

HB

601

**FISCAL NOTE**

**STATE OF ALASKA  
1992 LEGISLATIVE SESSION**

Bill No. HB 601

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to the taking of fish BRU: Trial Courts  
           and game Components: \_\_\_\_\_  
 Sponsor: Lincoln  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 000 | 000 000 | 768

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	7.5	12.5	7.5	2.5	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>7.5</b>	<b>12.5</b>	<b>7.5</b>	<b>2.5</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	7.5	12.5	7.5	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>7.5</b>	<b>12.5</b>	<b>7.5</b>	<b>2.5</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary)**  
  
 See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System Date: 06/16/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System

HB 601

Analysis

ANALYSIS

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge. These challenges will likely occur notwithstanding the passage of an underlying constitutional amendment.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.



Official Business

# Alaska State Legislature

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

TO: Members of the Alaska House

FROM: Representative Georgianna Lincoln *georg*

DATE: June 12, 1992

RE: Special session on subsistence

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In preparation for the special legislative session on June 15, significant misinformation has been circulated to legislators and the public. I would like to take this opportunity to clarify the issue and to ask you to consider a more responsible course of action.

### The Bills

There will be at least three subsistence proposals before us which were introduced in the regular session and not acted on:

- the Governor's bill (originally introduced as HB 552 and SB 443), with several minor changes;
- the Bush Caucus bill (originally introduced as HB 592), also with several minor changes; and
- constitutional amendments (originally introduced as HJR 79/SJR 49).

## The Real Issue

Since the Alaska Supreme Court ruled in McDowell, our state has been caught between its own Constitution and the requirements of the federal subsistence law (ANILCA). Repeated failures to resolve the impasse have produced a situation in which our fish and game resources are now under dual management by the state and federal governments. This issue can only be resolved by adoption of an amendment to the Alaska Constitution and a new statute. If presented to the voters, a constitutional amendment that protects subsistence users will pass. The Governor's solution however, is to resolve the federal-state impasse only by getting Congress to amend ANILCA. That plan, strongly opposed by our Congressional delegation, will take several years, poison our internal state relationships - and fail.

## Is the Governor's Bill the Solution?

The Governor's bill continues to suffer from three major flaws:

- ***It does not comply with federal law.*** If enacted, it will not return fish and game management to the state. Dual management will simply continue, and the political and social divisions among our people will widen.
- ***It is not constitutional.*** If enacted, it will be struck down by the courts - for the same reason that part of the 1986 state subsistence law was voided in McDowell. We'll be right back to where we are now, with no operative subsistence statute on the books.
- ***It is bad public policy.*** If enacted, it will not protect Alaskans who depend on fish and game to feed their families. It will threaten the survival of our most traditional villages and unfairly discriminate against legitimate urban subsistence users. Its adoption will send a negative message to the Congress and the nation which will guarantee that no solution will be forthcoming from Washington, D.C.

Here are examples of how the Governor's bill fails:

- **Its guarantee of subsistence eligibility for residents of rural villages is wholly inadequate.** As originally considered by the Governor's Subsistence Advisory Council, the bill would have afforded such individuals an irrebuttable presumption of eligibility for the preference. But late in the process, the Attorney General urged that "irrebuttable" be removed, on the theory that this would somehow strengthen the bill's shaky constitutionality. The only certain result, however, is the weakening of statutory protections for precisely those communities most dependent on fish and game.
- **The Governor's bill goes way beyond what must be done to solve the legal problem created by McDowell.** It excludes whole fish stocks and game populations - huge areas of the state - from subsistence uses, regardless of the individual subsistence eligibility of the people who live there. It is now clear that policy decisions were made by the Governor's Office to exclude subsistence from certain areas because of intense user-group competition. If we are going to define subsistence eligibility by lifestyle, then all Alaskans who live that way must be treated equally, no matter how difficult that makes it for the fish and game boards. To do otherwise is not only unfair, but unconstitutional. Moreover, it is not necessary.
- **If state law is to define subsistence as a lifestyle, we inevitably run into the problem of setting criteria of individual eligibility.** Under the Governor's bill, if any Alaskan is required to prove his or her eligibility, seven behavioral standards are rated on a point system. The Legislature should examine these criteria and ask whether they are measurable and enforceable. We cannot manage an emotionally charged issue on the "honor system." From past experience, we know that self-enforcement will produce a tangle of bureaucracy, investigation, cost and litigation.
- **Finally, the Governor's bill accords too much regulatory discretion to the Boards of Fish and Game.** History shows that clear policy direction must be given by the Legislature in order to prevent even the best statute from being effectively repealed in the regulatory process by powerful forces determined to reduce or eliminate subsistence protections.

## There is a solution

The only fair and effective way to resolve the subsistence problem has three components:

- Alaska must have a subsistence statute which complies with the federal law and returns management of fish and game to the state government.
- That statute must protect legitimate subsistence users, while treating Alaskans fairly in the distribution of hunting and fishing opportunities.
- In order to have such a balanced statute, the Legislature must allow the people of Alaska to amend the constitution.

## The Bush Caucus Bill

At the end of the regular session, the Bush Caucus introduced new subsistence legislation as an alternative to the Governor's bill. Minor changes are now being made in the text before its introduction in the special session. Here is what it does:

- It complies with the federal law, by retaining the ANILCA subsistence preference for residents of rural communities.
- It then adds a second-tier subsistence preference for eligible urban subsistence users.
- It treats eligible urban subsistence users fairly.
- It creates a new Subsistence Board, to work in cooperation with the Boards of Fish and Game, in order to insure more attention to subsistence species and practices.
- It gives clear statutory direction to the Boards of Fish and Game regarding management standards and the protection of eligible subsistence users in both urban and rural areas.
- It provides ordinary citizens with a greater degree of participation in the regulatory process through an improved system of advisory committees and regional councils.

The Bush Caucus alternative is balanced and workable. It solves the legal conflict. It gets back fish and game management. And it does so by being fair to people.

### A Constitutional Amendment

The Bush Caucus bill, like any statute which proposes to solve the subsistence problem, will require a constitutional amendment. That is also true for the Governor's bill. The Legislature's legal counsel has given fair warning regarding the dubious constitutionality of the administration's bill.

What would an appropriate constitutional amendment on subsistence look like? One that is short and to the point. One that gives the Legislature the authority, which it does not now enjoy, to enact a statute defining who is a subsistence user.

### False Claims

For several weeks, representatives of the Hickel administration have issued statements and documents trying to explain what the Governor's goal on subsistence really is, and why it was necessary to call a special session:

- Permanent Federal Regulations. Until recently, the Governor claimed that a special session was necessary to avoid the effective date of permanent federal subsistence regulations (July 1). The specter of a "permanent takeover" was given as the reason the Legislature had to adopt his bill immediately. The federal regulations are a "done deal" and cannot be prevented by any action of the Legislature during June. They were published in the Federal Register on Thursday, May 28, with a date certain of July 1. Our task is not to rush in to prevent a symbolic "event" which will change nothing. Rather, it is to solve the problem of subsistence in the right way and get back fish and game management permanently.
- Sport and Commercial Fishing: Kenai Peninsula. The Governor's Office now denies that the real problem of subsistence is the impasse between federal and state laws. The new problem is that the combination of the subsistence priority and the eligibility of all

Alaskans "...is soaking up so much of the resource that many commercial and sports fishing and general hunting opportunities will be eliminated." On June 9, the Commissioner of Fish and Game wrote all limited entry permit holders, urging them to contact their legislators in support of the Governor's bill because "...in many fisheries, subsistence will have a legal priority on so much of the resource that the commercial and recreational uses of the fish stock may be severely diminished or shut down entirely." Because of its large salmon fisheries and accessibility to Anchorage, the Kenai Peninsula is most frequently mentioned.

Subsistence fishing, even when open to all Alaskans, is not going to affect sport or commercial uses. Subsistence or personal use fishing, open to all Alaskans, has been allowed continuously in Cook Inlet since Statehood. The current Cook Inlet subsistence fishery has been in place for two fishing seasons, with subsistence allowed on beaches but not in the Kenai River. In 1991, 38,500 salmon were harvested for subsistence, of which 32,300 were sockeyes. In 1992, only 500 salmon have thus far been harvested in three setnet and four dipnet openings. For the remainder of the season, there will be only 14 days for setnets and 29 days for dipnets. The forecast for the 1992 commercial salmon harvest is a very healthy 3.6 million fish. If the entire subsistence fishery in Cook Inlet were to take twice as many fish and it did in 1991, this would still represent only 2% of the commercial take! No lawsuits are threatened to open the Kenai River to subsistence fishing or to create any open-ended fishery in Cook Inlet. The whole issue is a political scare tactic, unsupported by facts.

- Customary Trade. The Governor's Office claims that large-scale commercial sale of subsistence-taken harvests has occurred in the name of "customary trade." Everyone agrees that abuses must not be allowed. However, it is not clear why this requires a special session, since customary trade will be dealt with at the Board of Fisheries meeting in February, 1993. The Board has all the necessary authority to define the practice and to insure that commercial fishing is not done under the guise of subsistence.

- Federal Court Oversight. The Governor's Office states that, even if a constitutional amendment and a statute complying with ANILCA were passed, this would only restore state management as interpreted by federal courts. The Governor's solution to the presence of federal judges is to amend ANILCA. However, that is

very unlikely, according to the Alaska Congressional delegation. The law is the law, and if the state refuses to obey it, people will continue to sue.

- Native Sovereignty. On at least one occasion, even the specter of Native sovereignty has been raised as a reason why the Governor's subsistence bill must be passed. Title VIII of ANILCA has nothing to do with sovereignty. It deals only with the economic and cultural protection of small rural communities in Alaska.

## **BILL ANALYSIS**

### **HB 601 - Lincoln Subsistence Bill**

The purpose of HB 601 is to develop subsistence legislation which is consistent with ANILCA and which provides for subsistence uses by residents who do not reside in rural Alaska. This legislation accomplishes this purpose by retaining the subsistence priority for rural residents as mandated in ANILCA for rural residents, and then providing a secondary priority for persons who reside outside of rural Alaska (i.e., urban residents).

#### **SECTION 1. FINDINGS**

The bill contains four findings. The findings identify the importance of subsistence to rural and urban residents. They go on to recognize that fish and wildlife resources are not plentiful enough to meet the needs of all users and therefore it is necessary to provide a preference for subsistence uses over other consumptive uses. They conclude with a determination that there greater nutritional and economic alternatives in urban Alaska than in rural areas.

#### **SECTION 3. - SUBSISTENCE ALLOCATION**

In this section, the federal guidelines are used for purposes of defining rural in state law. By using the federal definition, the requirement in Sec. 805 of ANILCA that the state have a definition of subsistence consistent with the federal definition is satisfied. For those areas which are not rural, the Boards of Fisheries and Game are to determine which groups and individuals have cultural or economic dependence upon urban subsistence uses and are thereby eligible to participate in these uses.

This section provides the substantive provisions for allocating fish and game for rural and urban subsistence uses. The existing Boards of Fisheries and Game are to determine what the harvestable surplus is of each fish stock and game population used for subsistence and then develop subsistence regulations. This section uses the same method for allocating to rural subsistence uses as is contained in existing state law and satisfies the requirement of ANILCA regarding the priority for subsistence uses by rural residents. In addition, however, the section provides for allocations for urban subsistence uses and gives these uses a secondary priority after rural subsistence uses and before other consumptive uses. Once both rural and urban subsistence uses have been satisfied for those stocks and populations subject to subsistence uses, other consumptive uses are authorized.

#### **SECTIONS 2 and 5 - CONFORMING SECTIONS**

These sections of the bill provide authority to the Boards of Fisheries and Game and the Subsistence Division. There is no substantive impact from these sections.

#### **SECTION 4. - REGIONAL COUNCILS**

This section creates a regional council system in statute which currently existed only in regulation. The regional councils are to have significant authority in how their recommendations to the Boards on subsistence determinations and regulations are to be considered. The three part test contained in ANILCA is adopted in this section.

#### **SECTION 6 - 10. - DEFINITIONS**

These sections contain new definitions for "rural area", "urban area", "urban subsistence fishing", "urban subsistence hunting", and "urban subsistence uses." The existing definition of "subsistence uses" is maintained for rural subsistence uses, thereby satisfying the third and final requirement of ANILCA. The definition of urban subsistence uses is similar to the definition of subsistence uses (rural). Urban subsistence use is generally equivalent to personal use of fish and game by a state resident, though the personal use category is maintained because there are some fishing activities, such as dip net fisheries to harvest a return of hatchery fish, which would not be considered a subsistence use.

#### **SECTION 11. - EFFECTIVE DATE**

The effective date of this bill is the date on which a constitutional amendment authorizing rural and urban subsistence uses is approved by the voters.

HOUSE MAJORITY COMMITTEE SUBSTITUTE  
TO PROPOSED SUBSISTENCE LEGISLATION

The proposed House Majority Committee Substitute solves two major problems that have been driving the subsistence debate. It fixes the problems with the Kenai fishery. It also fixes the problem with subsistence taken fish and game being sold in competition with that taken by commercial users.

The problems with the Kenai fishery are dealt with by:

1. Requiring the Boards of Fish and Game to define non-subsistence use areas and prohibiting subsistence activities from taking place in subsistence use areas;
2. Requiring the Boards of Fish and Game to grant customary use permits within <sup>non</sup> subsistence use areas based on criteria set by the Boards in regulation; and
3. Giving the Boards of Fish and Game the discretion to allocate fish and game resources to holders of customary use permits based on criteria set by the Boards in regulation.

In addition to fixing the Kenai problem, the House Majority Committee substitute defines "customary trade" to mean the limited exchange, for minimal amounts of cash (as defined by the appropriate board) of fish or game resources.

**SUBSISTENCE LEGISLATION - DIFFERENCES BETWEEN LINCOLN BILL, GOVERNOR'S BILL, AND BARNES BILL.**

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Constitution	Requires a constitutional amendment to grant authority to pass legislation which is consistent with ANILCA and solves the problems created by <u>McDowell</u> .	Governor asserts his bill does not require a constitutional amendment. Legislative Legal Council believes amendment is necessary because of equal protection and common use clauses.	Probably does not require an amendment to the Alaska Constitution.
ANILCA Compliance	By retaining the three requirements of ANILCA: definition of subsistence, rural priority, and advisory committee/regional council system, bill complies with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.
Regains State Management	With passage of a constitutional amendment, would put state back in compliance with ANILCA and regain state management authorities.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.
Eligible participants	Rural residents who reside in communities which have customary and traditional uses of individual fish stocks and game populations. Urban residents who are part of a group or individually have a nutritional or cultural dependence upon fish and game for subsistence.	Residents of small communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of medium sized communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of large communities must qualify on an individual basis based upon their individual use of fish and game.	Eligibility is impossible to determine. The Board of Game sets eligibility standards for hunting, but Board of Fisheries has no authority similar authority for fishing. Each resident of the state is required to have an individual eligibility determination. Appears to require separate determination for each fish stock or game population an individual wishes to take for subsistence.

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Eligible Fish Stocks and Game Populations	Subsistence uses would apply to any fish stock and game population, whether in rural or urban areas, which are taken for subsistence uses.	Subsistence uses would apply only to fish stocks or game populations which are taken for subsistence uses in rural areas. A person can qualify for subsistence based upon harvests in urban areas, cannot harvest for subsistence in those areas, and must go to rural areas to harvest stocks and populations which may not have been part of this person's harvest pattern. Does not allow subsistence uses to be established on transplanted game populations or new hatchery or enhancement fish stocks until 20 years of use has been established.	The "customary and traditional" definition is ambiguous as to whether subsistence uses apply to particular fish stocks and game populations that have been historically used by residents of rural Alaska or merely describes the generic uses that may be made of fish stocks and game populations taken for subsistence uses.
Customary Trade	Leaves the definition to the boards.	Prohibits customary trade other than from individual to individual. Very vague on how to treat customary trade in furs which is important in ensuring access by trappers to National Park lands.	Leaves the definition to the boards.

ISSUE	LINCOLN BILL - HB 601	GOVERNOR'S BILL - HB 599	BARNES BILL - HB 600
Regulatory Standard	<p>Provides significant protection to subsistence uses by requiring that regulations be written in a manner consistent with customary and traditional use patterns and which cause the least adverse impact on subsistence users.</p> <p>Requires the boards to provide for subsistence uses when harvestable surpluses exist on fish stocks and game populations subject to subsistence uses.</p>	<p>Provides greater authority to the boards by reducing the obligation to regulate based upon customary and traditional use patterns. Does not include the standard that regulations must cause the least adverse impact on subsistence uses.</p> <p>Provides wide discretion to the boards to determine when to allow subsistence uses even when a harvestable surplus exists.</p>	<p>Though the language is vague, the bill appears to repeal the existing reasonable opportunity standard and require the boards to satisfy subsistence uses.</p>
Priority	<p>First priority is for rural subsistence uses and a secondary priority for urban subsistence uses. Paramount rural priority allows for compliance with ANILCA. Secondary priority for urban subsistence recognizes the importance of subsistence to some urban residents.</p> <p>Recognizes differences between rural and subsistence uses. Subsistence uses are limited to fish stocks and game populations which are customarily and traditionally used by communities. There will be little overlap between which stocks and populations rural and urban subsistence users harvest and the difference in the priority will be insignificant in a practical sense.</p>	<p>Gives equal priority to rural and urban subsistence uses. Urban subsistence users will only be able to participate in rural subsistence opportunities. This will have a practical effect by creating more competition between rural and urban users and will require the boards to institute more "Tier II" situations.</p>	<p>The bill's language is vague in this regard. A literal interpretation is that the boards are required to allocate a portion or all of the harvestable surplus of a stock or population for subsistence use at a level equal to what it would take to satisfy subsistence uses prior to allocating to any other uses.</p>

HOUSE MAJORITY COMMITTEE SUBSTITUTE  
TO PROPOSED SUBSISTENCE LEGISLATION

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The problems with the Kenai fishery are dealt with by:

1. Requiring the Boards of Fish and Game to define non-subsistence use areas and prohibiting subsistence activities from taking place <sup>non</sup> in subsistence use areas;
2. Requiring the Boards of Fish and Game to grant customary use permits within subsistence use areas based on criteria set by the Boards in regulation; and
3. Giving the Boards <sup>non</sup> of Fish and Game the discretion to allocate fish and game resources to holders of customary use permits based on criteria set by the Boards in regulation.

In addition to fixing the Kenai problem, the House Majority Committee substitute defines "customary trade" to mean the limited exchange, for minimal amounts of cash (as defined by the appropriate board) of fish or game resources.

Version reflecting.  
90 SLA 92 (HB 505)

7-LS2411A

4:45 pm

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

1 (C) can be conducted at a reasonable cost; and  
2 (D) can be coordinated with observer programs of other  
3 agencies, including the National Marine Fisheries Service, North Pacific  
4 Fishery Management Council, and the International Pacific Halibut  
5 Commission;

6 (14) establishing nonexclusive, exclusive, and superexclusive  
7 registration and use areas for regulating commercial fishing;

8 (15) regulating resident or nonresident sport fishermen as needed for  
9 the conservation, development, and utilization of fishery resources.

10 \* Sec. 2. AS 16.05.251(e) is amended to read:

11 (e) The Board of Fisheries may allocate fishery resources among personal use,  
12 sport, guided sport, customary use, and commercial fisheries. The board shall adopt  
13 criteria for the allocation of fishery resources and shall use the criteria as appropriate  
14 to particular allocation decisions. The criteria may include factors such as

15 (1) the history of each personal use, sport, guided sport, customary  
16 use, and commercial fishery;

17 (2) the number of residents and nonresidents who have participated in  
18 each fishery in the past and the number of residents and nonresidents who can  
19 reasonably be expected to participate in the future;

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

22 (4) the availability of alternative fisheries resources;

23 (5) the importance of each fishery to the economy of the state;

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

26 (7) the importance of each fishery in providing recreational  
27 opportunities for residents and nonresidents.

*(8) The importance of each fishery in meeting the social and cultural needs of the region and local area in which the fishery is located.*

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

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

31 (1) setting apart game reserve areas, refuges, and sanctuaries in the

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1 water or on the land of the state over which it has jurisdiction, subject to the approval  
2 of the legislature;

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) the number of residents and nonresidents who have participated in  
30 each hunt in the past and the number of residents and nonresidents who can  
31 reasonably be expected to participate in the future;

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

3 (4) the availability of alternative game resources;

4 (5) the importance of each hunt in providing recreational opportunities  
5 for residents and nonresidents. <sup>(b) the importance of each hunt in</sup>  
6 <sup>meeting the economic, social, and</sup>  
7 <sup>cultural needs of the region and local ar</sup>

\* Sec. 5. AS 16.05.258 is amended by adding new subsections to read: <sup>in which the hunt</sup>  
8 <sup>is located.</sup>

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

- 23 (1) the ~~individual's~~ <sup>permittee's</sup> proximity to the resource;
- 24 (2) the availability of alternative resources to the ~~individual~~ <sup>permittee</sup>; and
- 25 (3) either
  - 26 (A) the ~~individual's~~ <sup>permittee's</sup> dependence on wild, renewable resources
  - 27 as a mainstay of livelihood; or
  - 28 (B) the ~~individual's~~ <sup>permittee's</sup> cultural need to engage in personal or
  - 29 family use and consumption of wild, renewable resources.

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

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

23 \* Sec. 6. AS 16.05.259 is amended to read:

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

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

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

28 (5) "commercial fishing" means the taking, fishing for, or possession  
29 of fish, shellfish, or other fishery resources with the intent of disposing of them for  
30 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid  
31 subsistence or customary use permit in possession, if required by statute or

1 regulation, is considered prima facie evidence of commercial fishing if commercial  
2 fishing gear as specified by regulation is involved in the taking, fishing for, or  
3 possession of fish, shellfish, or other fish resources;

4 \* Sec. 8. AS 16.05.940 is amended by adding a new paragraph to read:

5 (36) "customary trade" means the limited exchange, for minimal  
6 amounts of cash, as restricted by the appropriate board, of fish or game resources, this  
7 paragraph does not restrict money sales of furs or furbearers.

Add: "customary use" means uses of  
fish stocks and game populations  
permitted under AS. 16. 05. 258(g)

Add immediate effective date

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

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking of fish and game; and providing for an effective  
2 date."

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

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

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

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

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

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

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

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

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

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

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

15 (9) prohibiting and regulating the live capture, possession, transport,  
16 or release of native or exotic fish or their eggs;

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

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

23 (12) regulating commercial, sport, guided sport, customary use,  
24 subsistence, and personal use fishing as needed for the conservation, development, and  
25 utilization of fisheries;

26 (13) requiring, in a fishery, observers on board fishing vessels, as  
27 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined  
28 in AS 16.05.475(c), after making a written determination that an on-board observer  
29 program

30 (A) is the only practical data-gathering or enforcement  
31 mechanism for that fishery;

1 (B) will not unduly disrupt the fishery;

2 (C) can be conducted at a reasonable cost; and

3 (D) can be coordinated with observer programs of other  
4 agencies, including the National Marine Fisheries Service, North Pacific  
5 Fishery Management Council, and the International Pacific Halibut  
6 Commission;

7 (14) establishing nonexclusive, exclusive, and superexclusive  
8 registration and use areas for regulating commercial fishing;

9 (15) regulating resident or nonresident sport fishermen as needed for  
10 the conservation, development, and utilization of fishery resources.

11 \* Sec. 2. AS 16.05.251(e) is amended to read:

12 (e) The Board of Fisheries may allocate fishery resources among personal use,  
13 sport, guided sport, customary use, and commercial fisheries. The board shall adopt  
14 criteria for the allocation of fishery resources and shall use the criteria as appropriate  
15 to particular allocation decisions. The criteria may include factors such as

16 (1) the history of each personal use, sport, guided sport, customary  
17 use, and commercial fishery;

18 (2) the number of residents and nonresidents who have participated in  
19 each fishery in the past and the number of residents and nonresidents who can  
20 reasonably be expected to participate in the future;

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

23 (4) the availability of alternative fisheries resources;

24 (5) the importance of each fishery to the economy of the state;

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

27 (7) the importance of each fishery in providing recreational  
28 opportunities for residents and nonresidents;

29 (8) the importance of each fishery in meeting the social and  
30 cultural needs of the region and local area in which the fishery is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (4) the availability of alternative game resources;

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

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

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

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

26 (1) the <sup>persons</sup> ~~permittee's~~ proximity to the resource;

27 (2) the availability of alternative resources to the permittee; and

28 (3) either

29 (A) the permittee's dependence on wild, renewable resources  
30 as a mainstay of livelihood; or

31 (B) the permittee's cultural need to engage in personal or

1 family use and consumption of wild, renewable resources.

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

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

28 \* Sec. 6. AS 16.05.259 is amended to read:

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

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

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

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

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

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

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

15 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

*AS 16.05.258*