

SCOMM

81:2

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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MEMORANDUM

June 19, 1992

SUBJECT: Constitutionality of CSHB 601(Judiciary) am (efd fld)
TO: Senator Al Adams
FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether CSHB 601(Judiciary) am (efd fld) is constitutional.

In the brief amount of time available to respond to your question there is not an opportunity for in depth legal analysis. However, I can give you my preliminary conclusions based on a cursory review of the bill, in light of my understanding of the relevant constitutional law.

The bill, as it passed the House, establishes nonsubsistence areas that are closed to subsistence hunting and fishing and establishes a new class of persons that may engage in customary use of certain fish and game in those nonsubsistence areas.

Under its constitutional authority to provide for the utilization of natural resources, the legislature may provide for particular uses of fish and game, may prescribe the areas in the state where those uses may occur, and may establish criteria for determining who may participate in those uses. The bill appears to exercise this authority in a constitutional manner. The bill does not appear to conflict with the open access provisions of Article VIII of the Alaska Constitution and does not appear to be violative of state equal protection requirements. The provisions of the bill appear to treat similarly situated individuals equally and fairly.

The most significant constitutional issue potentially available to challenge the bill is substantive due process. Under substantive due process, legislation must be rationally related to a valid legislative purpose. To violate substantive due process, the provisions of the legislation must be so unrelated to the achievement of a valid purpose that the action of the legislature in enacting the law was irrational. This is a relatively low standard of review by the courts. It would appear that the apparent purposes of the bill, to provide for the use and allocation of fish and game resources, are sufficient to bolster it against a challenge under substantive due process grounds.

If you are aware of a particular issue raised by the bill, I can examine that issue in more detail later. Please contact me, if I can provide further assistance.

GU:lmb:mi
92-140.lmb

COMMENTS ON "CUSTOMARY USE" IN CSHB 601 (JUD)

BY DICK BISHOP
ALASKA OUTDOOR COUNCIL

CUSTOMARY USE = FISH STOCKS AND GAME POPULATIONS THAT HAVE
BEEN CUSTOMARILY TAKEN FOR SUBSISTENCE USES.

IN TITLE 16.05.940 (30):

"SUBSISTENCE USES" MEANS THE NONCOMMERCIAL, CUSTOMARY & TRADITIONAL [emphasis added] USES OF WILD, RENEWABLE RESOURCES BY A RESIDENT [DOMICILED IN A RURAL AREA OF THE STATE] FOR DIRECT, PERSONAL OR FAMILY CONSUMPTION AS FOOD, SHELTER, FUEL, CLOTHING, TOOLS, OR TRANSPORTATION, FOR THE MAKING AND SELLING OF HANDICRAFT ARTICLES OUT OF NONEDIBLE BY-PRODUCTS OF FISH AND WILDLIFE RESOURCES TAKEN FOR PERSONAL OR FAMILY CONSUMPTION, AND FOR THE CUSTOMARY TRADE, BARTER, OR SHARING FOR PERSONAL OR FAMILY CONSUMPTION; IN THIS PARAGRAPH, 'FAMILY' MEANS PERSONS RELATED BY BLOOD, MARRIAGE, OR ADOPTION, AND A PERSON LIVING IN THE HOUSEHOLD ON A PERMANENT BASIS;"

"CUSTOMARY & TRADITIONAL" IS NOT DEFINED IN TITLE 16
(OR ANYWHERE ELSE EXCEPT HB 599/SB 484)

ALASKA LEGAL SERVICES ATTORNEYS AND OTHERS HAVE ARGUED SUCCESSFULLY IN COURT (AND ALSO ELSEWHERE, WITH AND WITHOUT SUCCESS) THAT "CUSTOMARY & TRADITIONAL" MEANS, IN ESSENCE, "NO CLOSED SEASON NO BAG LIMIT."

SUCH A POTENTIAL IS UNACCEPTABLE.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. CSHB601Revision Date: 6/19/92Department Affected: Fish and GameTitle: An Act relating to the taking
of fish and game for subsistence;BRU: BoardsComponent: Board ServicesSponsor: Rep. Lincoln, Mackie...Requestor: House Resources

COMPONENT SERIAL NO.

4	8	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	115.0	120.0	125.0	125.0	125.0	125.0
TRAVEL	170.0	175.0	50.0	50.0	50.0	50.0
CONTRACTUAL	75.0	80.0	25.0	25.0	25.0	25.0
SUPPLIES	5.0	5.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	365.0	380.0	201.0	201.0	201.0	201.0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	365.0	380.0	201.0	201.0	201.0	201.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	365.0	380.0	201.0	201.0	201.0	201.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY						

Estimate of current year impact: no FY92 fiscal impact

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared By: Beverly ReaumePhone: 465-4110Division: Boards of Fisheries and GameDate: 6/19/92Approved by Commissioner: Carl Z. RosierAgency: Department of Fish and GameDate: 6/19/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

DIVISION OF BOARDS FISCAL ANALYSIS - CSHB 601

ANALYSIS

The Board of Fisheries and the Board of Game meeting individually and together as the Joint Board would require approximately fifty days of meetings over a two year period to implement the CSHB601. In future years, the new bill would add approximately five days to the Board of Fisheries board schedule and two days to the Board of Game. The extra three days for the Board of Fisheries is based on the new section 8 "(8) the importance of each fishery in meeting the economic, social and cultural needs of the region and local area in which the fishery is located." The overall estimate is based on board consideration of rural designations and customary and traditional use during the 1980s. It is important to note that since 1989 both boards have deferred most proposals dealing with subsistence in anticipation of legislation that would allow for a defensible approach to proposals. Over this same time period there have been reductions in the Division of Boards budget that have reduced the capability of the boards to meet. With the advent of new subsistence legislation, the boards will have to deal with subsistence issues as well as maintaining a full workload in other regulatory areas.

The items in the proposed legislation requiring the greatest effort on the part of the boards, in descending order, are:

I. "The boards, acting, jointly, shall identify by regulation the boundaries of nonsubsistence areas...."

20 DAYS

II. "The boards shall identify by regulation the fish stocks and game populations that have been customarily taken for subsistence uses in each nonsubsistence area prior to the establishment of the nonsubsistence area...."

20 DAYS

III. "The boards shall jointly establish eligibility for issuance of a customary use permit to participate in the take of the harvestable portion of the fish stock or game population that is allocated for customary use...."

10 DAYS

Other items affecting cost estimates:

(1) With the loss of federal funding, Boards Division has eliminated two regional coordinators in the FY93 budget. The cost estimates include reactivation of these two coordinators. The regional coordinators are essential to provide for increased advisory committee meetings. Implementation will add at least one more meeting for each advisory committee. The increased activity of advisory committees and increased board meeting days are beyond staff's capability to provide adequate support.

(2) If the bill were to bring the state into compliance with ANILCA, we could anticipate that a portion and perhaps all of the estimated costs could come from the federal government.

COSTS - FY93

<u>Personal Services:</u>	115.0
overtime for existing staff	
two regional coordinators	
<u>Travel:</u>	170.0
travel and per diem for board members,	
Boards staff, and advisory committee	
meetings	
<u>Contractual:</u>	75.0
meeting space, printing and postage for	
proposal books, telephone and legal	
notice of meetings	
<u>Supplies:</u>	5.0
office supplies	
TOTAL	<u>365.0</u>

COSTS - FY94:

Personal Services	120.0
Travel	175.0
Contractual	80.0
Supplies	5.0
TOTAL	<u>380.0</u>

COSTS - FUTURE YEARS

Personal Services	125.0
Travel	50.0
Contractual	25.0
Supplies	1.0
TOTAL	<u>201.0</u>

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 601 CS

Revision Date: 6/19/92
 Title: An Act relating to the
 taking of fish & game for subsistence
 Sponsor: House Judiciary
 Requestor: Senate Finance

Department Affected: Fish & Game
 BRU: Subsistence
 Component: Subsistence

COMPONENT SERIAL NO.

4	8	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	Ø					
TRAVEL	Ø					
CONTRACTUAL	Ø					
SUPPLIES	Ø					
EQUIPMENT	Ø					
LAND & STRUCTURES	Ø					
GRANTS, CLAIMS	Ø					
MISCELLANEOUS	Ø					
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø

CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.) This bill authorizes the boards to establish "customary use" areas. Should these areas be established, costs to the division would increase. One such determination on the Kenai Peninsula, for example, could cost the division up to 35.0.

Prepared By: Robert Bosworth
 Division: Subsistence

Phone: 465-4147
 Date: 6/19/92

Approved by Commissioner: *Carl Z. Rosier*
 Agency: Department of Fish and Game

Date: 6/19/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 1

Bill Version: CSHB 601(RES)

(H) Publish Date: 6/18/92

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						
TOTAL OPERATING	7.5	12.5	7.5	2.5	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	7.5	12.5	7.5	2.5	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	7.5	12.5	7.5	2.5	0.0	0.0

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 SystemHB 601Analysis**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.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB601Revision Date: 6/15/92Department Affected: Fish and Game

Title: An Act relating to the taking
of fish and game for subsistence:

BRU: BoardsComponent: Board ServicesSponsor: Rep. Lincoln, Mackie...Requestor: House ResourcesCOMPONENT SERIAL NO.

4	8	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	115.0	120.0	125.0	130.0	130.0	130.0
TRAVEL	272.0	282.5	252.0	177.0	177.0	177.0
CONTRACTUAL	120.0	124.0	120.0	77.0	77.0	77.0
SUPPLIES	5.0	5.0	5.0	2.0	2.0	2.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	512.0	531.5	502.0	386.0	386.0	386.0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	512.0	531.5	502.0	386.0	386.0	386.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	512.0	531.5	502.0	386.0	386.0	386.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY						

Estimate of current year impact: no FY92 fiscal impact

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

Prepared By: Beverly Reaume *Beverly Reaume*Phone: 465-4110Division: Boards of Fisheries and GameDate: 6/17/92Approved by Commissioner: *Carl E. Riser*Agency: Department of Fish and GameDate: 6/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, CFB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

DIVISION OF BOARDS FISCAL ANALYSIS - HB 601

ANALYSIS

The Board of Fisheries and the Board of Game meeting individually and together as the Joint Board would require approximately seventy days of meetings over a three year period to implement the HB601. In future years, the new bill would add approximately ten days to the overall board schedule. This estimate is based on board consideration of rural designations and customary and traditional use during the 1980s. It is important to note that since 1989 both boards have deferred most proposals dealing with subsistence in anticipation of legislation that would allow for a defensible approach to proposals. Over this same time period there have been reductions in the Division of Boards budget that have reduced the capability of the boards to meet. With the advent of new subsistence legislation, the boards will have to deal with subsistence issues as well as maintaining a full workload in other regulatory areas.

The items in the proposed legislation requiring the greatest effort on the part of the boards, in descending order, are:

- (1) "The boards shall jointly identify by regulation
 - (1) communities and areas of the state that qualify as rural under this paragraph as follows:

- (A) a community or area with a population of 2,500 persons or less is a rural area unless the board determines that the community or area possesses significant characteristics of an urban nature or is part of an urbanized area;

- (B) a community or area with a population of more than 2,500 persons but not more than 7,000 persons shall be classified as a rural area or urban area according to the characteristics identified under (E) of this paragraph; the board shall classify communities and areas of more than 2,500 persons but not more than 7,000 persons before classifying other communities and areas;

- (C) a community or area with a population of more than 7,000 persons is presumed to be an urban area, unless the board determines that the community or area should be classified as a rural area because the community or area possesses significant characteristics of a rural area;"

20 DAYS

- (b) The boards shall identify, by regulation, for each rural and urban area of the state,

Boards Division - fiscal analysis for HB 601 page 2

- (1) the fish stocks and game populations that are taken for subsistence uses or urban subsistence uses;
- (2) the customary and traditional patterns of taking and use of fish stocks and game populations taken for subsistence uses or urban subsistence uses;
- (3) what portion, if any, of the fish stocks and game populations identified in (1) of this subsection can be harvested consistent with sustained yield;
- (4) how much of the harvestable portion of a fish stock or game population identified in (3) of this subsection is needed to satisfy subsistence users and urban subsistence uses of the fish stock or game population."

40 DAYS

(c - f) Initial development of regulations for each identified fish stock and game population as well as identification of subsistence users.

10 DAYS

Other items affecting cost estimates:

- (1) With the loss of federal funding, Boards Division has eliminated two regional coordinators in the FY93 budget. The cost estimates include reactivation of these two coordinators.
 - (a) The regional coordinators are essential to provide for increased advisory committee meetings. Implementation will add at least one more meeting for each advisory committee.
 - (b) Regional Councils, due to the number of communities and often vast area of the state, are even more dependent on regional coordinators than are advisory committees. This proposal would reactivate the six regional councils that are unfunded in the current FY93 budget. "(c) Each regional council, in consultation with the section of subsistence hunting and fishing, shall provide recommendations to the boards on the identifications and regulations required under AS 16.05.258..."

The increased activity of advisory committees, reactivation of regional councils and increased board meeting days are beyond staff's capability to provide adequate support.

- (2) If the bill were to bring the state into compliance with ANILCA, we could anticipate that a portion and perhaps all of the estimated costs could come from the federal government.

COSTS - FY93

<u>Personal Services:</u>	115.0
overtime for existing staff	
two regional coordinators	
<u>Travel:</u>	272.0
travel and per diem for board members,	
Boards staff, and advisory committee	
meetings	
<u>Contractual:</u>	120.0
meeting space, printing and postage for	
proposal books, telephone and legal	
notice of meetings	
<u>Supplies:</u>	5.0
office supplies	
TOTAL	<u>512.0</u>

COSTS - FY94:

Personal Services	120.0
Travel	282.5
Contractual	124.0
Supplies	5.0
TOTAL	<u>531.5</u>

COSTS - FY95:

Personal Services	125.0
Travel	252.0
Contractual	120.0
Supplies	5.0
TOTAL	<u>502.0</u>

COSTS - FUTURE YEARS

Personal Services	130.0
Travel	177.0
Contractual	77.0
Supplies	2.0
TOTAL	<u>386.0</u>

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

FISCAL NOTE

BILL NO. 601

Revision Date: _____

Department Affected: Fish and Game

Title: An Act Relating to the taking
of fish and game for Subsistence

BRU: Subsistence

Sponsor: Representative Lincoln

Component: Subsistence

Requestor: House Resources

COMPONENT SERIAL NO.

4	8	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	229.9	222.4	218.4	193.8	200.3	206.8
TRAVEL	8.5	7.5	6.5	5.5	5.5	5.5
CONTRACTUAL	27.5	25.5	23.5	22.0	22.0	22.0
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	17.0	3.0	3.0	2.5	2.5	2.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	285.4	260.9	253.9	226.3	232.8	239.3

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	285.4	260.9	253.9	226.3	232.8	239.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	285.4	260.9	253.9	226.3	232.8	239.3

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	3.0	3.0	2.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year impact: No impact in FY92.

ANALYSIS: Creates an individual application system for urban residents, with costs similar to the Consensus Bill and Senate Bill 485, except without a separate State Subsistence Board.

Prepared By: Robert Bosworth *Robert Bosworth*

Phone: 465-4147

Division: Division of Subsistence

Date: 6/17/92

Approved by Commissioner: *Carl L. Roser*

Agency: Department of Fish and Game

Date: 6/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 1

Revision Date: _____

Department Affected: Fish and Game

Title: An Act relating to the taking of
fish and game for subsistence

BRU: Wildlife ConservationSponsor: Representative LincolnComponent: Wildlife ConservationRequestor: House ResourcesCOMPONENT SERIAL NO. 4 7 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	58.4	60.2	62.0			
TRAVEL	9.0	9.4	9.7			
CONTRACTUAL						
SUPPLIES	5.0	5.2	5.4			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.4	74.8	77.1			

CAPITAL	0	0	0			
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REVENUE FUND SOURCE: 1024	0	0	0			
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FUNDING: (Thousands of Dollars)

GENERAL FUND	72.4	74.8	77.1			
FEDERAL FUNDS	0	0	0			
OTHER FUND SOURCE:	0	0	0			
TOTAL	72.4	74.8	77.1			

POSITIONS:

FULL-TIME	1	1	1			
PART-TIME	0	0	0			
TEMPORARY	0	0	0			

Estimate of current year impact: No FY 92 impact.

ANALYSIS: (Attach a separate page if necessary.)

Assumes hire of Wildlife Biologist III to coordinate development of cooperative management plans, mandated under Sec. 3, and includes travel and per diem costs of attending Board of Game meetings and meetings with affected advisory committees.

Prepared By: Wayne L. Regelin, Deputy DirectorPhone: 465-4190Division: Division of Wildlife ConservationDate: 6/17/92Approved by Commissioner: Carl Z. RosierAgency: Department of Fish and GameDate: 6/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

#1 Senator Halford

7-GS2084 B

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 601(SCW)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE COMMITTEE OF THE WHOLE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

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

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

12 (3) customary and traditional uses of Alaska's fish and game originated with Alaska
13 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses,
14 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of

1 identity for many subsistence users;

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

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

8 (b) It is the purpose of this Act

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

11 (2) to provide for a preference for subsistence use over other consumptive uses of fish
12 and game resources.

13 (c) It is the intent of the legislature

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

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

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

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

19 Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the
20 fish stocks and game populations, or portions of stocks or populations, that are customarily and
21 traditionally taken for subsistence. The commissioner shall provide recommendations to the
22 boards concerning the stock and population identifications. The boards shall make identifications
23 required under this subsection after receipt of the commissioner's recommendations.

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

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

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

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

1 (C) may adopt regulations to differentiate among consumptive uses;
2 (2) if the harvestable portion of the stock or population is sufficient to provide
3 for subsistence uses and some, but not all, other consumptive uses, the appropriate board
4 (A) shall adopt regulations that provide a reasonable opportunity to
5 participate in the subsistence uses of those stocks or populations;
6 (B) may adopt regulations that provide for other consumptive use of those
7 stocks or populations; and
8 (C) shall adopt regulations to differentiate among consumptive uses and
9 provide for a preference for the subsistence uses, if regulations are adopted under (B) of
10 this paragraph;
11 (3) if the harvestable portion of the stock or population is sufficient to provide
12 for subsistence uses, but no other consumptive uses, the appropriate board shall adopt regulations
13 that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence
14 uses; and
15 (4) if the harvestable portion of the stock or population is not sufficient to provide
16 a reasonable opportunity for all subsistence uses, the appropriate board shall
17 (A) adopt regulations eliminating all consumptive uses, other than
18 subsistence uses;
19 (B) distinguish among subsistence users, through limitations based on
20 (i) the customary and direct dependence on the fish stock or game
21 population by the subsistence user for human consumption as a mainstay of life;
22 (ii) the proximity of the domicile of the subsistence user to the
23 stock or population; and
24 (iii) the ability of the subsistence user to obtain food if subsistence
25 use is restricted or eliminated.
26 (c) If the harvestable portion of a stock or population is insufficient to provide both for
27 a reasonable opportunity for subsistence and for all other consumptive uses, the department shall
28 prepare a plan to facilitate the recovery of that stock or population to allow for increased
29 consumptive uses as soon as possible. The department shall provide recommendations to the
30 appropriate board for necessary regulatory changes. If subsistence use of a stock or population
31 has been eliminated to achieve sustained yield, the appropriate board shall adopt regulations to

1 allow subsistence uses when that board determines that the stock or population has recovered
2 sufficiently to allow the taking for any consumptive use, consistent with sustained yield.

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

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

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

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

1 (g) Taking and use of fish and game authorized under this section are subject to
2 regulations regarding open and closed areas, seasons, methods and means, marking and
3 identifications requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.
4 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and
5 AS 16.30.010.

6 (h) For purposes of subsection (b) of this section, "reasonable opportunity" is an
7 opportunity, as determined by the appropriate board,

8 (1) allowing a subsistence user to participate in a subsistence hunt or fishery that
9 provides a normally diligent participant with a reasonable expectation of success of taking of fish
10 or game, but does not guarantee the taking of fish or game; the conditions of the hunt or fishery;
11 or the taking of all the fish and game that the participant wants or needs; and

12 (2) based on the findings of the appropriate board on each of the following
13 factors:

14 (A) resource population and management objectives;

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

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

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

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

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

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

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

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

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

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

(31) "subsistence [USES]" means the noncommercial, customary and traditional taking in a subsistence use area of the state, and the customary and traditional uses, of fish and game [WILD, RENEWABLE RESOURCES] by a resident [DOMICILED IN A RURAL AREA OF THE STATE] for direct, noncommercial, 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, for noncommercial sharing, and for barter and [THE] customary trade of a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the same household on a permanent basis;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 * Sec. 12. Sections 1 - 7 and 10 of this Act take effect on the effective date of regulations first
21 adopted under this Act by the Board of Fisheries and the Board of Game.

MARKUP

7-GS2084.A

2
All Alaskan
w/ Non-Sub.
Area.

Sen. CS For H.B. 601

~~SENATE BILL NO. 484~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/15/92

Referred: Senate Committee on the Whole

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

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

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

12 (3) customary and traditional uses of Alaska's fish and game originated with Alaska
13 Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses,
14 among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

11 The commissioner shall provide recommendations to the boards concerning the stock and
12 population identifications. The boards shall make identifications required under this subsection
13 after receipt of the commissioner's recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (ii) the proximity of the domicile of the subsistence user to the
13 stock or population; and

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

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

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

29 ~~(e) Each board shall consider subsistence use area boundaries described in (d) of this~~
30 ~~section. Each board shall delineate a different boundary for a particular stock or population if~~
31 ~~the appropriate board determines that the boundary of a subsistence use area is inconsistent with~~

1 ~~established patterns of taking and use of that fish stock or game population for subsistence, or~~
2 ~~is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the~~
3 ~~customary and traditional taking and use of fish and game for subsistence.~~

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

7 (1) ~~category 1, an area where the human population of each community in the~~
8 ~~area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is~~

11 (a) The boards may not permit subsistence hunting or fishing in a
12 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
13 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
14 where dependence upon subsistence is not a principal characteristic of the economy,
15 culture, and way of life of the area or community. ~~Th~~

14 (3) ~~category 3, an area that is~~

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

29 (5) the cost and availability of goods and services to those domiciled in the area;

30 (6) the variety of fish and wildlife species used by those domiciled in the area;

31 (7) the seasonal cycle of economic activity;

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

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

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

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

27 (3) ~~a person domiciled in an area identified under (f)(3) of this section or who~~
28 ~~is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery~~
29 ~~or hunt in that subsistence use area only upon certification by the commissioner that the person~~
30 ~~meets the requirements for qualification under (i) and (j) of this section.~~

31 (i) ~~The boards shall jointly, by regulation, adopt procedures by which the commissioner~~

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

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

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

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

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

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

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

28 (7) whether the person's taking of fish and game occurred solely in the
29 subsistence use area.

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

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

9 (l) The commissioner shall provide, by regulation, for an expedited review procedure for
10 a person who is determined by the department not to meet the qualifications as a subsistence
11 user:

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

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

19 (o) For purposes of,

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

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

27 (B) based on the findings of the appropriate board on each of the
28 following factors:

29 (i) resource population and management objectives;

30 (ii) estimated harvest per unit of effort by participants in the

31 fishery or hunt;

- 1 (iii) patterns and levels of customary and traditional taking and use
2 of the fish or game;
3 (iv) migratory patterns and availability of fish or game;
4 (v) competition for the fish or game from other subsistence and
5 nonsubsistence uses; and
6 (vi) other factors that the appropriate board considers relevant.

7 ~~(2) subsection (i) of this section, "preceding 12 months" means for a person~~
8 ~~described~~

9 ~~(A) in (h)(1) of this section, the 12 months preceding the taking of the fish~~
10 ~~or game resource;~~

11 ~~(B) in (h)(2) of this section, the 12 months preceding the date of signing~~
12 ~~of the required statement;~~

13 ~~(C) in (h)(3) of this section, the 12 months preceding the date of signing~~
14 ~~the application to the commissioner.~~

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

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

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

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

23 * Sec. 5. AS 16.05.940(29) is amended to read:

24 (29) "subsistence fishing" means the taking [OF, FISHING FOR,] or possession,
25 by a qualified resident, of fish, shellfish, or other fisheries resources [BY A RESIDENT
26 DOMICILED] in a subsistence use [RURAL] area of the state, in accordance with regulations
27 adopted under AS 16.05.268, for subsistence uses with gill net, seine, fish wheel, long line, or
28 other means defined by the Board of Fisheries except for rod and reel;

29 * Sec. 6. AS 16.05.940(30) is amended to read:

30 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,
31 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use

1 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for
2 subsistence uses by means defined by the Board of Game;

3 * Sec. 7. AS 16.05.940(31) is amended to read:

4 (31) "subsistence [USES]" means the noncommercial, customary and traditional
5 taking in a subsistence use area of the state, and the customary and traditional uses, of fish
6 and game [WILD, RENEWABLE RESOURCES] by a resident [DOMICILED IN A RURAL
7 AREA OF THE STATE] for direct, noncommercial, personal or family consumption as food,
8 [SHELTER, FUEL,] clothing, [TOOLS,] or transportation, for the making and selling of
9 handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal
10 or family consumption, for noncommercial sharing, and for barter and [THE] customary trade
11 of a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for
12 personal or family consumption; in this paragraph, "family" means persons related by blood,
13 marriage, or adoption, and a person living in the same household on a permanent basis;

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

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

19 (37) "customary trade" means the limited, noncommercial exchange, for minimal
20 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested
21 primarily for personal or family consumption; "customary trade" does not include sales in
22 commercial channels; the terms of this paragraph do not restrict money sales of furs or
23 furbearers;

24 (38) ~~"game management unit" is the same as an area of the state established as~~
25 ~~a game management unit by the Board of Game under AS 16.05.255;~~

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

31 * Sec. 9. AS 16.05.258 and AS 16.05.940(26) are repealed.

1 * Sec. 10. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,
2 Board of Game, and Department of Fish and Game shall adopt regulations necessary to implement the
3 provisions of this Act.

4 * Sec. 11. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the
5 Board of Game expeditiously adopt regulations necessary to implement this Act.

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

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

11 * Sec. 12. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a
12 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature
13 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the
14 governor no later than June 1, 1994.

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

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

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

24 * Sec. 13. Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

25 * Sec. 14. Sections 1 - 9 and 12 of this Act take effect on the effective date of regulations first
26 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.

CS FOR HOUSE BILL NO. 601 (JUDICIARY) am (efd fld)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION****BY THE HOUSE JUDICIARY COMMITTEE**

Amended: 6/19/92

Offered: 6/18/92

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."

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) for6 (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;

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

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

31 (a) The Board of Game may adopt regulations it considers advisable in

1 accordance with the Administrative Procedure Act (AS 44.62) for

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) the number of residents and nonresidents who have participated in

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

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

5 (4) the availability of alternative game resources;

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

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

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

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

24 (1) the availability of alternative resources to the person; and

25 (2) either

26 (A) the person's dependence on wild, renewable resources as
27 a mainstay of livelihood; or

28 (B) the person's cultural need to engage in personal or family
29 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

1 section, the boards shall jointly consider the relative importance of subsistence
2 compared to the totality of the following socio-economic characteristics of the area:

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

25 (i) The boards shall jointly adopt by regulation a definition of "customary
26 trade" that is consistent with the definition of that term in AS 16.05.940(36).

27 * Sec. 6. AS 16.05.259 is amended to read:

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

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

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

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

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

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

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