

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672
4222.2 SRES SUBSISTENCE BILL DRAFTS & LETTER OF INTENT (file 1) 189

(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 ~~gear~~ 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(Rules)

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 I, 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 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.

4/30/85

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 and 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 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 (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 a new section to read:

(12) regulating commercial, sport, personal use, sport 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 the taking of such stock by Alaska residents for

personal use or 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, 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) 1. 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).

4/29/85

BY _____

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 primarily 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 or family consumption is a priority use of stocks and populations;

(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 essential 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 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 (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 a new section to read:

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

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 AS 16.05.251 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, the Board of Fishery shall establish a mandatory authorization

that ensures all Alaskans a reasonable opportunity for the taking of such stock by Alaska residents for personal and family consumption, and the Board of Fisheries 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) Whenever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, 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 and family consumption, and the Board of Game 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).

CS for HB 288(Rules)

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, ~~which might be caused by a reproduction in this legislation of the language of Title VIII of ANILCA.~~

This legislation maintains [the two tiers of] subsistence use as a priority use of ~~the~~ Alaska's wild, renewable resources in accordance with ANILCA, and establishes ^{two tier} a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations ^{to ensure} [based on the] sustained yield, [principle] ^{including} [and to] reasonable regulations as to seasons, catch or bag limits, and methods and means without requiring ~~the limitation of~~ ^{reasonable limitations} uses of lower priority. *1st be restricted or eliminated.*

Paragraph ANILCA language

Subsistence uses, in times of ^{relative} resource shortages, by 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, [and if necessary exclusive,] priority of use.

could this argue for commercial fishing priority in rural area? It is not quite the same as food/sustenance.

> ↑

Subsistence uses in rural Alaska by Alaska residents ^{who in a cost effective} using reasonably ^{Rural} economic means, ~~who~~ use, including consume, their take in the same ^{Area}

it was taken, have the next highest priority of use.

~~The authority to determine cost effectiveness considering methods of means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.~~ ^{The Boards have} ~~to be interpreted as traditional hunting or fishing area for game unit or subunit as found appropriate by the Boards of Fish and Game.~~ ^{area is intended}

Whenever it is necessary to restrict the taking of a fish stock or game population, the use and taking of fish stocks and game populations by Alaska residents for personal use or for personal ^{or} family consumption, whether by sport or personal use methods or means, is the highest priority of use after subsistence uses. This priority is intended to give Alaska residents a reasonable opportunity for the taking of fish and game populations and is not an absolute priority over commercial uses. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial ^{personal and subsistence} uses while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for ^{the full range of uses} personal use or personal or family consumption.

^{if necessary} ^{other than the I subsistence uses in time of severe resource shortage,} No priority is intended to be absolute but only as a means to provide a reasonable opportunity for harvest.

It is the intent of the Leg to ~~to~~ establish that the Boards shall establish a mandatory ^{authorization} that ensures all Alaskans a reasonable opportunity for the taking of fish stocks and game populations.

murky

methods of means of harvest

of effort and cost

and conditioned by local circumstances

4/25/85

BY _____

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 ^{primarily} 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;

Section 1 Findings:

(3) This paragraph is exceptionally ambiguous.

Recommend: ~~Complete amendment.~~ Delete ~~as is~~ and insert:

(3) The customary and traditional use of local fish stock and game population in rural Alaska is a significant characteristic of the economy of many Alaskan communities because it is ^{cost effective and} essential to the health, safety and general well being of those Alaskans.

(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.

16.05. 251 a (6) ~~add~~ personal use ~~add~~ *new section 12*
add personal use from draft #2

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

Letter of Intent
Handwritten Substitution

~~stock~~ (b) Whenever it is necessary to restrict the taking of ~~fish~~ *stock* population to assure the maintenance of such ~~population~~ *stock* on a ~~sustained-yield~~ *reasonable opportunity* basis, ~~the taking of such population~~ *stock* by Alaska residents for personal and family consumption, shall be ~~the~~ *9* priority use of the harvestable surplus of such ~~population~~ *stock* and the Board of Fisheries shall adopt regulations ~~authorizing~~ *providing a reasonable opportunity for* such taking in accordance with the Administrative Procedure Act (AS 44.62). *Reasonable Regs*

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

Insert 1st sentence from (d) draft II
1st sentence from (e) draft II

(c) If the harvestable surplus of a fish population is not large enough to provide a reasonable opportunity for the taking of such ~~population~~ ^{stock} by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, ~~The~~ ^{The} Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of ~~such population~~ ^{fish stocks} for subsistence uses ~~a~~ ^{priority} over other ~~consumptive~~ ^{stock} uses of such ~~population~~ ^{stock}. 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~~

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

(b)
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 ⁹ ~~the~~ priority use~~s~~ 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) *Reasonable Regulations*

AS 16.05.255 is amended by adding new sections ~~and~~ to read:

(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.

re number following sections accordingly

existing language

(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.~~

repealed and re-enacted

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

and cost effective

(23) "subsistence uses" means the customary and traditional ~~means~~ *means* 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,

historic hunting or fishing area associated with a

(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;

1
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. ~~(22)~~ is amended by adding a new paragraph to read:

"personal use fishing"
(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).

The use and taking of fish stocks and game populations by Alaska residents for personal use or for personal and family consumption, whether by sport or personal use methods or means, is the third highest priority of use. This priority is intended to give Alaska residents a reasonable opportunity for the taking of fish and game populations and is not an absolute priority over commercial uses. In making allocation decisions, the Boards of Fish and Game shall strive to ensure the health and prosperity of commercial uses while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for personal use or personal or family consumption.

It is the legislature's intention that in times of normal resource availability that all uses exist. w/ - - -

Clear reference needed that priority uses are associated with various tiers or category. There are not classifications w/in a tier or category.

LETTER OF INTENT CS HB 288(RLS)

IT IS THE INTENT OF THE LEGISLATURE THAT FOR PURPOSES OF MANAGING THE STATE'S FISH AND GAME RESOURCES THERE EXIST FOUR TIERS FOR DETERMINING THE ALLOCATION LEVELS OF FISH AND GAME THROUGHOUT THE STATE.

THE FOUR ALLOWABLE TIERS ARE: 1. "ABOVE SUSTAINED YIELD" WHICH ALL CATEGORIES: COMMERCIAL FISHERIES, SUBSISTENCE, NON-SUBSISTENCE, RESIDENT OR NON-RESIDENT RECEIVE FULL ALLOCATION FROM BOARD OF FISH OR GAME. 2. "PERSONAL AND FAMILY CONSUMPTIVE USE": ALL PERSONS WHO HUNT AND FISH AND EAT THE RESOURCE RECEIVE PRIORITY USE. 3. "SUBSISTENCE USERS": ALL SUBSISTENCE USERS WHO CONSUME THE RESOURCE WHERE THEY CATCH IT IN RURAL ALASKA AND MEET AN ECONOMIC MEANS TEST RECEIVE PRIORITY USE. 4. "ANILCA SUBSISTENCE USERS": ALL SUBSISTENCE USERS WHO MEET THE THREE ANILCA PROVISIONS FOR THE TAKING OF FISH AND GAME WHICH ARE A. CUSTOMARY AND DIRECT DEPENDENCE UPON THE RESOURCE AS THE MAINSTAY OF ONE'S LIVELIHOOD, B. LOCAL RESIDENCY AND C. AVAILABILITY OF ALTERNATIVE RESOURCES RECEIVE PRIORITY USE.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARDS OF FISH AND GAME USE A "REASONABLE OPPORTUNITY" METHOD TO PROVIDE ACCESS TO THE FISH AND GAME RESOURCE FOR EACH CLASS OF USER WITHIN A TIER LEVEL.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT WHEN THE BOARDS OF FISH AND GAME DETERMINE THE RESOURCE ALLOCATION AMOUNTS FOR EACH CATEGORY OF USER, TIMELY ACCESS TO THE RESOURCE SHALL BE PROVIDED TO EACH CATEGORY OF USER REGARDLESS OF THE RESOURCE ALLOCATION AMOUNTS TO THE OTHER CATEGORY OF USERS.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT SUBSISTENCE USE AS DEFINED IN EACH CATEGORY CONTINUES TO BE THE TOP PRIORITY FOR THE TAKING OF FISH AND GAME.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD MAY CONSIDER USING A PRE-REGISTRATION SYSTEM TO DETERMINE THE NUMBER OF POTENTIAL USERS IN A CATEGORY. HOWEVER, NO PRE-REGISTRATION SYSTEM MAY BE USED THAT WILL PRECLUDE EXISTING SUBSISTENCE USERS.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT NON-RESIDENTS RECEIVE THE LOWEST PRIORITY IN ANY RESOURCE ALLOCATION SCHEME.

4/25/85

BY _____

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 such 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 domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption by reasonable economic means constitutes a significant characteristic of the economy of the community or area 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.

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

Sec. 2. AS 16.05.251 is repealed and reenacted 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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provision of subsection (d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

- (1) the history of each personal use, sport, and commercial fishery;
- (2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing Alaska residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fish stock and other resources;
- (5) the importance of each fishery to the economy of the State of Alaska;
- (6) the importance of each fishery to the economy of the local area in which the fishery is located;
- (7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors]

(d) The Board of Fisheries shall adopt regulations in accordance with 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. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e) 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. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock 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.

(f) 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. 3. 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 and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote game research, management, education, and information and to train persons for game management;

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

(10) 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:

(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).

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.


Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

No  Amends the definition of "subsistence uses" to indicate that the identification of such uses is ~~limited to the taking of fish and game by residents domiciled in 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.~~

This section also incorporates a statutory definition of "resident net fishing" defined as 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, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

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 such 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 domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption in a cost-effective manner constitutes a significant characteristic of the economy of the community or area 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.

Sec. 2. AS 16.05.251 is repealed and reenacted 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, resident net 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) ~~resident net, sport, and commercial fishing.~~

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

(2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;

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

(4) the availability of alternative fish stock and other resources;

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

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons; and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with 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. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e)

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. ^(e) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock 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.

- Reasonable regs still apply.

(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

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

Sec. 3. 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 and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) 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. 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⁾ *Responsible Regs* availability of alternative resources.

(d) 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:

~~Alaska residents~~ (23) "subsistence uses" means the ^{*taking and use*} ~~customary and traditional~~ ^{*in rural areas*} uses by ~~Alaska residents~~ 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 edible by-products of fish and wildlife resources taken for personal or family consumption, ^{*non commercial*} and for the ~~customary trade~~, barter, or sharing for personal or family consumption; ~~for the purposes of this~~

~~paragraph~~ ^{*for purposes of this section wild and renewable resources*} ~~"rural Alaska residents" means persons domiciled in a~~ ^{*Rural areas means*} community or area ^{*in which the taking of fish stocks and game*} in which the taking of fish stocks and game

~~being taken.~~ *R*

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, 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).

suggested
amendments

PS 4
PS 5
PS 7
PS 8
PS 9

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.
Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in 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.

This section also incorporates a statutory definition of "resident net fishing" defined as 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, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

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 such 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 domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption in a cost-effective manner constitutes a significant characteristic of the economy of the community or area 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.

Sec. 2. AS 16.05.251 is repealed and reenacted 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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among [persons engaged in] resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

(2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;

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

(4) the availability of alternative fish stock and other resources;

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

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of ^{subsistence} 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. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means. 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. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock 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.

(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

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

Sec. 3. 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 and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) 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 ^{subistence} game population ^{beyond reasonable regulations on bag limits, seasons and methods of taking} 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 ^{subistence} 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. 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.

(d) 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:

(23) "subsistence uses" means the customary and traditional uses by rural Alaska residents 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 edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ^{non commercial} trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) "rural Alaska residents" means persons domiciled in 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, fish wheel, ^{pot,} 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).

Subsistence game (fish) species are ~~defined~~ those species identified by the Board in regulation as subsistence species. The identification shall be by area or sub area and shall be based on findings of traditional use and lack of available alternative resources.

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing †

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

No
Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in 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.

This section also incorporates a statutory definition of "resident net fishing" defined as 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, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

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 such 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 domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption ^{by reasonably economic means} in a cost-effective manner constitutes a significant characteristic of the economy of the community or area 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.

Sec. 2. AS 16.05.251 is repealed and reenacted 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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

← (c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

(2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future:

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

(4) the availability of alternative fish stock and other resources;

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

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with 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. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means. 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. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock 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.

(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} ~~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. 3. 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 and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) 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. 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.

(d) 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:

(23) "subsistence uses" means the ^{taking and use} ~~customary and traditional~~ ^{in rural areas} ~~uses by rural Alaska residents~~ 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 inedible by-products of fish and wildlife resources taken for personal or family consumption, ~~and for the customary trade~~ ^{delete} barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) "rural Alaska residents" means persons domiciled in 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, o. other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, 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).

Findings Comm. Fish
eat their fish also
that parting should remain
a priority

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.-
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.
Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in 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.

This section also incorporates a statutory definition of "resident net fishing" defined as 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, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

IN THE SENATE

Kie - comments aimed at clarifying & simplifying but ignores the "rural" issue. ~~Common~~ suggestion in context of subsistence being a component ^{BY} of personal use & set at historic level. 2

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 such stocks and populations;

as hard to define
as "rural".
Will include group
charters of aircraft,
personal aircraft
when it is only
transportation available,
tracked vehicles,
off-road vehicles,
boats on motor
etc.

(2) 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 domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption by reasonably economic means in a cost-effective manner constitutes a significant characteristic of the economy of the community or area 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.

Sec. 2. AS 16.05.251 is repealed and reenacted 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, resident net 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) resident ^{personal use} net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), ^{personal use} resident ~~[net, sport]~~ and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among persons engaged in resident ^{personal use} ~~[net, sport]~~ and commercial fishing, the Board shall consider the following factors:

- (1) the history of each personal use, ~~sport~~, and commercial fishery;
- (2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing Alaska residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fish stock and other resources;
- (5) the importance of each fishery to the economy of the State of Alaska;
- (6) the importance of each fishery to the economy of the local area in which the fishery is located;
- (7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons; and
- (3) other relevant factors

The Boards need to establish better records of discussions leading to their decisions. However, these criteria can be debated and infinity of will nearly always have a point that may be litigated. Kind of a catch-22 in that you ~~must~~ delineate further specifics for each factor the process becomes more cumbersome, infinitely more cumbersome. For example, establishing the "importance" of each fishery in 3, 5, 6, 7, could entail a major economic analysis for each point.

~~not to be~~
~~part of~~

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses, ^{at historic levels of aggregate annual harvest of specified stocks,} 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. Subsistence fishing authorized pursuant to this subsection shall be ~~subject to~~ ^{regulated by} ~~reasonable regulation~~ ^{of} seasons, bag limits, and methods and means. 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. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, ^{at historic levels} the board shall adopt regulations that establish restrictions and limitations on the taking of such stock 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.

↙ (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

The Boards already do this & I believe there is some existing regulatory requirement in this regard. This new statute does not create a problem, but may be somewhat redundant.

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

Sec. 3. 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 and bag limits on the taking of game;

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

(6) investigating and determining the cause and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) 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.

Tried to bring into line with first section

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, at historic levels of aggregate, sustained yield basis, the taking of such population by Alaska residents annual, subsistence harvests of specified populations, unless such uses for personal and family consumption, shall be the priority uses of the will jeopardize the maintenance of a game population on a sustained-yield harvestable surplus of such population and the Board of Game shall adopt basis. Subsistence use authorized by this subsection shall be the priority regulations authorizing such taking in accordance with the use & shall be regulated by seasons, bag limits, & methods & means. 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. 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

delete

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.

(d) 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:~~

(23) "subsistence uses" means the customary and traditional ^{taking of} uses by rural 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 ~~inedible~~ by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ^{no commercial} trade~~d~~ barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) ^{rural} "rural Alaska residents" means ~~persons domiciled in 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 ^{any} ~~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 ^{authorized} 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} ~~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, fish wheel, long line, or other similar]~~ ^{by any} ~~means defined~~ ^{authorized} by the Board of Fisheries.

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

4-13-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and personal use fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and personal use fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for personal use, sport, and commercial fishing.

Subsections (d) and (e) are basically the same as existing law, although subsection (d) has been tightened in a nonsubstantive manner to give a clearer indication to the board as to how the regulatory system is to work.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to define the phrase "customary and traditional uses" according to the criteria set forth in 5 AAC 99.010. (This is a suggestion that is incorporated in the draft bill developed by Anchorage sport fishermen. However, unlike the sport fishing bill that merely references the regulation, this draft sets forth the criteria in the bill). Under the revised definition, subsistence applies essentially to residents of rural communities.

The section also incorporates a statutory definition of "personal use fishing" that includes the use of hook and line among other means.

Note: The bill draft includes additions to existing statutes but does not indicate language deleted.