

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 809

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

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

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

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

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

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

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

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

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

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

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

31 (i) the customary and direct dependence on the fish

1 stock or game population by the subsistence user for human
2 consumption as a mainstay of life;

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

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

7 (c) If the harvestable portion of a fish stock or game population is insufficient
8 to provide both for a reasonable opportunity for subsistence uses and for all other
9 consumptive uses, the department shall prepare a plan to facilitate the recovery of that
10 stock or population to allow for increased consumptive uses as soon as possible. The
11 department shall provide recommendations to the appropriate board for necessary
12 regulatory changes. If subsistence uses of a fish stock or game population have been
13 eliminated to achieve sustained yield, the appropriate board shall adopt regulations to
14 allow subsistence uses when that board determines that the stock or population has
15 recovered sufficiently to allow the taking for any consumptive use, consistent with
16 sustained yield.

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

22 (e) In determining whether dependence upon subsistence is a principal
23 characteristic of the economy, culture, and way of life of an area or community under
24 (d) of this section, the boards shall jointly consider the relative importance of
25 subsistence compared to the totality of the following socio-economic characteristics
26 of the area or community:

- 27 (1) the social and economic structure;
- 28 (2) the stability of the economy;
- 29 (3) the extent and the kinds of employment for wages, including full-
30 time, part-time, temporary, and seasonal employment;
- 31 (4) the amount and distribution of cash income among those domiciled

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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.

(f) 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.

(g) 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.

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

(1) 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, but does not guarantee the taking of fish or game,

1 the conditions of the hunt or fishery, or the taking of all the fish and game that the
2 participant wants or needs; and

3 (2) is based on the findings of the appropriate board on each of the
4 following factors:

5 (A) resource population and management objectives;

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

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

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

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

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

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

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

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

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

24 * Sec. 5. AS 16.05.940 is amended by adding new paragraphs to read:

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

29 (37) "customary trade" means the limited, noncommercial exchange,
30 for minimal amounts of cash, as restricted by the appropriate board, of fish or game
31 resources harvested primarily for personal or family consumption; "customary trade"

1 does not include sales in commercial channels; the terms of this paragraph do not
2 restrict money sales of furs or furbearers.

3 * Sec. 6. AS 16.05.258 and 16.05.940(26) are repealed.

4 * Sec. 7. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board
5 of Fisheries, Board of Game, and Department of Fish and Game shall adopt regulations
6 necessary to implement the provisions of this Act.

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

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

11 (c) Regardless of whether regulations adopted under the authority of AS 16.05.251,
12 16.05.255, or 16.05.258 and in effect on July 1, 1992, are inconsistent with the provisions of
13 this Act, they may continue to be implemented and enforced until the effective date of sec. 2
14 of this Act.

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

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

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

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

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

31 * Sec. 11. Sections 1 - 6 and 9 of this Act take effect on the effective date of regulations

1 first adopted under this Act by the Board of Fisheries and the Board of Game.

BILL COMPARISON OF LIMITED POWERS PROVIDED TO THE
FREE CONFERENCE COMMITTEE ON
CS HB 601 (JUD)AM (EFD FLD) AND SCS CSHB 601 (SCW)

- 1) WHERE THE SUBSTANTIVE SUBSISTENCE PROVISIONS SHOULD BE PLACED:
AS AN AMENDMENT TO EXISTING AS 16.05.258, AS A NEW SECTION AS
16.05.268, OR BOTH.

CC VERSION: THE PROVISIONS WERE PLACED IN A NEW SECTION 16.05.268.

SENATE VERSION:

SENATE BILL ADD A NEW SECTION AS 16.05.268.

HOUSE VERSION:

USE BILL AMENDS AS 16.05.258 BY ADDING NEW SUBSECTIONS.

- 2) CONCEPTS EMBODIED ON PAGE 2, LINE 21 THROUGH PAGE 4, LINE 6
IN THE SCW VERSION OF THE BILL.

CC VERSION: THE LANGUAGE OF THIS PROVISION WAS CLARIFIED TO MORE
DIRECTLY ADDRESS THE CONCERNS OF THE ADMINISTRATION. THE NEW
LANGUAGE AVOIDS ELEVATING CONSUMPTIVE USES OVER NONCONSUMPTIVE USES
OF FISH AND GAME, CONTINUES THE EXISTING REQUIREMENT THAT THE
BOARDS DETERMINE THE AMOUNT OF THE HARVESTABLE PORTION OF FISH AND
GAME STOCKS NECESSARY TO PROVIDE FOR SUBSISTENCE USES, MAKES
MEANINGFUL THE REQUIREMENT THAT SUBSISTENCE USERS HAVE A REASONABLE
OPPORTUNITY TO USE THE RESOURCES, AND IN CASES OF RELATIVE RESOURCE
SHORTAGE, SPECIFICALLY REQUIRES THAT PORTIONS OF THE STOCK OR
POPULATIONS WHICH CAN BE HARVESTED CONSISTENT WITH SUSTAINED YIELD
BE DETERMINED.

SENATE VERSION:

SENATE BILL ADDS NEW PROVISIONS RELATING TO IDENTIFICATION AND
ALLOCATION OF FISH AND GAME FOR SUBSISTENCE USES.

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN THESE PROVISIONS.

- 3) THE "RECOVERY" CONCEPT EMBODIED ON PAGE 4, LINES 7 THROUGH 16
OF THE SCW VERSION OF THE BILL.

CC VERSION: THIS CONCEPT WAS DELETED FROM THE BILL.

SENATE VERSION:

SENATE BILL PROVIDES FOR DEVELOPMENT OF A RECOVERY PLAN FOR
DEPRESSED STOCKS AND POPULATIONS OF FISH AND GAME.

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN THESE PROVISIONS.

- 4) CONCEPTS EMBODIED ON PAGE 5, LINE 22 THROUGH LINE 26 OF SCW VERSION OF THE BILL.

CC VERSION: THESE PROVISIONS WERE KEPT IN THE BILL.

SENATE VERSION:

SENATE BILL PROVIDES FOR RESTRICTIONS ON TAKINGS AND USES OF FISH AND GAME FOR SUBSISTENCE USES. THIS PROVISION IS SIMILAR TO EXISTING, AS 16.05.258 (g).

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN THESE PROVISIONS AND DOES NOT AMEND EXISTING LAW ON THIS SUBJECT.

- 5) THE DEFINITION OF "REASONABLE OPPORTUNITY".

CC VERSION: A NEW DEFINITION WAS DRAFTED TO SATISFY THE CONCERNS OF THE INTERESTED PARTIES.

SENATE VERSION:

SENATE BILL CONTAINS A DEFINITION OF REASONABLE OPPORTUNITY.

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN A DEFINITION FOR REASONABLE OPPORTUNITY.

- 6) THE DEFINITION OF "CUSTOMARY AND TRADITIONAL".

CC VERSION: A NEW DEFINITION WAS DRAFTED TO SATISFY THE CONCERNS OF THE INTERESTED PARTIES.

SENATE VERSION:

SENATE BILL CONTAINS A DEFINITION OF CUSTOMARY AND TRADITIONAL.

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN A DEFINITION OF CUSTOMARY AND TRADITIONAL.

- 7) THE DEFINITION OF "CUSTOMARY TRADE".

CC VERSION: A NEW DEFINITION WAS DRAFTED TO SATISFY THE CONCERNS OF THE INTERESTED PARTIES, AND A LETTER OF INTENT WAS ADOPTED TO

CLARIFY THE INTENT OF THE CONFERENCE COMMITTEE CONCERNING THE MEANING OF THE PHRASE "LIMITED NONCOMMERCIAL EXCHANGE."

SENATE VERSION:

SENATE BILL CONTAINS A MORE RESTRICTIVE DEFINITION OF CUSTOMARY TRADE.

HOUSE VERSION:

HOUSE BILL CONTAINS A BROADER DEFINITION OF CUSTOMARY TRADE.

- 8) THE REVIEW PROCEDURE EMBODIED IN SECTION 9 OF SCW VERSION OF THE BILL.

CC VERSION: THIS PROVISION WAS KEPT IN THE BILL.

SENATE VERSION:

SENATE BILL PROVIDES FOR REVIEW OF NEW SUBSISTENCE LAW BY 1994.

HOUSE VERSION:

HOUSE BILL DOES NOT PROVIDE FOR REVIEW OF NEW SUBSISTENCE LAW.

- 9) THE "CUSTOMARY USE" CONCEPT EMBODIED IN THE HOUSE VERSION OF THE BILL AND ALL PROVISIONS IN THE HOUSE BILL THAT ARE RELATED TO THE "CUSTOMARY USE" CONCEPT.

CC VERSION: THIS PROVISION WAS DELETED FROM THE BILL AND A LETTER OF INTENT ADOPTED THAT CLARIFIES THE EXISTING POWERS OF THE BOARDS TO PROVIDE OPPORTUNITIES FOR CUSTOMARY USES IN NONSUBSISTENCE AREAS.

SENATE VERSION:

SENATE BILL DOES NOT PROVIDE FOR CUSTOMARY USE OF FISH AND GAME IN NONSUBSISTENCE AREAS.

HOUSE VERSION:

HOUSE BILL PROVIDES FOR CUSTOMARY USE OF FISH AND GAME IN NONSUBSISTENCE AREAS.

- 10) THE REPEALER PROVISION IN THE SCW VERSION OF THE BILL.

CC VERSION: THIS PROVISION WAS DELETED FROM THE BILL.

SENATE VERSION:

SENATE BILL PROVIDES FOR REPEAL OF CURRENT SUBSISTENCE LAW AND CURRENT DEFINITION OF RURAL.

HOUSE VERSION:

HOUSE BILL DOES NOT CONTAIN ANY REPEALERS.

- 11) LIMITING THE PERIOD DURING WHICH THE NEW SUBSTANTIVE SUBSISTENCE PROVISIONS APPLY AND SETTING A PRIORITY BETWEEN THE NEW PROVISIONS AND THE EXISTING PROVISIONS OF AS 16.05.258.

CC VERSION: THE PROVISIONS OF THE BILL WILL REMAIN IN EFFECT UNTIL OCTOBER 1, 1995.

SENATE VERSION:

SENATE BILL REPEALS THE EXISTING SUBSISTENCE LAW, AS 16.05.258 AND ENACTS A NEW SUBSISTENCE PROVISION, AS 16.05.268 THAT CONTAINS SOME OF THE PROVISIONS OF EXISTING, AS 16.05.258 WITH MINOR CHANGES AND ADDS OTHER NEW PROVISIONS.

HOUSE VERSION:

HOUSE BILL RETAINS THE EXISTING SUBSISTENCE LAW, AS 16.05.258 WITHOUT CHANGE AND ADDS NEW SUBSECTIONS.

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MEMORANDUM

June 19, 1992

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

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

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

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

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

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

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

GU:lmb:mi
92-140.lmb

DIVISION OF LEGAL SERVICES

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MEMORANDUM

June 18, 1992

SUBJECT: Sectional Analysis of CSHB 601 (RES)

TO: Representative Jerry Mackie

FROM: Pamela Finley *PJF*
Assistant Revisor

You have asked for a sectional analysis of CSHB 601(RES). Of course, the bill itself is the best explanation of its contents.

Section 1. Adds the customary use fishery to AS 16.05.251(a), which authorizes the Board of Fisheries to adopt regulations.

Section 2. Adds the customary use fishery to AS 16.05.251(e), which authorizes the Board of Fisheries to allocate fishery resources. Adds, as a possible factor that may be included in establishing criteria for those allocations, the importance of each fishery in meeting the social and cultural needs of the region and local area in which the fishery is located. Note that these factors are not exclusive. (For construction of the word "includes," see AS 01.10.040(b).)

Section 3. Adds customary use hunting to AS 16.05.255(a), which authorizes the Board of Game to adopt regulations.

Section 4. Adds to AS 16.05.255 a subsection requiring the Board of Game to allocate game resources among sport and customary use hunting. Lists some factors that may be considered in establishing the criteria for the allocations, one of which is the importance of each hunt in meeting the economic, social, and cultural needs of the region and local area in which the hunt is located. Again, these factors are not exclusive because of AS 01.10.040(b).

Section 5. Adds two subsections to AS 16.05.258.

Subsection (g): Requires the Board of Fisheries and the Board of Game, acting jointly, to identify nonsubsistence areas, which are those areas or communities where dependence upon subsistence is not a principal characteristic of the economy,

culture, and way of life. Prohibits the boards from permitting subsistence hunting or fishing in nonsubsistence areas. Requires the boards to identify, for each non-subsistence area, fish stocks and game populations that have been taken, before the establishment of the nonsubsistence area, for subsistence uses. If a harvestable portion of such an identified stock or population exists, the boards must adopt regulations for the issuance of customary use permits to participate in the take of the harvestable portion. Requires the boards to establish eligibility for issuance of those permits based on certain listed criteria, i.e., (1) the permittee's proximity to the resource, (2) the availability of alternative resources to the permittee, and (3) either the permittee's dependence on wild renewable resources as a mainstay of livelihood or the permittee's cultural need to engage in personal or family use and consumption of wild renewable resources.

Subsection (h): Lists the socio-economic characteristics that the boards are to compare with the relative importance of subsistence in order to determine whether dependence on subsistence is a principal characteristic of the community or area. This subsection would be clearer if, on page 6, line 5, "in the context of" were substituted for "compared to".

Section 6. Adds customary use to AS 16.05.259, which provides that subsistence and customary use are not defenses to fish and game violations.

Section 7. Makes a technical change to the definition of "commercial fishing" that is needed because of the creation of customary use permits.

Section 8. Adds definitions of "customary trade" and "customary use". Note that the definition of "customary use" refers to uses permitted under AS 16.05.258(g), but that subsection does not really specify which uses of fish and game it is intended to permit.

Section 9. Gives the bill an immediate effective date.

PF:lmb
92-138.lmb

SCW-92
6/19/92

SUBSISTENCE DEVELOPMENT COUNCIL

There is established the Subsistence Development Council comprised of 15 members, five members to be appointed respectively by the Governor, President of the Senate, and the Speaker of the House. **The council shall also have as an ex officio member a representative of the Secretary of the Department of the Interior.**

The council shall, prior to the convening of the second session of the Eighteenth Alaska Legislature, prepare recommendations for submission to the legislature by the Governor. The council shall provide guidance to the Governor and legislature to resolve public policy issues affecting subsistence use of fish and wildlife resources. The council shall have the following objectives:

- Restrict statutory revisions to those absolutely necessary.
- Provide a subsistence priority that meets the real needs of subsistence users under sustained yield management and allows reasonable access to resources by other consumptive users.
- Provide a constitutionally sound legal basis that is clearly understood and supported by the people of Alaska.
- Minimize litigation in both state and federal courts and allow regulatory responsiveness.
- Unify fish and wildlife management in Alaska under state regulation.

Council members shall be residents who represent a broad cross section of those affected by and knowledgeable of subsistence issues. Five members shall be recognized subsistence users or their representatives. No more than five members shall be elected or appointed office holders of the state or its political subdivisions.

The council for administrative purposes shall be located in the Office of the Governor which shall provide necessary support of the conduct of its business. The council is empowered as an agency of the state to take all action necessary pursuant to law to discharge its responsibilities, including electing officers from among its members and appointing staff.

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

BY DICK BISHOP
ALASKA OUTDOOR COUNCIL

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

IN TITLE 16.05.940 (30):

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

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

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

SUCH A POTENTIAL IS UNACCEPTABLE.

**ADVERSE EFFECTS OF THE HALFORD SUBSTITUTE
TO HB 601 ON RURAL ALASKANS WHO DEPEND UPON
SUBSISTENCE HUNTING AND FISHING**

- * **ALLOWS FEDERAL GOVERNMENT TO CONTINUE TO MANAGE ALASKA FISH AND GAME RESOURCES.**
- * **THE BOARDS OF FISHERIES AND GAME ARE NOT REQUIRED TO ALLOCATE SUFFICIENT RESOURCES TO PROVIDE A REASONABLE OPPORTUNITY TO SATISFY RURAL SUBSISTENCE NEEDS.**
- * **GRANTS BOARDS NEAR TOTAL DISCRETION IN HOW THEY ACCOMMODATE SUBSISTENCE USES.**
- * **DOES NOT PROTECT RURAL SUBSISTENCE OPPORTUNITIES FROM UNFAIR URBAN COMPETITION EXCEPT TO THE EXTENT AFFORDED BY THE TIER II SYSTEM. THE ADMINISTRATION HAS REPEATEDLY EXPRESSED CONCERN THAT THE TIER II SYSTEM DOES NOT ADEQUATELY SAFEGUARD RURAL SUBSISTENCE USERS.**
- * **REPEALS THE ALASKA SUBSISTENCE LAW IN URBAN AREAS, THEREBY DENYING URBAN RESIDENTS AN OPPORTUNITY TO CONTINUE IMPORTANT CUSTOMARY USES.**
- * **CREATES A "CUSTOMARY AND TRADITIONAL" DEFINITION THAT UNFAIRLY PENALIZES RURAL RESIDENTS WHO DEPEND UPON SUBSISTENCE USES OF FISH STOCKS AND GAME POPULATIONS THAT HAVE BEEN UNAVAILABLE AS THE RESULT OF PAST ARBITRARY BOARD ACTION.**
- * **PROHIBITS SUBSISTENCE USES OF NEWLY AVAILABLE STOCKS AND POPULATIONS FOR 20-30 YEARS REGARDLESS OF THE IMPORTANCE OF THOSE RESOURCES TO THE SATISFACTION OF RURAL SUBSISTENCE NEEDS.**
- * **LIMITS "CUSTOMARY TRADE" TO FISH AND GAME TAKEN PRIMARILY FOR PERSONAL AND FAMILY CONSUMPTION. THIS RESTRICTION MAY UNFAIRLY ELIMINATE IMPORTANT VILLAGE CUSTOMARY TRADE ACTIVITIES THAT HAVE NOT PREVIOUSLY BEEN OF CONCERN OR CONTROVERSY.**

SUBSISTENCE LEGISLATION - DIFFERENCES BETWEEN HB 601 (HOUSE), HB 599 GOVERNORS BILL, AND HB 601 (SCW) BILL.

ISSUE	HB 601 (HOUSE)	GOVERNOR'S BILL - HB 599	HB 601 (SCW)
Constitution	Probably constitutional.	Governor asserts his bill does not require a constitutional amendment. Legislative Legal Council believes amendment is necessary because of Article VIII problems.	Probably constitutional.
ANILCA Compliance	Does not comply with ANILCA:	Changes definition of subsistence uses, changes allocation priority, and retains advisory committee/regional council system. Does not comply with ANILCA.	Does not comply with ANILCA.
Regains State Management	Does not regain state management because it does not comply with ANILCA. Would require a change by Congress to regain management.	Does not regain state management because it does not comply with ANILCA. Would require Congress to change ANILCA to regain state management.	Does not regain state management because it does not comply with ANILCA. Would require Congress to amend ANILCA to regain state management.
Eligible participants	In rural areas: All-Alaskans are eligible to participate in subsistence uses. In urban areas: There are no subsistence uses. The boards have the discretion to create "customary use fisheries or hunts." Eligible participants would be determined by criteria to be set by the appropriate board.	Residents of small communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of medium sized communities are presumed to qualify if their community qualifies as a subsistence-dependent community. Residents of large communities are not presumed to qualify and must apply on an individual basis based upon their individual use of fish and game.	In rural areas: All-Alaskans are eligible to participate in subsistence uses. In urban areas: There are no subsistence uses.

ISSUE	HB 601 (HOUSE)	GOVERNOR'S BILL - HB 599	HB 601 (SCW)
Eligible Fish Stocks and Game Populations	<p>Rural areas: Subsistence uses would apply to any fish stocks and game populations which are taken for subsistence uses.</p> <p>Urban areas: No subsistence uses would apply in these areas. The boards have the discretion to create "customary use fisheries or hunts" on fish stocks and game populations customarily and traditionally used.</p>	<p>Subsistence uses would apply only to fish stocks or game populations which are taken for subsistence uses in rural areas. A person may qualify for subsistence based upon harvests in urban areas, but cannot harvest for subsistence in those areas, and must go to adjacent rural areas to harvest stocks and populations which may not have been part of this person's harvest pattern.</p> <p>Does not allow subsistence uses to be established on transplanted game populations or new hatchery or enhancement fish stocks until 20-30 years of use has been established.</p>	<p>Rural areas: Subsistence uses would apply to every fish stock and game population which are taken for subsistence uses. Does not allow subsistence uses to be established on transplanted game populations or new hatchery or enhancement fish stocks until 20-30 years of use has been established.</p> <p>Urban areas: No subsistence uses would apply in these areas.</p>
Customary Trade	Limits the practice to limited exchanges for minimal amounts of cash. Gives the boards the authority to further restrict customary trade.	Prohibits customary trade other than from individual to individual. Very vague on how to treat customary trade in furs which is important in ensuring access by trappers to National Park lands.	Prohibits customary trade other than from individual to individual. Remedies concern with trapping in National Parks.

ISSUE	HB 601 (HOUSE)	GOVERNOR'S BILL - HB 599	HB 601 (SCW)
Regulatory Standard	Retains existing regulatory standard: Portion of harvestable surplus needed for subsistence must be determined and then allocated for subsistence. Requires Alaskans to have a reasonable opportunity to participate in such uses and satisfy their need. "Reasonable opportunity" is not defined in statute.	Provides greater discretion to the boards: does not require boards to assure that number of animals needed to satisfy subsistence needs are allocated to that use category; defines "reasonable opportunity" as an opportunity to participate in subsistence uses rather than to satisfy subsistence needs; provides wide discretion to the boards to determine when to allow subsistence uses even when a harvestable surplus exists. Eliminates ability for boards to manage for nonconsumptive uses.	Provides greater discretion to the boards: does not require boards to assure that number of animals needed to satisfy subsistence needs are allocated to that use category; defines "reasonable opportunity" as an opportunity to participate in subsistence uses rather than to satisfy subsistence needs; provides wide discretion to the boards to determine when to allow subsistence uses even when a harvestable surplus exists.
Priority	Gives equal priority to all-Alaskans who participate in subsistence uses of a particular fish stock or game population (Tier I) and provides a mechanism to choose most dependent subsistence users in Tier II.	Gives equal priority to rural and urban subsistence users. Urban subsistence users will only be able to participate in rural subsistence opportunities. This will have a practical effect by creating more competition between rural and urban users and will require the boards to institute more "Tier II" situations.	Gives equal priority to all-Alaskans who participate in subsistence uses of a particular fish stock or game population (Tier I) and provides a mechanism to choose most dependent subsistence users in Tier II.
Regulatory System	Retains existing board structure.	Retains existing board structure.	Retains existing board structure.

#1 Senator Halford

SCW 2nd 83 ~~92~~ 92
6/19/92

7-GS2084 B

Adopted
for CS workdays

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE COMMITTEE OF THE WHOLE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

8 (b) It is the purpose of this Act

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

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

13 (c) It is the intent of the legislature

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

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

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

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

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

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

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

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

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

1 (C) may adopt regulations to differentiate among consumptive uses;
2 (2) if the harvestable portion of the stock or population is sufficient to provide
3 for subsistence uses and some, but not all, other consumptive uses, the appropriate board

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

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

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

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

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

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

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

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

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

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

26 (c) If the harvestable portion of a stock or population is insufficient to provide both for
27 a reasonable opportunity for subsistence and for all other consumptive uses, the department shall
28 prepare a plan to facilitate the recovery of that stock or population to allow for increased
29 consumptive uses as soon as possible. The department shall provide recommendations to the
30 appropriate board for necessary regulatory changes. If subsistence use of a stock or population
31 has been eliminated to achieve sustained yield, the appropriate board shall adopt regulations to

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

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

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

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

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

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

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

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

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

14 (A) resource population and management objectives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MARKUP

7-GS2084.A

2
All Alaskan
w/ Non-Sub.
Area.

Sen. CS For H.B. 601

~~SENATE COMMITTEE ON THE WHOLE~~ 84

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/15/92
Referred: Senate Committee on the Whole

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) The boards may not permit subsistence hunting or fishing in a
12 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
13 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
14 where dependence upon subsistence is not a principal characteristic of the economy,
15 culture, and way of life of the area or community. ¹⁰⁶

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

27 (3) ~~a person domiciled in an area identified under (1)(3) of this section or who~~
28 ~~is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery~~
29 ~~or hunt in that subsistence use area only upon certification by the commissioner that the person~~
30 ~~meets the requirements for qualification under (i) and (j) of this section.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (o) For purposes of,

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

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

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

29 (i) resource population and management objectives;

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

31 fishery or hunt;

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

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

- 9 ~~(A) in (h)(1) of this section, the 12 months preceding the taking of the fish~~
- 10 ~~or game resource;~~
- 11 ~~(B) in (h)(2) of this section, the 12 months preceding the date of signing~~
- 12 ~~of the required statement;~~
- 13 ~~(C) in (h)(3) of this section, the 12 months preceding the date of signing~~
- 14 ~~the application to the commissioner.~~

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

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

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

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

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

24 ~~(29) "subsistence fishing" means the taking [OF, FISHING FOR,] or possession,~~
25 ~~by a qualified resident, of fish, shellfish, or other fisheries resources [BY A RESIDENT~~

26 ~~DOMICILED] in a subsistence use [RURAL] area of the state, in accordance with regulations~~
27 ~~adopted under AS 16.05.268, for subsistence uses with gill net, seine, fish wheel, long line, or~~
28 ~~other means defined by the Board of Fisheries, except for rod and reel;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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