

HB

312

CS FOR HOUSE BILL NO. 312(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PHILLIPS, Toohey

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the date for a review of and a report on the current law
2 regarding subsistence use of fish and game and delaying the repeal of the current
3 law regarding subsistence use of fish and game; and providing for an effective
4 date."

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

6 * Section 1. Section 9(a), ch. 1, SSSLA 1992, is amended to read:

7 (a) The legislature acknowledges and recognizes that this Act deals with a
8 subject of vital concern and that the subject merits review. Therefore, it is the intent
9 of the legislature that the operation of this Act and the regulations adopted under this
10 Act be fully reviewed by the governor no later than February 1, 1996 [JUNE 1,
11 1994].

12 * Sec. 2. Section 9(d), ch. 1, SSSLA 1992, is amended to read:

13 (d) No later than February 1, 1996 [SEPTEMBER 1, 1994], the governor
14 shall provide a report to the legislature on the results of the review and proposed

1 recommendations for statutory amendments.

2 * Sec. 3. Section 12, ch. 1, SSSLA 1992, is amended to read:

3 Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1996 [1995].

4 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

9-LS0909\M
Utermohle
4/27/95

CS FOR HOUSE BILL NO. 312(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PHILLIPS, Toohey

A BILL

FOR AN ACT ENTITLED

1 **"An Act delaying the repeal of the current law regarding subsistence use of fish**
2 **and game; and providing for an effective date."**

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

4 *** Section 1.** Section 12, ch. 1, SSSLA 1992, is amended to read:

5 Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1996 [1995].

6 *** Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

HOUSE COMMITTEE REPORT

(9)
Date Referred: April 19, 1995

FURTHER REFERRALS:

Date of Committee Action: 4-27-95

The RESOURCES Committee considered:

HB 312

HOUSE BILL NO. 312

EXTEND CURRENT SUBSISTENCE LAW

"An Act relating to subsistence use of fish and game."

recommends it be replaced with the following committee substitute CSHB312 (RES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|----|-----|----|----|
| <i>Irene Nicholas</i> | | X | | |
| <i>Jon Stand</i> | | | X | |
| <i>Pete Holt</i> | ✓ | | | |
| <i>William</i> | ✓ | | | |
| <i>Blund</i> | | | ✓ | |
| <i>W.K. Williams</i> | | | ✓ | |
| <i>Barbara Barnes</i> | | | ✓ | |
| <i>[Signature]</i> | | | ✓ | |
| | | | | |
| | | | | |

CHAIR'S SIGNATURE *W.K. Williams*

HOUSE RESOURCES COMMITTEE
Roll Call and Members' Bill Votes

* (indicates first public hearing)

Tues.

Room 124, Capitol Bldg.

Mon., Wed., Fri.

Date: 4-25-45

Topic: 95-55 Joint _____

Time: 9:37 (am/pm) Time Adjourned: _____ am/pm

| ROLL CALL: | PRES | ABS | TIME | AR | _____ | _____ | _____ |
|---------------------|-------|-------|-------|-------|-------|-------|-------|
| Rep. Joe Green | ✓ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Bill Williams | ✓ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Scott Ogan | ✓ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Alan Austerman | ✓ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Ramona Barnes | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. John Davies | ✓ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Pete Kott | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Eileen MacLean | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| Rep. Irene Nicholia | _____ | _____ | _____ | _____ | _____ | _____ | _____ |

Other Legislators Present _____

AGENDA:

| Bill No. | Short Title | Action Taken |
|--------------|---|------------------------------|
| <u>SB147</u> | <u>Municipal River Habitat Tax Credit</u> | <u>HOUSE SB147 (RES) OUT</u> |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

OTHER

House Resources

Tape 95-55, Side A, #000

Green call to order @ 9:37

SB 147

John Jorgensen

no obj. amend ^{HB} 279

Green - p2 lns 15-16

Davis MOVE Amend
p2 Ln 15 SB 147 scope } delete
most - percentage of
No Obj.

Wno MOVE SB 147 w/ End. Rec.
Fiscal note
No Obj.

HB 312 Extends Current

132

Byrl Parker Aide

Liza Gay

1992 st. subs. law is set Oct.

but reports must clause ext 1992 law
indefinitely

Liza G.

Davis - how preserves 92 law Sec. 1

Sec 3 spec. session law 92 law.

Chase - takes away '96 law

Davis - Sec. 3 session law

Gayle -

Davis -

245 Parker -

Williams - Sec. 12 Oct. 1

Parker - sunset

Williams

Parker - extends 312 extends 92 law indef.

293 Baron Bruce ABFTG

admin. lt. gov. solution for subs.

oppose gov. willing to accept 1 yr. ext. since gov
but not an ext.

cannot accept it. review 92 law - in 1995

* next council want perf.

admin is willing to work w/ sponsor

Davis - key differences 86 - 92 law

Bruce - 86 law cont. rural pref. for subs.

92 does not 92 ext. mech. rural subs. areas

93 dependencies cost trade - rural oppor

383 Greg McKune Pres UFA

Davis - 92 over 86

McKune -

Adj. 10:00 p.m.

HOUSE RESOURCES COMMITTEE



Alaska State Legislature
House of Representatives

DATE: 4/25/95

PLACE: ROOM 124

SUBJECT OF MEETING:

HB 312 - Extend Current Subsistence Law
SB 147 - Municipal River Habitat Tax Credit

| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | | WHAT SUBJECT/ WHICH BILL? |
|----------------|---------------|-----------------------------------|-------|-----------|-----------|-------------------------|-----|---------------------------|
| Geron Bunn | Dept Fish/Gam | P.O. Box 25526 | 99602 | | 465-6143 | (Y) | N | HB 312 |
| Eddie GRASSEN | AOC | Box 22374 Jno 99802 | 99802 | | 463-3830 | Y | (N) | HB 312 |
| Fry Mc Lane | VFA | 4 St Suite 112 211 | 99801 | | 465-2820 | (Y) | N | HB 312 |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| Liza Gay Atty. | | 63900 Cosmos Dr Anchorage | 99517 | | 248-2533 | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |

Alaska State Legislature



Official Business
Fax : (907) 465-3472

Speaker of the House of Representatives

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3720
(907) 465-2689

SPONSOR STATEMENT

HB 312, "An Act relating to subsistence use of fish and game."

Under terms of the Act by which the state's 1992 subsistence law was enacted (Sec.3, CH.1, SSSLA 1992), the 1992 law will be repealed on October 1, 1995. It will then be replaced by its predecessor, the 1986 subsistence law. This "sunset" provision was premised on the expectation that the legislature would consider reinstating the 1992 law following a review by the Governor. Unfortunately, this review has not been completed.

Although there are many similarities between the 1986 and the 1992 versions of Alaska's subsistence law, there are some significant differences which favor the 1992 law.

First, the 1992 law incorporates the concept of "nonsubsistence areas". These are areas or communities where dependence on subsistence is not a principal characteristic of the economy, culture and way of life of the community or area, as determined by the Boards of Fisheries and Game based on several specific criteria. This allows the Boards to identify places such as the Anchorage bowl or parts of the Kenai Peninsula where the subsistence priority does not apply. Although this provision has been challenged in court and its operation temporarily stayed, the Alaska Supreme Court has not yet ruled, so it is entirely possible that this provision may still be viable.

A second major advantage of the 1992 law is its definition of "customary and traditional" and "customary trade". These definitions are lacking in the 1986 law and hence are a continuous focus of controversy and litigation. The definitions in the 1992 law recognize prior interpretations of the Boards and give them latitude to further refine those definitions. The definition of

"customary trade" and its legislative history clarify that trade is noncommercial and also requires the Boards to identify and provide for those trades.

Another advantage of maintaining the 1992 law is that all Board regulations will remain intact. If the law is allowed to sunset, the Board will be required to review all regulations for consistency with the 1986 subsistence law. This will be a time-consuming, expensive process that will disrupt the Boards' regulatory meetings and create public confusion. This disruption should not occur until the legislature decides that it prefers to return to the provisions of the 1986 law.

The 1992 law is also superior to the 1986 version because it provides clarification that the Boards are not required to quantify an exact harvestable surplus of fish or game -- a task usually biologically impossible. The Boards do, however, have to identify the portion of harvestable surplus that is reasonably necessary to for subsistence use.

In sum, the clarifying definitions alone make the 1992 law an improvement over the 1986 law. In addition, the 1992 law's "nonsubsistence area" provision may well be upheld by the Alaska Supreme Court. Reverting to the 1986 law will be costly to the state and its citizens, both in terms of money and public confusion, and will serve no purpose.

HB 312 should be passed to simply extend the state's 1992 subsistence law. This would retain the status quo until the Supreme Court rules on the validity of the "nonsubsistence areas" and a complete review of the 1992 law by the Governor's office has been completed.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 21, 1995

SUBJECT: HB 312; Extension of the current law regarding subsistence hunting and fishing

TO: Representative Gail Phillips
Attn: Kyle Parker

FROM: George Utermohle *GU*
Legislative Counsel

You have asked for an explanation of how HB 312 has the effect of extending the current law regarding subsistence hunting and fishing (AS 16.05.258).

Under the terms of the Act by which it was enacted (ch. 1, SSSLA 1992), the current subsistence law will be repealed and replaced by another version¹ of the subsistence law on October 1, 1995. Two definitions ("customary and traditional" and "customary trade") enacted as part of the current subsistence law will also be repealed on October 1, 1995.

The version of the subsistence law that will repeal and replace the current version of the law on October 1, 1995 was enacted by sec. 3, ch. 1, SSSLA 1992. The definition of the terms "customary and traditional" and "customary trade" will be repealed by sec. 5, ch. 1, SSSLA 1992.

By repealing secs. 3 and 5 of ch. 1, SSSLA 1992 before October 1, 1995, those sections will never take effect and the current subsistence law and the associated definitions will not be repealed or replaced. Thus the current law will be extended indefinitely.

In anticipation that secs. 3 and 5 would take effect as planned on October 1, 1995, sec. 8, ch. 1, SSSLA 1992 grants authority to the Board of Fisheries and the Board of Game to adopt regulations in advance of the new subsistence law taking effect, so that there would be smooth transition between the current subsistence law and the new law. Once secs. 3 and 5 are repealed sec. 8 becomes unnecessary, so it is also repealed by HB 312.

¹ The new version of the law that will replace the current version of AS 16.05.258 is in fact the former subsistence law that was partially invalidated by the Alaska Supreme Court in McDowell v. State, 785 P.2d 1 (Alaska 1989).

Representative Gail Phillips

April 21, 1995

Page 2

The key to the successful operation of HB 312 is that it take effect before October 1, 1995. Because HB 312 does not have a special effective date, it will take effect 90 days after it becomes law by being signed by the governor, by taking effect without the governor's signature, or by being passed over the governor's veto. Assuming the governor does not veto HB 312, the governor could hold the bill for up to 20 days, not including Sundays, after the bill was transmitted to him by the legislature, before it would become law by the mere passage of time. Though the absolute latest date for transmittal of the bill to the governor, in order to assure that it takes effect before October 1, 1995, is sometime in early June, the legislature would best achieve its purpose by passing HB 312 and transmitting it to the governor as soon as possible in April or May.

If I may be of further assistance, please advise.

GU:klb

95-286.klb

FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: _____
 Title: Extend current subsistence BRU: _____
 law
 Sponsor: Phillips Components _____
 Requestor: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

| OPERATING | FY 96 | FY 97 | FY 98 | FY 99 | FY 2000 | FY 2001 |
|-------------------|-------|-------|-------|-------|---------|---------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Equipment | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Land & Structures | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants, Claims | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Miscellaneous | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

CAPITAL

REVENUE

FUNDING: (THOUSANDS OF DOLLARS)

| | | | | | | |
|--------------|-----|-----|-----|-----|-----|-----|
| General Fund | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Federal Fund | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

Estimated FY 95 Impact: 0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: House Resources Committee Date: 4/25/95
 Division: _____ Phone: 465-6547

Approved By: Rep. Joe Green Date: 4/25/95
 Agency: Co-Chair, House Resources Committee

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT AND BUDGET
AGENCY(IES)



LAWS OF ALASKA

1992

Second Special Session

Source
CCS HB 601

Chapter No.
1

AN ACT

Relating to the taxing of fish and game, and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: July 14, 1992

Actual Effective Date: Sections 6 - 8 take effect July 15, 1992; sections 1, 2, 4, and 9 are conditional; sections 3 and 5 take effect October 1, 1995

AN ACT

1 Relating to the taking of fish and game, and providing for an effective date.

2

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,
5 social, or cultural relationship to and dependence upon the wild renewable resources produced
6 by Alaska's land and water; the harvest and use of fish and game for personal and group
7 consumption is an integral part of those relationships;
8 (2) although customs, traditions, and beliefs vary, these Alaskans share ideals
9 of respect for nature, the importance of using resources wisely, and the value and dignity of
10 a way of life in which they use Alaska's fish and game for a substantial portion of their
11 sustenance; this way of life is recognized as "subsistence";
12 (3) customary and traditional uses of Alaska's fish and game originated with
13 Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as
14 well; these uses, among others, are culturally, socially, spiritually, and nutritionally important
15 and provide a sense of identity for many subsistence users;

Chapter 1

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

6 (5) in most areas of the state, a preference for subsistence can be provided
7 without an 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; and

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

13 (c) It is the intent of the legislature that

14 (1) 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) this Act not result in significant reallocations of fish and game in Alaska.

17 * Sec. 2. AS 16.05.258 is repealed and reenacted to read:

18 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND

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

25 (b) The appropriate board shall determine whether a portion of a fish stock
26 or game population identified under (a) of this section can be harvested consistent
27 with sustained yield. If a portion of a stock or population can be harvested consistent
28 with sustained yield, the board shall determine the amount of the harvestable portion
29 that is reasonably necessary for subsistence uses and

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

- 1 (A) shall adopt regulations that provide a reasonable
- 2 opportunity for subsistence uses of those stocks or populations.
- 3 (B) shall adopt regulations that provide for other uses of those
- 4 stocks or populations, subject to preferences among beneficial uses, and
- 5 (C) may adopt regulations to differentiate among uses:
- 6 (2) if the harvestable portion of the stock or population is sufficient
- 7 to provide for subsistence uses and some, but not all, other consumptive uses, the
- 8 appropriate board
- 9 (A) shall adopt regulations that provide a reasonable
- 10 opportunity for subsistence uses of those stocks or populations.
- 11 (B) may adopt regulations that provide for other consumptive
- 12 uses of those stocks or populations; and
- 13 (C) shall adopt regulations to differentiate among consumptive
- 14 uses that provide for a preference for the subsistence uses, if regulations are
- 15 adopted under (B) of this paragraph;
- 16 (3) if the harvestable portion of the stock or population is sufficient
- 17 to provide for subsistence uses, but no other consumptive uses, the appropriate board
- 18 shall
- 19 (A) determine the portion of the stocks or populations that can
- 20 be harvested consistent with sustained yield; and
- 21 (B) adopt regulations that eliminate other consumptive uses in
- 22 order to provide a reasonable opportunity for subsistence uses; and
- 23 (4) if the harvestable portion of the stock or population is not
- 24 sufficient to provide a reasonable opportunity for subsistence uses, the appropriate
- 25 board shall
- 26 (A) adopt regulations eliminating consumptive uses, other than
- 27 subsistence uses;
- 28 (B) distinguish among subsistence users, through limitations
- 29 based on
- 30 (i) the customary and direct dependence on the fish
- 31 stock or game population by the subsistence user for human

Chapter 1

- 1 consumption as a mainstay of livelihood;
- 2 (ii) the proximity of the domicile of the subsistence
- 3 user to the stock or population; and
- 4 (iii) the ability of the subsistence user to obtain food if
- 5 subsistence use is restricted or eliminated.
- 6 (c) The boards may not permit subsistence hunting or fishing in a
- 7 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
- 8 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
- 9 where dependence upon subsistence is not a principal characteristic of the economy,
- 10 culture, and way of life of the area or community. In determining whether
- 11 dependence upon subsistence is a principal characteristic of the economy, culture, and
- 12 way of life of an area or community under this subsection, the boards shall jointly
- 13 consider the relative importance of subsistence in the context of the totality of the
- 14 following socio-economic characteristics of the area or community:
- 15 (1) the social and economic structure;
- 16 (2) the stability of the economy;
- 17 (3) the extent and the kinds of employment for wages, including full-
- 18 time, part-time, temporary, and seasonal employment;
- 19 (4) the amount and distribution of cash income among those domiciled
- 20 in the area or community;
- 21 (5) the cost and availability of goods and services to those domiciled
- 22 in the area or community;
- 23 (6) the variety of fish and game species used by those domiciled in the
- 24 area or community;
- 25 (7) the seasonal cycle of economic activity;
- 26 (8) the percentage of those domiciled in the area or community
- 27 participating in hunting and fishing activities or using wild fish and game;
- 28 (9) the harvest levels of fish and game by those domiciled in the area
- 29 or community;
- 30 (10) the cultural, social, and economic values associated with the
- 31 taking and use of fish and game;

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(11) the geographic locations where those domiciled in the area or community hunt and fish;

(12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;

(13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

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

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, "reasonable opportunity" means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.

Sec. 3. AS 16.05.25h is repealed and reenacted to read:

Sec. 16.05.25h. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME. (a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

(b) The boards shall determine
(1) what portion, if any, of the stocks and populations identified under (a) of this section can be harvested consistent with sustained yield; and

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

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable portion is

Chapter 1

1 determined to exist under (b)(1) of this section. If the harvestable portion is not
2 sufficient to accommodate all consumptive uses of the stock or population, but is
3 sufficient to accommodate subsistence uses of the stock or population, then
4 nonwasteful subsistence uses shall be accorded a preference over other consumptive
5 uses, and the regulations shall provide a reasonable opportunity to satisfy the
6 subsistence uses. If the harvestable portion is sufficient to accommodate the
7 subsistence uses of the stock or population, then the boards may provide for other
8 consumptive uses of the remainder of the harvestable portion. If it is necessary to
9 restrict subsistence fishing or subsistence hunting in order to assure sustained yield
10 or continue subsistence uses, then the preference shall be limited, and the boards shall
11 distinguish among subsistence users, by applying the following criteria:

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

14 (2) local residency; and

15 (3) availability of alternative resources.

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

19 (e) Fish stocks and game populations, including bison, or portions of fish
20 stocks and game populations, not identified under (a) of this section may be taken
21 only under nonsubsistence regulations.

22 (f) Takings authorized under this section are subject to reasonable regulation
23 of seasons, catch or bag limits, and methods and means. Takings and uses of
24 resources authorized under this section are subject to AS 16.05.831 and AS 16.29.

25 * Sec. 4. AS 16.05.940 is amended by adding new paragraphs to read:

26 (36) "customary and traditional" means the noncommercial, long-term,
27 and consistent taking of, use of, and reliance upon fish or game in a specific area and
28 the use patterns of that fish or game that have been established over a reasonable
29 period of time taking into consideration the availability of the fish or game;

30 (37) "customary trade" means the limited noncommercial exchange,
31 for minimal amounts of cash, as restricted by the appropriate board, of fish or game

1 resources, the terms of this paragraph do not restrict money sales of furs and
2 furbearers.

3 * Sec. 5. AS 16.05.940(36) and 16.05.940(37) are repealed.

4 * Sec. 6. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, as in effect
5 on the day before the effective date of sec. 2 of this Act, the Board of Fisheries, Board of
6 Game, and Department of Fish and Game shall adopt regulations necessary to implement the
7 provisions of secs. 1, 2, and 4 of this Act.

8 * Sec. 7. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries
9 and the Board of Game expeditiously adopt regulations necessary to implement secs. 1, 2, and
10 4 of this Act.

11 (b) Regulations adopted by the Board of Fisheries, Board of Game, or Department
12 of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of secs. 1,
13 2, and 4 of this Act.

14 (c) Regardless of whether regulations in effect on July 1, 1992, and adopted under
15 the authority of AS 16.05.251, 16.05.255, or 16.05.258, as that statute read on the day before
16 the effective date of sec. 2 of this Act, are inconsistent with the provisions of secs. 1, 2, or
17 4 of this Act, they may continue to be implemented and enforced until the effective date of
18 sec. 2 of this Act.

19 * Sec. 8. TRANSITION. After January 1, 1995, the Board of Fisheries, Board of Game,
20 and Department of Fish and Game may adopt regulations to implement AS 16.05.258, as
21 amended by sec. 3 of this Act. Regulations adopted under this section may not take effect
22 before the effective date of sec. 3 of this Act.

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

27 (b) This review period is intended to allow for further research and to gain experience
28 in implementing this Act and regulations adopted under secs. 6 and 7 of this Act. It is the
29 intent of the legislature that the governor convene a representative group to provide
30 recommendations to the governor before the end of the review period. It is the intent of the
31 legislature that representatives of the legislature and persons with a history in the formulation

Chapter 1

1 of subsistence legislation in this state participate in the group.

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

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

7 * Sec. 10. Sections 6 - 8 of this Act take effect immediately under AS 01.10.070(c).

8 * Sec. 11. Sections 1, 2, 4, and 9 of this Act take effect on the effective date of
9 regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of
10 Game.

11 * Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1995.

Rep. Green
For Committee Reports
CA - RB 072

Resumes
11:00 PM

Jack Polster

907 235 2298/8777

April 27, 1995

FAX 465 - 3472

To: Representative Gail Phillips. Please pass a copy of the following to each member of the committee which will be hearing testimony on H.B. 312 which will be heard today at 4 pm. The submission is to be considered public testimony and a matter of the public record.

Ultimately, all life is sustained by combining the very activity of life with the resources of nature. That combination exists as either a long train of interconnected specializations, regulated by government, and constituting today's complex commercial markets...or a simple lifestyle called subsistence.

Each Alaska citizen holds, by birthright, the natural right to combine his or her labor with that bounty of nature declared to be owned in common. Perhaps no single human activity, except breathing air, better exemplifies "natural right" than subsistence use of commonly owned natural resources; all other rights pale when compared to the overwhelming historical importance of natural resource use by man.

Each and every Alaskan citizen is a living testament to over 10,000 generations of hunters and gatherers spanning over 250,000 years. Against unfathomable odds the ancestors of each Alaskan citizen successfully and continually passed the genetic baton he holds today. One's very existence today is an unlikely opportunity for celebration of a necessarily successful and long-practiced subsistence tradition. The subsistence tradition however has been increasingly forgotten in the bright lights of relatively recent distractions - supermarkets, computers, and other modern amenities.

Most politicians will agree that rights are universal - held by every individual under jurisdiction of the governmental entity which has authority over activities in that particular area. Yet recent political statements and newspaper articles indicate that subsistence "rights" may soon be relegated by government to rural, native, poor, or other classes within the total population of Alaska citizens.

For example, some citizens of Alaska have forsaken their natural birthright to subsist by accepting from the state, via license or permit, the privilege of using a particular commonly-owned natural resource for purposes of sport, commercial, and/or personal-use...i.e. patently privileged uses. Those individuals therefore, by their own action, have lost status as a true subsistence user. They have chosen privilege and relinquished right. One cannot exist under both a conflicting right and privilege. (One cannot have accepted a permit to bear arms and still retain his natural right to do so. Loss of a right occurs only through the action of the individual who once held it.)

State and Federal government should officially recognize both the individual right to subsist, and the priority-use of natural subsistence rights over government granted privilege (sport, commercial, and personal use).

Both the Federal government and Alaska state government could give much-needed direction in the the seemingly unending subsistence dilemma by simply answering the following questions;

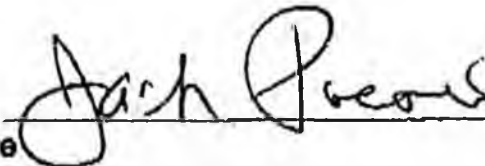
1) Is subsistence a) a right - or, b) a privilege?

[And, since each individual is entitled to a right, and only he alone (by his actions) can relinquish that right, therefore...]

2) What action or actions by an individual would cause him to indicate that he has relinquished to the state or federal government his natural birthright to subsistence?

The right to subsist can be claimed by the belligerent claimant who desires to use I-207 of the universal commercial code to claim his natural common-law right to subsist.

Jack Polster
1506 Ocean Drive
Homer, Ak. 99603

 907 235 2298/8777