

**HB**

**255**



Official Business

MEMBER  
Natural Resources  
Committee

# Alaska State Legislature

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## SPONSOR STATEMENT

### House Bill 255

House Bill 255 was crafted using Alaska's Constitution as its basis.

The Legislature is mandated by the constitution to provide for the utilization, development and conservation of all natural resources belonging to the State, including the land and waters...for the maximum benefit of its people.

Further, wherever occurring in their natural state, the fish, wildlife and waters of the state are reserved to the people for common use.

Under the Alaska Constitution no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

The laws and regulations which govern the use or disposal of natural resources under the state constitution, shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Replenishable resources belonging to the state shall be utilized, developed and maintained on a sustained yield principle, subject to preferences among beneficial users.

HB 255 would establish an allocation mechanism and ensure the allocation for the various uses of the fish and game resources including subsistence use, to be consistent with the principles of sustained yield and will be the result of decisions by the respective Boards of Fish and Game.

The Boards are empowered to adopt criteria upon which to base allocation decisions, including the allocation for subsistence. The Boards will provide regulations to determine who may participate in subsistence hunting and fishing during times of abundance and shortage.

The subsistence allocation will be determined as a percentage of the stock or population that is available, based upon sustained yield. The percentage must provide a preference to satisfy subsistence use.

The Boards of Fish and Game shall distinguish among those provided a subsistence use on the basis of need, customary use and one's ability to obtain food by other means, should restrictions become necessary.

Under the provisions of HB 255, commercial sale of subsistence-taken fish or game is prohibited, however customary trade, barter or sharing for personal or family use is authorized.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF SUBSISTENCE

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April 30, 1997

Mr. Pete Ecklund  
Representative Bill Williams office  
State Capitol Building, Room 424

Dear Mr. Ecklund:

As you had requested on the phone earlier this week, I am providing a review of the impacts of HB 255. If enacted, HB 255 would substantially revise the state's subsistence statute, as well as change the way that the Board of Fisheries and Board of Game allocate between commercial, sport, personal, and subsistence uses. Significant aspects of the bill include the following:

#### Individual Eligibility Criteria

The bill requires the Board of Fisheries and Board of Game to establish in regulation individual eligibility criteria for determining who may participate in subsistence fisheries or subsistence hunts (Sec. 2, Sec. 3). There are two sets of criteria -- one set for identifying who is a subsistence user in general, and one set for distinguishing between subsistence users when all subsistence users cannot harvest. Individual eligibility criteria likely would be based on some individual needs-based dependency test, because the act changes the definition of "subsistence uses" to be "by an individual who significantly depends on the resource" (Sec. 10). A person's eligibility might change from year to year. Under this system, there would be tens of thousands of applicants yearly, creating a significant new task to the Alaska Department of Fish and Game (ADF&G). A major change is that non-residents could qualify for subsistence eligibility because of changes in key definitions (see below).

The Board of Fisheries and Board of Game act separately, so potentially there could be separate eligibility standards for subsistence fishing and subsistence hunting -- persons eligible to fish may not be the same as persons eligible to hunt and vice versa. ADF&G likely would administer the individual subsistence permit system, determining which applicants score high enough to be eligible for participating in subsistence fishing and subsistence hunting. Each individual would have to apply for a permit to participate in a subsistence fishery or hunt -- in a family, husband, wife, and older children would all have to apply (presumably, children below a certain age might not need a permit).

Allocation Quotas ("Percentage for Subsistence, Personal, Sport, and Commercial Uses")

The bill requires the Board of Fisheries and Board of Game to establish regulatory quotas (called a "percentage of the stock or population") allocated for subsistence uses, personal uses, sport uses, and commercial uses (Sec. 6). Allocations between these uses would be done on every stock or game population in the state with a harvestable surplus. In making allocations, the percentage allocated for subsistence uses must give a preference to satisfy subsistence uses.

Allocations between personal, sport, and commercial uses of fish presumably would be based on criteria listed in AS 16.05.251(e) (Sec. 1).

The Procedural Steps for Applying the Subsistence Preference are Removed, and Replaced by an Uncertain Quota Allocation System

The bill removes the 1992 procedural steps for applying the subsistence preference (Sec. 5) – that is, under the 1992 law, as the harvestable surplus declines, restrictions are placed on commercial, sport, or personal uses before subsistence uses are significantly restricted. Existing procedural steps are replaced by an uncertain quota allocation system (Sec. 6) – under one interpretation, once the "percentage for subsistence" and for other uses are established they are fixed, and as the harvestable surplus declines, restrictions are placed on all uses concurrently. Under a fixed quota system, the pool of subsistence users compete among themselves for their percentage of the harvestable surplus. When the fixed subsistence percentage of the harvestable surplus is not sufficient "to continue subsistence uses", then two criteria are used by the Board of Fisheries or Board of Game to distinguish among subsistence users (Tier II), reducing the number of subsistence fishers or hunters.

However, the act is unclear if subsistence uses and other user groups are locked into their percentage of the allocation, or if the boards can readjust the percentages to provide for one user group over another when the harvestable surplus declines. Under another interpretation of the act, it may be that as the harvestable surplus declines, the Board of Fisheries and Board of Game must readjust the percentages allocated among all competing uses, so that subsistence uses are always satisfied; how this occurs is unclear.

Nonsubsistence Areas Are Eliminated

The act removes language allowing the Boards of Fisheries and Game to establish "non-subsistence areas" – areas where subsistence is not a principal characteristic of the economy, culture, and way of life (Sec. 5). The act would eliminate the five nonsubsistence areas which have been established by the Board of Fisheries and Game – the Anchorage-Matsu-Kenai Nonsubsistence Area, the Fairbanks Nonsubsistence Area, the Juneau Nonsubsistence Area, the Ketchikan Nonsubsistence Area, and the Valdez Nonsubsistence Area. The act would require the Board of Fisheries and Board of Game to create subsistence fisheries and hunts on stocks and populations in the five current nonsubsistence areas. General hunts in the Anchorage-Matsu-Kenai and Fairbanks areas likely would be converted into subsistence hunts under a Tier II system, unless the eligibility criteria for subsistence hunting were very restrictive. Subsistence fisheries likely would be established in the nonsubsistence areas.

Definitions of Key Terms Are Changed

Non-residents become eligible to participate in subsistence fishing and hunting, because the act modifies the definitions of "subsistence hunting" (sec. 8), "subsistence fishing" (sec. 9), and "subsistence uses" (sec. 10) to eliminate the requirement that the user be a rural resident of the state, or even a resident of the state. The definition of "subsistence uses" is changed to include an individual, needs-based eligibility standard, with the phrase, "by an individual who significantly depends on the resource".

One of the three Tier II criteria are eliminated – "the proximity of the domicile of the subsistence user to the stock or population" (sec. 6); this criterion was found to be unconstitutional by the Alaska Supreme Court. The act eliminates the definition of "rural area" in AS 16.05:940(27) – "a community or area of the state in which the noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area".

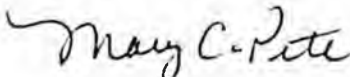
Sunset Provisions Are Eliminated

The act removes the sunset provisions in the current law (sec. 12). The 1986 subsistence law language retained in the sunset provisions would disappear, making it more difficult for the state's law to return to the pre-1992 language (under which the state retained management of fish and game on all Alaska lands).

These are the major changes pending with HB 255 that the Division of Subsistence has identified. Because it removes rural residency preference for the subsistence priority, enactment of this bill would not comply with ANILCA, so it would not allow state resumption of subsistence management on federal lands.

Please feel free to call if you have further questions about this analysis. Thank you.

Sincerely,



Mary C. Pete  
Director

# LEGAL SERVICES

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## MEMORANDUM

April 18, 1997

**SUBJECT:** Sectional Summary: Draft bill relating to subsistence hunting and fishing (Work Order No. 20-LS0922A)

**TO:** Representative Ramona Barnes

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is a sectional summary of the draft bill regarding subsistence hunting and fishing.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.05.251(e), which relates to the criteria that the Board of Fisheries must use for allocating fishery resources. This section requires the board to adopt criteria for allocating fishery resources to and among subsistence users that are consistent with AS 16.05.258. The remainder of subsection (e) sets out criteria for allocation of fishery resources among personal use, sport, guided sport, and commercial fisheries.

Section 2 of the bill adds a new subsection (i) to AS 16.05.251, relating to the powers of the Board of Fisheries. This subsection requires the board to establish criteria for determining who may engage in subsistence fishing in times of resource abundance and in times of resource shortage.

Section 3 of the bill amends AS 16.05.255(a), relating to the powers of the Board of Game. The board shall regulate subsistence hunting in a manner consistent with AS 16.05.258. The board shall also adopt criteria for determining who may engage in subsistence hunting in times of resource abundance and in times of resource shortage.

Section 4 of the bill repeals and reenacts AS 16.05.258(a), relating to the identification of fish stocks and game populations used for subsistence uses. The Board of Fisheries and the Board of Game are to identify stocks and populations that are customarily and traditionally used for subsistence uses in areas identified by the boards. The former reference to "rural areas" has been dropped from this subsection.

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Section 5 of the bill repeals and reenacts AS 16.05.258(b), relating to the assessment of harvestable portions of stocks and populations. The boards shall determine what portion of stocks and populations identified as used for subsistence uses under AS 16.05.258(a) can be harvested consistent with sustained yield and what portion of the harvestable portion of the stock or population is necessary to provide a reasonable opportunity to satisfy subsistence uses.

Section 6 of the bill repeals and reenacts AS 16.05.258(c), relating to allocation of fish and game resources among the various user groups. The boards shall by regulation determine the percentages of a stock or population that may be taken for subsistence, personal use, sport, and commercial uses. The boards shall also allocate the available resources among subsistence users if there is not sufficient resources. The boards shall distinguish among subsistence users based on their customary and direct dependence on the stock or population for human consumption and their ability to obtain other food if subsistence uses are restricted or eliminated.

This bill does not use local residency or proximity of domicile to the resource to determine eligibility for Tier II subsistence. This provision was found to be unconstitutional. The McDowell court hinted that criteria based on local residency may not be a legitimate factor to be considered but the Kenaitze court addressed this issue directly and determined that a person's place of residency in the state cannot be used to distinguish among subsistence users.

Section 7 of the bill adds a new subsection to AS 16.05.258, authorizing the boards to allow nonsubsistence hunting and fishing on stocks and populations identified as being used for subsistence under AS 16.05.258(a).

Sections 8 and 9 of the bill amend the definitions of "subsistence fishing" and "subsistence hunting" to eliminate the requirement that a person be domiciled in a rural area of the state to engage in subsistence fishing and hunting. Also eliminated is the requirement that subsistence is restricted to residents.

Section 10 of the bill amends the definition of "subsistence uses" by eliminating the requirement that a person be domiciled in a rural area of the state and that the person be a resident of the state. The definition is further amended to provide that subsistence uses are certain uses of wild renewable resources by an individual who significantly depends on the resource for direct personal or family consumption, etc.

Section 11 of the bill provides that the definition of "rural area" is repealed.

Section 12 of the bill repeals provisions of the 1992 subsistence law that would sunset the current subsistence law as well as provisions of this bill. If not repealed, these provisions

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of ch. 1, SSSLA 1992 would have the effect of reenacting the provisions of the 1986 subsistence law.

Section 13 of the bill contains transitional provisions relating to the transition from the current subsistence regulations to the new regulations that will be required to implement this bill. The boards and the department are to start adopting conforming regulations once the bill takes effect but the current regulations stay on the books until superseded by new regulations or until October 1, 1997, whichever comes first. This provision eases the burden on the boards to make the transition to the new subsistence law.

Section 14 of the bill provides an immediate effective date.

GU:jdr

97-278.jdr