

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672
4222.1 SRES SUBSTENCE BILL DRAFTS & LETTER OF INTENT (file 1) / 82

SUBSISTENCE

BILL DRAFTS

AND

LETTERS OF
INTENT (FILE 1)

4/25/85

BY

Halford

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents in rural areas for personal and family consumption by reasonable economic means is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a fish population to assure the maintenance of such population on a sustained-yield basis, the ^{reasonable opportunity for the} taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Fisheries shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62).

*Sec. 3. AS 16. 05. 251 is amended by adding new subsections to read:

(c) If the harvestable surplus of a fish population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

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

EXISTING
LAW

proposal, or 30 days after receiving the request for an explanation, whichever is later.

EXISTING
LAW

Sec. 4. AS 16.05.255 is repealed and reenacted to read:

(a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

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

(2) establishing open and closed seasons and area for the taking of game;

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

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

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

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

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

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

(9) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of

permits and registrations between registration areas and game management units or subunits is allowed.

↑
(b) Wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

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

Sec. 4. AS 16.05.940 (23) is amended to read:

and cost effective (23) "subsistence uses" means the customary ~~and~~ traditional taking and use by Alaska residents in rural areas of wild, renewable resources 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 noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

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

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

~~(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.~~

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V.FISCHER

2

SENATE BILL NO. 39

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
7 lish a personal use fishery."

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

9 * Section 1. AS 16.05.251 is amended by adding a new subsection to
10 read:

11 (c) The Board of Fisheries shall adopt regulations in accordance
12 with the Administrative Procedure Act (AS 44.62) permitting personal
13 use fishing unless the board determines, in accordance with the Admin-
14 istrative Procedure Act, that adoption of such regulations will jeop-
15 ardize or interfere with the maintenance of fish stocks on a sus-
16 tained-yield basis. Whenever it is necessary to restrict the taking
17 of fish to assure the maintenance of fish stocks on a sustained-yield
18 basis, or to assure the continuation of the personal use fishing of
19 such resources, personal use fishing shall be the second priority use
20 after subsistence use.

21 * Sec. 2. AS 16.05.940 is amended by adding a new paragraph to read:

22 (30) "personal use fishing" means the taking, fishing for,
23 or possession of fish, shellfish, or other fishery resources for
24 personal use and not for sale, barter, or trade, with gill net, seine,
25 fish wheel, long line, or other means defined by the Board of Fisher-
26 ies.

hook
+line

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V. FISCHER

2

SENATE BILL NO. 5

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act establishing a residents' priority for the
taking of big game animals."

7

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

9 * Section 1. FINDINGS. The legislature finds that

10 (1) in recent years the number of nonresidents ~~and nonresident~~
11 ~~aliens~~ hunting big game in the state has significantly increased, and this
12 trend is expected to continue;

13 (2) nonresidents ~~and nonresident aliens~~ hunt big game in the
14 state primarily for sport and recreation, and for trophy value, while
15 residents hunt big game in the state primarily to obtain meat for personal
16 and family use; and

17 (3) the conservation, use, and development of the state's big
18 game populations in the best interests of the state and the nation require
19 the establishment of a limit on the taking of big game by nonresidents ~~and~~
20 ~~nonresident aliens~~ so that state residents have an opportunity to obtain
21 big game meat for personal and family use.

22 * Sec. 2. AS 16.05.256 is amended to read:

23 Sec. 16.05.256. NONRESIDENT ~~AND NONRESIDENT ALIEN~~ PERMITS.
24 Whenever it is necessary to restrict the taking of big game so that
25 the opportunity for Alaska residents to take big game can be reason-
26 ably satisfied in accordance with sustained yield principles, the
27 Board of Game shall [MAY], through a permit system, limit the taking
28 of big game by nonresidents ~~and nonresident aliens~~ to accomplish that
29 purpose.

DIFFERENCES BETWEEN THE SENATE DRAFT AND THE GOVERNOR'S BILL

MAJOR DIFFERENCES

- 1) Avoids possible constitutional problems with equal protection provisions that may develop as a result of "resident domiciled in a rural area of the state" language of HB 288. (See discussion below)
- 2) Requires Boards to establish mandatory allocations to provide all Alaskans a reasonable opportunity for sport and personal use unless such an allocation would jeopardize or interfere with the maintenance of a fish stock or game population or the continuance of subsistence.
- 3) Is specific that all uses, at all times, are subject to limitations based on sustained yield and reasonable regulation of seasons, bag limits, and methods and means.

OTHER DIFFERENCES

- 1) Adds cost effective as requirement of taking for subsistence use.
- 2) Small difference in definition of rural area
- 3) Allows Board of Fish to provide for catch and release fishing
- 4) Allows Board of Fish to classify fish as subsistence fish as well as commercial fish, sport fish, predators (existing law), and personal fish (both bills).
- 5) Allows Board of Game to regulate sport and subsistence hunting.
- 5) Adds "or for personal use or family consumption" to definition of sport fishing.

DISCUSSION OF SUBSISTENCE DEFINITION

The subsistence definition in this bill is designed to comply with the spirit and intent of ANILCA without possible violations of the equal protection sections of the Alaska Constitution. It does this by specifying that subsistence uses are open to all Alaska residents if they comply with several fairly stringent requirements:

- 1) subsistence hunting or fishing may be done only in rural areas; defined as a traditional hunting or fishing area associated with a community or area where the taking fish or game for personal use or consumption is a significant characteristic of the economy.
- 2) fish or game taken for subsistence purposes must be used, including consumed, in the same rural area it was taken.
- 3) taking must be done in a customary, traditional, and cost effective manner.

These criteria are designed to limit subsistence taking and use to the rural areas of the state where alternatives to subsistence use are limited. Any resident of the state who is in these areas may participate in subsistence taking and use but they may not remove fish or game taken for subsistence uses to another part of the state where there is not a need for subsistence uses.

DRAFT LETTER OF INTENT

5/11/85

SENATE CS for HB 288

It is the intent of the legislature in enacting this legislation, to comply with the intent and spirit of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article 1, Section 1 and Article VIII, Section 15 of the Alaska Constitution.

This legislation maintains subsistence use as a priority use of Alaska's wild, renewable resources in accordance with ANILCA, and establishes a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations based on the sustained yield principle and to reasonable regulations as to seasons, catch or bag limits, and methods and means without requiring that uses of lower priority be eliminated first.

If the harvestable surplus of a fish stock or game population is not large enough to provide a reasonable opportunity for all subsistence uses, individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Subsistence uses in rural Alaska by Alaska residents who, in a customary, traditional and cost effective manner, use, including consume, their take in the same rural area it was taken, have the next highest priority of use. The legislature finds that the need for subsistence exists in the rural areas of the state because of the lack of alternative resources in those areas. The legislature further finds that when Alaska residents are in a rural area, they are situated equally in respect to access to alternative resources. The taking of fish and wildlife for subsistence by any Alaska resident is therefor allowed in rural areas designated by the Boards of Fish and Game, however, the fish or game taken for subsistence use may not be removed to another area where there are alternative resources to subsistence hunting and fishing.

It is intended that the boards shall have the authority to determine cost effectiveness, considering methods and means of harvest characterized by efficiency and economy of effort and cost, and conditioned by local circumstances. Customary and traditional refers to methods, means and uses that have been common in Alaska in the last half century.

Whenever it is necessary to restrict the taking of a fish stock or game population to assure the maintenance of that stock or population, taking by Alaska residents for personal and family consumption shall be a priority use. To implement this priority, the boards must establish a mandatory allocation that ensures all Alaskans a reasonable opportunity for sport or personal use fishing or hunting where there is an

established use of the resource, unless such regulations would jeopardize or interfere with the maintenance of a fish stock or game population or with the continuance of subsistence.

The harvestable surplus of fish or game in excess of this mandatory allocation shall be allocated among uses by the boards as they find appropriate. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial, sport, personal use and subsistence uses, while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for the full range of beneficial uses.

April 3, 1985

APR 08 1985

Honorable Governor Bill Sheffield
Honorable Senate President Don Bennett
Honorable Speaker of the House Ben

Gentlemen:

Our sportfishing groups are deeply concerned as the potential ^{chaos} ~~caes~~, damage to the resource, concern for public safety and a user group impact in the event there is no legislation protecting the fisheries in 1985.

The attached suggested 'bandaid' bill as a substitute for Senate Bill #231 endeavors to accomplish three basic purposes:

1. Returns the authority to manage fish and game to the status quo that existed prior to the Madison decision of February 21, 1985.
2. Provides a "sunset" clause for this legislation of March 31, 1986. We feel that the legislative and the executive branch will not have the time to deal with this very complicated subject as there is less than 40 days remaining in this session. We hope and encourage the legislature ^{use} ~~to~~ to hold state wide hearings during the balance of this year and develop a permanent long term solution to this very sensitive issue. The ^{section by section} ~~exhibit~~ ^{analysis &} ~~as~~ attached, illustrates some of the questions that we feel will need to be answered in the long term legislation to be enacted next year.
3. Our bill refers to criteria that establish rural ^{subsistence} ~~uses~~ as has been done historically in the past by ADF&G regulations numbers 5 AAC 99.010, 5 AAC 01.597. These criteria are attached as an exhibit for your reference.

Section 3 is proposed to allow the Commissioner of Fish and Game to reinstate as an emergency provision the regulations that were allowed in 1984. We have suggested this section to assure that statutory time limitations do not preclude implementation of such a law. We are available for public discussion. We respectfully request your consideration.

Draft Substitute for S.B 231
Suggested by the Kenai River Sportfishing Association
and
The Alaska Sportfishing Association
April 3, 1986

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the continuation of the opportunity for non-wasteful subsistence uses by many rural Alaskans is important and in many cases essential to their physical, traditional, cultural, and social existence, and that in certain instances no practical alternative resources or means are available to replace food, supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(2) in order to protect subsistence users most dependent on subsistence, and in order to protect sport and commercial uses of fish and wildlife, and in order to maintain healthy fish and wildlife populations available to subsistence, sport and

commercial users, it is necessary for the Board of Fisheries and the Board of Game to have authority, only for the 1985 fishing and hunting seasons and until March 31, 1986, to regulate subsistence fishing and hunting in the manner in which they were regulated in 1984.

(3) conservation of fish and wildlife during the 1985 season and thereafter will be furthered if the legislature is unhurried in its consideration of complicated social, political, and biological questions related to subsistence; by March 31, 1986 the legislature should be able to consider, after statewide hearings, more complicated subsistence issues that cannot be adequately considered in the remaining days of the first session of the fourteenth legislature.

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

Sec. 16.5.258. SUBSISTENCE CRITERIA. Until March 31, 1986, and in accordance with the Administrative Procedure Act (A.S. 44.62), the Board of Fisheries and the Board of Game may adopt regulations in order to identify customary and traditional subsistence uses by rural Alaskans by using the criteria set forth in the regulations in effect in 1984 and found at 5 AAC 99.010 and 5 AAC 01.597, and those criteria are hereby established for the 1985 fishing and hunting seasons, ~~until the Boards have an opportunity to consider those criteria.~~

* Sec. 3. For the 1985 fishing and hunting seasons, the Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 5. This Act shall take effect immediately in accordance AS 01.10.070(c).

Section by Section Analysis
of
Draft Substitute for S.B. 231
Proposed by Kenai River Sportfishing Association
and
the Alaska Sportfishing Association
April 3, 1985

INTRODUCTION

The recent decision of the Alaska Supreme Court, in Madison v. Alaska Board of Fisheries, has resulted in opening several subsistence fisheries to all Alaskans and the ^{opinion} widespread perception that subsistence everywhere in the state, for both fish and game, is open ^{new} to all Alaskans. Because of the Madison decision, the Board of Fisheries has ^{already} opened to all Alaskans the subsistence fisheries on the Kenai Peninsula, in the Iliamna and Lake Clark areas, on the Naknek River, on the Copper River, and at Angoon. Those subsistence fisheries will be opened to all Alaskans unless the legislature acts quickly to maintain the status quo until ~~the~~ ^{there is} ~~legislature and the public have a~~ ^{enough} opportunity ~~for~~ ^{public input.} assess possible changes to the subsistence laws.

The impact of the Madison decision, and the need for legislative remedies ^{probably} cannot be adequately assessed in the remaining days of the current legislative session. Therefore, the substitute bill proposed by the Kenai River Sportfishing Association and the Alaska Sportfishing Association is designed ~~solely~~ as a temporary "band-aid", in order to maintain subsistence, sport and commercial uses generally as they occurred in 1984. This "band-aid" approach will protect the resources and protect subsistence users most dependent on those resources, until the legislature and the public have had an opportunity to consider more long-term solutions necessary to protect subsistence and yet provide for sport and commercial uses. The substitute allows a year for the legislature to hold statewide hearings and to act.

SECTION BY SECTION ANALYSIS

Section 1 --

Section 1 of the draft substitute contains the following findings which justify this temporary solution of maintaining the status quo for one year:

(1) that rural subsistence by those individuals who are dependent on the resources is ~~most~~ important to protect;

(2) that in order to protect subsistence, sport and commercial uses, and in order to protect the health of the fish and wildlife resources that are so important to all Alaskans, it

is necessary to regulate those uses in generally the same manner as occurred in 1984.

(3) that the remaining days of this legislative session are ^{probably} insufficient to allow reasonable consideration of longterm ~~changes~~ ^{solutions} to the subsistence ^{issues} ~~laws~~. This last finding is particularly important because it recognizes that complicated issues related to subsistence deserve thorough, unhurried examination. Among those questions, which the legislature and the public ^{may wish to} ~~should~~ consider, are: ~~questions such as:~~

(a) whether the subsistence priority should be defined in terms of being available to rural Alaskans only;

(b) whether the legislature should give guidance to the Board of Fisheries and the Board of Game in order to assist them in defining the use of the word "rural";

(c) whether better legislative language exists -- rather than the restriction of subsistence to an undefined rural population -- in order to more adequately protect subsistence users dependent on the resources, while thereby providing more opportunity for sport and commercial users; ~~if such a solution could be found, then there might be less conflict~~ ^{will reduce} ~~over~~ sport, commercial and subsistence users, ^{between}

(d) whether the legislature should give ^{additional} guidance to the Board of Fisheries and the Board of Game in order to assist them in defining "customary and traditional subsistence uses", as they are protected but not defined in state and federal statutes related to Alaska subsistence;

(e) whether in some circumstances it may be appropriate ^{to} ~~or inappropriate to allow or prohibit~~ subsistence use of certain ^{specific} species or stocks of wildlife, ~~such as hatchery fish, such as transplanted game populations, steelhead or rainbow trout, or other species or stocks which in many circumstances might not be essential to the physical, cultural, traditional, and social existence of subsistence users.~~

(f) whether the legislature ^{should} ~~might~~ give guidance to the boards to establish criteria for focusing subsistence on more abundant stocks of fish and wildlife.

These are ^{some of} the ~~types of~~ questions that need to be answered after thorough public and legislative consideration, which can only occur if more time is available. Sport, commercial, Native, rural and urban interests will all need to participate. We also urge the Department of Fish and Game to take an active role in suggesting ~~improvements~~ ^{long term solutions} to the state's subsistence ~~laws~~ ^{issues}.

Section 2 --

This section ratifies, for the 1985 fishing and hunting seasons and until March 31, 1986, the previous criteria ~~that have been used by~~ ^{that have been used by} existing regulations at 5 AAC 99.010 and 5 AAC 01.597, ~~adopted by~~ ^{for determining} the Boards ^{for determining} customary and traditional subsistence use. This will protect rural subsistence as it was managed in 1984. ~~from urban subsistence competition.~~

Section 3 --

This section ^{requires} ~~directs~~ the Commissioner of Fish and Game to use his emergency regulatory authority to protect rural subsistence, ~~and~~ sport and commercial uses ~~and users~~, as ^{they were managed} ~~advised~~ in 1984. This is temporary authority for the 1985 season only.

Section 4 --

This section provides that the legislation takes effect immediately.

4/2/85

OPTION A

1) Subsistence use remains the ~~priority~~ ^{professional} use.

→ 2) Neither ~~personal use~~ ^{sport} nor commercial use is assigned a priority over the other.

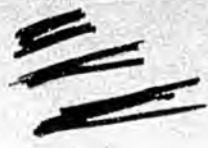
3) Boards set ~~resident personal use~~ ^{add personal use fishery} hunts and fisheries throughout state by stock and by area or sub area. ~~Personal use category includes former sport hunting and sport fishing categories.~~ ^{sport} Boards set regulations for seasons, bag limits and gear types.

4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:

- a) customary and direct dependence on the stock,
- b) local residency, and
- c) lack of available alternative resources,

And that these ^{specified} needs are not being met by a particular ~~personal use~~ ^{sport} hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of sustained yield.



OPTION B

4/2/85

idea
Sub Comm
→ food uses
part numbers
larger
for Dept

1) Subsistence use remains the priority use.

preference

2) Personal use is assigned a priority over commercial use.

3) Boards set resident personal use hunts and fisheries throughout state by stock and by area or sub area. Personal use category includes former sport hunting and sport fishing categories. Boards set regulations for seasons, bag limits and gear types. All personal use open to

all Alaskan residents

4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:

- a) customary and direct dependence on the stock,
- b) local residency, and
- c) lack of available alternative resources,

particular



And that these needs are not being met by a particular personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of sustained yield.

to meet specified needs

for subs pop

~~Sport species~~ - meat preference

- 1. Uses not uses
- 2. Individual
- 3) define

larger by community

- personal use over
- commercial

that subsistence can be limited to reasonable opportunity before everyone else is eliminated

4/11/85

OPTION A

- 1) Subsistence use is the preferred use, subject to conditions below.
- 2) Neither sport, personal use, nor commercial use is assigned a priority over the other.
- 3) Boards set resident sport hunts and fisheries throughout state by stock and by area or sub area. Boards set regulations for seasons, bag limits and gear types.
- 4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:
 - a) customary and direct dependence upon the (specific fish and wildlife) populations as the mainstay of livelihood,
 - b) local residency, and
 - c) availability (lack) of alternative resources,

And that these specified needs can not be met by a particular sport or personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of maximum sustained yield.

April 3, 1985

Honorable Bill Sheffield, Governor
Honorable Don Bennett, President of the Senate
Honorable Ben Grussendorf, Speaker of the House
Juneau, Alaska
99811

Gentlemen:

Our sportfishing groups are deeply concerned about the potential chaos, damage to the resource, public safety and user group impacts in the event there is no legislation passed for protecting the fisheries in 1985. The potential exists for a resource calamity.

The attached suggested "band-aid" bill as a substitute for Senate Bill #231 endeavors to accomplish three basic purposes:

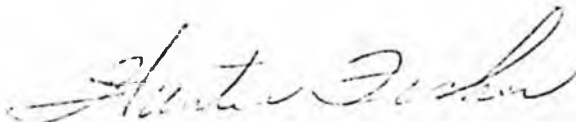
1. Returns the authority to manage fish and game to the status quo that existed prior to the Madison decision of February 21, 1985.
2. Provides a "sunset" clause for this legislation of March 31, 1986. We feel that the legislative and the executive branch will not have the time to deal with this very complicated subject as there is less than 40 days remaining in this session. We hope and encourage the legislature to hold state wide hearings during the balance of this year and develop a permanent long term solution to this very sensitive issue. The section-by-section analysis attached, illustrates some of the questions that we feel will need to be answered in the long term legislation to be enacted next year.
3. Our bill refers to criteria that establish rural subsistence uses as has been done historically in the past by ADF&G regulations numbers 5 AAC 99.010, 5 AAC 01.597. These criteria are attached as an exhibit for your reference.

Section 3 is proposed to allow the Commissioner of Fish and Game to reinstate as an emergency provision the regulations that were allowed in 1984. We have suggested this section to assure that statutory time limitations do not preclude implementation of such a law. We are available for public discussion. We respectfully request your consideration.

Very truly yours,



Kenai River Sportfishing Association
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cc: Legislators

Original

Draft Substitute for S.B. 231
Suggested by the Kenai River Sportfishing Association
and
The Alaska Sportfishing Association
April 3, 1986

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the continuation of the opportunity for non-wasteful subsistence uses by many rural Alaskans is important and in many cases essential to their physical, traditional, cultural, and social existence, and that in certain instances no practical alternative resources or means are available to replace food, supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(2) in order to protect subsistence users most dependent on subsistence, and in order to protect sport and commercial uses of fish and wildlife, and in order to maintain healthy fish and wildlife populations available to subsistence, sport and

commercial users, it is necessary for the Board of Fisheries and the Board of Game to have authority, only for the 1985 fishing and hunting seasons and until March 31, 1986, to regulate subsistence fishing and hunting in the manner in which they were regulated in 1984.

(3) conservation of fish and wildlife during the 1985 season and thereafter will be furthered if the legislature is unhurried in its consideration of complicated social, political, and biological questions related to subsistence; by March 31, 1986 the legislature should be able to consider, after statewide hearings, more complicated subsistence issues that cannot be adequately considered in the remaining days of the first session of the fourteenth legislature.

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

Sec. 16.05.258. SUBSISTENCE CRITERIA. Until March 31, 1986, and in accordance with the Administrative Procedure Act (A.S. 44.62), the Board of Fisheries and the Board of Game may adopt regulations in order to identify customary and traditional subsistence uses by rural Alaskans by using the criteria set forth in the regulations in effect in 1984 and found at 5 AAC 99.010 and 5 AAC 01.597, and those criteria are hereby established for the 1985 fishing and hunting seasons.

* Sec. 3. For the 1985 fishing and hunting seasons, the Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide

for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 4. This Act shall take effect immediately in accordance AS 01.10.070(c).

Section by Section Analysis
of
Draft Substitute for S.B. 231
Proposed by Kenai River Sportfishing Association
and
the Alaska Sportfishing Association
April 3, 1985

INTRODUCTION

The recent decision of the Alaska Supreme Court, in Madison v. Alaska Board of Fisheries, has already resulted in opening several subsistence fisheries to all Alaskans, and there is a widespread opinion that subsistence everywhere in the state, for both fish and game, is now open to all Alaskans. Because of the Madison decision, the Board of Fisheries has opened to all Alaskans the subsistence fisheries on the Kenai Peninsula, in the Iliamna and Lake Clark areas, on the Naknek River, on the Copper River, and at Angoon. Those subsistence fisheries will be opened to all Alaskans unless the legislature acts quickly to maintain the status quo until there is a better opportunity for public input.

The impact of the Madison decision, and the need for legislative remedies probably cannot be adequately assessed in the remaining days of the current legislative session. Therefore, the substitute bill proposed by the Kenai River Sportfishing Association and the Alaska Sportfishing Association is designed as a temporary "band-aid", in order to maintain subsistence, sport and commercial uses generally as they occurred in 1984. This "band-aid" approach will protect the resources and protect subsistence users most dependent on those resources, until the legislature and the public have had an opportunity to consider more long-term solutions necessary to protect subsistence and yet provide for sport and commercial uses. The substitute allows a year for the legislature to hold statewide hearings and to act.

SECTION BY SECTION ANALYSIS

Section 1 --

Section 1 of the draft substitute contains the following findings which justify this temporary solution of maintaining the status quo for one year:

(1) that rural subsistence by those individuals who are dependent on the resources is important to protect;

(2) that in order to protect subsistence, sport and commercial uses, and in order to protect the health of the fish and wildlife resources that are so important to all Alaskans, it

is necessary to regulate those uses in generally the same manner as occurred in 1984.

(3) that the remaining days of this legislative session probably are insufficient to allow reasonable consideration of long-term solutions to subsistence issues. This last finding is particularly important because it recognizes that complicated issues related to subsistence deserve thorough, unhurried examination. Among those questions, which the legislature and the public may wish to consider, are:

(a) whether the subsistence priority should be defined in terms of being available to rural Alaskans only;

(b) whether the legislature should give guidance to the Board of Fisheries and the Board of Game in order to assist them in defining the use of the word "rural";

(c) whether better legislative language exists -- rather than the restriction of subsistence to an undefined rural population -- in order to more adequately protect subsistence users dependent on the resources, while thereby providing more opportunity for sport and commercial users; such a solution will reduce conflict between sport, commercial and subsistence users;

(d) whether the legislature should give additional guidance to the Board of Fisheries and the Board of Game in order to assist them in defining "customary and traditional subsistence uses", as they are protected but not defined in state and federal statutes related to Alaska subsistence;

(e) whether in some circumstances it may be appropriate to prohibit subsistence use of certain fragile species or stocks of wildlife.

(f) whether the legislature should give guidance to the boards to establish criteria for focusing subsistence on more abundant stocks of fish and wildlife.

These are the some of questions that need to be answered after thorough public and legislative consideration, which can only occur if more time is available. Sport, commercial, Native, rural and urban interests will all need to participate. We also urge the Department of Fish and Game to take an active role in suggesting long-term solutions to the state's subsistence issues.

Section 2 --

This section ratifies, for the 1985 fishing and hunting seasons and only until March 31, 1986, the previous criteria, in existing regulations at 5 AAC 99.010 and 5 AAC 01.597, that have been used by the boards until now and prior to the Madison

decision for determining customary and traditional subsistence use. This section takes the situation back to the status quo and will protect rural subsistence as it was managed in 1984.

Section 3 --

This section directs the Commissioner of Fish and Game to use his emergency regulatory authority to protect rural subsistence, and sport and commercial uses, as they were managed in 1984. This is temporary authority for the 1985 season only.

Section 4 --

This section provides that the legislation takes effect immediately.

SUBSISTENCE CRITERIA USED PRIOR TO THE RECENT SUPREME COURT DECISION

JOINT BOARD'S SUBSISTENCE POLICY

**CHAPTER 99.
SUBSISTENCE USES.**

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principal and compatible with the public interest;

(2) each board will identify subsistence uses of fish and game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and in which that pattern of subsistence uses provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

Authority: AS 16.05.251(b)
AS 16.05.255(b)

FINFISH

COOK INLET AREA

4,200 king salmon may be taken in the Tyonek subdistrict during the period March 15 through June 30.

(b) The daily bag and possession limit for halibut is two. No person may possess sport taken and subsistence taken halibut on the same day.

Authority: AS 16.05.060
AS 16.05.251(a) (3), (7),
(10) and (b)

5 AAC 01.597. CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, barter, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

Sec. ____ AS 16.05.251 is amended by adding a new subsection to read:

(d) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting a reasonable opportunity for the taking of fish for sport and personal use by Alaska residents, unless the board determines, in accordance with the Administrative Procedure Act, that the regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuation of subsistence uses. Takings authorized under this subsection are subject to reasonable regulation of seasons, bag limits, and methods and means.

Sec. ____ AS 16.05.260 is amended by adding a new subsection to read:

(b) The Board of Fisheries and the Board of Game shall adopt a regulatory proposal recommended by a regional fish and game council concerning the subsistence use of fish or game within its region, unless the board determines that the recommendation is not supported by substantial evidence presented during the course of the board's administrative proceedings, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence uses. The Board of Fisheries shall adopt a regulatory proposal recommended by a regional fish and game council which would result in a reallocation of anadromous fish species to sport or personal use fishing, unless the board determines that it is not supported by substantial evidence presented during the course of the board's administrative proceedings, violates recognized principles of fish conservation, or would be detrimental to the satisfaction of subsistence, sport or personal uses. If a recommendation is not adopted by a board, it shall set forth in writing the factual basis and the reasons for its decision.

This is an explanation of
where the draft substitute
originated - some background.

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PURPOSE

To provide for a special and differentiated Board of Fisheries regulatory process for the consideration of reallocation of anadromous fish to personal and sportfish uses.

BACKGROUND

This special process is a generalized and adapted form of the process described in Section 805 of ANILCA which deals with the interaction of regional advisory councils and the Secretary of Interior with regard to subsistence uses. In the process described below the Alaska Board of Fisheries is substituted for Secretary as is the case when the state is in compliance with the act and it is dealing with subsistence uses.

This special process, associated with allocation decisions regarding personal and sportfishing uses, is intended to build upon and enhance the role of the extensive grass roots local public participation system currently in place in this state. This system is broadly recognized as the most extensive such program involving the public in the development of fish and wildlife regulation existing in the United States. There are currently 72 local fish and game advisory committees, with five to fifteen members each,

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distributed across the state. This system is funded by the state, with the members of the advisory committees being authorized to receive reimbursement for travel and per diem.

The chairman of the local fish and game advisory committees in each of the state's six resource regions constitute the regions regional advisory council.

PROCESS

The special allocative process would work thus:

THE BOARD OF FISHERIES WOULD BE OBLIGATED TO ADOPT A REGULATORY PROPOSAL, IF IT WERE RECOMMENDED BY A REGIONAL ADVISORY COUNCIL AND WOULD RESULT IN A REALLOCATION OF ANADROMOUS FISH SPECIES TO PERSONAL OR SPORTFISHING USES. THE BOARD MAY CHOOSE NOT TO ADOPT THE RECOMMENDATION ONLY IF IT DETERMINES THAT IT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, VIOLATES RECOGNIZED PRINCIPLES OF FISH CONSERVATION OR WOULD BE DETRIMENTAL TO THE SATISFACTION OF PERSONAL USE, SPORTFISHING, OR SUBSISTENCE NEEDS. IF A RECOMMENDATION IS NOT ADOPTED BY THE BOARD OF FISHERIES, IT SHALL SET FORTH, IN A WRITTEN FINDING, THE FACTUAL BASIS AND THE REASONS FOR ITS DECISION.

The Board of Fisheries would continue to deliberate and pass upon all other regulatory proposals which deal with personal



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use or sportfishing allocations, or other related issues, in accordance with their existing procedures.

5/7/85

1 IN THE SENATE

BY V.FISCHE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 personal and family consumption and for subsistence
8 uses; and providing for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) nonresidents visiting Alaska take fish and game primarily
12 for commercial, trophy, and recreational purposes; state residents who take
13 fish and game for noncommercial purposes use the stocks and populations for
14 personal and family consumption;

15 (2) because of its importance to their health, safety and
16 general well-being, the taking of fish and game by residents for personal
17 and family consumption is a priority use of the state's fish and game
18 resources;

19 (3) because of residents' proximity to fish stocks and game
20 populations, their dependence on fish and game as a mainstay of livelihood,
21 and the lack of alternative food resources, the taking of fish and game for
22 personal and family consumption is essential to the health, safety, and
23 general well-being of residents domiciled in communities and areas in which
24 the taking of fish and game for personal and family consumption in a cost-
25 effective manner constitutes a significant characteristic of the economy of
26 the community or area;

27 (4) the taking of fish and game for commercial, recreational,
28 and other uses by both residents and nonresidents is important to the
29 economy of the state and particularly to the economies of communities

1 dependent on commercial fishing.

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

3 (a) The Board of Fisheries may adopt regulations it conside
4 advisable in accordance with the Administrative Procedure Act (AS 44
5 62) for

6 (1) setting apart fish reserve areas, refuges and sanctu
7 aries in the waters of the state over which it has jurisdiction
8 subject to the approval of the legislature;

9 (2) establishing open and closed seasons and areas for th
10 taking of fish;

11 (3) setting quotas, bag limits, harvest levels, and sex an
12 size limitations on the taking of fish;

13 (4) establishing the means and methods employed in th
14 pursuit, capture and transport of fish;

15 (5) establishing marking and identification requirement
16 for means used in pursuit, capture and transport of fish;

17 (6) classifying as commercial fish, sport fish, residen
18 net-fish, or predators or other categories essential for regulator
19 purposes;

20 (7) watershed and habitat improvement, and management
21 conservation, protection, use, disposal, propagation and stocking o
22 fish;

23 (8) investigating and determining the extent and effect o
24 disease, predation, and competition among fish in the state, exercis
25 ing control measures considered necessary to the resources of th
26 state;

27 (9) prohibiting and regulating the live capture, posses
28 sion, transport, or release of native or exotic fish or their eggs;

29 (10) establishing seasons, areas, quotas and methods of

1 harvest for aquatic plants;

2 (11) establishing the times and dates during which the
3 issuance of fishing licenses, permits and registrations and the trans-
4 fer of permits and registrations between registration areas
5 allowed; however, this paragraph does not apply to permits issued or
6 transferred under AS 16.43;

7 (12) resident net, sport, and commercial fishing.

8 * Sec. 3. AS 16.05.251(b) is amended to read:

9 (b) The Board of Fisheries shall adopt regulations in accordance
10 with the Administrative Procedure Act (AS 44.62) permitting the taking
11 of fish for subsistence uses unless the board determines, in accor-
12 dance with the Administrative Procedure Act, that adoption of th-
13 regulations will jeopardize or interfere with the maintenance of fis-
14 stocks on a sustained-yield basis. Subsistence fishing authorize
15 under this subsection shall be subject to reasonable regulation o
16 seasons, harvest levels, and methods and means of taking. Whenever it
17 is necessary to restrict the taking of fish to assure the maintenanc-
18 of fish stocks on a sustained-yield basis, or to assure the continua-
19 tion of subsistence uses of such resources, subsistence use shall be
20 the priority use. If further restriction is necessary, the board
21 shall establish restrictions and limitations on and priorities for
22 these consumptive uses on the basis of the following criteria:

23 (1) customary and direct dependence upon the resource as
24 the mainstay of one's livelihood;

25 (2) local residency; and

26 (3) availability of alternative resources.

27 * Sec. 4. AS 16.05.251 is amended by adding new subsections to read:

28 (d) Regulations adopted under (a) of this section shall provide
29 that, consistent with the provisions of (b) of this section, resident

1 net, sport, and commercial fishermen are provided a fair and reason
2 able opportunity to participate in the harvest of fish. The regula
3 tions shall provide that, regardless of the type of gear used in each
4 fishery, the taking of fish by residents for personal and family
5 consumption is a priority use of fish.

6 (e) In allocating access to fish among persons engaged in resi-
7 dent net, sport, and commercial fishing, the Board of Fisheries shall
8 consider the following factors:

9 (1) the history of each personal use, sport, and commercial
10 fishery;

11 (2) the number of residents and nonresidents who have
12 participated in each fishery in the past and the number of residents
13 and nonresidents who can reasonably be expected to participate in the
14 future;

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

17 (4) the availability of alternative fisheries resources;

18 (5) the importance of each fishery to the economy of the
19 State of Alaska;

20 (6) the importance of each fishery to the economy of the
21 local area in which the fishery is located;

22 (7) the importance of each fishery in providing recreation-
23 al opportunities for residents and nonresidents.

24 * Sec. 5. AS 16.05.255(b) is repealed and reenacted to read:

25 (b) Whenever it is necessary to restrict the taking of a game
26 population to assure the maintenance of the population on a sustained-
27 yield basis, the taking of game from the population by residents for
28 personal and family consumption shall be the priority use of the
29 harvestable surplus of the population and the Board of Game shall

1 adopt regulations authorizing the taking in accordance with the Admin
2 istrative Procedure Act (AS 44.62).

3 * Sec. 6. AS 16.05.255 is amended by adding a new subsection to read:

4 (d) If the harvestable surplus of a game population is not large
5 enough to provide a reasonable opportunity for the taking of game from
6 the population by residents in accordance with regulations adopted
7 under (a) and (b) of this section, the Board of Game shall adopt
8 regulations in accordance with the Administrative Procedure Act
9 (AS 44.62) that create a priority for the taking of game from the
10 population for subsistence uses over other consumptive uses of the
11 population. Takings authorized under this subsection shall be subject
12 to reasonable regulation of seasons, bag limits, and methods and
13 means. If the harvestable surplus of the population is not large
14 enough to provide a reasonable opportunity for the taking of game from
15 the population for subsistence uses, the board shall adopt regulations
16 that establish restrictions and limitations on the taking of game from
17 the population for subsistence uses on the basis of the following
18 criteria:

19 (1) customary and direct dependence upon the game resource
20 as the mainstay of one's livelihood;

21 (2) local residency; and

22 (3) availability of alternative game resources.

23 * Sec. 7. AS 16.05.940(21) is amended to read:

24 (21) "sport fishing" means the taking of or attempting to
25 take for personal use or for personal or family consumption, and not
26 for sale or barter, any fresh water, marine, or anadromous fish by
27 hook and line held in the hand, or by hook and line with the line
28 attached to a pole or rod which is held in the hand or closely attend-
29

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2 * Sec. 8. AS 16.05.940(23) is amended to read:

3 (23) "subsistence uses" means the customary and traditional
4 noncommercial uses [IN ALASKA] of wild, renewable resources by
5 resident domiciled in a rural area of the state for direct personal or
6 family consumption as food, shelter, fuel, clothing, tools, or
7 transportation, for the making and selling of handicraft articles or
8 of nonedible by-products of fish and wildlife resources taken for
9 personal or family consumption, and for the customary trade, barter
10 or sharing for personal or family consumption; in [FOR THE PURPOSES
11 OF] this paragraph [,]

12 (A) "family" means all persons related by blood
13 marriage, or adoption, and any person living within the household
14 on a permanent basis;

15 (B) "rural area" means a community or area of the
16 state in which the taking of fish or wildlife for personal or
17 family consumption is a significant characteristic of the economy
18 of the community or area;

19 * Sec. 9. AS 16.05.940 is amended by adding a new paragraph to read:

20 (28) "resident net fishing" means the taking, fishing for,
21 or possession of finfish, shellfish, or other fishery resources, by a
22 resident for personal or family consumption and not for sale or bar-
23 ter, with gillnet, dipnet, seine, fish wheel, longline, or other
24 similar means defined by the Board of Fisheries.

25 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).
27
28
29

HEADINGS TITLE 16.

Fish and Game.

CHAPTER 05.

Fish and Game Code.

ARTICLE 2.

Boards of Fisheries and Game.

Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES.

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

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

and size limitations on the taking of fish;

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

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

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

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

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

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

(10) establishing seasons, areas, quotas and methods of

harvest for aquatic plants;

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

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) ^{the reasonable opportunity for} permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

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

Sec. 16.05.255. REGULATIONS OF THE BOARD OF GAME.

(a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

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

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

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

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

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

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

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

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

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

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the

taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis.

Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct

dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

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

request for an explanation, whichever is later.

Sec. 16.05.257. SUBSISTENCE HUNTING REGULATIONS.

(a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of AS 16.05.300(a), shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

(1) recommendation of the department, based on biological evidence;

(2) the recommendation of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;

(3) the written petition of not less than 100 interested residents of that game management unit or subunit;
or

(4) the written petition of not less than 25 interested residents of an area which is requested for establishment as a subsistence area within a game management unit or subunit.

(b) The regulations may include but are not limited to the

following:

(1) the establishment of subsistence hunting areas;

(2) the regulation of transportation methods and means to protect subsistence hunting within subsistence hunting areas, including the prohibition or limitation of pack animals, mechanized vehicles and aircraft, other than watercraft or wheeled vehicles operating on a road maintained by public funds;

(3) the establishment of open and closed seasons and areas to protect subsistence hunting;

(4) the limitation of hunting to only one sex of the animal.

(c) Regulations may not be adopted by the Board of Game under (a), (b) or (f) of this section unless, in addition to the requirements of AS 44.62.180 44.62.290, the department

(1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

(2) presents at the hearings the information provided

for in (e) of this section;

(3) makes the information provided for in (e) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a)(3) or (4) of this section; comments shall be received by the board until 10 days before any adoption of regulations.

(d) A petition submitted under (a)(3) -- (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or recommendation made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the meeting of the board at which the petition or recommendation is to be considered.

(e) The department shall investigate, by collecting existing data, and, when necessary, conducting new studies, every petition or recommendation made under (a)(2), (3) or (4) of this section to the extent practicable within the time available and provide the following information:

(1) the concentration of the species to be affected and carrying capacity of the area to be affected;

(2) the current hunting practices in the area, including numbers of animals taken and by what methods and means and whether the take is subsistence or recreational;

(3) the dependence of persons in the area for subsistence use of a species;

(4) the population trends of the affected fish and game in the area;

(5) whether the affected fish and game population is able to support a nonsubsistence harvest; and

(6) other information considered necessary by the section of subsistence hunting and fishing.

(f) The Board of Game at any time may review and change the boundaries of a subsistence area upon

(1) the recommendation of the department, based on biological evidence;

(2) the written petition of not less than 25 interested residents of that area; or

(3) the majority vote of the active local advisory committees for that area.

(g) The department shall submit a report to the legislature during the first 10 days of each legislative session beginning after January 1, 1977. The report shall include, but is not limited to, a listing of the specific subsistence areas established or modified during the preceding year and the species subject to subsistence use within those areas.

(h) In this section

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game;

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

(i) The Board of Game may not make a decision denying, creating or changing a subsistence hunting area unless the decision is based on specific written findings of fact regarding all the information provided in accordance with (e) of this section.

Sec. 16.05.930. EXEMPTED ACTIVITIES.

(a) This chapter does not prevent the collection or

exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit which the department may issue and prescribe the terms thereof.

- (b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation adopted by the appropriate board.
- (c) AS 16.05.920 does not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food or the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board. In this subsection, "animals" includes all animal life, including insects and bugs.
- (d) Nondomestic animals of any species may not be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action.

- (e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.
- (f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes.

Sec. 16.05.940. DEFINITIONS.

In AS 16.05 - AS 16.40

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

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

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

(B) for other food or for nonedible items other

than money if the exchange is of a limited and noncommercial nature;

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

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

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

possession of fish, shellfish, or other fish resources;

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

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

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

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

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

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

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

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

(16) "nonresident" means a person who is not a resident

of the state;

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

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

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

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure

under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

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

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources 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; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the

household on a permanent basis;

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

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

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

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft.

A M E N D M E N T

Offered in the HOUSE

By Larson

TO: CSHB 288(Jud)

Page 3, after line 18, delete section 5 and insert new bill sections to read:

"* Sec. 5. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

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

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

(6) classifying as commercial fish, sport fish, [PERSONAL USE FISH,] or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management,

conservation, protection, use, disposal, propagation and stocking of fish;

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

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

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

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

(12) PERSONAL USE FISHING].

* Sec. 6. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional [NONCOMMERCIAL] uses in Alaska 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

[(A)] "family" means all persons related by blood,

marriage, or adoption, and any person living within the household on a permanent basis;

[(B) "RURAL AREA" MEANS A COMMUNITY OR AREA OF THE STATE IN WHICH THE TAKING OF FISH OR WILDLIFE FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA;]

* Sec. 7. Section 1 of this Act and AS 16.05.940(28) are repealed.

* Sec. 8. Sections 1 - 4 of this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 9. Sections 5 - 7 of this Act take effect ^{March 31} ~~January 1~~, 1986."

INTRODUCTION OF BILLS (House)

HB 286. (cont'd)

require the Commissioner of Natural Resources to ensure practical access to the parcel. A homestead permit holder would be required to submit an aliquot parts description in order to receive patent to the land.

Would repeal language in current law that allows the Director of the Division of Lands to waive monumentation of all individual section corner positions and substitute an official control survey with control points being monumented and shown on control survey plats approved by the state. Repeals AS 38.09.040(b): "If the commissioner determines that a permit holder has made a good faith effort to obtain a plat of survey, the commissioner may extend the time required for completion of the plat of survey for not more than three years after the issuance of the permit." Does not provide effective date.

Note. Rep. Koponen described aliquot parts as the process of subdividing any parcel of land in equal parts and he said that aliquot parts lines are also used to signify right-of-ways. He said that traditionally land was subdivided into equal areas called townships, then into equal areas called sections.

Introduced March 13 and referred to Resources, Finance.

Golden Valley
Royalty Sale
(approving &
ratifying)

HOUSE BILL NO. 287. by the Rules Committee by Request of the Governor. Approves and ratifies the sale of Prudhoe Bay royalty oil by the State of Alaska to the Golden Valley Electric Association. Identical to SB 232, page 430. Takes effect immediately.

Introduced March 13 and referred to the House Special Committee on Oil and Gas, Resources and Finance.

Subsistence
Laws
(amending)

HOUSE BILL NO. 288. by the Rules Committee by request of the Governor. See Senate Bill No. 231, page 428, identical.

Introduced March 13 and referred to Resources and Judiciary.

Teachers Tenure
Rights,
Evaluations &
RIF's

HOUSE BILL NO. 289. by Rep. Fuller. See Senate Bill 230, page 428, identical.

Introduced March 13 and referred to Health, Education & Social Services, Finance.

Bd. of Barbers
& Hairdressers
(extending)

HOUSE BILL NO. 290. by Reps. Taylor and Sund. Would extend the Board of Barbers and Hairdressers to June 30, 1989 (currently set to expire June 30, 1984). Also see SB 218, page 390 - extends Board among other things. Provides Act takes effect immediately.

Introduced March 13 and referred to Labor & Commerce, Finance.

COMMITTEE-REPORTS (House)(cont'd)

Student Loans
(revising)

HOUSE-BILL-NO.-185, (see pages 244;418;500). Reported back to the House April 18 by Finance recommending it do pass. Concurring: Adams (Chair), Ringstad, Duncan, Larson, Pourchot, Uehling, Rieger, Binkley and Cotten. Not concurring: Szymanski and Frank have no recommendation. To Rules.

Child Care in
State Bldgs.

HOUSE-BILL-NO.-262, (see page 403). Reported back to the House April 15 from State Affairs with a majority of the committee recommending it be replaced with a State Affairs CS and that it do pass. Concurring: Hurley (chair), Collins, M.M. Miller, Navarre and Boucher. Cato and Jenkins had no recommendation. To Finance.

The State Affairs adds a new section stating the law would apply only to buildings for which construction, expansion, or major renovation plans are developed on or after the law takes effect, and buildings for which construction, expansion or major renovation plans have been developed, but have not begun before the law takes effect. Also states the requirements for child care centers do not apply to a leased building if it cannot meet or reasonably be renovated.

Golden Valley
Royalty Sale
(approving &
ratifying)

HOUSE-BILL-NO. 287, (see pages 450;630). Reported back to the House April 15 from Resources with a majority of the committee recommending do pass. Concurring: Shultz (co-chair), Herrmann, Wallis, M.W. Miller and Sund. Thompson recommended do not pass. Jenkins and Pearce had no recommendation. To Finance.

Subsistence
Laws
(amending)

HOUSE-BILL-NO. 288, (see page 450). Reported back to the House April 15 from Resources recommending it be replaced with a substitute and reporting it back as follows: Herrmann (co-chair), Cato, Thompson, Sund and Wallis recommended do pass. M.W. Miller and Jenkins recommended do not pass. Pearce signed do not pass without amendment. Shultz signed do not pass unless amended. To Judiciary.

The Resources committee attached a letter of intent which states:

"The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal and family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

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 and rural areas in Alaska is significantly dependent participation by the residents of these 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.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries

COMMITTEE REPORTS (House)(cont'd)

HB-288 (cont'd)

and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;
- (5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;
- (6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;
- (7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and
- (8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

This legislation establishes that the commercial sale of fish and game taken for personal and family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal and family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks."

The Resources substitute changes the definition of "subsistence uses" under AS 16.05.940(23) [definition section for AS 16.05 - AS 16.40: Fish and Game Code (16.05), Fisheries and Fishing Regulations (16.10), Fisheries Experimental Laboratory (16.15), Conservation and Protection of Alaskan Wildlife (16.20), Stocking of Public Lands (16.25), Destruction of Big Game Animals and Wild

Letter of Intent for CSHB 288 (Jud)
an act relating to the taking of fish and game for subsistence and
personal use
by the House Rules Committee
5/2/85

The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal or family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

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 and rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the taking of fish stocks and game populations for personal or family consumption. Further, the Legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

Letter of Intent for CSHB 288 (Jud)
by the House Rules Committee (Continued)

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

This legislation establishes that the commercial sale of fish and game taken for personal or family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal or family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks.

The Legislature recognizes that personal use of fish and wildlife is a valuable part of Alaskan life. Therefore, it is the intent of the Legislature that the Board of Fisheries provides fairly and adequately for these personal uses. For example, the Board must provide a fair and adequate allocation for the fishery at Chitina, on the Copper River, in which Fairbanks residents and other Alaskans participate using dipnets and fishwheels to harvest salmon for personal use.

Letter of Intent for CSHB 288 (Jud)
by the House Rules Committee (Continued)

Mike W. Miller, Chairman
House Rules Committee
5/2/85

5/2/85

BY

IN THE HOUSE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents, who take fish stocks and game populations for non-commercial purposes, use such stocks and populations primarily for food for personal or family consumption;

(2) The taking of fish stocks and game populations by such residents for personal or family consumption is important to the health, safety and general wellbeing of all Alaska residents;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant

characteristic of the economy of many Alaskan communities and areas because it is cost effective and important to the health safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding two new sections to read:

(12) regulating selected stocks in selected nonrural waters for catch and release sport fishing and regulating selected stocks in selected waters in rural areas for subsistence and catch and release sport fishing.

(13) regulating commercial, sport, personal use, and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuance of subsistence, the Board of Fisheries shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for sport or personal use fishing for such stock by Alaska residents, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such

population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the stock as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

(10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis or with the continuance of subsistence, the Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of such population by Alaska residents for personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary, traditional and cost effective taking and use by Alaska residents, in rural areas, of wild, renewable resources 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 noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a historic hunting or fishing area associated with a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

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

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

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

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

DRAFT LETTER OF INTENT

4/30/85

CS for HB 288(Rule -)

Applies to

5/2/85 draft also

It is the intent of the legislature in enacting this legislation, to comply with the spirit and intent of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article 1, Section 1 and Article VIII, Section 15 of the Alaska Constitution.

This legislation maintains subsistence use as a priority use of Alaska's wild, renewable resources in accordance with ANILCA, and establishes a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations based on the sustained yield principle and to reasonable regulation ~~of~~ ^{of} seasons, catch or bag limits, and methods and means without requiring that ~~uses of~~ lower priority ^{uses} be eliminated first.

^{where}
If the harvestable surplus of a fish stock or game population is not large enough to provide a reasonable opportunity for all subsistence uses, individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Why this category?
This is a second level of subsistence.

Subsistence uses in rural Alaska by Alaska residents who, in a cost effective manner, use, including consume, their take in the same rural area it was taken, have the next highest priority of use. It is intended that the boards shall have the authority to determine cost effectiveness, considering methods and means of harvest characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.

The boards must establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of fish stocks and game populations for personal use or personal or family consumption, unless such regulations would jeopardize or interfere with the maintenance of a fish stock or game population or with the continuance of subsistence. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial, sport, personal use and subsistence uses, while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for the full range of beneficial uses.

Kie - This "mandatory authorization" will sink this legislation, at best it is confusing at worst it gives impression of doubletalk.

5/2/85

BY

IN THE HOUSE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents, who take fish stocks and game populations for non-commercial purposes, use such stocks and populations primarily for food for personal or family consumption;

(2) The taking of fish stocks and game populations by such residents for personal or family consumption is important to the health, safety and general wellbeing of all Alaska residents;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant

hard to substantiate?

characteristic of the economy of many Alaskan communities and areas because it is cost effective and important to the health, safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding two new sections to read:

(12) regulating selected stocks ~~[in selected nonrural waters]~~ for catch and release sport fishing and regulating selected stocks ~~[in selected waters in rural areas]~~ for subsistence and catch and release sport fishing.

(13) regulating commercial, sport, personal use, and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

"nonrural waters" is a worse con of worms than all that have gone before.

"selected stocks" in above should achieve your intent. To say, "selected stocks in selected waters" is probably redundant.

(b) Unless such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuance of subsistence, the Board of Fisheries shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for sport or personal use fishing ~~for such stock~~ by Alaska residents, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulation^{of} ~~of~~ seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks^{in historic quantities from specific stocks} for subsistence uses unless the board determines that ^{such use} ~~adoption of such regulations~~ will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. ^{Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulation^{of} ~~of~~ seasons, bag limits, and methods and means.}

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such

population for subsistence uses, the board shall adopt regulations that establish ~~restrictions and limitations on the taking of such population~~ ^{such harvests} ~~for subsistence uses~~ on the basis of the following criteria:

- (1) customary and direct dependence upon the stock as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

- (10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis or with the continuance of subsistence, The Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of ^{game} ~~such~~ population by Alaska residents for personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations ^{in historic quantities from specific populations} for subsistence uses unless the board determines that ^{such harvests} ~~adoption of such regulations~~ will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read: