

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2158 SCOMM 81: SPECIAL SESSION (SUBSISTENCE), June 1992/HB 601

exists, the [Commercial Fisheries Entry Commission] should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so.

Id., 758 P.2d at 1266 (footnote omitted).

Most recently in Owsichuk, we suggested that section 17 of article VIII, the uniform application clause, "may require 'more stringent review' of a statute than does the equal protection clause in cases involving natural resources." Owsichuk, 763 P.2d at 498 n.17 (quoting Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983)). We also cited with approval Justice Rabinowitz's dissent in Ostrosky, 667 P.2d at 1196 which employs a least restrictive alternative approach in view of the "highly important interest running to each person within the state" by virtue of the common use clause. 763 P.2d at 492 n.10.

In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important. The means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values. Ostrosky, supra at 1191, Johns, supra at 1266.

We employ this method of analysis in the present case as an alternative ground of decision. Using this approach, we conclude that the rural-urban residency criterion is unconstitutional for the reasons that follow.

One purpose of the 1985 act is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so.

This is an important interest.²⁰ However, the means used to accomplish this purpose are extremely crude. There are, as noted above, substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims. A classification scheme employing individual characteristics would be less invasive of the article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criterion.

We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes. These authorities support our view that the equal access clauses of article VIII, which are a special type of equal

20. Another expressed purpose is to aid communities whose residents are dependent on subsistence, as distinct from aiding the individual residents. This is not a purpose separate from aid to individual community members where the aid goes directly to the individuals. As we stated in State v. Enserch, P.2d , Slip Op. No. 3539 at 31 (Alaska, December 18, 1989): "It would not make sense to conclude that a statute may not discriminate between residents of two areas in order to aid the residents of the more disadvantaged area, but that such a statute could discriminate between residents of two areas in order to aid the communities in the more disadvantaged area. The communities are merely the collective sum of the residents."

A third purpose is to comply with ANILCA in order to retain state fish and game control on federal lands. It is difficult to view this as a sufficiently important purpose. ANILCA does not require state compliance. State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII.

protection guaranty, bar the residential discrimination imposed in this case.²¹ Lewis v. State, 161 S.W. 154 (Ark. 1913) contains an excellent historical statement:

When it becomes necessary for the propagation and preservation of wild game and fish for the use of the public, the people acting in their sovereign capacity, through their lawmaking power, may pass laws to regulate the right of each individual which he enjoys in common with every other member of the community to use of same. But when

21. See State v. Bryan, 99 So. 327, 330 (Fla. 1924) (state law levying \$10 and \$50 license tax on state residents who are non-residents of certain counties, as a prerequisite to hunting in those counties, when residents of those counties pay only \$1 or \$1.25, violates equal protection); State v. Barkley, 134 S.E. 454, 455 (N.C. 1926) (state law levying \$3 hunting fee on non-resident hunters in the county, and a \$1 fee on residents of the county, held invalid in that it taxed inhabitants unequally); Harper v. Galloway, 51 So. 226, 229 (Fla. 1910) (state law that required citizens of the state of Florida who were not residents of Marion County to give a previous notice of intention to hunt and to pay a special license tax for the privilege of hunting game in Marion County, while no notice or license tax was required of residents of Marion County, denied equal protection of the laws); Bruce v. Director, Dep't of Chesapeake Bay Affairs, 276 A.2d 200, 208 (Md. 1971) (statutes prohibiting crabber from crabbing in waters of county other than his county of residence and prohibiting oystermen from going to waters of another county invalid); Power, More About Oysters Than You Wanted To Know, 30 Maryland L. Rev. 199, 218 (1970) ("A county non-resident represents no peculiar threat to the fishery but merely the same threat as represented by a county resident.").

But see Commonwealth v. Hilton, 54 N.E. 362, 364 (Mass. 1899) (selectmen of a town may prohibit the digging of clams by nonresidents of the town); State v. Norton, 335 A.2d 607, 615 (Me. 1975) (state had compelled governmental interest in conservation of its clams and its attempt to achieve that purpose by, in part, authorizing municipalities to apply a resident-nonresident standard in licensing shell fisheries did not unconstitutionally discriminate against nonresidents).

the sovereign undertakes to regulate or restrain the individual in its right as a member of the community to enjoy the right to take and use this common property of all, it must do so upon the same terms to all members of the community alike. The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law the exclusive privilege of the people of a certain class or section upon terms and conditions that do not apply to the whole people alike. This right which one individual has in common with every other individual in the community to take and use fish and game, *ferae naturae*, is one that has existed from the remotest times, and, although at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John. "The rights," says Green, "which the barons claimed for themselves they claimed for the nation at large." Green's History of the English People, vol. 4, pp. 252-254.

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English-speaking people. See Parker v. People, 111 Ill. 581, 53 Am. Rep. 643. Also Geer v. Conn., 161 U.S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793; Martin v. Waddell, 16 Pet. 412, 10 L. Ed. 997. The only justification for a law regulating and restricting the common right of individuals to take wild game and fish is the necessity for protecting the same from extinction, and thus to preserve and perpetuate to the individual members of the community the inalienable rights which they have had from time immemorial. While the state, holding the title to game and fish, so to speak, in trust for every individual member of the community, may pass laws to regulate the rights of each individual in the manner of taking and using the common property, yet, as we have already stated, this must be done, under the

Constitution, upon the same terms to all the people. No special privileges or immunities can be conferred.

Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation. Hayes v. Territory, 2 Wash. T. 286, 5 Pac. 927. In the cases of State v. Higgins, 51 S. C. 51, 28 S. E. 15, 38 L. R. A. 561, and Harper v. Galloway, 58 Fla. 255, 51 South. 226, 26 L. R. A. (N.S.) 794, 19 Ann. Cas. 235, the question here involved was considered and determined in accord with the doctrine we have announced.

Id. at 155-156 (footnote omitted, emphasis added).

CONCLUSION

Our disposition of this case makes it unnecessary to discuss the other grounds advanced by appellants. For the above reasons, the judgment of the superior court is reversed. This case is remanded to the superior court with instructions to issue a declaratory judgment that the rural preference of ch. 52 SLA 1985 is unconstitutional and to take such further action as may be appropriate.

REVERSED and REMANDED.

COMPTON, Justice, concurring.

I agree with Part A of the opinion, holding that this preferential scheme violates art. VIII, sections 3, 15 and 17 of the Alaska Constitution.

I express no opinion regarding Part B as it is superfluous to the decision.

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MOORE, Justice, Concurring.

The court correctly concludes that chapter 52, SLA 1986 ("the Act") violates the Alaska Constitution. I write separately to explain my understanding of the court's holding in part B of the section entitled "The Article VIII Clauses - History and Analysis," which I join, and because I disagree with the court's analysis in part A.

Equal Protection

The Act is motivated by a compelling purpose, ensuring that persons who are dependent upon subsistence hunting and fishing have access to wildlife. However, the Act's geographical classification scheme is only loosely related to that purpose. This is an equal protection case, and an easy one at that.

Article I, section 1 of the Alaska Constitution provides that "all persons are . . . entitled to equal rights, opportunities, and protection under the law" We have decided many cases interpreting this provision, most recently, State v. Enserch Alaska Construction, Inc., ___ P.2d ___, Op. No. 3539, (Alaska, December 18, 1989). The Alaska Constitution has a similar clause specifically concerning natural resources. Article VIII, section 17, the uniform application clause, provides that "[l]aws and

regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation."

When applying the equal protection clause of article I, we determine the importance of the individual interest affected by the enactment. The importance of the individual interest determines the level of scrutiny we apply to both the state's interest in the enactment and the nexus between that interest and the enactment. Enserch, Op. No. 3539, at 22-24; Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). Without explicitly acknowledging it, the court's opinion employs the same analysis under the uniform application clause of article VIII. See supra pp. 26-27. Since the principle of equality underlies both clauses, the use of our equal protection analysis in the uniform application context is proper.

I believe that the individual interest impaired by the Act, access to wildlife for subsistence purposes, is a species of the important right to engage in economic endeavor at issue in Enserch, Op. No. 3539, at 25-28. See also Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980). The challenged enactment

therefore should receive close scrutiny.¹ The Act then at least must be closely related to an important state interest. Enserch, Op. No. 3539, at 28.

The state's interest, ensuring that those who must engage in subsistence hunting and fishing are able to do so, is undoubtedly important. Indeed, I believe it is compelling. However, the Act's classification scheme for deciding who is entitled to engage in subsistence hunting and fishing and its implementing regulations are not closely related to the purpose of the Act. As the court's opinion describes, large numbers of residents of areas classified as urban under the Act are dependent upon subsistence hunting and fishing. Conversely, some of the state's larger cities, where many people are not dependent upon subsistence hunting and fishing, are classified as rural. Supra pp. 11-12. There is only a modest correlation between the set of people who reside in areas designated as rural under the Act and the set of people who are dependent upon subsistence hunting and fishing. The fit between the Act and the state's interest does not even approach that required to withstand

1. Enserch, Op. No. 3539, at 28; Patrick v. Lynden Transp., Inc., 765 P.2d 1375, 1379 (Alaska 1988). It may be that the enactment should receive even greater scrutiny under the uniform application clause; however, the court has not decided that question. Owsichuk v. State, 763 P.2d 488, 498 n.17 (Alaska 1988).

close scrutiny. Therefore, the Act violates the equal protection and uniform application clauses of the Alaska Constitution.

This is not to say that all subsistence preference laws would be unconstitutional. I simply believe that for such a law to pass constitutional muster, it must be closely related to its compelling purpose. A law providing for individual determinations of eligibility would in my view be sufficiently tailored to the state's interest to withstand a constitutional challenge.

Common Use and Exclusive Right of Fishery

The court's holding in Part A of the section entitled "The Article VIII Clauses - History and Analysis" is not altogether clear. I agree with the court to the extent that it holds that an intrastate geographical preference for the taking of wildlife violates sections 3 and 15 of article VIII of the Alaska Constitution. I reject any implication that all preferences, especially all subsistence preferences, would violate these sections. I do not believe that the court can find a violation of article VIII, section 17

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without a full equal protection analysis. I do not join part A of the court's opinion, but I concur in its result.²

Section 15 of article VIII provides that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State." Alaska Const., art. VIII, § 15 (emphasis added). Section 4 of article VIII provides that the use of resources shall be "subject to preferences among beneficial uses." On the surface, there appears to be some conflict between these provisions. To the greatest extent possible, we must interpret the provisions of Article VIII consistent with each other. See Abrams v. State, 534 P.2d 91, 95 (Alaska 1975).

Section 4 clearly authorizes some preferences based upon uses. The court recognized a parallel exception to section 15 in Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897 (Alaska 1981), where we wrote that section 15 "was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen." 628 P.2d at 904. The Act distinguishes subsistence uses from commercial and sport uses in name only. As discussed above, its classification

2. I would not, however, reach this question, because I believe that such geographical preferences violate the equal protection and uniform application clauses of the Alaska Constitution.

is in fact a fairly arbitrary one based upon residence. It is not the type of classification we have previously held permissible under section 15.

We are left with the question whether geographical preferences are permissible under section 15. For the reasons given in the court's opinion, see supra pp. 15-19, I believe that reliance upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), which interpreted the federal statute upon which section 15 was based, is appropriate. In Hynes, the Court invalidated regulations prohibiting fishing off the shores of the Karluk Reservation. While I do not believe that Hynes is determinative since it involved an exclusive right to fish in a particular area and not a mere preference, 337 U.S. at 92, section 15 proscribes "special privilege[s]" as well as exclusive rights. Like the court, I do not read Hynes as being based on the fact that the exclusive right was granted to Natives rather than some other group. Nor do I believe that Hynes can be distinguished by the ability of people to move to rural areas and thus qualify under the Act. See supra pp. 18-19 & n.12. For these reasons, I agree with the court that geographical preferences for the taking of fish are not permissible under section 15. The Act thus violates section 15. Although section 15 is facially applicable only to fishing, I would have no difficulty finding a corresponding

prohibition of geographical hunting preferences in the
common use clause of article VIII, section 3. See supra p.
23.

RABINOWITZ, Justice, dissenting.

I dissent from the court's holding that ch. 52 SLA 1986 is unconstitutional.¹ In my view Alaska's subsistence laws are not violative of either section 3 ("common use"), section 15 ("no exclusive right of fisheries"), or section 17 ("equal application of laws") of article VIII of the Alaska Constitution.

Article VIII, section 4 explicitly provides for "preferences among beneficial uses." In Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 904 (Alaska 1981), we said in part: "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen." The subsistence laws at issue here do not exclude individuals from access to wildlife; rather, wildlife resources are allocated on a preferential basis. Nor do these laws create an exclusive right of fishery in any class. Rather, the effect of these laws is to provide for a subsistence preference among beneficial users of the resource. No exclusive, monopolistic, or otherwise closed classes of resource users are established.

I would further hold that ch. 52 SLA 1986 is not violative of the equal protection provisions of the Alaska

1. Hereinafter state subsistence laws.

Constitution (article I, section 1, article VIII, section 17). In my view adoption of the strict scrutiny and least restrictive alternative standards is inappropriate. Given the nature of the interest at stake I would apply a lesser standard for purposes of equal protection analysis. This subsistence legislation is substantially related to legitimate legislative goals. I conclude that the fit between the legislature's goal of furthering the health and welfare of subsistence users, and the subsistence preference system it devised to carry out this objective, is sufficiently close to withstand scrutiny under Alaska's equal protection provisions.

INTRODUCTION.

In response to the impact the state's population growth has had upon subsistence lifestyles, Congress in 1980 enacted the Alaska National Interest Lands Conservation Act (hereinafter ANILCA or federal subsistence law).² ANILCA was designed to protect subsistence hunting and fishing by giving such uses priority over commercial and sport uses in rural areas.³

2. Pub. L. No. 96-487, 94 Stat. 2371 (1980); 16 U.S.C. §§ 3101-3233 (West 1985). Congress prefaced Title VIII of ANILCA with a declaration that "the continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential to Native physical, economic, traditional, and cultural existence" 16 U.S.C. § 3111(1).

3. See 16 U.S.C. §§ 3111-3126 (1982 & Supp. IV 1986).

The federal subsistence law specified that subsistence uses must be "customary and traditional uses by rural Alaska residents." ANILCA § 803; 16 U.S.C. § 3113 (emphasis added). Thus, under ANILCA, eligibility for subsistence permits was dependent in part upon one's geographic place of residence. ANILCA § 804; 16 U.S.C. § 3114.⁴

ANILCA authorized the state to continue managing fish and game inhabiting Alaska's federal lands and waters if the state established regulations maintaining the definition of and preference for subsistence uses articulated in the federal subsistence law. ANILCA § 805(d); 16 U.S.C. § 3115(d). The state legislature complied, and thereby retained managerial control over federal lands located within the state by authorizing the Joint Boards of Fish and Game to promulgate regulations defining "rural" use.

In enacting ch. 52 SLA 1986 the Alaska House of Representatives adopted a letter of intent.⁵ The letter articulated the subsistence-rural preference of the act in the following terms:

4. "Rural" areas are those with sparse populations, and the term "rural" as used in ANILCA is not a term of art. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989), (term "rural" is to be given its ordinary significance, meaning "sparsely populated").

5. 1985 House Journal 1246.

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of the communities in the taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.6/

The subsistence statutes challenged here define "rural area" as "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." AS 16.05.940(25).

6. See also the House Committee on Interior and Insular Affairs Report issued in conjunction with the passage of ANILCA.

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40% of such families spend an average of 6 to 7 months of the year in subsistence activities. . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978).

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Appellants' basic contention here is that "by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, it unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing." The linchpin of this dispute, then, is whether the challenged subsistence law constitutes an unconstitutionally imperfect attempt to fulfill the legislature's purpose of protecting subsistence uses.

I. DO ALASKA'S SUBSISTENCE LAWS VIOLATE ARTICLE VIII OF THE ALASKA CONSTITUTION?

Appellants challenge the constitutionality of the state subsistence laws under three clauses of article VIII of the Alaska Constitution, sections 3 ("common use"), 15 ("no exclusive right of fisheries"), and 17 ("equal application of laws").⁷ The court attributes a "shared meaning" to these three constitutional

7. Section 3 of article VIII provides:

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

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural

(footnote continued)

provisions: that "exclusive or special privileges to take fish and wildlife are prohibited." The court then concludes that the subsistence statute's preference for rural residents violates each of the aforementioned clauses and offends the shared meaning of article VIII. I disagree.

A. Section Three: The "Common Use" Clause.

Article VIII, section 3 (the "common use" clause) is derived from laws designed to guarantee the common citizen participation in wildlife harvest, and to divest the Crown of exclusive entitlement to those resources.⁸ It is said that this

(footnote continued)

waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 17 of article VIII provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

8. In Lewis v. State, 161 S.W. 154 (Ark. 1913), the court described the history of the common use principle in the following terms:

[A]lthough at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclu-

(footnote continued)

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"public trust" doctrine⁹ "impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Owsichuk v. State, 763 P.2d 488, 495 (Alaska 1988) (citations omitted); see also Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 905 (Alaska 1961), aff'd, 369 U.S. 45 (1962); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1003 (Alaska 1977).

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), reh'g denied, 468 U.S. 1204 (1984), we accepted the view that the common use clause reflects "anti-exclusionist values." Id. at 1191. Thereafter, in Owsichuk v. State, 763 P.2d 488 (Alaska 1988), a case involving an exclusive right to conduct guided hunting in particular areas of wilderness, we reiterated this

(footnote continued)

sion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John.

. . .

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to use from the laws of England and may be regarded as a common heritage of the English-speaking people.

Id. at 155 (citations omitted).

9. The public trust doctrine maintains that government holds untaken wildlife in trust for public use, and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. See Owsichuk v. State, 763 P.2d 488, 493-95 (Alaska 1988).

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theme stating that section 3 is fundamentally "anti-monopoly" in its thrust. Id. at 493 ("Because an EGA [exclusive guide area] is clearly a type of monopoly . . . [legislative] history strongly suggests that the statutes at issue here are unconstitutional."). Critical to our holding that the guide licensing system at issue in Owsichek was unconstitutional under the common use clause were the following characteristics of the scheme: it permitted a single guide permanently to exclude all other guides from leading hunts professionally on specific lands; it favored established guides at the expense of new entrants in the guiding market; it created a salable, property-like interest in the license; and it established exclusivity of an unlimited duration. Id. at 496.

In the case at bar the challenged subsistence laws exhibit none of these characteristics. The state subsistence laws establish a subsistence preference, not an exclusive, monopolistic, or otherwise closed class. Anyone may join subsistence users by moving to a sector of the state which has been designated as a "rural area." Further, these laws do not establish subsistence hunting and fishing as an exclusive use, even in rural areas, except during periods of extreme resource scarcity.¹⁰ In regard to this issue I think the court's reliance

10. Alaska Statute 16.05.258(c) authorizes complete
(footnote continued)

on Owsichuk and Ostrosky is misplaced. Both Owsichuk and Ostrosky emphasize that the primary thrust of article VIII is anti-exclusionist or anti-monopolistic, not anti-preferential.

I do not read the statutes in question as providing that eligibility to participate in subsistence uses is determined solely with reference to where an individual lives. That is not the case. The subsistence laws at issue here are implemented by multi-factoral regulations which focus not only on place of residence, but also upon particular stocks and populations of fish and game, and particular patterns of subsistence usage.¹¹ Moreover, individual characteristics are always considered under the state subsistence law during lean periods when it becomes necessary to restrict even certain subsistence uses. In those periods, the determination as to which individuals among those normally eligible for a subsistence permit may continue harvesting is made on the basis of an analysis of individuals' characteristics under the following criteria: (1) customary and

(footnote continued)

prohibition of non-subsistence uses during periods of famine when the state's total harvest is insufficient to support even normal subsistence uses.

11. Subsistence uses must be "customary and traditional" uses as determined by the separate Boards after evaluation of a particular fish or game stock in light of eight criteria. 5 AAC 99.010(b). These eight criteria include examination of individual populations' patterns of use, methods and efficiency of use, consistency of use, and methods of food storage, as well as the nexus between the asserted subsistence use and the maintenance of individuals' cultural heritage. Id.

direct dependence on the resource as the mainstay of livelihood; (2) local residence; and (3) availability of alternative resources. AS 16.05.258(c).

The court's interpretation of the common use clause would prohibit the legislature from making any differential allocation of natural resources whatsoever, an outcome precluded by our holding in Kenai Peninsula, 628 P.2d 897 (Alaska 1981) and the language of article VIII, section 4, which explicitly provides for "preferences among beneficial uses." In Kenai, we held that "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fisherman." 698 P.2d at 904 (emphasis added).

Moreover, it is axiomatic that the provisions of article VIII of the Alaska Constitution should be interpreted so as to avoid internal contradictions. Abrams v. State, 534 P.2d 91, 95 (Alaska 1975) ("It is an undisputed maxim of constitutional construction that the different provisions of the document shall be read so as to avoid conflict whenever possible"); Park v. State, 528 P.2d 785, 786-87 (Alaska 1974) ("It is a well-accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized."). In my view the court's reading of article VIII, section 3 as prohibiting preferences among beneficial uses

of Alaska's resources plainly conflicts with article VIII, section 4. That section provides, in full:

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

(Emphasis added.) The intent of section 4 is that persons situated differently can be treated differently and that some users of a resource may legitimately be given preference over others.

In brief, the common use clause constitutionalized the doctrine that wild fish and game are held in trust by the state for the benefit of the public as a whole, rather than by the sovereign in exclusive possession. That principle is consistent with the view that the sovereign state may manage wildlife for the common good, including certain beneficial preferences. Thus I conclude that the challenged subsistence laws do not offend the anti-monopolistic, anti-exclusionist values underpinning the public trust and common use doctrines embodied in section 3 of article VIII of Alaska's constitution.

B. Section 15: the "No Exclusive Right" Clause.

I also disagree with the court's holding that the state subsistence law violates article VIII, section 15 (the "no exclusive right" clause).

The court relies for its interpretation of the no exclusive right clause upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case in which the United States Supreme Court interpreted the federal legislation which governed Alaska's fisheries before statehood, former 48 U.S.C. §§ 220-224 (1941) (hereinafter "The White Act"). The White Act did include language seemingly prohibitive of the kind of geographic distinction at issue here. Section 1 of the White Act provides, in relevant part:

[N]o exclusive or several right of fishery shall be granted . . . nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, Ch. 272, § 1, 43 stat. 464 (emphasis added). On the other hand, I disagree with the court's view that insofar as the White Act was expressly anti-geographic, section 15 should be given a similar construction. For in my opinion Hynes is distinguishable in several important respects.

First, Hynes did not involve an allocation of fish and game on the basis of residence; rather, the exemption at issue there applied only to fish, and was predicated upon the users' status as Indians, not their place of residence. 337 U.S. at 89-97. Second, Hynes involved an exclusive right of access which had been made available only to a closed class of fishermen. At issue in Hynes was a regulation of the Secretary of the Interior completely prohibiting commercial salmon fishing in all waters

within 3,000 feet of the shores of the Karluk reservation, but exempting Native fishermen from this otherwise comprehensive ban. Id. Therefore, Hynes, like Owsichuk, is distinguishable from the classification scheme at issue in the present case, since in the case at bar one may become eligible for subsistence permits by moving into a rural area. Finally, as noted previously, both article VIII, section 4 and Kenai Fishermen establish that section 15 cannot be read to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence users.

C. Section 17: the "Equal Application" Clause.

Although section 17 (the "equal application clause") is a component of article VIII, it is essentially, as the court states, a "'more stringent . . .' equal protection clause [for] . . . cases involving natural resources." I will address these issues together.

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II. DO THE 1986 STATE SUBSISTENCE LAWS VIOLATE ARTICLE VIII, SECTION 17 OR THE EQUAL PROTECTION CLAUSE OF THE ALASKA CONSTITUTION (ARTICLE I, SECTION 1)?

The court holds the state subsistence laws unconstitutional on equal protection grounds.¹²

Although this court has not yet addressed the issue whether equal access to fish and game is a fundamental right, we have held that commercial fishing is not fundamental. Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Other courts have concluded that recreational hunting is not a fundamental right. See, e.g., Baldwin v. Montana Fish and Game Comm'n, 436 U.S. 371 (1978) (elk hunting by non-residents not fundamental); Utah Public Employees Ass'n v. State, 610 P.2d 1272 (Utah 1980) (entry in big game permit drawing not fundamental). See also Herscher v. State, Department of Commerce, 568 P.2d 996, 1003, 1006 (Alaska 1977).

In my view, the interest at stake, i.e., the right to participate in subsistence hunting and fishing, is not a fundamental right. Maximum scrutiny is reserved for fundamental

12. The majority opinion employs article VIII section 17 and the concurring opinion of Justice Moore uses article I section 1. As Justice Moore points out, the method of analysis in either case is the same. Because Alaska's equal protection standards are more stringent than the federal constitutional standard, any statute which passes muster under Alaskan law will also survive the equal protection clause of the United States Constitution. Herrick's Aero-Aqua Repair v. Department of Transportation, 754 P.2d 1111, 1114 (Alaska 1988). Therefore, discussion of the federal standard is omitted.

rights and suspect classifications. Ostrosky, 667 P.2d at 1192. Given what I perceive to be the appropriate characterization of the interest involved, the state must demonstrate the existence of a substantial relationship between the means utilized by the legislation and the legitimate governmental ends sought to be achieved thereby.

Since I am of the view that strict scrutiny is inapplicable, I conclude that the questioned legislation does not violate the Alaska Constitution's equal protection clause. The challenged subsistence laws are fairly and substantially related to the important governmental goal of protecting the health and welfare of the state's subsistence users, a goal admittedly within the state's police powers to pursue.¹³

13. As mentioned previously, in enacting the state subsistence laws, the Alaska legislature explicitly found that "the general health and welfare of these citizens is significantly tied to their participation in [subsistence] activities." 1985 House Journal 1246. In a similar vein this court said in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854, 859 n.18 (Alaska 1978):

. . . For hundreds of years, many of the Native people of Alaska depended on hunting to obtain the necessities of life. To this day, despite incursions by those of different cultures, many Alaska Eskimos, Indians and Aleuts eke out a livelihood by reliance on fish and game. . . . Not only is the game of prime importance in furnishing the bare necessities of life, but subsistence hunting is at the core of the cultural tradition of many of these people. . . .

3540

Implicit in my view that this legislation is not violative of equal protection is the further conclusion that the subsistence classification formulated to fulfill this concededly legitimate legislative purpose is not constitutionally infirm. As we said in Apokedak, 606 P.2d at 1267:

[I]ndividual cases will arise in which those barred may be able to show extreme hardship. The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification. If it did, there would be few laws establishing classifications that would sustain an equal protection challenge.

The subsistence legislation in question here effectively captures within its ambit the thousands of subsistence users residing in Alaska's numerous rural villages. In short, I would hold that the subsistence laws' fit satisfies the requirements of equal protection under both article I, section 1, and article VIII, section 17 of the Alaska Constitution.

burden of proof, the court finds the state's argument in its reply more persuasive. The court thus has used a preponderance of evidence standard in evaluating the legislature's intent with regard to severability. The court finds that even under this less stringent standard the evidence fails to show that the legislature would have intended non-severability.

The parties and all amici agree there were three purposes behind the 1986 legislature's amendment to the subsistence law. The court should find in favor of severability unless a preponderance of evidence shows that the legislature would have intended non-severability to further these purposes.

The first goal of the legislature was to protect those Alaskans most reliant on the non-commercial use of fish and game, i.e., subsistence users. All parties agree that severability serves this purpose because severing the unconstitutional rural residency requirement from the remainder of the statute leaves the subsistence law on the books. A finding in favor of non-severability would delete the law altogether with the result that subsistence uses would not have a priority over any other uses.

The second purpose of the legislature was to put state fish and game laws in compliance with ANILCA to assure the state of control of fish and game management on both federal and state lands. This purpose is not relevant to the question of severability, however, because this purpose cannot be served regardless of the decision on severability. The supreme court's ruling in McDowell renders compliance with ANILCA an

impossibility without a constitutional amendment. Moreover, a decision in favor of non-severability would put the state further out of compliance with ANILCA because there then would be no subsistence preference in Alaska law at all. The legislature likely would have preferred to comply with ANILCA as much as possible because the degree of compliance with ANILCA might affect whether the threatened federal takeover of fish and game management on federal lands actually occurs.

The third purpose of the legislature was to cure the post-Madison confusion and disruption in the harvests of fish and game. This purpose actually is two separate purposes. The first is eliminating uncertainty about the amount of subsistence use. The second is providing for other users some certainty about their use. These other users include commercial users and sportsmen, particularly hunters, including out of state hunters.

For the court to find in favor of non-severability for these last two reasons, the court would have to find that the legislature intended to throw out the decade-old subsistence preference altogether merely to avoid a return to the confusion and disruption caused by the Madison decision. The court finds nothing in the legislative history that indicates a willingness to take such a drastic step, even though some legislators were determined to protect other uses. To the contrary, both the record and the briefs of the parties convincingly show the legislature's emphasis since 1975 on furthering a subsistence priority. As the state acknowledges, the 1986 law retained the

Clearly there will be some confusion and difficulty in determining who actually are substance users and who are not.

It will be burdensome for the state to decide on appropriate regulations to carry out AS 16.05.258. This difficulty does not require the court to find the remaining provisions non-severable, however. There is no legal or logistical barrier to the promulgation of new regulations that both permit subsistence use to those Alaskans who qualify as subsistence users and foster management of the resources so as to allow other uses.

Regulations could provide deadlines for applying for subsistence permits. All residents will not apply. Applicants could be required to provide some of the information the state needs to make its eligibility determinations. Alaska already has a system in place for all residents to apply for permanent fund dividends. On those applications, certain information must be given, witnesses must be provided, and the applications must be notarized. There appears to be no reason why those who wish to subsistence hunt or fish could not be burdened to provide information in similar form, in order to obtain the benefit of subsistence harvesting.

Logical limitations could be placed on the amount of fish and game taken for subsistence purposes, based on criteria such as size of household and use of product harvested. To permit the state to obtain knowledge to help it wisely control the resource's uses, reports of the amount harvested could be required. Regulations might even be considered that would limit residents who successfully subsistence fish from other harvest activities such as sports fishing, unless they catch and release.

Many innovative but fair ways of distributing the resources are possible, even with a subsistence priority. The above are mere suggestions of possible approaches by the Fish and Game boards. They do not in any way represent the opinion of the court as to what regulations should be passed.

A further finding must be made with regard to "tier-two" determinations and the continued viability of "local residency" as a criterion in AS 16.05.258(C)(2). This criterion will be used only if subsistence use itself has to be limited to fewer than all persons eligible. The court sees no reason to strike down the "local residency" criterion as long as it is interpreted and applied as amici Bobby suggest in their brief. Memorandum for Amici Curiae on the Severability Issue, at 8-9. For example, if an applicant resides in southeast Alaska, there is no reason why his place of residence should not be considered with regard to whether he is chosen for a limited subsistence hunt near Fairbanks. Even though the Alaska Supreme Court held earlier in this case that use of a rural residency requirement is too crude a yardstick for determining all subsistence eligibility, because it is unrelated to the compelling purposes of the subsistence act, the court did not hold that the domicile of a person has no relation to whether the person should be given a permit for a specific subsistence hunt or fish opening if a "tier-two" determination has to be made. This court does not believe the supreme court would reach that far.

A finding also must be made in regard to the first section

of AS 16.05.258, which previously directed the boards to identify "in each rural area" the fish stocks and game populations of the state that are customarily and traditionally used for subsistence. The law directs the boards to make these determinations as a step preliminary to adopting regulations to determine subsistence use and subsistence users. The parties do not address whether the boards now should identify any such stocks or populations anywhere in the state, not merely in rural areas. That the boards should make these determinations anywhere in the state appears to be a logical result of the supreme court's holding in McDowell, supra. The boards still must find, however, that a stock or population is customarily and traditionally used for subsistence before making it available for subsistence use.

Based on the foregoing analysis, the court finds that the following provisions are severed from the following statutes:

- from AS 16.05.258(a) - "rural" in line 4
- from AS 16.05.940(26) - "rural" in line 1
- from AS 16.05.940(29) - "a rural area of" in line 3
- from AS 16.05.940(30) - "a rural area of" in line 2
- from AS 16.05.940(31) - "a rural area of" in line 3.

DATED at Palmer, Alaska this 20 day of June, 1990.

Beverly W. Cutler
BEVERLY W. CUTLER
SUPERIOR COURT JUDGE

06/25/89 16:54

FROM PALMER 1 4 0

FAX TRANSMITTAL MEMO

TO: Harry Spender on

DEPT: Tom Kuo FAX #: 463-5345

FROM: judicial PHONE: _____

CO: _____ FAX #: 743-7587

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PAGES

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM McDOWELL, et al.

Plaintiffs

vs.

DON W. COLLINSWORTH, et al.

Defendants

and

THE ALASKA FEDERATION OF
NATIVES, et al.

Intervenors

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
AT PALMER

JUN 25 1990

Clerk of the Trial Courts
By _____ Dep.

Case No. 3AN-83-1592 Civil

ORDER OF CLARIFICATION OF ORDER
ISSUED JUNE 20, 1990

The court in its order of June 20, 1990, stated that compliance by the State of Alaska with ANILCA was not possible without a constitutional amendment. The court now restates its finding as follows.

Literal compliance with ANILCA does not appear possible without a constitutional amendment. In other words, Alaska law cannot limit subsistence use to rural residents without running afoul of the Alaska constitution.

This conclusion does not preclude the state from trying to persuade the federal government that Alaska's subsistence law does comport with ANILCA, despite Alaska law's failure to contain a specific rural resident preference. Alaska law defines subsistence uses as "customary, traditional and non-commercial uses", AS 16.05.940(31). This definition heavily favors rural

06/25/89 16:57 P. 1 TOTAL P. 1 FROM PALMER I. 0

residents. Alaska law for tier-two subsistence user determinations employs as criteria "customary and direct dependence on the fish stock or game population as the mainstay of livelihood, local residency, and availability of alternative resources", AS 16.05.256(c)(1-3). This part of the law also heavily favors rural residents.

This rural favoritism results from the fact that most subsistence uses happen to be rural uses by rural persons in rural areas. The Alaska Supreme Court did not outlaw such a de facto favoring of rural residents. The supreme court merely struck down a complete closing of the door to non-rural residents who might otherwise meet the criteria for subsistence users. The supreme court was not trying to change the definition of subsistence use but rather was protecting the constitutional rights of urban residents to attempt to qualify as subsistence users.

Whether the federal government sees current Alaska law as complying with ANILCA remains to be seen. The court has issued this clarification merely to aid the parties in addressing the subsistence crisis. This court must caution, however, that it is merely a trial court, and is not the final say as to what portions of Alaska's fish and game laws survive constitutional scrutiny.

DATED at Palmer, Alaska this 25 day of June, 1990.

Beverly W. Cutler
BEVERLY W. CUTLER
SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT PALMER

SAM McDOWELL, et al.

Plaintiffs

vs.

DON W. COLLINSWORTH, et al.

Defendants

and

THE ALASKA FEDERATION OF
NATIVES, et al.

Intervenors

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
AT PALMER

JUL 1 1990

Clerk of the Trial Courts

By _____ Dep.

Case No. 3AN-83-1592 Civil

ORDER OF CLARIFICATION PURSUANT TO
STATE'S MOTION FOR RECONSIDERATION

The court has reviewed the state's motion for reconsideration and the responses thereto. The court finds that the second paragraph on page 5 of its original decision is subject to different interpretations and hereby replaces it with the following paragraph.

"All Alaskans will not automatically become subsistence users. The Fish and Game Boards first will determine which fish and game populations are to be used for subsistence use. For this purpose the boards will use selected criteria which may be somewhat similar to the criteria set forth in current 5 AAC 99.010(b)(1-8). Individuals then may apply for subsistence use. The boards will set criteria for declaring which applicants are bona fide subsistence users. The boards will not be able to limit eligibility to merely granting "grandfather rights" to

those who have customarily and traditionally subsistence used the resource in the past. All Alaskans will not automatically qualify simply by virtue of their state residency, however. A valid subsistence use of the resource will need to be shown."

This latter point is illustrated by the example given by Amici Bobby on pages 4-5 of their response to the State's motion to reconsider. The supreme court stated in McDowell, "The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing." McDowell v. State of Alaska, 785 P.2d 1, 9 (Alaska 1989). The court noted, "A classification scheme employing individual characteristics would be less invasive of the Article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criteria." Id. at 11. In its decisions in Madison v. Alaska Department of Fish and Game, 696 P.2d 188 (Alaska 1985) and McDowell, the supreme court did not intend to turn subsistence use of resources into something else. A subsistence use still must be a subsistence use.

DATED at Palmer, Alaska this 12 day of July, 1990.

I certify that on 7-12-90
a copy of this document was sent to:
☐ COUNSEL ☒ Attorney(s) of Record
☐ PLAINTIFF ☐ DEFENDANT
☐ Other _____
at the address(es) of record.

Rec'd. Jcl: [Signature]
Deputy Clerk

[Signature]
REVEREND J. CUTLER
SUPERIOR COURT JUDGE

[Signature]
[Signature]
[Signature]
[Signature]

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

those who have customarily and traditionally subsistence used the resource in the past. All Alaskans will not automatically qualify simply by virtue of their state residency, however. A valid subsistence use of the resource will need to be shown."

This latter point is illustrated by the example given by Amici Bobby on pages 4-5 of their response to the State's motion to reconsider. The supreme court stated in McDovall, "The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing." McDovall v. State of Alaska, 785 P.2d 1, 2 (Alaska 1989). The court noted, "A classification scheme employing individual characteristics would be less invasive of the Article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criteria." Id. at 11. In its decisions in Madison v. Alaska Department of Fish and Game, 696 P.2d 188 (Alaska 1985) and McDovall, the supreme court did not intend to turn subsistence use of resources into something else. A subsistence use still must be a subsistence use.

DATED at Palmer, Alaska this 12 day of July, 1990.

I certify that on 7-12-90

a copy of this document was sent to:

☐ C/DO ☒ Attorney(s) of Record
☐ Plaintiff ☐ Defendant
☐ Other _____
at the address(es) of record.

Springer
James
Mitchell
Goldwell
Garni

Rec'd. Jcl: *[Signature]*
Deputy Clerk

Samuel W. Cutler
SEVERIN D. CUTLER
SUPERIOR COURT JUDGE

SCOMM

81:2

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

June 19, 1992

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

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

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

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

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

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

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

GU:lmb:mi
92-140.lmb

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

BY DICK BISHOP
ALASKA OUTDOOR COUNCIL

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

IN TITLE 16.05.940 (30):

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

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

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

SUCH A POTENTIAL IS UNACCEPTABLE.

FISCAL NOTE

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

COMPONENT SERIAL NO.

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

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: no FY92 fiscal impact

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

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

DIVISION OF BOARDS FISCAL ANALYSIS - CSHB 601

ANALYSIS

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

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

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

20 DAYS

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

20 DAYS

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

10 DAYS

Other items affecting cost estimates:

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

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

COSTS - FY93

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

COSTS - FY94:

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

COSTS - FUTURE YEARS

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 601 CS

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

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

COMPONENT SERIAL NO.

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

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

CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

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

Prepared By: Robert Bosworth
 Division: Subsistence

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

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

Date: 6/19/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 1

Bill Version: CSHB 601 (RES)

(H) Publish Date: 6/18/92

Revision Date: _____ Department Affected: Alaska Court System
Title: An Act relating to the taking of fish BRU: Trial Courts
and game
Sponsor: Lincoln Components: _____
Requestor: _____ COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	7.5	12.5	7.5	2.5	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	7.5	12.5	7.5	2.5	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Division: Alaska Court System Date: 06/16/92

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System Date: 06/16/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court SystemHB 601Analysis**ANALYSIS**

This legislation provides a statutory priority for subsistence use of fish and game, relative to other consumptive uses of the state's fish and game resources.

Because of the continuing controversies surrounding this issue, it can be anticipated that the bill will face a vigorous legal challenge if it is enacted. It can also be anticipated that regulations adopted to implement this legislation will face legal challenge. These challenges will likely occur notwithstanding the passage of an underlying constitutional amendment.

The fiscal note reflects pro tem judge costs that will be incurred in handling these matters expeditiously.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

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

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

BRU: BoardsComponent: Board ServicesSponsor: Rep. Lincoln, Mackie...Requestor: House Resources

COMPONENT SERIAL NO.

4	8	2
---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact: no FY92 fiscal impact

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

Prepared By: Beverly ReaumePhone: 465-4110Division: Boards of Fisheries and GameDate: 6/17/92Approved by Commissioner: Carl E. RiserAgency: Department of Fish and GameDate: 6/17/92

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

DIVISION OF BOARDS FISCAL ANALYSIS - HB 601

ANALYSIS

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

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

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

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

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

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

20 DAYS

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

Boards Division - fiscal analysis for HB 601 page 2

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

40 DAYS

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

10 DAYS

Other items affecting cost estimates:

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

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

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

COSTS - FY93

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

COSTS - FY94:

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

COSTS - FY95:

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

COSTS - FUTURE YEARS

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

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

FISCAL NOTE

BILL NO. 601

Revision Date: _____

Department Affected: Fish and Game

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

BRU: Subsistence

Sponsor: Representative Lincoln

Component: Subsistence

Requestor: House Resources

COMPONENT SERIAL NO.

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

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

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

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

POSITIONS:

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

Estimate of current year impact: No impact in FY92.

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

Prepared By: Robert Bosworth *Robert Bosworth*

Phone: 465-4147

Division: Division of Subsistence

Date: 6/17/92

Approved by Commissioner: *Carl L. Roser*

Agency: Department of Fish and Game

Date: 6/17/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 1

Revision Date: _____

Department Affected: Fish and Game

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

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

4	7	3
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0			
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REVENUE	0	0	0			
FUND SOURCE: 1024						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No FY 92 impact.**ANALYSIS:** (Attach a separate page if necessary.)

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

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

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

#1 Senator Halford

7-GS2084 B

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE COMMITTEE OF THE WHOLE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

8 (b) It is the purpose of this Act

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

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

13 (c) It is the intent of the legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

- 11 (1) the social and economic structure;
- 12 (2) the stability of the economy;
- 13 (3) the extent and the kinds of employment for wages, including full-time, part-
14 time, temporary, and seasonal employment;
- 15 (4) the amount and distribution of cash income among those domiciled in the
16 area;
- 17 (5) the cost and availability of goods and services to those domiciled in the area;
- 18 (6) the variety of fish and wildlife species used by those domiciled in the area;
- 19 (7) the seasonal cycle of economic activity;
- 20 (8) the percentage of those domiciled in the area participating in hunting and
21 fishing activities or using wild fish and game;
- 22 (9) the harvest levels of fish and game by those domiciled in the area;
- 23 (10) the cultural, social, and economic values associated with the taking and use
24 of fish and game;
- 25 (11) the geographic locations where those domiciled in the area hunt and fish;
- 26 (12) the extent of sharing and exchange of fish and game by those domiciled in
27 the area;
- 28 (13) additional similar factors the boards establish in regulation to be relevant to
29 their determinations under this subsection.
- 30 (f) Fish stocks and game populations, or portions of fish stocks and game populations
31 not identified under (a) of this section may be taken only under nonsubsistence regulations.

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

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

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

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

14 (A) resource population and management objectives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MARKUP

7-GS2084.A

#2
All Alaskan
w/Non-Sub.
Area.

Sen. CS For H.B. 601

~~SENATE BILL NO. 484~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 6/15/92

Referred: Senate Committee on the Whole

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

1 identity for many subsistence users;

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

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

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

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

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

20 (b) It is the purpose of this Act

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

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

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

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

31 (c) It is the intent of the legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (3) category 3, an area that is

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

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

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

23 (1) the social and economic structure;

24 (2) the stability of the economy;

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

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

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

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

31 (7) the seasonal cycle of economic activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (o) For purposes of,

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

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

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

29 (i) resource population and management objectives;

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

31 fishery or hunt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended: 6/19/92

Offered: 6/18/92

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan, Foster

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the taking of fish and game."

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

3 * Section 1. AS 16.05.251(a) is amended to read:

4 (a) The Board of Fisheries may adopt regulations it considers advisable in
5 accordance with the Administrative Procedure Act (AS 44.62) for6 (1) setting apart fish reserve areas, refuges, and sanctuaries in the
7 waters of the state over which it has jurisdiction, subject to the approval of the
8 legislature;9 (2) establishing open and closed seasons and areas for the taking of
10 fish; if consistent with resource conservation and development goals, the board may
11 adopt regulations establishing restricted seasons and areas necessary for persons 60
12 years of age and older to participate in sport, personal use, customary use, or
13 subsistence fishing;

14 (3) setting quotas, bag limits, harvest levels, and sex and size

1 limitations on the taking of fish;

2 (4) establishing the means and methods employed in the pursuit,
3 capture and transport of fish;

4 (5) establishing marking and identification requirements for means
5 used in pursuit, capture, and transport of fish;

6 (6) classifying as commercial fish, sport fish, guided sport fish,
7 personal use fish, customary use fish, subsistence fish, or predators or other
8 categories essential for regulatory purposes;

9 (7) watershed and habitat improvement, and management,
10 conservation, protection, use, disposal, propagation, and stocking of fish;

11 (8) investigating and determining the extent and effect of disease,
12 predation, and competition among fish in the state, exercising control measures
13 considered necessary to the resources of the state;

14 (9) prohibiting and regulating the live capture, possession, transport,
15 or release of native or exotic fish or their eggs;

16 (10) establishing seasons, areas, quotas, and methods of harvest for
17 aquatic plants;

18 (11) establishing the times and dates during which the issuance of
19 fishing licenses, permits, and registrations and the transfer of permits and registrations
20 between registration areas is allowed; however, this paragraph does not apply to
21 permits issued or transferred under AS 16.43;

22 (12) regulating commercial, sport, guided sport, customary use,
23 subsistence, and personal use fishing as needed for the conservation, development, and
24 utilization of fisheries;

25 (13) requiring, in a fishery, observers on board fishing vessels, as
26 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
27 in AS 16.05.475(c), after making a written determination that an on-board observer
28 program

29 (A) is the only practical data-gathering or enforcement
30 mechanism for that fishery;

31 (B) will not unduly disrupt the fishery;

1 (C) can be conducted at a reasonable cost; and
2 (D) can be coordinated with observer programs of other
3 agencies, including the National Marine Fisheries Service, North Pacific
4 Fishery Management Council, and the International Pacific Halibut
5 Commission;

6 (14) establishing nonexclusive, exclusive, and superexclusive
7 registration and use areas for regulating commercial fishing;

8 (15) regulating resident or nonresident sport fishermen as needed for
9 the conservation, development, and utilization of fishery resources.

10 * Sec. 2. AS 16.05.251(e) is amended to read:

11 (e) The Board of Fisheries may allocate fishery resources among personal use,
12 sport, guided sport, customary use, and commercial fisheries. The board shall adopt
13 criteria for the allocation of fishery resources and shall use the criteria as appropriate
14 to particular allocation decisions. The criteria may include factors such as

15 (1) the history of each personal use, sport, guided sport, customary
16 use, and commercial fishery;

17 (2) the number of residents and nonresidents who have participated in
18 each fishery in the past and the number of residents and nonresidents who can
19 reasonably be expected to participate in the future;

20 (3) the importance of each fishery for providing residents the
21 opportunity to obtain fish for personal and family consumption;

22 (4) the availability of alternative fisheries resources;

23 (5) the importance of each fishery to the economy of the state;

24 (6) the importance of each fishery to the economy of the region and
25 local area in which the fishery is located;

26 (7) the importance of each fishery in providing recreational
27 opportunities for residents and nonresidents;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (4) the availability of alternative game resources;

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

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

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

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

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

25 (2) either

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

28 (B) the person's cultural need to engage in personal or family
29 use and consumption of wild, renewable resources.

30 (h) In determining whether dependence upon subsistence is a principal
31 characteristic of the economy, culture, and way of life of an area under (g) of this