

SB

171

Sections 3+5 have
effective dates of 10-1-95

These must be reported, rather
than included directly in the value
regarding reporting late dates.

Section 8

Not to be reported; gives
effective date 10-1-95.



LAWS OF ALASKA

1992

Second Special Session

Source
CCS HB 601

Chapter No.
1

AN ACT

Relating to the taking 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

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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

Chapter 1

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

consumption as a mainstay of livelihood;

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

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

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

(1) the social and economic structure;

(2) the stability of the economy;

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

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

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

(6) the variety of fish and game species used by those domiciled in the area or community;

(7) the seasonal cycle of economic activity;

(8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;

(9) the harvest levels of fish and game by those domiciled in the area or community;

(10) the cultural, social, and economic values associated with the taking and use of fish and game.

(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 16.05.258 is repealed and reenacted to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME. (a) The Board of Fisheries and the Board of Game shall 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 16.30.

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 I

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.

**ENATE COMMITTEE REI RT
First Committee of Referral**

DATE: 4/27/95

FURTHER:

Date of 5-Day Notice: 24-Hour Roll
(In accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-29-95

Resources Committee considered SB 171

Delaying the repeal of the current law regarding subsistence use of fish and game; efd.

and recommends:

- be replaced with CS SB171 (RES) | Senate Bill: same title
- adopt previous CS () | House Bill: new title
- attached amendment(s) | technical title
- adopt Letter of Intent by _____ Committee | new: SCR° _____
- further referral to the _____ Committee

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DF+G	4/28	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

CS FOR SENATE BILL NO. 171(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

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 December 31, 1995 [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).

AMENDMENT

Senator Lincoln

OFFERED IN THE SENATE *Resource Committee*
TO: SB 171

1 Page 1, line 1, after "Act":

2 Insert "extending the date for a review of and a report on the current law
3 regarding subsistence use of fish and game and"

4 Page 1, after line 3:

5 Insert new bill sections to read:

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
15 recommendations for statutory amendments."

16 Page 1, line 4:

17 Delete "Section 1."

18 Insert "Sec. 3."

19 Renumber the following bill section accordingly.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

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).

SENATE BILL NO. 

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

SENATE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

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

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

1992
SECOND SPECIAL SESSION

CHAPTER 1

AN ACT RELATING TO THE TAKING OF FISH AND GAME; AND PROVIDING
FOR AN EFFECTIVE DATE.

(CCS HB 601)

Be it enacted by the Legislature of the State of Alaska:

Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The Legislature finds that

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

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

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

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

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

(b) It is the purpose of this Act

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

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

(c) It is the intent of the legislature that

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

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

Secs. 2 — 5. Permanent laws. See Table of Disposition of Acts.

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

Sec. 7. 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 secs. 1, 2, and 4 of this Act.

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

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

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

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

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

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Ch. 1

TEMPORARY AND SPECIAL ACTS

Ch. 1

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

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

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

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

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

Approved: July 14, 1992

Effective: 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

which the issuance of the transfer of permits and game management hunting as needed ion of game.

proposal to amend, receiving a written explanation for after the board has proposal, or 30 days whichever is later. n must provide that, the taking of moose, family consumption ch 206 SLA 1975; am 84; am §§ 4, 5, 12 ch

r the broad statutory defi- "or "domestic mammals" (16) and (17), respectively, e scope of the board's au- AS 16.05.255. Jan. 18, Gen. (b) does not presently au- rd of Game to enter into eements. Mar. 14, 1988

Game is the proper entity p, possession and propaga- rds as pets. Apr. 2, 1987

of conservation, develop- ation, the Board of Game rity to regulate seasons, A, and quotas for sport and ing. Apr. 12, 1991 Op.

general authority in AS ulate subsistence hunting mervation, development, f game, together with the ion of subsistence hunt- th taking and possession, ard to regulate post-tak- 22, 1991 Op. Att'y Gen.

Game has authority to a that require the harvest nder subsistence permits ly for purposes of the Potlatch so long as the

regulation does not limit participation only to residents of certain areas. Apr. 12, 1991 Op. Att'y Gen.

It is well within the authorities of the Board of Game under subsection (a) and the Department of Fish and Game under AS 16.05.020 to determine by regulation

the point at which certain animals are deemed feral and subject to whatever game regulations the board may wish to adopt. A board or departmental regulation defining "feral animal" would be applicable statewide regardless of land ownership. July 30, 1987 Op. Att'y Gen.

NOTES TO DECISIONS

Establishment of quotas must be in accordance with the Administrative Procedure Act (AS 44.62). State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854 (Alaska 1978).

Former subsection (b) construed. — Former subsection (b), concerning adoption of regulations by the Board of Game permitting taking of game for subsistence uses, merely established the priority of subsistence uses within the regulatory scheme; the state supreme court found no evidence of an intent to grant any personal right to take or possess game in the absence of such regulations. State v. Eluska, 724 P.2d 514 (Alaska 1986).

"Subsistence" defense created where no regulations adopted under former subsection (b) held contrary to AS 16.05.920(a) mandate. — A "subsistence" defense created by the state court of appeals to "remedy" the Board of Game's failure to adopt separate subsis-

tence regulations under former subsection (b) of this section contradicted the legislative mandate of AS 16.05.920(a). State v. Eluska, 724 P.2d 514 (Alaska 1986).

Regulations held invalid. — Board of game regulations establishing seasons and bag limits on the taking of moose and caribou were arbitrary and invalid, where the board did not follow or articulate its use of the statutory analytical process for adopting bag limits as to subsistence hunting, and the regulations imposed seasons not consistent with the board's findings as to established village customs and thereby unacceptably restricted the statutory preference for subsistence uses. Bobby v. Alaska, 718 F. Supp. 764 (D. Alaska 1989).

Applied in Gottardi v. State, 615 P.2d 626 (Alaska 1980).

Quoted in Jordan v. State, 681 P.2d 346 (Alaska Ct. App. 1984).

Sec. 16.05.256. Nonresident and nonresident alien permits. Whenever it is necessary to restrict the taking of big game so that the opportunity for state residents to take big game can be reasonably satisfied in accordance with sustained yield principles, the Board of Game may, through a permit system, limit the taking of big game by nonresidents and nonresident aliens to accomplish that purpose. (§ 3 ch 74 SLA 1982)

Sec. 16.05.257. Subsistence hunting regulations. [Repealed. § 12 ch 52 SLA 1986]

Sec. 16.05.258. Subsistence use and allocation of fish and game. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required

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

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

(b) *[Repealed, § 12 ch 52 SLA 1986.]*

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

(d) Regulations adopted under (a) of this section must provide that, consistent with the provisions of AS 16.05.258, the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1978; am §§ 10, 11 ch 132 SLA 1984; am §§ 4, 5, 12 ch 52 SLA 1986; am § 1 ch 6 SLA 1989)

Cross references. — For restriction on maximum area of land that may be closed to multiple uses without an act of the state legislature, see AS 38.05.300(a).

Effect of amendments. — The 1989 amendment, effective June 11, 1989, added the provision beginning "including regulations" at the end of paragraph (a)(3).

Opinions of attorney general. — Neither the Board of Game nor the Department of Fish and Game has jurisdiction over domestic animals. August 29, 1979 Op. Att'y Gen.

Permitting authority over live game, that is, nondomestic animals, rests with the Board of Game as implemented by the Department of Fish and Game. August 29, 1979 Op. Att'y Gen.

For discussion of compatibility of state subsistence-use law with federal standards as set forth in Alaska National Interest Lands Conservation Act (16 U.S.C. § 3115 et seq.), see 1981 Op. Att'y Gen. No. 11.

The Board of Game has general authority to regulate the live capture and possession of game under AS 16.05.255(a)(1). Apr. 2, 1987 Op. Att'y Gen.

Under 16.05.255(a)(5), (a)(6), and (d) and AS 16.05.254, the board's authority to regulate uses of elk in the wild is not diminished under ch. 68, SLA 1987. That

act does not alter the broad statutory definitions of "game" or "domestic mammals" in AS 16.05.940(8) and (17), respectively, which define the scope of the board's authorities under AS 16.05.255. Jan. 18, 1988 Op. Att'y Gen.

AS 16.05.255(b) does not presently authorize the Board of Game to enter into cooperative agreements. Mar. 14, 1988 Op. Att'y Gen.

The Board of Game is the proper entity to regulate the possession and propagation of game birds as pets. Apr. 2, 1987 Op. Att'y Gen.

For purposes of conservation, development, and utilization, the Board of Game has general authority to regulate seasons, areas, bag limits, and quotas for sport and subsistence hunting. Apr. 12, 1991 Op. Att'y Gen.

The board's general authority in AS 16.05.255 to regulate subsistence hunting as needed for conservation, development, and utilization of game, together with the statutory definition of subsistence hunting to include both taking and possession, authorizes the board to regulate post-taking uses. Apr. 12, 1991 Op. Att'y Gen.

The Board of Game has authority to adopt regulations that require the harvest of moose taken under subsistence permits to be used only for purposes of the Nuchalawoyya Potlatch so long as the

under this subsection after receipt of the commissioner's recommendations.

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

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

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

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

(C) may adopt regulations to differentiate among uses;

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

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

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

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

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

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

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

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

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

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

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

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;
- (4) the amount and distribution of cash income among those domiciled in the area or community;
- (5) the cost and availability of goods and services to those domiciled in the area or community;
- (6) the variety of fish and game species used by those domiciled in the area or community;
- (7) the seasonal cycle of economic activity;
- (8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;
- (9) the harvest levels of fish and game by those domiciled in the area or community;
- (10) the cultural, social, and economic values associated with the taking and use of fish and game;
- (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. (§ 6 ch 52 SLA 1986; am § 2 ch 1 SSSLA 1992)

Delayed amendment of section. — Section 3, ch. 1, SSSLA 1992, effective October 1, 1995, amends this section to read: "Sec. 16.05.258. Subsistence use and allocation of fish and game. (a) The Board of Fisheries and the Board of Game shall 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 determined to exist under (b)(1) of this section. If the harvestable portion is not sufficient to accommodate all consumptive uses of the stock or population, but is sufficient to accommodate subsistence uses of the stock or population, then nonwasteful subsistence uses shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria:

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

"(2) local residency; and

"(3) availability of alternative resources.

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

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

"(f) Taking authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30."

Cross references. — For legislative findings, purpose, and intent in connection with the 1992 amendment of this section, see § 1, ch. 1, SSSLA 1992 in the Temporary and Special Acts; for requirement that the boards expeditiously adopt regulations to implement this section, see §§ 6 and 7, ch. 1, SSSLA 1992 in the Temporary and Special Acts; for transitional provisions and for review by the governor and report to the legislature, see §§ 7 - 9, ch. 1, SSSLA 1992 in the Temporary and Special Acts.

Effect of amendments. — The 1992 amendment rewrote this section.

Effective date of 1992 amendment. — Under § 11, ch. 1, SSSLA 1992, the amendment to this section made by § 2, ch. 1, SSSLA 1992 takes effect "on the effective date of regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of Game."

Opinions of attorney general. — Under this section, for a given fish stock or game population, if there is a harvestable surplus and if the relevant board has found a customary and traditional use of that stock, then subsistence uses must be authorized. Jan. 1, 1991 Op. Att'y Gen.

Under this section, the Board of Fisheries and Game may not provide less than reasonable opportunity for subsistence uses unless nonsubsistence uses are closed. However, assuming that guideline is met, the board may go to a two tier

portunity" means an board, that allows a hunt or fishery that reasonable expecta- 2 SLA 1986; am § 2

is may adopt regulations his section that authorize subsistence uses a stock or fished under (a) of this sec-

as and game populations, or portions of fish stocks ations, not identified un- ction may be taken only tence regulations. uthorized under this sec- to reasonable regulation ch or bag limits, and ans. Takings and uses of rized under this section AS 16.05.831 and AS

nces. — For legislative e, and intent in connec- 92 amendment of this sec- n. 1, SSSLA 1992 in the Special Acts; for require- ards expeditiously adopt mplement this section, see SSSLA 1992 in the Tem- al Acts; for transitional r review by the governor e legislature, see §§ 7 - 9, 92 in the Temporary and

endments. — The 1992 rote this section. e of 1992 amendment. ch. 1, SSSLA 1992, the his section made by § 2, 92 takes effect "on the ef- egulations first adopted his Act by the Board of e Board of Game"

ttorney general. — Un- for a given fish stock or if there is a harvestable the relevant board has ry and traditional use of subsistence uses must be 1, 1991 Op Att'y Gen- tion, the Board of Fisher- ay not provide less than rtunity for subsistence nsubsistence uses are assuming that guideline d may go to a two tier

analysis under the statute (which is necessary if less than reasonable opportunity can be provided) in two cases: (1) to assure sustained yield, or (2) to continue subsistence uses. The latter situation may be

presented when a population is being managed for overall growth, in order that eventually more opportunity can be provided. Jan. 1, 1991 Op Att'y Gen.

NOTES TO DECISIONS

Rural residency requirement unconstitutional. — The requirement contained in the 1986 subsistence statute (ch. 52, SLA 1986), that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates Alaska Const., art. VI § 3, 15, and 17. *McDowell v. State*, 735 P.2d 1 (Alaska 1989).

Regulations adopted under former AS 16.05.257 had to be in accordance with the Administrative Procedure Act (AS 44.62). *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

While former AS 16.05.257, which authorized the Board of Game to adopt regulations providing for subsistence hunting, did not specifically refer to the Administrative Procedure Act (AS 44.62), it appeared clear that it merely set forth an additional purpose for which regulations might be promulgated. *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

"Sustained yield". — The term "sustained yield" in subsection (b) is potentially broad enough to include authority in the game board to restrict even subsistence hunting in order to rebuild a damaged game population. However, the board does not have absolute discretion in this area. There must be a balance of minimum adverse impact upon rural residents who depend upon subsistence use of resources and recognized scientific principles of game management. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

Issuance of permits based on verbal

instructions to agents held improper. — Nothing in the Administrative Procedure Act (AS 44.62) authorizes the Board of Game to impose requirements not contained in written regulations by means of oral instructions to agents. Such verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Reasonable basis for Board of Game's quota of caribou to be killed under former AS 16.05.257. — See *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Emergency caribou hunt allowed. — Native Alaskan villagers were granted injunctive relief permitting an emergency caribou hunt allowing the taking of 50 to 70 animals where the hunt was justified by economic conditions and would not adversely affect the herd. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

Regulations held invalid. — Board of game regulations establishing seasons and bag limits on the taking of moose and caribou were arbitrary and invalid, where the board did not follow or articulate its use of the statutory analytical process for adopting bag limits as to subsistence hunting, and the regulations imposed seasons not consistent with the board's findings as to established village customs and thereby unacceptably restricted the statutory preference for subsistence uses. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

Sec. 16.05.259. No subsistence defense. In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for subsistence uses. (§ 7 ch 52 SLA 1986)

Revisor's notes. — Formerly AS 16.05.261. Renumbered in 1987.

NOTES TO DECISIONS

Quoted in *State v. Semaken*, 648 P2d
114 (Alaska Ct. App. 1982).

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

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

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

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

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

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

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph "operate fishing gear" means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;

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

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

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

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(8) "customary trade" means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers.

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

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

(11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

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

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

(14) "fishery" means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph

(A) "gear" means the specific apparatus used in the harvest of a fishery resource; and

(B) "type of gear" means an identifiable classification of gear and may include

(i) classifications for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(ii) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear or sport gear and guided sport gear;

(15) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;

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

(17) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the

purchase of animal skins by a person, other than a fur dealer, for the person's own use;

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

(19) "game population" means a group of game animals of a single species or subgroup manageable as a unit;

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

(21) "nonresident" means a person who is not a resident of the state;

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

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

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

(25) "person with physical disabilities" means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

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

(27) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for

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personal or family consumption is a principal characteristic of the economy of the community or area;

(28) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

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

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

(31) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(32) "subsistence uses" means the noncommercial, customary and traditional 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;

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

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

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

(36) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (1) 2 art I ch 95 SLA 1959; am (1) 1 — 4 ch 131 SLA 1960; am (1) 1 ch 21 SLA 1961; am (1) 1, 2 ch 102 SLA 1961; (1) 9 art III ch 94 SLA 1959; am (1) 23 ch 131 SLA 1960; am (1) 1 ch 160 SLA 1962; am (1) 13, 14 ch 31 SLA 1963; am (1) 2 ch 32 SLA 1968; am (1) 3 ch 73 SLA 1970; am (1) 1 ch 91 SLA 1970; am (1) 4 ch 110 SLA 1970; am (1) 1 ch 90 SLA 1972; am

§ 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 208 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984; am §§ 9 — 11 ch 52 SLA 1986; am § 5 ch 76 SLA 1986; am § 1 ch 114 SLA 1988; am § 9 ch 145 SLA 1988; am § 3 ch 6 SLA 1989; am § 15 ch 211 SLA 1990; am § 18 ch 30 SLA 1992; am § 2 ch 49 SLA 1992; am § 3 ch 90 SLA 1992; am § 4 ch 1 SSSLA 1992)

Reviser's notes. — Reorganized in 1983, 1986, 1989, and 1992 to alphabetize the defined terms and to maintain alphabetical order. Former paragraph (13) was renumbered as AS 16.05.662(b) in 1992.

Both § 2, ch 49, SLA 1992 and § 3, ch 90, SLA 1992 amended paragraph (14) of this section. Because the latter amendment took effect first and included the former amendment, paragraph (14) is set out as amended by § 3, ch 90, SLA 1992.

Effect of amendments. — The first 1988 amendment substituted all of the language at the end of paragraph (4) beginning with "commercial fisherman" includes" for "and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish."

The second 1988 amendment, effective June 9, 1988, substituted "that is completely enclosed by a generally escape-proof barrier, in this paragraph, fish" does not include shellfish, as defined in AS 16.40.179" for "which is completely enclosed by a generally escape-proof barrier" in paragraph (14) (now (16)).

The 1989 amendment, effective June 11, 1989, added paragraph (24) (now (26)).

The 1990 amendment, effective January 1, 1991, inserted "the preceding" near the beginning of paragraph (25) (now (27)) and made a punctuation change near the end of that paragraph.

The 1992 amendment by § 18, ch 30, SLA 1992, effective May 16, 1992, inserted "etc." in paragraph (10).

The 1992 amendment by § 3, ch 90, SLA 1992, effective June 19, 1992, re-wrote paragraph (16).

The 1992 amendment by § 4, ch 1, SSSLA 1992 added paragraphs (7) and (8).

Delayed repeal of (7) and (8). — Sections 3 and 12, ch 1, SSSLA 1992 provide for the repeal of (7) and (8) effective October 1, 1993.

Conditional effective date of (7) and (8). — Section 17, ch 1 SSSLA 1992 makes the addition of (7) and (8) by § 4,

ch 1, SSSLA 1992 effective on the effective date of regulations first adopted under § 6, ch 1, SSSLA 1992 by the Board of Fisheries and the Board of Game.

Legislative history reports. — For report on ch 32, SLA 1968 (HCSCSSB 80 am), see 1968 House Journal, p. 169. For report on ch 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

For legislative letter of intent in connection with the amendment to (4) of this section by § 1, ch 114, SLA 1968 (CSSB 307 (Rec)), see 1968 Senate Journal 2027.

Opinions of attorney general. — The paragraph defining "resident" did not grant special resident privileges to military personnel: 1964 (Op. Atty Gen. No. 2).

Term "customary trade" as used in the definition of "subsistence use" allows for limited exchanges for cash other than for purely personal or family consumption: 1981 (Op. Atty Gen. No. 11).

Definition of "subsistence use" in terms of "customary and traditional uses of wild, renewable resources" reflects the equating of "subsistence use" with use by rural residents: 1981 (Op. Atty Gen. No. 11).

A domestic or nondomestic animal becomes feral when it returns to a wild state. In the case of a partially domesticated or captive wild animal such as a fox that escapes, this generally means when the animal is no longer under the control of its owner or the owner is not in direct pursuit. In the case of a domestic animal such as a cow or pig that escapes, it is "feral" when it is living as a wild creature, and this may take more or less time depending on the circumstances. In the case of a domestic animal trespassing upon public lands, it could be declared "feral" under statute or regulation July 30, 1987 (Op. Atty Gen.).

If factual information supported the proposition that it is "customary and traditional" to make handcraft articles from one other skins, and if one other are or have been taken customarily and tradi-



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

MEMO

TO: George Utermohle, Attorney
Legal Services
VIA FAX: 2029

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 13, 1995

RE: Continuation of state subsistence law

Please draft a bill to extend the sunset date of the 1992 subsistence law.

WORK ORDER REQUEST FORM

W.O. [19] LS-1025

KEYWORDS: FISH/GAME, FISHERIES ASSIGNED: Utermohle
POSTAL SERVICE

REQUEST FOR: Resolution TAKEN BY: Utermohle

SUBJECT: Wild Salmon Postage Stamps

REQUESTED FOR: SEN LEMAN BY: Annette PHONE: 465-2095

DELIVER TO: Sen. Leman, Cap. 113

INSTRUCTIONS: Prepare a resolution relating to a postage stamp for wild Alaska salmon based on Work Order No. 9-LS0962\C.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____
	RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____ IN <u>04/03/95</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT
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WORK ORDER REQUEST FORM

W.O. [19] LS-1082

KEYWORDS: FISH/GAME ASSIGNED: Utermohle

SUBSISTENCE

REQUEST FOR: New Bill TAKEN BY: Utermohle

SUBJECT: Extend Current Subsistence Law

REQUESTED FOR: SEN LEMAN BY: Annette Kreitzer PHONE: 465-4907

DELIVER TO: Sen. Leman, Attn: Annette, Cap. 113

INSTRUCTIONS: Prepare a bill that extends the current subsistence law. If possible draft the bill so that a 2/3 majority vote is not required.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
	AUTHORIZED TO CONFER WITH _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____
IN <u>04/13/95</u> DUE _____	
TYPED: Draft _____ Date _____	
Final _____ Date _____	
PROOFED _____ DELIVERED _____	Request for DRAFT

4-18-95

9-LS1082VA
Utermohle
4/13/95

George:

Please correct
sponsor

A. Kutz

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

~~BY SENATOR LEMAN~~

Senate Resource Committee

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Extend current subsistence law BRU: Subsistence
 Component: Subsistence
 Sponsor: Senate Resources
 Requester: Senate Resources COMPONENT SERIAL NO. 483

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Geron Bruce Phone: 465-5143
 Division: Commissioner's Office Date: 4/28/95
 Approved by Commissioner: Frans Rue Date: 4/28/95
 Agency: Fish and Game

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SPONSOR STATEMENT

SB 171 "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 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.

SB 171
~~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.