

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672  
4222.44 SRES SUBSISTENCE: MISCELLANEOUS (file 2) 1225

1 when the subsistence preference requires a reduction in the harvest of  
2 a fish stock or game population by nonsubsistence users, ~~or when~~  
3 ~~special seasons, bag limits or other provisions are necessary, to~~  
4 ~~provide a reasonable opportunity for subsistence takings. A permit~~  
5 ~~program need not be established in any particular area of the state or~~  
6 ~~for any particular fish stock or game population unless circumstances~~  
7 ~~warrant.]~~

8 (d) With the assistance of the department, the boards shall  
9 provide reasonable public notice of the following information to users  
10 of a group, community, village, or area subsistence permit:

11 (1) the terms of the permit;

12 (2) the fish stocks and game populations authorized to be  
13 taken under the permit;

14 (3) the subsistence use areas covered by the permit.

15 (e) The Board of Fisheries and the Board of Game may use village  
16 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska  
17 Native Claims Settlement Act) and community, postal, media, or other  
18 services appropriate for providing notice under (d) of this section.

19 (f) The commissioner shall administer subsistence permit pro-  
20 grams that may be established. The commissioner may appoint state  
21 employees or other persons to take applications and issue permits and  
22 tags. A person appointed by the commissioner may administer oaths for  
23 permit and tag applications. The commissioner or the appropriate  
24 board may require a report from persons using a permit concerning the  
25 time, manner, and place of taking fish and game, the kinds and quanti-  
26 ty taken, and other information helpful in administering the fish and  
27 game resources of the state. Except for state employees, a person  
28 appointed by the commissioner under this subsection is entitled to  
29 compensation of \$50 per year or \$1 for each permit or tag issued,

★ domicile or durational issue ★  
 longevity def.

1 whichever is greater.

2 \* Sec. 8. AS 16.05.940(22) is amended to read:

3 (22) "subsistence fishing" means the nonwasteful taking of,  
 4 fishing for, or possession of fish, shellfish, or other fisheries  
 5 resources by a resident domiciled in a rural area of the state for  
 6 subsistence uses with gill net, seine, fish wheel, long line, or other  
 7 means defined by the Board of Fisheries;

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

9 (23) "subsistence uses" means the nonwasteful, noncommer-  
 10 cial, customary and traditional uses [IN ALASKA] of wild, renewable  
 11 resources by a resident domiciled in a rural area of the state for  
 12 direct personal or family consumption as food, shelter, fuel, cloth-  
 13 ing, tools, or transportation, for the making and selling of handi-  
 14 craft articles out of nonedible by-products of fish and wildlife  
 15 resources taken for personal or family consumption, and for the cus-  
 16 tomary trade, barter, or sharing for personal or family consumption;  
 17 in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons  
 18 related by blood, marriage, or adoption, and a [ANY] person living in  
 19 [WITHIN] the household on a permanent basis;

20 \* Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

21 (28) "fish stock" means a species, subspecies, geographic  
 22 grouping or other category of fish manageable as a unit; ~~that; [at any~~  
 23 ~~time during any season of the year, may be found in water subject to~~  
 24 ~~state jurisdiction;]~~

25 (29) "game population" means a group of game animals of a  
 26 single species or subgroup whose members in whole or in part <sup>are manageable as a unit;</sup> ~~use, or~~  
 27 ~~may be found at any time or during any season of the year in or on,~~  
 28 ~~land, air, or water subject to state jurisdiction;]~~

29 (30) "nonwasteful" means making reasonable use of .

modify w/  
Customary + traditional?

use?

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harvested fish or game animal or most of its parts;

(31) "rural area" means a community or area of the state in which the <sup>noncommercial</sup> ~~taking~~ <sup>and consumption</sup> of fish or game [for personal or family consumption] is a significant characteristic of the economy of the community or area;

hunting  
fishing for, or possession of

(32) "subsistence hunting" means the nonwasteful taking of, ~~game~~ <sup>game [animals]</sup> by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game.

\* Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

\* Sec. 12. This Act takes effect June 1, 1986.

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

|                  |   |                    |
|------------------|---|--------------------|
| STATE OF ALASKA, | ) |                    |
|                  | ) |                    |
| Plaintiff,       | ) |                    |
|                  | ) |                    |
| v.               | ) |                    |
|                  | ) |                    |
| DONALD SKUSE,    | ) |                    |
|                  | ) |                    |
| Defendant,       | ) | No. 3KN 85-1111 CR |
|                  | ) |                    |

MOTION FOR RECONSIDERATION

Pursuant to Alaska Criminal Rule 50(b), Civil Rule 77(m) and Appellate Rule 506, the state requests that the court reconsider action granting defendant's motion for pre-judgment acquittal. Under Appellate Rule 506(a)(1) and (2) the court has overlooked a statute directly controlling the outcome, and has misconceived a proposition of law.

First, the court found that the state had specifically excluded taking with hook and line, even for personal use, from the purview of "subsistence fishing," and that since the defendant was fishing for personal consumption, under Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), he was subsistence fishing. Findings and conclusions, pages 2 and 5. This conclusion overlooks the significance of AS 16.05-.940(21), the definition of "sport fishing."

Before 1978, "subsistence fishing" was defined as fishing for personal use "with gill net, seine, fish wheel, long line, or other means defined by the board." Sec. 4, ch. 131, SLA 1960. "Sport fishing," was also defined as fishing for personal use, but with hook and line, "or by other means defined by the board." Sec. 1, ch. 131, SLA 1960.

In 1978, the legislature amended the definition of "subsistence fishing" to mean fishing for "subsistence uses" with the same means specified in the previous definition. AS 16.05.940(22). At the same time, the legislature in AS 16-.05.251(b) removed from the Board of Fisheries the discretion it

ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
POUCH K. JUNEAU, ALASKA 99811  
PHONE 465-3600

1 had previously held with regard to subsistence fishing, and  
2 mandated that the board allow the taking of fish for subsistence  
3 uses unless the resource would be jeopardized. The legislature  
4 in that same subsection gave subsistence uses a priority over  
5 other uses.

6  
7 The legislature did not alter the definition of "sport  
8 fishing" in AS 16.05.940(21). The statutory changes related to  
9 subsistence fishing, a distinct category of fishing from sport  
10 fishing. The legislature knew that sport fishing was engaged in  
11 by Alaska residents as well as non-residents, as evidenced by  
12 the different license fees established for resident sport  
13 fishing and non-resident sport fishing licenses. AS 16.05-  
14 .340(a)(1)(7) and (8). The legislature knew that the definition  
15 of "sport fishing" was fishing "for personal use." Yet the  
16 legislature did not in 1978 give sport fishing the status of  
17 subsistence fishing, with a mandatory allocation and priority.

18 "Subsistence fishing" is defined in terms of specific  
19 gear types, not including hook and line. It is true that the  
20 list of gear is followed by the words "or other means as defined  
21 by the board." However, "Where general words follow specific  
22 words in a statutory enumeration, the general words are to  
23 embrace only objects similar in nature to those objects enumer-  
24 ated by the preceding specific words." 2A M. Singer, Sutherland  
25 Statutory Construction section 47.17 (4th edition 1984). Since  
26 1960, "sport fishing" has been defined as fishing with hook and  
27 line, and subsistence fishing has been defined as fishing with  
28 nets, fish wheels, and long lines -- much more efficient gear  
29 than hook and line. While the state agrees that the principles  
30 of Madison and Eluska v. State, 698 P.2d 147 (Alaska app. 1985)  
31 apply to subsistence fishing, by the clear terms of the statute  
32 fishing with hook and line is sport fishing, which is not a  
33 category of fishing given special treatment by the legislature  
34 in AS 16.05.251(b).

Second, the court in this case ruled that the board

1 was incorrect in authorizing subsistence fishing after Madison  
2 and Eluska only in places where that activity had occurred in  
3 the past. At page 4 of the findings and conclusions, in foot-  
4 note 3, the court states that Madison held that the board could  
5 not link subsistence fishing to historical patterns unless there  
6 was a resource shortage. This misconceives the court's  
7 analysis. Actually, Madison discussed the definition of "subsistence  
8 uses" in AS 16.05.940(23) as "the customary and traditional  
9 uses" of fish and game for certain purposes. Madison held at  
10 page 176 that, "The words customary and traditional serve as a  
11 guideline to recognize historical subsistence use by individ-  
12 uals, both native and non-native Alaskans." (Emphasis added.)

13  
14 Madison does not hold that all fishing for personal  
15 consumption is subsistence fishing; the court recognized that  
16 the modifiers "customary and traditional" did mean historic. In  
17 this instance, since 1960, when the definition of "subsistence  
18 fishing" was first enacted into state statute, such fishing has  
19 not occurred in the Moose River, and therefore, the board was  
20 not under any obligation under the principles of Madison to au-  
21 thorize it there. \*/

22 The state asks the court to reconsider and reverse its  
23 action granting the defendant's motion for pre-judgment  
24 acquittal.

25 DATED:

26  
27 Shannon Turner  
28 Assistant District Attorney  
29 Kenai

30  
31 \*/ On the other hand, sport fishing for red salmon in the Moose  
32 River is open year round, except for the period between April 15  
33 and June 14, which closure is designed to protect spawning rain-  
34 bow trout. 5 AAC 56.010 and 5 AAC 56.050(11). The daily bag  
limit for red salmon in the Moose River is three of 16 inches or  
more, and ten of less than 16 inches. 5 AAC 56.020. Thus, even  
under an Eluska analysis, the regulations do provide a reason-  
able opportunity for harvest, and do not "significantly impair"  
fishing with hook and line for personal use.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,  
Plaintiff,  
vs.  
DONALD SKUSE,  
Defendant.

FILED in the Trial Courts  
State of Alaska Third District

at Kenai  
JAN 17 1986

Clk of the Trial Court  
JAN 23 1986

Case No. 3KNS 85-1111 CR

of the District Attorney  
Kenai, Alaska

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

1. The defendant, Donald Skuse, is charged with three counts of fishing violations: Count I - unlawfully taking fish; Count II - unlawfully possessing fish; Count III - engaging in sport fishing without a sport fishing license in possession.

2. The defendant, by affidavit and testimony, claims a subsistence defense.

3. Two days of motions were heard regarding the defendant's motion for pretrial judgment of acquittal. As a result of those hearings, this court finds the following uncontested facts:

(A) The defendant was fishing in the Moose River, a tributary of the Kenai River. He was snagging red salmon. He caught and kept six red salmon.

(B) When approached by the undercover Fish and Game officer, he advised the officer, whom he believed to be a fisherman, that he was snagging for "subsistence" and that he intended to use the fish for his personal consumption.

(C) The defendant was well aware of, and in fact had studied and thought he understood, the decisions of State vs. Eluska, 698 P.2d 175 (1985) and Madison vs. Alaska Department of Fish and Game, 696 P.2d 168 (1985).

(D) The defendant has been a resident of Alaska and has resided on the Moose River for approximately 15 years. He has routinely and regularly snagged red salmon and used the fish for personal consumption during that period of time.

(E) At some point after the defendant's arrival in Alaska and prior to 1973, snagging in freshwater was first made illegal. It appears that one of the major reasons that snagging was made illegal is that it was considered to be an unethical form of sport fishing.

(F) The defendant continued to snag fish every year even after it was made illegal.

(G) According to the testimony that was presented, in the early 1950s, when the Kenai and Moose River area population was small, fishing for direct personal and family consumption was widespread. The methods of taking these fish included both gill netting and snagging.

(H) Subsequent to the Madison and Eluska decisions, the State attempted to institute subsistence fishing regulations which would comply with the holdings in Madison and Eluska.

(I) During the process of formulating the regulations, the State determined that the "subsistence fisheries" existing from 1960 to the present should be reestablished.

(J) This decision led to the opening of "subsistence fisheries" as noted in plaintiff's Exhibit #1, a map which details the type of fishery, the date it was opened and its location.

(K) No "subsistence fishery" was established on the Kenai River because the State determined that subsistence fishing by "traditional subsistence means" had not occurred in the Kenai from 1960 to the present. In making this determination, the State defined "traditional subsistence means" in such a way as to specifically exclude taking with hook and line, even for personal use.

(L) Prior to Madison and Eluska, and pursuant to 5 AAC 77.545, a "personal use" dip net fishery was established on the Kenai River after the escapement goal of 500,000 sockeye salmon had been reached. This "personal use" fishery was only open in 1982 and 1983. Although the escapement goal was reached in 1985, it occurred too late to open the dip net "personal use" fishery.

(M) In summary, the State established a "subsistence fishery" in areas where fishing for personal use with non-sport

gear (i.e. non-hook and line) had historically occurred. The state established a "personal use" fishery in areas where there was no significant evidence of an historically established non-hook and line fishery but where an abundance of fish were available after sport and commercial takes.

(N) No subsistence fishing was allowed on the Kenai or its tributaries in 1985.

(O) Sport fishing and commercially guided fishing was allowed on the Kenai and its tributaries in 1985.

The court is concerned about the application of Eluska and Madison to the foregoing facts. Madison was decided before Eluska and involves a claim by Kenai Peninsula fishing families for eligibility for subsistence fishing in the Cook Inlet Region in an area just south of the area that is the subject of this litigation. In Madison the fishing families demonstrated that they had fished for several years with set nets for salmon for personal and family use. The case details the history of subsistence fishing regulations prior to 1978<sup>1</sup> and summarizes the 1978 subsistence law (See Ch 151 SLA 1978) in which subsistence fishing was redefined as fishing for "subsistence uses." "Subsistence uses" are defined, in part, as fishing for direct personal or family consumption. Without detailing the 1978 subsistence law which was carefully analyzed in Madison, it suffices to say that one subsection of that law (AS 16.05.251(b)) mandates that subsistence shall have priority over sport and commercial fishing and that to the extent that any fishing must be restricted to maintain the resource, subsistence fishing will be the last to be restricted. Madison makes clear that the establishment of subsistence fishing as a priority is not discretionary and that subsistence use can only be restricted if the sustained yield principle of management is in danger.<sup>2</sup>

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<sup>1</sup>Prior to 1978, subsistence had been defined as fishing for personal use and not for sale or barter.

<sup>2</sup>The facts in this case do not require the court to reach Madison's "two tier level of analysis." There was no showing at either of the evidentiary hearings that if statutory priority was given to all subsistence users, there would be too few fish for all subsistence users. Therefore, there is no need to deal with the analysis of "preferred subsistence users."

In Madison, the court also stated that subsistence fishing did not mean "fishing by individuals residing in those rural communities that historically depended upon subsistence hunting and fishing."<sup>3</sup> In effect, Madison declares all Alaskans fishing for personal consumption to be subsistence fishers.

Subsequent to the Supreme Court decision in Madison, the Alaska Court of Appeals faced a "subsistence use" issue in State v. Eluska, 698 P.2d 174 (1985). Eluska involved a hunting violation in which the defendant took a deer out of season in a closed game unit. In Eluska the State claimed that the defendant must show that a six month season and seven deer limit was insufficient to meet his subsistence uses before he could prevail on a motion to dismiss pursuant to a subsistence defense.

The State argues in this case, as it argued in Eluska, that either the defendant was able to satisfy his subsistence, i.e. personal use, needs pursuant to the regulations established on the Kenai River and its tributaries, or that sufficient subsistence fishing was authorized in the area such that the State did not need to authorize subsistence fishing in the Kenai River system. That argument was rejected in Eluska.

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<sup>3</sup>The State, in attempting to comply with Madison and Eluska by reinstating "subsistence fisheries that existed from 1960 on" (see finding of facts, L-Q) misconstrued AS 16.05.251(b) in the same way the Madison court found the statute to have been misconstrued. In Madison, the court held that historical patterns of subsistence could be considered only when there were not enough fish for all subsistence users and it was necessary to discriminate amongst various groups of subsistence users. It appears that the State has again applied "second tier" criteria to establish a definition for subsistence. As stated in Madison, all subsistence users have priority over commercial and sport uses. Further regulations which relate subsistence use to a historical pattern of fishing by a particularized group can only operate to limit all subsistence users when it is necessary to assure sustained yield of the resource.

The State's attempt to label the last priority subsistence fishery authorized for the Kenai River as a "personal use" fishery thereby exempting it from a priority status violates the holding in Madison. Since there has been no evidence of a threat to the sustained yield to the resource, those fishing for direct personal use in the Kenai do not have to demonstrate an historical pattern of fishing by a particularized group in a designated area in order to have the State establish a subsistence fishery in the Kenai.

The Court of Appeals found that Eluska was entitled to rely on a subsistence defense where the State had failed to enact specific regulations governing subsistence hunting, or in this case, fishing. The court held that:

When the trial court concludes, as a matter of law, that hunting occurs in an area in which the State has not adopted regulations pursuant to AS 16.05.255(b), providing for subsistence uses and recognizing the subsistence priority, conduct which would otherwise be a violation of a regulation adopted pursuant to AS 16.05.255(a) restricting hunting is justified as a subsistence use if the person whose conduct is alleged to have constituted hunting in violation of the regulation believed he or she was taking game for subsistence uses (See AS 16.05.940(23)) and was not aware of and did not consciously disregard a substantial and unjustifiable risk that his or her taking was not a subsistence use of the game taken.

Under Eluska, the defendant must, either by affidavit or testimony, establish that he believed in good faith that his hunting or fishing constituted a subsistence use of the resource. The State must show that it has complied with AS 16.05.255(b) or AS 16.05.251(b) by providing a priority scheme for subsistence. If the State has provided a priority plan for subsistence fishing in this case, and if its regulations involve merely time, place or manner but do not significantly impair the subsistence fishing right, then the State prevails.

In the case before the court, there is no question that the defendant has established a good-faith claim that his taking of fish in the Moose River, a tributary of the Kenai River, was for personal consumption and therefore, under Madison, for a subsistence use. There is no question that the State has not provided for priority subsistence fishing in the Kenai River or its tributaries, except in circumstances which are clearly violative of the dictates of AS 16.05.251(b).<sup>4</sup> Therefore

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<sup>4</sup>According to the testimony adduced at the hearing, when the escapement reaches over 500,000, the State will set up a "personal use" fishery at the mouth of the Kenai which allows for fishing for personal consumptive use with a dip net. That fishery has only been opened two out of the last five years and is a "last priority" as opposed to first priority fishery in that it is only available after all other needs have been met.

this court finds as a matter of law that the defendant was fishing for subsistence use in an area in which the State has not adopted regulations which comply with AS 16.05.251(b).

The only question that remains for this court is whether or not the State, having provided for a personal use (i.e. subsistence use under Madison) fishery on the Kenai, and having given that fishery least priority, can claim that a dip net fishery available to the defendant at the mouth of the Kasilof River, approximately 35 miles from the defendant's home, satisfies the Eluska requirement that the State make "adequate provisions<sup>5</sup> for subsistence (fishing)". This court, in reading Madison and Eluska together, finds that the answer to that question must be in the negative. The Madison court states that AS 16.05.251(b) requires that:

If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations. . . it is the intent of the committee that sports or commercial use be restricted before subsistence use. . . .

Thus it appears to this court that Madison requires that the State permit subsistence use first if it allows sports or commercial use.

This court certainly can take judicial notice of the fact that the Kenai River is one of the most heavily utilized and popular sportfishing rivers in Southcentral Alaska. It is a heavily regulated river, due in part to its popularity. The question the court does not answer today is: If the State had provided for priority personal use or subsistence fishing elsewhere in the region, could it reserve the Kenai River as an exclusive sports fishery?

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<sup>5</sup>The State provided at the hearing, plaintiff's Exhibit 1, which indicated the areas open for subsistence fishing. The court finds that the only adequate subsistence fishery available to the defendant would have been the dip net fishery at Kasilof. The other subsistence fisheries were closed at the time the defendant was fishing or required a substantial financial investment in a motorized skiff and net which clearly would be uneconomic, given this defendant's subsistence claim to only 40 to 50 red salmon per year

It is also clear to this court that, under Madison and Eluska, the State may regulate time, place and manner of subsistence fishing. In this case, if it had provided for a priority subsistence fishery at all in the Kenai River, the State could have restricted the subsistence take below the counting weir to assure adequate monitoring of the resource. The State could have designated the type of gear to be used for subsistence fishing and in doing so could have prevented snagging, and it could regulate the time during which fishing could be done as well as the bag limits to be taken by subsistence fishers.

In the absence of a regulation giving subsistence fishing in the Kenai River or its tributaries priority, the defendant prevails and his motion for prejudgment acquittal is GRANTED.

DATED at Anchorage, Alaska, this 17 day of January, 1986.

*Elaine M. Andrews*

ELAINE M. ANDREWS  
District Court Judge

I certify that on 1-20-86  
a copy of the above was mailed to each  
of the following at their addresses of  
record: Dist. Atty. ; D. Skuse  
D. Dawley  
Secretary

...you need  
some help.  
Please help me,  
you know. Don't  
dummy up on  
me..."

— Gilbert Paule

Anchorage Daily News illustration/Dee Boyles

asks a while later,  
about the g-u-n,"  
the word "gun"  
ent effort to foil  
S.

was arrested in  
on Nov. 8 and  
setting up the  
Pfeil, Mackay's

long-time foe and former  
brother-in-law. Pfeil was shot  
Oct. 12 and died of his inju-  
ries a month later.

Paule told police Neil  
Mackay gave him \$10,000 to  
pay for the attack and agreed  
to testify against Mackay and  
three co-defendants. Mackay  
has entered a plea of n +

guilty to a charge of first-  
degree murder.

A millionaire property  
owner and former Anchorage  
lawyer, Mackay now makes  
his home in Honolulu. Paule  
told police he visited Mackay  
there twice in the months  
before the shooting and dis-  
cussed the murder plan with

him in general terms. He said  
Mackay gave him the \$10,000  
on the second trip.

In the hours after his ar-  
rest, Paule agreed to plead  
guilty to attempted murder —  
Pfeil was still alive then —  
and to accept the maximum

See Page A-8, MACKAY

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Snow flurries  
this morning,  
becoming  
partly cloudy  
this after-  
noon. High-  
lows in the  
mid-20s.  
10 mph. Partly  
with low in low

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morning.....12  
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25.....7  
25 (1981)....47  
25 (1947)....34

WEATHER,  
ADVISORY,  
00

# Judge grants subsistence rights on any fresh water fishing stream

By RONNIE CHAPPELL  
Daily News reporter

KENAI — Alaska residents  
are entitled to subsistence  
fish on any fresh water  
stream that supports a sport  
or commercial fishery, Supe-  
rior Court Judge Elaine An-  
drews has ruled.

Under present state law,  
subsistence fishermen would  
have first right to catch fish  
in some of the state's premier  
salmon streams, including the  
Kenai, Anchor and Susitna  
Rivers.

In a January 17 decision,  
Andrews dismissed charges  
against Sterling resident Don-  
ald Skuse who was cited last  
summer for "snagging" six  
red salmon in the Moose Riv-  
er, a tributary of the Kenai.

Snagging — the jerking of  
a large treble-hook through a  
group of schooled fish — is a  
highly efficient "rod and  
reel" technique that has been  
outlawed in Alaska.

When caught, Skuse told an  
undercover Fish and Wildlife  
Protection Officer that he was  
"snagging" for subsistence

purposes.

Skuse prevailed in court,  
Andrews said, because the  
state failed — as required by  
law — to provide him with an  
"adequate" Kenai River sub-  
sistence fishery. If the state  
had provided that fishery, it  
could have regulated its loca-  
tion, time, bag limits and  
means of take, she said.

The state argued that  
Skuse could have satisfied his  
subsistence needs by sport  
fishing on the Kenai River or

See Back Page, JUDGE

# Rare ferrets find a home

## Wyoming town takes endangered critters to heart

By IVER PETERSON  
The New York Times

**M**EETEETSE, Wyo. — Finding a  
federally protected endangered  
animal on one's property is an  
honor that most Western ranch-  
ers would just as soon pass up.

So when Lucille Hogg's dog, Shep,  
dropped the carcass of a black-footed  
ferret on her back porch in 1981 and word  
got out that a colony of one of the rarest  
mammals in North America had somehow  
survived here in Meeteetse, "Pop. 500, El.  
5,797," as the road sign says, the reaction  
was pronounced.

"There was panic," said Rick West-

brook, manager of the 15,000-acre 91  
Ranch on which some of the ferrets were  
subsequently found.

It was not an unusual reaction in the  
West to what Easterners might consider  
good news: that an animal thought to be  
all but extinct was surviving. The panic  
has moderated, thanks in part to state  
officials' shrewd management of the poli-  
tics of animal preservation.

In a region where everyone makes a  
living from the land one way or another,  
it would be hard not to feel threatened by  
the array of federal and state rules for the  
protection of endangered species that can

See Back Page, JUDGE

- .....Q-1
- .....B-2
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ERY

## Judge

Continued from Page A-1

participating in other subsistence and personal use fisheries available on the Kenai Peninsula.

In the past, subsistence fishing in Cook Inlet has been limited to gillnetting in salt water. The state has also allowed for "personal use" dip net fisheries on the Kasilof and Kenai Rivers.

Andrews' decision means that subsistence fishing must be allowed on every stream in Alaska, said one Fish and Game official who asked not to be identified. "The way I read this, I could go down to the Anchor River between weekends and snag all I want."

The Anchor River is one of the first salmon streams in Alaska to open each summer to sport fishing. The king salmon fishery is so popular and so limited that it is open only three weekends a year.

The decision could also create problems on the Kenai River, where creation of a subsistence fishery will increase competition for a limited number of fish.

In recent years, the river has been the scene of a bitter salmon allocation fight between Anchorage sportsmen and Cook Inlet commercial fishermen. The anglers want to increase the number of king salmon they can catch by decreasing the fishing time given Kenai Peninsula set-netters.

"If this decision had to be rendered, it's good it was rendered while the subsistence question is before the legislature," said Russ Redick, executive director of the Alaska Sportfishing Association. "The idea that every fish stock in every stream has to be open to subsistence is ridiculous. We've got to move on from this. That's why we need a rational decision out of the legislature."

Lawmakers are considering a variety of bills amending the state's 1978 subsistence law. Most would restrict subsistence to rural residents or give the Boards of Fisheries and Game increased authority to restrict subsistence users.

Gov. Bill Sheffield tried to win passage of a subsistence bill last year after the Alaska Supreme Court ruled that urban Alaskans with no traditional dependence on fish



Lucille Hogg: Discovery of the ferrets has done town "a lot of good."

## n after initial panic

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ground. Overhead poles could provide perches from which hawks and eagles could spot ferrets.

The Pitchfork is credited with nurturing Wyoming's dwindling antelope population back to abundance earlier in the century, and Turnell shares Westbrook's feeling that so far the ferret protection program has not hurt his ranch or his community.

But an abiding suspicion of outsiders and particularly of Eastern environmentalists lingers here. "The environmentalists look at us like all we care about is running cattle and getting all we can get," Westbrook said. "The truth of the matter is that most ranchers care about the land and understand that wildlife is part of it."

money for a special drunk patrol.

"We get hundreds of these type of call every month," he said. "We always respond... this is the first time an attempt has been made to link it to someone's death."

Rhodes said the department is "concerned about the incident" but plans no special review of Officer Brechon's actions. "He acted professionally and competent," said Rhodes.

□ Associated Press reporter Paul

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Hein  
01/23/86

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 16.05.251(a)(6) is amended to read:

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

13 \* Sec. 2. AS 16.05.251(a)(7) is amended to read:

14 (7) protecting, maintaining, and improving watersheds  
15 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-  
16 ment, conservation, protection, use, disposal, propagation, and stock-  
17 ing of fish;

18 \* Sec. 3. As 16.05.251(a) is amended by adding new paragraphs to read:

19 (12) designating and regulating special fishing areas,  
20 including personal use areas, trophy management areas, catch-and-  
21 release areas, and children's fishing areas, and designating stocks in  
22 those areas for which special management is appropriate;

23 (13) regulating commercial, sport, subsistence, and personal  
24 use fishing as needed for the conservation, development, and utiliza-  
25 tion of fisheries.

26 \* Sec. 4. AS 16.05.255(a)(7) is amended to read:

27 (7) protecting, maintaining, and improving watersheds  
28 [WATERSHED] and habitats [HABITAT IMPROVEMENT]. and for the manage-  
29 ment, conservation, protection, use, disposal, propagation, and

1 stocking of game;

2 \* Sec. 5. AS 16.05.255(a) is amended by adding a new paragraph to read:

3 (10) regulating sport hunts and subsistence hunts as needed  
4 for the conservation, development, and utilization of game and nongame  
5 species.

6 \* Sec. 6. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION <sup>OF</sup> FISH AND GAME.

8 (a) The Board of Fisheries and the Board of Game shall

9 (1) identify the fish stocks and game populations, or  
10 portions of stocks and populations, that are important to the subsis-  
11 tence economy and culture of the area in which they are located; and

12 (2) estimate the amount of fish and game needed from each  
13 stock or population identified under (1) of this subsection to provide  
14 a reasonable opportunity to satisfy the subsistence uses of those  
15 stocks and populations.

16 (b) Consistent with sustained yield, sound management, and the  
17 maintenance of healthy fish stocks and game populations, the boards  
18 shall determine

19 (1) whether there exists a harvestable surplus of the  
20 stocks and populations identified under (a)(1) of this section; and

21 (2) how much of the surplus is needed to provide a reason-  
22 able opportunity to satisfy the subsistence uses of those stocks and  
23 populations.

24 (c) The boards shall adopt subsistence fishing and subsistence  
25 hunting regulations for each stock and population for which a harvest-  
26 able surplus is determined to exist under this section. If a surplus  
27 is not sufficient to accommodate consumptive uses of the surplus, but  
28 is sufficient to accommodate subsistence uses of the surplus, then  
29 subsistence uses shall be accorded a preference over other consumptive

1 uses, and the regulations shall provide a reasonable opportunity to  
2 satisfy subsistence uses of the surplus, and may provide opportunities  
3 to satisfy other consumptive uses of the surplus. If it is necessary  
4 to restrict subsistence fishing or subsistence hunting in order to  
5 assure sound management or protect future subsistence fishing or  
6 subsistence hunting, then the preference shall be limited, and the  
7 boards shall distinguish among subsistence users, by applying the  
8 following criteria:

9 (1) customary and direct dependence on the fish stock or  
10 game population as the mainstay of livelihood;

11 (2) local residency; and

12 (3) availability of alternative resources.

13 (d) The boards may adopt regulations consistent with this sec-  
14 tion that authorize taking for nonsubsistence uses a stock or popula-  
15 tion identified under (a)(1) of this section.

16 (e) A board may provide that a fish stock or game population not  
17 identified under (a)(1) of this section may not be taken under subsis-  
18 tence regulations, but may be taken under other regulations. The  
19 Board of Fisheries may shift subsistence use of a fish stock to a  
20 suitable prior or contemporaneous stock of the same or a different  
21 species that is readily available. The Board of Game may shift sub-  
22 sistence use of a game population to another population if a suitable  
23 alternative population of the same or a different species is readily  
24 available.

25 (f) The subsistence preference shall provide a reasonable oppor-  
26 tunity for subsistence fishing or subsistence hunting. The preference  
27 may vary, may be graduated, and may be balanced against the degree of  
28 economic and traditional dependence on the resource in question. If  
29 dependence on the resource in question is high, the preference shall

1 provide a full opportunity for satisfaction of subsistence uses, in-  
2 cluding potentially exclusive subsistence use when a resource shortage  
3 occurs. If dependence on the resource in question is low, the prefer-  
4 ence may provide a lesser opportunity for satisfaction of subsistence  
5 uses and need not be potentially exclusive. As the degree of depen-  
6 dence varies, the degree of the preference may vary accordingly.

7 (g) Takings authorized under this section are subject to reason-  
8 able regulation of seasons, catch or bag limits, and methods and  
9 means.

10 (h) The implementation of a subsistence preference under this  
11 section does not affect the eligibility of active duty military  
12 personnel, while stationed in the state for more than 30 days, to  
13 fish, hunt, or trap on military installations and facilities in the  
14 state under 10 U.S.C. 2671.

15 (i) The commissioner of fish and game shall adopt regulations  
16 defining "maintenance of healthy populations of fish and game," "sound  
17 management principles," and "sustained yield."

18 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries  
19 and the Board of Game, acting jointly, shall establish by regulation  
20 an appeal procedure for persons aggrieved by the adoption or repeal of  
21 a fishing or hunting regulation. An aggrieved person must exhaust  
22 administrative remedies before bringing a legal action challenging the  
23 adoption or repeal of the regulation.

24 \* Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

25 (c) The Board of Fisheries and the Board of Game may adopt  
26 regulations providing for the issuance and expiration of subsistence  
27 permits for areas, villages, communities, groups, or individuals as  
28 needed for authorizing, regulating and monitoring the subsistence  
29 harvest of fish and game. The boards shall adopt these regulations

1 when the subsistence preference requires a reduction in the harvest of  
2 a fish stock or game population by nonsubsistence users, or when  
3 special seasons, bag limits or other provisions are necessary, to  
4 provide a reasonable opportunity for subsistence takings. A permit  
5 program need not be established in any particular area of the state or  
6 for any particular fish stock or game population unless circumstances  
7 warrant.

8 (d) With the assistance of the department, the boards shall  
9 provide reasonable public notice of the following information to users  
10 of a group, community, village, or area subsistence permit:

11 (1) the terms of the permit;

12 (2) the fish stocks and game populations authorized to be  
13 taken under the permit;

14 (3) the subsistence use areas covered by the permit.

15 (e) The Board of Fisheries and the Board of Game may use village  
16 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska  
17 Native Claims Settlement Act) and community, postal, media, or other  
18 services appropriate for providing notice under (d) of this section.

19 (f) The commissioner shall administer subsistence permit pro-  
20 grams that may be established. The commissioner may appoint state  
21 employees or other persons to take applications and issue permits and  
22 tags. A person appointed by the commissioner may administer oaths for  
23 permit and tag applications. The commissioner or the appropriate  
24 board may require a report from persons using a permit concerning the  
25 time, manner, and place of taking fish and game, the kinds and quanti-  
26 ty taken, and other information helpful in administering the fish and  
27 game resources of the state. Except for state employees, a person  
28 appointed by the commissioner under this subsection is entitled to  
29 compensation of \$50 per year or \$1 for each permit or tag issued,

1           whichever is greater.

2       \* Sec. 8. AS 16.05.940(22) is amended to read:

3           (22) "subsistence fishing" means the nonwasteful taking of,  
4       fishing for, or possession of fish, shellfish, or other fisheries  
5       resources by a resident domiciled in a rural area of the state for  
6       subsistence uses with gill net, seine, fish wheel, long line, or other  
7       means defined by the Board of Fisheries;

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

9           (23) "subsistence uses" means the nonwasteful, noncommer-  
10       cial, customary and traditional uses [IN ALASKA] of wild, renewable  
11       resources by a resident domiciled in a rural area of the state for  
12       direct personal or family consumption as food, shelter, fuel, cloth-  
13       ing, tools, or transportation, for the making and selling of handi-  
14       craft articles out of nonedible by-products of fish and wildlife  
15       resources taken for personal or family consumption, and for the cus-  
16       tomary trade, barter, or sharing for personal or family consumption;  
17       in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons  
18       related by blood, marriage, or adoption, and a [ANY] person living in  
19       [WITHIN] the household on a permanent basis;

20       \* Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

21           (28) "fish stock" means a species, subspecies, geographic  
22       grouping or other category of fish manageable as a unit that, at any  
23       time during any season of the year, may be found in water subject to  
24       state jurisdiction;

25           (29) "game population" means a group of game animals of a  
26       single species or subgroup whose members in whole or in part use, or  
27       may be found at any time or during any season of the year in or on,  
28       land, air, or water subject to state jurisdiction;

29           (30) "nonwasteful" means making reasonable use of a

1 harvested fish or game animal or most of its parts;

2 (31) "rural area" means a community or area of the state in  
3 which the taking of fish or game for personal or family consumption is  
4 a significant characteristic of the economy of the community or area;

5 (32) "subsistence hunting" means the nonwasteful taking of  
6 game animals by a resident domiciled in a rural area of the state for  
7 subsistence uses by means defined by the Board of Game.

8 \* Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

9 \* Sec. 12. This Act takes effect June 1, 1986.

1/15/85

# WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

\* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.

(b) Maintaining healthy populations of fish and wildlife is important to the state because <sup>Resources are held in common by all citizens.</sup> [healthy populations] provide opportunities for a subsistence life style, for trophy and other sport hunting and fishing, for commercial fishing and for wildlife viewing.]

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive [needs;] uses.

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, [and information] needed to maintain sustained yield, healthy populations, and <sup>Reasonable</sup> opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 \* Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the  
4 Board of Game regarding the adoption, amendment, and repeal of regu-  
5 lations;

6 (15) provide information to the Board of Fisheries and the  
7 Board of Game as needed to carry out their statutory duties.

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

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

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

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the  
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,  
19 escapement levels, and sex, [AND] size, age, and other limitations  
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including  
22 gear, tackle, and vessels, employed in the pursuit, capture, and  
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-  
25 ments for means used in pursuit, capture, possession, tagging, and  
26 transport of fish;

27 (7) [(6)] classifying as commercial fish, sport fish,  
28 personal use fish, subsistence fish, indigenous fish, exotic fish,  
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of  
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)  
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,  
5 conservation, protection, use, disposal, propagation, and stocking of  
6 fish; watershed and habitat regulations may be adopted under this  
7 paragraph only after consultation with the Department of Natural  
8 Resources;

9 (9) [(8)] investigating and determining the extent and  
10 effect of disease, predation, and competition among fish in the state,  
11 and exercising control measures considered necessary to the resources  
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,  
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their  
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods  
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which  
19 the issuance of fishing licenses, permits and registrations and the  
20 transfer of permits and registrations between registration areas is  
21 allowed; however, this paragraph does not apply to permits issued or  
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,  
24 including personal use areas, trophy management areas, catch-and-  
25 release areas, and children's fishing areas, and designating stocks in  
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of  
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-  
2 tion of fisheries.

3 \* Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-  
5 able in accordance with the Administrative Procedure Act (AS 44.62)  
6 for

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

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the  
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, marking,  
14 and identification requirements employed in the pursuit, capture,  
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and  
17 sex, age, [AND] size, and other limitations on, and game population  
18 goals pertaining to, the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big  
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to  
22 control predation and competition among game in the state;

23 *new authority* (8) protecting, maintaining, and improving watersheds [(7)  
24 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-  
25 ment, conservation, protection, use, disposal, propagation and stock-  
26 ing of game; watershed and habitat regulations may be adopted under  
27 this paragraph only after consultation with the Department of Natural  
28 Resources;

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the  
3 issuance of game licenses, permits and registrations and the transfer  
4 of permits and registrations between registration areas and game  
5 management units or subunits is allowed;

6 (11) regulating sport hunts and subsistence hunts as needed  
7 for the conservation, development, and utilization of game and nongame  
8 species.

9 \* Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL  
11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of  
12 Fisheries and the Board of Game shall:

13 (1) <sup>Determine</sup> [estimate] the amount of fish and game needed to provide  
14 a reasonable opportunity [for [rural residents]] to continue to engage in  
15 a customary and traditional subsistence way of life; determinations  
16 shall be based on research, analysis, comments, and recommendations of  
17 the department;

18 (2) identify [and designate] the areas used for subsistence  
19 harvest, and areas formerly used for subsistence harvest, according to  
20 fish stock and game population, and according to subsistence user  
21 population; the zones may overlap where different groups of subsis-  
22 tence users have customarily and traditionally used the same areas;

23 (3) identify fish stocks and game populations that custom-  
24 arily and traditionally have been used by, and are important [to, rural  
25 residents] for subsistence use. (Redundant)

26 (b) The Board of Fisheries or the Board of Game shall assess the  
27 biological status of, respectively, the important subsistence fish  
28 stocks and the important subsistence game populations in the use  
29 zones, and shall determine whether a surplus may be harvested during

## Department Responsibility - Use of the Boards.

a regulatory year consistent with the sustained yield principle, sound management principles, and the maintenance of healthy fish stocks, and other wildlife populations.

(c) After identifying the important subsistence fish stocks or game populations, the appropriate board shall determine the amount of harvestable surplus of the stock or population that will provide a reasonable opportunity to engage in customary and traditional subsistence uses of the stocks or populations.

(d) The Board of Fisheries and the Board of Game shall adopt regulations, in ~~accordance with~~ *Agree - Review* the Administrative Procedure Act (AS 44.62), for subsistence fishing and subsistence hunting unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on a sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. The regulations may be the same as, different from, or in addition to regulations governing other consumptive uses of the stocks or populations.

(e) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting is accorded a preference over other consumptive takings and uses of fish, game, or other wildlife. Whenever it is necessary, after reasonably regulating seasons, bag or catch limits, and means and methods, to further restrict subsistence fishing or subsistence hunting to protect the continued health and viability of a fish stock or game population, assure sound management, assure the maintenance of a fish stock or game population on a sustained-yield basis, or protect continued future subsistence fishing or subsistence hunting, the preference may be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or  
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that  
6 authorize taking for nonsubsistence uses a stock or population iden-  
7 tified as important for subsistence use, to the extent that the non-  
8 subsistence uses do not jeopardize or interfere with sound management  
9 principles, sustained yield, [the maintenance of healthy populations,]  
10 or the <sup>desirable</sup> opportunity for taking these resources for subsistence uses  
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that  
13 establish criteria that the boards must consider when defining and  
14 identifying customary and traditional subsistence uses and customary  
15 and traditional subsistence use areas. The regulations may include,  
16 but need not be limited to, the following criteria:

17 <sup>define?</sup> (1) long-term, consistent patterns of use recurring in <sup>define?</sup>  
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest  
20 characterized by efficiency and economy of effort and cost, and condi-  
21 tioned by local circumstances;

22 <sup>define?</sup> (3) the consistent harvest and use of fish or game that is  
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge  
25 of fishing or hunting skills, values, and lore from generation to  
26 generation;

27 (5) use patterns in which the hunting or fishing effort or  
28 the products of that effort are distributed or shared among others  
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include  
2 significant commercial enterprises; an area may include specific  
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence  
5 purposes on a wide diversity of the fish and game resources of an area  
6 and provide substantial economic, cultural, social, and nutritional  
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all  
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular  
11 fish stock or game population is not a customary and traditional  
12 subsistence resource or not a significant source of subsistence use  
13 and (2) subsistence is not the <sup>highest determined</sup> ~~best~~ use of that fish stock or game  
14 population, the board may provide that the fish stock or game popu-  
15 lation may not be taken under subsistence regulations, but may be  
16 taken under other regulations. The Board of Fisheries may shift  
17 subsistence use of a fish stock to a suitable prior or contempora-  
18 neous stock of the same or a different species. The Board of Game may  
19 shift subsistence use of a game population to another population if a  
20 suitable alternative population of the same or a different species is  
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-  
23 tunity for subsistence fishing or subsistence hunting. The preference  
24 may vary, may be graduated, and may be balanced against the degree of  
25 economic and traditional dependence on the resource in question. If  
26 dependence on the resource in question is high, the preference shall  
27 provide a full opportunity for satisfaction of subsistence needs,  
28 including potentially exclusive subsistence use when a resource  
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As  
2 the degree of dependence varies, the degree of the preference may vary  
3 accordingly.

4 Sec. 16.05.259. JUDICIAL <sup>Review</sup> APPEAL OF REGULATORY ACTIONS. An  
5 aggrieved person must exhaust all administrative remedies before  
6 bringing a legal action challenging the adoption or repeal of a regu-  
7 lation of the Board of Fisheries or the Board of Game.

8 \* Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt  
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-  
11 viding for the issuance and expiration of subsistence fishing permits,  
12 subsistence hunting permits, and combination subsistence fishing and  
13 hunting permits as needed for authorizing, regulating and monitoring  
14 the subsistence harvest of fish and game. The boards shall adopt  
15 these regulations when the subsistence preference requires a reduction  
16 in the harvest of a fish stock or game population by nonsubsistence  
17 users, or when special seasons, bag limits or other provisions are  
18 necessary, to provide a reasonable opportunity for subsistence tak-  
19 ings. A permit program need not be established in any particular area  
20 of the state or for any particular fish stock or game population  
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-  
23 grams that may be established. The commissioner may appoint and  
24 authorize compensation of persons to take applications and issue  
25 permits and tags, and may require reports, as provided for licenses  
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-  
28 ments of state or federal law for licenses, permits, stamps, tags, or  
29 seals.

1 \* Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,  
3 fishing for, or possession of fish, shellfish, or other fisheries  
4 resources in accordance with regulations adopted under AS 16.05.258  
5 for subsistence uses with gill net, seine, fish wheel, long line, or  
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and  
9 traditional uses by residents of rural subsistence areas in Alaska of  
10 wild, renewable resources for direct personal or family consumption as  
11 food, shelter, fuel, clothing, tools, or transportation, for the  
12 making and selling of handicraft articles out of nonedible by-products  
13 of fish and wildlife resources taken for personal or family consump-  
14 tion, and for the customary trade, barter, or sharing for personal or  
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"  
16 means [ALL] persons related by blood, marriage, or adoption, and a  
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 \* Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic  
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a  
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-  
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state  
26 residents domiciled in rural areas of the state that the Board of  
27 Fisheries and the Board of Game determine, under AS 16.05.258, are  
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 game animals by a person qualified under AS 16.05.258 for subsistence  
2 uses by methods and means defined by the Board of Game.

3 \* Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

4 \* Sec. 11. This Act takes effect June 1, 1986.  
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1/15/85

# WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

\* Section 1. FINDINGS AND INTENT. [(a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.]

(b) Maintaining healthy populations of fish and <sup>game</sup> [wildlife] is important to the state because all resources are held in common by all Alaska's citizens and [healthy populations] provide opportunities for [a] subsistence life styles, for [trophy and other] sport hunting and fishing, for commercial fishing and for wildlife viewing.

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive <sup>uses</sup> [needs];

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, and information needed to maintain sustained yield, healthy populations, and <sup>reasonable</sup> opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 \* Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the  
4 Board of Game regarding the adoption, amendment, and repeal of regu-  
5 lations;

6 (15) provide information to the Board of Fisheries and the  
7 Board of Game as needed to carry out their statutory duties.

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

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

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

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the  
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,  
19 escapement levels, and sex, [AND] size, age, and other limitations  
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including  
22 gear, tackle, and vessels, employed in the pursuit, capture, and  
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-  
25 ments for means used in pursuit, capture, possession, tagging, and  
26 transport of fish; *fish in categories necessary for management such as*

27 (7) [(6)] classifying *as* commercial fish, sport fish,  
28 personal use fish, subsistence fish, [indigenous fish, exotic fish,  
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of  
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)  
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,  
5 conservation, protection, use, disposal, propagation, and stocking of  
6 fish; watershed and habitat regulations may be adopted under this  
7 paragraph only after consultation with the Department of Natural  
8 Resources;]

9 (9) [(8)] investigating and determining the extent and  
10 effect of disease, predation, and competition among fish in the state,  
11 and exercising control measures considered necessary to the resources  
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,  
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their  
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods  
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which  
19 the issuance of fishing licenses, permits and registrations and the  
20 transfer of permits and registrations between registration areas is  
21 allowed; however, this paragraph does not apply to permits issued or  
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,  
24 including personal use areas, trophy management areas, catch-and-  
25 release areas, and children's fishing areas, and designating stocks in  
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of  
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-  
2 tion of fisheries.

3 \* Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-  
5 able in accordance with the Administrative Procedure Act (AS 44.62)  
6 for

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

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the  
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, [marking,  
14 and identification requirements] employed in the pursuit, capture,  
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and  
17 sex, age, [AND] size, and other limitations on, [and game population  
18 goals pertaining to,] the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big  
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to  
22 control predation and competition among game in the state;

23 (8) [protecting, maintaining, and improving watersheds [(7)  
24 WATERSHED] and [habitats] [HABITAT IMPROVEMENT], and [for the] manage-  
25 ment, conservation, protection, use, disposal, propagation and stock-  
26 ing of game; [watershed and habitat regulations may be adopted under  
27 this paragraph only after consultation with the Department of Natural  
28 Resources;]

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the  
 3 issuance of game licenses, permits and registrations and the transfer  
 4 of permits and registrations between registration areas and game  
 5 management units or subunits is allowed;  
 6 (11) establishing a procedure for administrative appeal of board & decisions.  
 7 (12) regulating sport hunts and subsistence hunts as needed  
 8 for the conservation, development, and utilization of game and nongame  
 9 species.

\* Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL  
 11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of  
 12 Fisheries and the Board of Game shall:

13 [(1) estimate the amount of fish and game needed to provide  
 14 a reasonable opportunity for [rural residents to continue to engage in  
 15 a] customary and traditional subsistence [way of life] determinations  
 16 shall be based on research, analysis, comments, and recommendations of  
 17 the department;]

18 (2) identify and designate [the] areas used for subsistence  
 19 harvest [and areas formerly used for subsistence harvest, according to  
 20 fish stock and game population, and according to subsistence user  
 21 population; the zones may overlap where different groups of subsis-  
 22 tence users have customarily and traditionally used the same areas;]

23 (3) identify fish stocks and game populations that custom-  
 24 arily and traditionally have been used by, and are important to, rural  
 25 residents for subsistence use.

26 (b) The Board of Fisheries or the Board of Game shall assess the  
 27 biological status of, respectively, the important subsistence fish  
 28 stocks and the important subsistence game populations in the use  
 29 zones, and shall determine whether a surplus may be harvested during

1 a regulatory year consistent with the sustained yield principle, sound  
2 management principles, and the maintenance of healthy fish stocks, and  
3 other wildlife populations.

4 (c) After identifying the important subsistence fish stocks or  
5 game populations, the appropriate board shall determine the amount of  
6 harvestable surplus of the stock or population that will provide a  
7 reasonable opportunity to engage in customary and traditional subsis-  
8 tence uses of the stocks or populations.

9 (d) The Board of Fisheries and the Board of Game shall adopt  
10 regulations, in accordance with the Administrative Procedure Act  
11 (AS 44.62), for subsistence fishing and subsistence hunting unless  
12 adoption of the regulations could jeopardize or interfere with the  
13 maintenance of fish stocks, game populations, or other wildlife popu-  
14 lations on a sustained-yield basis, or could be inconsistent with  
15 sound management principles or with the maintenance of healthy fish  
16 stocks, game populations, or other wildlife populations. The regula-  
17 tions may be the same as, different from, or in addition to regula-  
18 tions governing other consumptive uses of the stocks or populations.

19 (e) Except as otherwise provided in this chapter or in other  
20 state or federal laws, subsistence fishing and subsistence hunting is  
21 accorded a preference over other consumptive takings and uses of fish,  
22 game, ~~[or other wildlife]~~. Whenever it is necessary, after reasonably  
23 regulating seasons, bag or catch limits, and means and methods, to  
24 further restrict subsistence fishing or subsistence hunting to protect  
25 the continued health and viability of a fish stock or game population,  
26 assure sound management, assure the maintenance of a fish stock or  
27 game population on a sustained-yield basis, or protect continued  
28 future subsistence fishing or subsistence hunting, the preference may  
29 be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or  
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that  
6 authorize taking for nonsubsistence uses a stock or population iden-  
7 tified as important for subsistence use, to the extent that the non-  
8 subsistence uses do not jeopardize or interfere with sound management  
9 principles, sustained yield, the maintenance of healthy populations,  
10 or the opportunity for taking these resources for subsistence uses  
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that  
13 establish criteria that the boards must consider when defining and  
14 identifying customary and traditional subsistence uses and customary  
15 and traditional subsistence use areas. The regulations may include,  
16 but need not be limited to, the following criteria:

17 (1) long-term, consistent patterns of use recurring in  
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest  
20 characterized by efficiency and economy of effort and cost, and condi-  
21 tioned by local circumstances;

22 (3) the consistent harvest and use of fish or game that is  
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge  
25 of fishing or hunting skills, values, and lore from generation to  
26 generation;

27 (5) use patterns in which the hunting or fishing effort or  
28 the products of that effort are distributed or shared among others  
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include  
2 significant commercial enterprises; an area may include specific  
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence  
5 purposes on a wide diversity of the fish and game resources of an area  
6 and provide substantial economic, cultural, social, and nutritional  
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all  
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular  
11 fish stock or game population is not a customary and traditional  
12 subsistence resource or not a significant source of subsistence use  
13 and (2) subsistence is not the best use of that fish stock or game  
14 population, the board may provide that the fish stock or game popu-  
15 lation may not be taken under subsistence regulations, but may be  
16 taken under other regulations. The Board of Fisheries may shift  
17 subsistence use of a fish stock to a suitable prior or contempora-  
18 neous stock of the same or a different species. The Board of Game may  
19 shift subsistence use of a game population to another population if a  
20 suitable alternative population of the same or a different species is  
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-  
23 tunity for subsistence fishing or subsistence hunting. The preference  
24 may vary, may be graduated, and may be balanced against the degree of  
25 economic and traditional dependence on the resource in question. If  
26 dependence on the resource in question is high, the preference shall  
27 provide a full opportunity for satisfaction of subsistence needs,  
28 including potentially exclusive subsistence use when a resource  
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As  
2 the degree of dependence varies, the degree of the preference may vary  
3 accordingly.

4 Sec. 16.05.259. JUDICIAL APPEAL OF REGULATORY ACTIONS. An  
5 aggrieved person must exhaust all administrative remedies before  
6 bringing a legal action challenging the adoption or repeal of a regu-  
7 lation of the Board of Fisheries or the Board of Game.

8 \* Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt  
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-  
11 viding for the issuance and expiration of subsistence fishing permits,  
12 subsistence hunting permits, and combination subsistence fishing and  
13 hunting permits as needed for authorizing, regulating and monitoring  
14 the subsistence harvest of fish and game. The boards shall adopt  
15 these regulations when the subsistence preference requires a reduction  
16 in the harvest of a fish stock or game population by nonsubsistence  
17 users, or when special seasons, bag limits or other provisions are  
18 necessary, to provide a reasonable opportunity for subsistence tak-  
19 ings. A permit program need not be established in any particular area  
20 of the state or for any particular fish stock or game population  
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-  
23 grams that may be established. The commissioner may appoint and  
24 authorize compensation of persons to take applications and issue  
25 permits and tags, and may require reports, as provided for licenses  
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-  
28 ments of state or federal law for licenses, permits, stamps, tags, or  
29 seals.

1 \* Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,  
3 fishing for, or possession of fish, shellfish, or other fisheries  
4 resources in accordance with regulations adopted under AS 16.05.258  
5 for subsistence uses with gill net, seine, fish wheel, long line, or  
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and  
9 traditional uses by residents of rural subsistence areas in Alaska of  
10 wild, renewable resources for direct personal or family consumption as  
11 food, shelter, fuel, clothing, tools, or transportation, for the  
12 making and selling of handicraft articles out of nonedible by-products  
13 of fish and wildlife resources taken for personal or family consump-  
14 tion, and for the customary trade, barter, or sharing for personal or  
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"  
16 means [ALL] persons related by blood, marriage, or adoption, and a  
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 \* Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic  
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a  
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-  
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state  
26 residents domiciled in rural areas of the state that the Board of  
27 Fisheries and the Board of Game determine, under AS 16.05.258, are  
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 or hunting fox in accordance with regulations adopted  
 2 game animals ~~[by a person qualified]~~ under AS 16.05.258 for subsistence  
 3 uses by methods and means defined by the Board of Game.

4 \* Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

5 \* Sec. 11. This Act takes effect June 1, 1986.

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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2

SENATE BILL NO.

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-  
7 ing for an effective date."

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

9 *Section* \* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and  
10 wildlife is more likely to be achieved if the management of fish and wild-  
11 life, including allocation among different uses, is done on a biological  
12 basis, rather than on the basis of land ownership.

13 (b) Maintaining healthy populations of fish and wildlife is important  
14 to the state because healthy populations provide opportunities for a sub-  
15 sistence life style, for trophy and other sport hunting and fishing, for  
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it  
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,  
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be  
22 accommodated without harming the resource, there be a reasonable preference  
23 for subsistence use of fish stocks and game populations that are important  
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the  
26 authority, flexibility, and information needed to maintain sustained yield,  
27 healthy populations, and opportunities for subsistence, sport, commercial  
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

1. authority to establish subsistence permit programs.

*Consider  
Refer to  
Revenue,  
Sho. In.*

2 \* Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND  
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in  
6 future studies, and conduct studies to gather information, including  
7 data from subsistence users, the public, other divisions of the de-  
8 partment, and other state or federal agencies, on all aspects of the  
9 role of subsistence hunting and fishing in the lives of the residents  
10 of the state; while analyzing and studying, the division shall, as  
11 clearly as possible, identify

12 (A) the species, stocks, and populations of fish and  
13 wildlife used for customary and traditional subsistence in each  
14 area of the state;

15 (B) the degree of significance that these species,  
16 stocks, and populations have to customary and traditional subsis-  
17 tence in each area of the state;

18 (C) the customary and traditional subsistence uses of  
19 fish and wildlife by species, stock, and population in each area  
20 of the state;

21 (D) the areas used for subsistence harvest, and areas  
22 formerly used for subsistence harvest, according to

23 (i) fish stock and wildlife population; and

24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-  
26 tats, whether or not within the state, used by fish and wildlife  
27 that are subject to subsistence uses; in identifying these habi-  
28 tats, the division shall seek the assistance of other divisions  
29 of the department, and other state or federal agencies having

1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each  
3 species, stock, or population has on the maintenance of healthy  
4 populations, on the sustained yield of these species, stocks, or  
5 populations, on other subsistence users, and on sport or commer-  
6 cial users whether or not in the state; in identifying these  
7 effects, the division shall seek the assistance of other divi-  
8 sions of the department and other state or federal agencies  
9 having jurisdiction over fish and wildlife;

10 (2) quantify or estimate the amount, nutritional value, and  
11 extent of dependence on food acquired through subsistence hunting and  
12 fishing according to

13 (A) species, stock, or population of fish and wild-  
14 life;

15 (B) population of customary and traditional subsis-  
16 tence users; and

17 (C) subsistence use area;

18 (3) make information gathered available to the public,  
19 appropriate agencies, and other organized bodies;

20 (4) assist the department, the Board of Fisheries, and the  
21 Board of Game in determining what uses of fish and game, as well as  
22 which users and what methods, should be termed customary and tradi-  
23 tional subsistence uses, users, and methods;

24 (5) evaluate the impact of state and federal laws and  
25 regulations on subsistence hunting and fishing and, when corrective  
26 action is indicated, make recommendations to the department;

27 (6) make recommendations to the Board of Game and the Board  
28 of Fisheries regarding adoption, amendment and repeal of regulatio  
29 affecting subsistence hunting and fishing; in making recommendatic

1 the division shall consult with appropriate divisions of the depart-  
2 ment and, when appropriate, with other state or federal agencies  
3 having jurisdiction over fish and wildlife; recommendations must be  
4 approved by the commissioner;

5 (7) participate with other divisions of the department and  
6 with other departments of state and federal government in the prepara-  
7 tion of statewide, [AND] regional, or area management plans affecting  
8 fish and wildlife and their habitats so that those plans recognize  
9 [REORGANIZE] and incorporate the needs of subsistence users of fish  
10 and game.

11 \* Sec. 3. AS 16.05.251(a) is amended to read:

12 -11 (a) The Board of Fisheries may adopt regulations it considers  
13 advisable in accordance with the Administrative Procedure Act (AS 44.-  
14 ✓ 62) for

15 (1) setting apart ~~[and designating]~~ fish reserve areas,  
16 refuges and sanctuaries in the waters of the state over which it has  
17 jurisdiction, subject to the approval of the legislature;

18 ~~[(2) managing fish reserve areas, refuges and sanctuaries;]~~

19 (3) establishing open and closed seasons and areas for the  
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,  
22 escapement levels, and sex, [AND] size, age, and other limitations  
23 pertaining to [ON] the taking of fish ~~[in waters subject to state~~  
24 ✓ ~~jurisdiction;]~~

25 (5) [(4)] establishing the means and methods, ~~such as gear~~  
26 ~~tackle and vessels~~ employed in the pursuit, capture, and transport o  
27 ✓ fish;

28 (6) [(5)] establishing marking and identification require  
29 ments for] means used in pursuit, capture, ~~[possession, tagging,]~~ ar

1 ✓ transport of fish,

2 (7) [(6)] classifying as commercial fish, sport fish,  
-1 3 personal use fish, subsistence fish, [indigenous fish, exotic fish,  
4 LH nonindigenous fish, hatchery fish.] or predators or other categories  
-2 5 essential for regulatory purposes; a fish stock may be the subject of  
6 ✓ more than one classification;

7 (8) protecting, maintaining and improving watersheds [(7)  
8 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,  
9 conservation, protection, use, disposal, propagation, and stocking of  
10 fish; [watershed and habitat regulations may be adopted under this  
11 LH paragraph only after consultation with the Department of Natural  
-2 12 ✓ Resources;]

13 (9) [(8)] investigating and determining the extent and  
14 effect of disease, predation, and competition among fish in the state,  
15 and exercising control measures considered necessary to the resources  
16 ✓ of the state;

17 (10) [(9)] prohibiting and regulating the live capture,  
18 possession, transport, or release of (NATIVE OR EXOTIC) fish or their  
-1 19 ✓ eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods  
21 ✓ of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which  
23 the issuance of fishing licenses, permits and registrations and the  
24 transfer of permits and registrations between registration areas is  
25 allowed; however, this paragraph does not apply to permits issued or  
26 ✓ transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,  
28 including personal use areas, trophy management areas, catch-and-  
29 release areas, and children's fishing areas, and designating species <sup>species</sup>

1 in those areas for which special management is appropriate;

2 ~~(14) establishing a procedure for administrative appeal of~~  
3 ~~board decisions, and~~

4 (15) regulating commercial, sport, subsistence, and personal  
5 use fishing as needed for the conservation, development and utiliza-  
6 tion of fisheries.

7 \* Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-  
9 able in accordance with the Administrative Procedure Act (AS 44.62)  
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the  
16 taking of game;

17 (4) <sup>regulating</sup> [(3)] establishing the means <sup>SET</sup> [AND] methods, marking,  
18 and identification requirements employed in the pursuit, capture,  
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and  
21 sex, age, [AND] size, and other limitations on, and game population  
22 goals pertaining to, the taking of game;

23 (6) [(5)] classifying game as game birds, song birds, big  
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to  
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)  
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-  
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted  
2 under this paragraph only after consultation with the Department of  
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-  
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the  
7 issuance of game licenses, permits and registrations and the transfer  
8 of permits and registrations between registration areas and game  
9 management units or subunits is allowed;

10 ~~(11) regulating sport hunts and subsistence hunts as needed~~  
11 for the conservation, development, and utilization of game and nongame  
12 species.

13 \* Sec. 5. AS 16.05 is amended by adding new sections to read:

14 Sec. 16.05.258. [METHODS OF] [DETERMINING CUSTOMARY AND TRADITIONAL]  
15 SUBSISTENCE [USE] AND ALLOCATING FISH AND GAME. (a) The Board of  
16 Fisheries and the Board of Game, [acting jointly], shall:

17 (1) estimate <sup>for each subsistence area,</sup> the amount of fish and game needed to provide  
18 a reasonable opportunity for [rural residents to continue to engage in  
19 a] customary and traditional subsistence [way of life]; determinations  
20 shall be based on research, analysis, comments, and recommendations of  
21 the <sup>department</sup> ~~subsistence division;~~

22 (1) [identify and] designate [the] areas used for subsistence  
23 harvest, [and areas formerly used for subsistence harvest], according to  
24 LH fish stock and game population, and [according to] subsistence user  
25 population; the zones may overlap where different groups of subsis-  
26 tence users [have customarily and traditionally] used [the] same areas;

27 (2) identify, <sup>for each subsistence area, the</sup> fish stocks and game populations that custom-  
28 arily and traditionally have been used by, and are important to, rural  
29 residents for subsistence use.

1  
2 ~~(b) The Board of Fisheries or the Board of Game shall assess the~~  
3 biological status of ~~respectively~~ the ~~important subsistence fish~~  
4 stocks and ~~the important subsistence game~~ populations in ~~the use~~  
5 ~~areas,~~ <sup>zones,</sup> and shall determine whether a surplus may be harvested during  
6 a regulatory year consistent with the sustained yield principle, sound  
7 management principles, and the maintenance of healthy fish stocks,  
8 game populations, or other wildlife populations.

9 (b) After identifying the important subsistence fish stocks or  
10 game populations, the appropriate board shall <sup>The appropriate board shall</sup> determine the amount of  
11 harvestable surplus, <sup>of any,</sup> of the stock or population that will ~~[provide a]~~  
12 reasonable <sup>satisfy</sup> opportunity to engage in ~~[customary and traditional]~~ subsis-  
13 tence uses <sup>needs</sup> [of the stocks or populations].

14 (c) ~~The Board of Fisheries and the Board of Game shall adopt~~  
15 regulations, in accordance with the Administrative Procedure Act  
16 (AS 44.62), <sup>that will provide</sup> for subsistence fishing and subsistence hunting <sup>of the important stocks and pop.</sup> unless  
17 adoption of the regulations could jeopardize or interfere with the  
18 maintenance of fish stocks, game populations, or other wildlife popu-  
19 lations on a sustained-yield basis, or could be inconsistent with  
20 sound management principles or with the maintenance of healthy fish  
21 stocks, game populations, or other wildlife populations. The  
22 regulations may be the same as, different from, or in addition to  
23 regulations governing other consumptive uses of the stocks or  
24 populations.

25 (d) Except as otherwise provided in this chapter or in other  
26 state or federal laws, subsistence fishing and subsistence hunting ~~[on~~  
27 land or water subject to state jurisdiction] is accorded a subsistence  
28 preference over other consumptive takings and uses of fish, game, or  
29 other wildlife. This preference is not a preference over  
nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially  
2 unrelated to customary and traditional subsistence needs, or over the  
3 taking, capture, tagging, or transport of fish, game, or other  
4 wildlife for biological or management purposes, or over nonconsumptive  
5 uses of game in areas, such as national parks, that are open only to  
6 subsistence hunting. Whenever it is necessary to restrict subsistence  
7 fishing or subsistence hunting ~~on land or water subject to State~~  
8 ~~jurisdiction~~ to protect the continued health and viability of a fish  
9 stock, game population, or other wildlife population, assure sound  
10 management, assure the maintenance of a fish stock or game population  
11 on a sustained-yield basis, or protect continued future subsistence  
12 fishing or subsistence hunting, the preference may be limited by  
13 applying the following criteria:

- 14 (1) customary and direct dependence on the fish stock or  
15 game population as the mainstay of livelihood;  
16 (2) local residency; and  
17 (3) availability of alternative resources.

18 <sup>e</sup>  
19 (f) Each board may adopt regulations under this chapter that  
20 authorize taking for nonsubsistence uses a stock or population iden-  
21 tified as important for subsistence use, to the extent that the non-  
22 subsistence uses do not jeopardize or interfere with sound management  
23 principles, sustained yield, the maintenance of healthy populations  
24 or the <sup>reasonable</sup> opportunity for taking these resources for ~~customary and~~  
25 ~~traditional~~ subsistence uses, ~~under this chapter.~~

26 ~~(g) The boards, acting jointly, shall adopt regulations that~~  
27 ~~establish criteria that the boards must consider when defining or~~  
28 ~~identifying customary and traditional subsistence uses and, if appro-~~  
29 ~~priate, customary and traditional subsistence use areas. The regula-~~  
30 ~~tions may include, but need not be limited to, the following criteri-~~

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

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

5 (3) a use pattern consisting of methods and means of har-  
6 vest characterized by efficiency and economy of effort and cost, and  
7 conditioned by local circumstances;

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

10 (5) the means of handling, preparing, preserving, and  
11 storing fish or game that has been used traditionally by past genera-  
12 tions, but not excluding appropriate recent technological advances;

13 (6) a use pattern that includes the handing down of knowl-  
14 edge of fishing or hunting skills, values, and lore from generation to  
15 generation;

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

24 (8) a use pattern that includes reliance for subsistence  
25 purposes on a wide diversity of the fish and game resources of an area  
26 and provides substantial economic, cultural, social, and nutritional  
27 elements of the subsistence user's life; and

28 (f)(1) <sup>(f) the extent of such economy in the area.</sup> If the appropriate board determines that (1) a particular  
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a <sup>low extent level and important</sup> ~~significant~~ source of subsistence use  
2 and (2) subsistence is not the best use of that fish stock or game  
3 population, the board may provide that the fish stock or game popu-  
4 lation may not be taken under subsistence regulations, but may be  
5 taken under other regulations. The Board of Fisheries may shift  
6 subsistence use of a fish stock to a suitable prior or contempora-  
7 neous stock of the same or a different species <sup>that is readily available.</sup> The Board of Game may  
8 shift subsistence use of a game population to another population if a  
9 suitable alternative population of the same or a different species is  
10 <sup>readily</sup> available.

11 (d) Each board may adopt regulations, under the Administrative  
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for  
13 subsistence uses by persons who have not qualified previously for  
14 subsistence takings. *The authority in this subsection shall not be used to prohibit*  
*subsistence use by children or family members of subsistence users.*

15 (h) The subsistence preference shall provide a reasonable oppor-  
16 tunity for subsistence fishing or subsistence hunting. The preference  
17 may vary, may be graduated, and may be balanced against the degree of  
18 economic and traditional dependence on the resource in question. If  
19 dependence on the resource in question is high, the preference shall  
20 provide a full opportunity for satisfaction of subsistence needs,  
21 including potentially exclusive subsistence use when a resource  
22 shortage occurs. If dependence on the resource in question is low,  
23 the preference may be less and need not be potentially exclusive. As  
24 the degree of dependence varies, the degree of the preference may vary  
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries  
27 and the Board of Game, acting jointly, shall establish an appeal  
28 procedure for persons aggrieved by the adoption or repeal of a fishing  
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the  
2 adoption or repeal of the regulation.

3 \* Sec. ~~4~~<sup>4</sup>. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt  
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-  
6 viding for the issuance and expiration of subsistence ~~fishings~~ permits/  
7 ~~to areas, villages, communities, groups, or individuals~~  
8 ~~subsistence hunting permits, and combination subsistence fishing and~~  
9 ~~hunting permits~~ as needed for authorizing, regulating and monitoring  
10 the subsistence harvest of fish and game. The boards shall adopt  
11 these regulations when the subsistence preference requires a reduction  
12 in the harvest of a fish stock or game population by nonsubsistence  
13 users, or when special seasons, bag limits or other provisions are  
14 necessary, to provide a reasonable opportunity for subsistence tak-  
15 ings. A permit program need not be established in any particular area  
16 of the state or for any particular fish stock or game population  
17 unless circumstances warrant.

18 ~~(d) Each board may establish programs to issue subsistence~~  
19 ~~permits to individuals, groups, communities, villages, or areas.~~

20 ~~Nothing in this section shall be construed as altering other require-~~  
21 ~~ments of state or federal law for licenses, permits, stamps, tags, or~~  
22 ~~seals.~~

23 (d) With the assistance of the department, the boards shall  
24 provide reasonable public notice of the following information to users  
25 of a group, community, village, or area subsistence permit:

26 (1) the terms of the permit;

27 (2) the fish stocks and game populations authorized to be  
28 taken under the permit;

29 (3) the subsistence use areas covered by the permit.

30 ← (f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska  
2 Native Claims Settlement Act) and community, postal, media, or other  
3 services appropriate for providing notice, ~~under (e) of this section.~~

4 (g) The commissioner shall administer subsistence permit pro-  
5 grams that may be established. The commissioner may appoint state  
6 employees or other persons to take applications and issue permits and  
7 tags. A person appointed by the commissioner, may administer oaths  
8 for permit and tag applications. The commissioner or the appropriate  
9 board may require a report from persons using a permit concerning the  
10 time, manner, and place of taking fish and game, the kinds and  
11 quantity taken, and other information helpful in administering the  
12 fish and game resources of the state. Except for state employees, a  
13 person appointed by the commissioner under this subsection is entitled  
14 to compensation of \$50 per year or \$1 for each permit or tag issued,  
15 whichever is greater.

16 ~~(h) A person who holds a limited entry permit may not engage in~~  
17 ~~subsistence fishing for a species of fish authorized under the limited~~  
18 ~~entry permit unless the person proves to the satisfaction of the~~  
19 ~~commissioner's appointee that~~

20 (1) the limited entry permit was not and will not be used  
21 during the season in which the subsistence fishing occurred or is to  
22 occur;

23 (2) the species of fish was not taken under the limited  
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry  
26 permit was used or kept for personal or family consumption, the person  
27 needs additional subsistence fish of the same species for reasons  
28 approved by the department.

29 \*Sec. 7. AS 16.05.930(e) is amended to read:

1           (e) ~~This chapter does not prevent the traditional trade or~~  
2 ~~barter of fish and game taken by subsistence hunting or subsistence~~  
3 ~~fishing, except that the commissioner may prohibit the trade or barter~~  
4 ~~of subsistence-taken fish and game by regulation, emergency order, or~~  
5 ~~otherwise, if a determination on the record is made that the trade or~~  
6 ~~barter is resulting in a waste of the resource, damage to fish stocks~~  
7 ~~or game populations, or circumvention of fish or game management~~  
8 ~~programs.~~

9 \* Sec. ~~5~~<sup>8</sup>. AS 16.05.940(22) is amended to read:

10           (22) "subsistence fishing" means the nonwasteful taking of,  
11 fishing for, or possession of fish, shellfish, or other fisheries  
12 resources ~~by a person qualified under AS 16.05.258~~ for subsistence  
13 uses with gill net, seine, fish wheel, long line, or other methods and  
14 means defined by the Board of Fisheries;

15 \* Sec. ~~6~~<sup>9</sup>. AS 16.05.940(23) is amended to read:

16           (23) "subsistence uses" means the nonwasteful, customary and  
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable  
18 resources for direct personal or family consumption as food, shelter,  
19 fuel, clothing, tools, or transportation, for the making and selling  
20 of handicraft articles out of nonedible by products of fish and wild-  
21 life resources taken for personal or family consumption, and for the  
22 customary trade, barter, or sharing for personal or family consump-  
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]  
24 persons related by blood, marriage, or adoption, and a [ANY] person  
25 living in [WITHIN] the household on a permanent basis;

26 \* Sec. ~~7~~<sup>10</sup>. AS 16.05.940 is amended by adding new paragraphs to read:

27           (28) "fish stock" means a species, subspecies, geographic  
28 grouping or other category of fish manageable as a unit that, at any  
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a  
3 single species or subgroup whose members in whole or in part use, or  
4 may be found at any time or during any season of the year in or on,  
5 land, air, or water subject to state jurisdiction;

6 (30) "nonwasteful" means making reasonable use of a har-  
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident  
9 engaged in customary and traditional subsistence <sup>use</sup> as a way of life;

10 (32) "subsistence hunting" means the nonwasteful taking of  
11 game animals by a person qualified under AS 16.05.258 for subsistence  
12 uses by methods and means defined by the Board of Game.

13 \* Sec. ~~8~~. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are re-  
14 pealed.

15 \* Sec. ~~4~~. This Act takes effect June 1, 1986.  
16

r5  
and who is domiciled outside the road connected  
area and outside of a community with a population  
of 7,000 or more, as determined by the Alaska  
Department of Community and Regional Affairs;

current

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-  
7 ing for an effective date."

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

9 \* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and  
10 wildlife is more likely to be achieved if the management of fish and wild-  
11 life, including allocation among different uses, is done on a biological  
12 basis, rather than on the basis of land ownership.

13 (b) Maintaining healthy populations of fish and wildlife is important  
14 to the state because healthy populations provide opportunities for a sub-  
15 sistence life style, for trophy and other sport hunting and fishing, for  
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it  
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,  
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be  
22 accommodated without harming the resource, there be a reasonable preference  
23 for subsistence use of fish stocks and game populations that are important  
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the  
26 authority, flexibility, and information needed to maintain sustained yield,  
27 healthy populations, and opportunities for subsistence, sport, commercial  
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 \* Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND  
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in  
6 future studies, and conduct studies to gather information, including  
7 data from subsistence users, the public, other divisions of the de-  
8 partment, and other state or federal agencies, on all aspects of the  
9 role of subsistence hunting and fishing in the lives of the residents  
10 of the state; while analyzing and studying, the division shall, as  
11 clearly as possible, identify

12 (A) the species, stocks, and populations of fish and  
13 wildlife used for customary and traditional subsistence in each  
14 area of the state;

15 (B) the degree of significance that these species,  
16 stocks, and populations have to customary and traditional subsis-  
17 tence in each area of the state;

18 (C) the customary and traditional subsistence uses of  
19 fish and wildlife by species, stock, and population in each area  
20 of the state;

21 (D) the areas used for subsistence harvest, and areas  
22 formerly used for subsistence harvest, according to

23 (i) fish stock and wildlife population; and

24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-  
26 tats, whether or not within the state, used by fish and wildlife  
27 that are subject to subsistence uses; in identifying these habi-  
28 tats, the division shall seek the assistance of other divisions  
29 of the department, and other state or federal agencies having

1           jurisdiction over fish and wildlife;

2                   (F) the effect, if any, that subsistence use of each  
3           species, stock, or population has on the maintenance of healthy  
4           populations, on the sustained yield of these species, stocks, or  
5           populations, on other subsistence users, and on sport or commer-  
6           cial users whether or not in the state; in identifying these  
7           effects, the division shall seek the assistance of other divi-  
8           sions of the department and other state or federal agencies  
9           having jurisdiction over fish and wildlife;

10           (2) quantify or estimate the amount, nutritional value, and  
11           extent of dependence on food acquired through subsistence hunting and  
12           fishing according to

13                   (A) species, stock, or population of fish and wild-  
14           life;

15                   (B) population of customary and traditional subsis-  
16           tence users; and

17                   (C) subsistence use area;

18           (3) make information gathered available to the public,  
19           appropriate agencies, and other organized bodies;

20           (4) assist the department, the Board of Fisheries, and the  
21           Board of Game in determining what uses of fish and game, as well as  
22           which users and what methods, should be termed customary and tradi-  
23           tional subsistence uses, users, and methods;

24           (5) evaluate the impact of state and federal laws and  
25           regulations on subsistence hunting and fishing and, when corrective  
26           action is indicated, make recommendations to the department;

27           (6) make recommendations to the Board of Game and the Board  
28           of Fisheries regarding adoption, amendment and repeal of regulation  
29           affecting subsistence hunting and fishing; in making recommendatio

1 the division shall consult with appropriate divisions of the depart-  
2 ment and, when appropriate, with other state or federal agencies  
3 having jurisdiction over fish and wildlife; recommendations must be  
4 approved by the commissioner;

5 (7) participate with other divisions of the department and  
6 with other departments of state and federal government in the prepara-  
7 tion of statewide, [AND] regional, or area management plans affecting  
8 fish and wildlife and their habitats so that those plans recognize  
9 [REORGANIZE] and incorporate the needs of subsistence users of fish  
10 and game.

11 \* Sec. 3. AS 16.05.251(a) is amended to read:

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

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

18 (2) managing fish reserve areas, refuges and sanctuaries;

19 (3) establishing open and closed seasons and areas for the  
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,  
22 escapement levels, and sex, [AND] size, age, and other limitations  
23 pertaining to [ON] the taking of fish [in waters subject to state  
24 jurisdiction];

25 (5) [(4)] establishing the means and methods, <sup>?</sup> [such as gear,  
26 tackle and vessels] employed in the pursuit, capture, and transport o:  
27 fish;

28 *no change* (6) [(5)] ~~Establishing~~ <sup>Regulating</sup> establishing marking and identification require  
29 ments for } means used in pursuit, capture, ~~[possession, tagging]~~ an

1 transport of fish;

2 (7) [(6)] classifying as commercial fish, sport fish,  
3 personal use fish, subsistence fish, [indigenous fish, exotic fish,  
4 nonindigenous fish, hatchery fish,] or predators or other categories  
5 essential for regulatory purposes; [a fish stock may be the subject of  
6 more than one classification;]

7 (8) protecting, maintaining and improving watersheds [(7)  
8 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,  
9 conservation, protection, use, disposal, propagation, and stocking of  
10 fish; [watershed and habitat regulations may be adopted under this  
11 paragraph only after consultation with the Department of Natural  
12 Resources;]

13 (9) [(8)] investigating and determining the extent and  
14 effect of disease, predation, and competition among fish in the state,  
15 and exercising control measures considered necessary to the resources  
16 of the state;

17 (10) [(9)] prohibiting and regulating the live capture,  
18 possession, transport, or release of {NATIVE OR EXOTIC} fish or their  
19 eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods  
21 of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which  
23 the issuance of fishing licenses, permits and registrations and the  
24 transfer of permits and registrations between registration areas is  
25 allowed; however, this paragraph does not apply to permits issued or  
26 transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,  
28 including personal use areas, trophy management areas, catch-and-  
29 release areas, and children's fishing areas, and designating [species] <sup>stocks</sup>

1 in those areas for which special management is appropriate;

2 (14) establishing a procedure for administrative appeal of  
3 board decisions; and

4 (14) regulating commercial, sport, subsistence, and personal  
5 use fishing as needed for the conservation, development and utiliza-  
6 tion of fisheries.

7 \* Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-  
9 able in accordance with the Administrative Procedure Act (AS 44.62)  
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the  
16 taking of game;

17 (4) <sup>Regulating</sup> [(3)] [establishing the] means, [AND] methods, [marking,  
18 and identification requirements] employed in the pursuit, capture,  
19 [possession, tagging] and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and  
21 sex, age, [AND] size, and other imitations on, [and game population  
22 goals pertaining to,] the taking, of game;

23 (6) [(5)] classifying game as game birds, song birds, big  
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to  
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)  
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-  
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted  
2 under this paragraph only after consultation with the Department of  
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-  
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the  
7 issuance of game licenses, permits and registrations and the transfer  
8 of permits and registrations between registration areas and game  
9 management units or subunits is allowed;

10 ~~(11) establishing a procedure for administrative appeal of board decisions~~  
11 (11) regulating sport hunts and subsistence hunts as needed  
12 for the conservation, development, and utilization of game and nongame  
13 species.

14 \* Sec. 5. AS 16.05 is amended by adding new sections to read:

15 Sec. 16.05.258. [METHODS OF] DETERMINING CUSTOMARY AND TRADITIONAL  
16 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of  
17 Fisheries and the Board of Game, [acting jointly,] shall:

18 (a) estimate <sup>by area of the state,</sup> the amount of fish and game needed to provide  
19 a reasonable opportunity for [rural residents to continue to engage in  
20 a] customary and traditional subsistence <sup>by area</sup> [way of life]; determinations  
21 shall be based on research, analysis, comments, and recommendations of  
22 the [subsistence division];

23 (1) [identify and] designate [the] areas used for subsistence  
24 harvest [and areas formerly used for subsistence harvest,] according to  
25 fish stock and game population, and [according to] subsistence user  
26 population; the zones may overlap where different groups of subsis-  
27 tence users [have customarily and traditionally] use[d] the same areas;

28 (2) identify fish stocks and game populations that custom-  
29 arily and traditionally have been used by, and are important to, rural  
residents for subsistence use.

1           (b) The Board of Fisheries or the Board of Game shall assess the  
2 biological status of, respectively, the important subsistence fish  
3 stocks and the important subsistence game populations in the use  
4 zones, and shall determine whether a surplus may be harvested during  
5 a regulatory year consistent with the sustained yield principle, sound  
6 management principles, and the maintenance of healthy fish stocks,  
7 game populations, or other wildlife populations.

8           (c) After identifying the important subsistence fish stocks or  
9 game populations, the appropriate board shall determine the amount of  
10 harvestable surplus of the stock or population that will provide a  
11 reasonable opportunity to engage in customary and traditional subsis-  
12 tence uses of the stocks or populations.

13           (d) The Board of Fisheries and the Board of Game shall adopt  
14 regulations, in accordance with the Administrative Procedure Act  
15 (AS 44.62), for subsistence fishing and subsistence hunting unless  
16 adoption of the regulations could jeopardize or interfere with the  
17 maintenance of fish stocks, game populations, or other wildlife popu-  
18 lations on a sustained-yield basis, or could be inconsistent with  
19 sound management principles or with the maintenance of healthy fish  
20 stocks, game populations, or other wildlife populations. The  
21 regulations may be the same as, different from, or in addition to  
22 regulations governing other consumptive uses of the stocks or  
23 populations.

24           (e) Except as otherwise provided in this chapter or in other  
25 state or federal laws, subsistence fishing and subsistence hunting on  
26 land or water subject to state jurisdiction is accorded a subsistence  
27 preference over other consumptive takings and uses of fish, game, or  
28 other wildlife. This preference is not a preference over  
29 nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially  
2 unrelated to customary and traditional subsistence needs, or over the  
3 taking, capture, tagging, or transport of fish, game, or other  
4 wildlife for biological or management purposes, or over nonconsumptive  
5 uses of game in areas, such as national parks, that are open only to  
6 subsistence hunting. Whenever it is necessary to restrict subsistence  
7 fishing or subsistence hunting on land or water subject to state  
8 jurisdiction to protect the continued health and viability of a fish  
9 stock, game population, or other wildlife population, assure sound  
10 management, assure the maintenance of a fish stock or game population  
11 on a sustained-yield basis, or protect continued future subsistence  
12 fishing or subsistence hunting, the preference may be limited by  
13 applying the following criteria:

14 (1) customary and direct dependence on the fish stock or  
15 game population as the mainstay of livelihood;

16 (2) local residency; and

17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that  
19 authorize taking for nonsubsistence uses a stock or population iden-  
20 tified as important for subsistence use, to the extent that the non-  
21 subsistence uses do not jeopardize or interfere with sound management  
22 principles, sustained yield, the maintenance of healthy populations,  
23 or the opportunity for taking these resources for customary and  
24 traditional subsistence uses under this chapter.

25 (g) The boards, acting jointly, shall adopt regulations that  
26 establish criteria that the boards must consider when defining and  
27 identifying customary and traditional subsistence uses and, if appro-  
28 priate, customary and traditional subsistence use areas. The regula-  
29 tions may include, but need not be limited to, the following criteria:

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

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

5           (3) a use pattern consisting of methods and means of har-  
6 vest characterized by efficiency and economy of effort and cost, and  
7 conditioned by local circumstances;

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

10           (5) the means of handling, preparing, preserving, and  
11 storing fish or game that has been used traditionally by past genera-  
12 tions, but not excluding appropriate recent technological advances;

13           (6) a use pattern that includes the handing down of knowl-  
14 edge of fishing or hunting skills, values, and lore from generation to  
15 generation;

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

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

28           (h) If the appropriate board determines that (1) a particular  
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a significant source of subsistence use  
2 and (2) subsistence is not the best use of that fish stock or game  
3 population, the board may provide that the fish stock or game popu-  
4 lation may not be taken under subsistence regulations, but may be  
5 taken under other regulations. The Board of Fisheries may shift  
6 subsistence use of a fish stock to a suitable prior or contempora-  
7 neous stock of the same or a different species. The Board of Game may  
8 shift subsistence use of a game population to another population if a  
9 suitable alternative population of the same or a different species is  
10 available.

11 (i) Each board may adopt regulations, under the Administrative  
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for  
13 subsistence uses by persons who have not qualified previously for  
14 subsistence takings.

15 (j) The subsistence preference shall provide a reasonable oppor-  
16 tunity for subsistence fishing or subsistence hunting. The preference  
17 may vary, may be graduated, and may be balanced against the degree of  
18 economic and traditional dependence on the resource in question. If  
19 dependence on the resource in question is high, the preference shall  
20 provide a full opportunity for satisfaction of subsistence needs,  
21 including potentially exclusive subsistence use when a resource  
22 shortage occurs. If dependence on the resource in question is low,  
23 the preference may be less and need not be potentially exclusive. As  
24 the degree of dependence varies, the degree of the preference may vary  
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries  
27 and the Board of Game, acting jointly, shall establish an appeal  
28 procedure for persons aggrieved by the adoption or repeal of a fishing  
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the  
2 adoption or repeal of the regulation.

3 \* Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt  
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-  
6 viding for the issuance and expiration of subsistence fishing permits,  
7 subsistence hunting permits, and combination subsistence fishing and  
8 hunting permits as needed for authorizing, regulating and monitoring  
9 the subsistence harvest of fish and game. The boards shall adopt  
10 these regulations when the subsistence preference requires a reduction  
11 in the harvest of a fish stock or game population by nonsubsistence  
12 users, or when special seasons, bag limits or other provisions are  
13 necessary, to provide a reasonable opportunity for subsistence tak-  
14 ings. A permit program need not be established in any particular area  
15 of the state or for any particular fish stock or game population  
16 unless circumstances warrant.

17 (d) Each board may establish programs to issue subsistence  
18 permits to individuals, groups, communities, villages, or areas.  
19 Nothing in this section shall be construed as altering other require-  
20 ments of state or federal law for licenses, permits, stamps, tags, or  
21 seals.

22 (e) With the assistance of the department, the boards shall  
23 provide reasonable public notice of the following information to users  
24 of a group, community, village, or area subsistence permit:

25 (1) the terms of the permit;

26 (2) the fish stocks and game populations authorized to be  
27 taken under the permit;

28 (3) the subsistence use areas covered by the permit.

29 (f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska  
2 Native Claims Settlement Act) and community, postal, media, or other  
3 services appropriate for providing notice under (e) of this section.

4 (g) The commissioner shall administer subsistence permit pro-  
5 grams that may be established. The commissioner may appoint state  
6 employees or other persons to take applications and issue permits and  
7 tags. A person appointed by the commissioner, may administer oaths  
8 for permit and tag applications. The commissioner or the appropriate  
9 board may require a report from persons using a permit concerning the  
10 time, manner, and place of taking fish and game, the kinds and  
11 quantity taken, and other information helpful in administering the  
12 fish and game resources of the state. Except for state employees, a  
13 person appointed by the commissioner under this subsection is entitled  
14 to compensation of \$50 per year or \$1 for each permit or tag issued,  
15 whichever is greater.

16 (h) A person who holds a limited entry permit may not engage in  
17 subsistence fishing for a species of fish authorized under the limited  
18 entry permit unless the person proves to the satisfaction of the  
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used  
21 during the season in which the subsistence fishing occurred or is to  
22 occur;

23 (2) the species of fish was not taken under the limited  
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry  
26 permit was used or kept for personal or family consumption, the person  
27 needs additional subsistence fish of the same species for reasons  
28 approved by the department.

29 \* Sec. 7. AS 16.05.930(e) is amended to read:

1 (e) This chapter does not prevent the traditional trade or  
2 barter of fish and game taken by subsistence hunting or subsistence  
3 fishing, except that the commissioner may prohibit the trade or barter  
4 of subsistence-taken fish and game by regulation, emergency order, or  
5 otherwise, if a determination on the record is made that the trade or  
6 barter is resulting in a waste of the resource, damage to fish stocks  
7 or game populations, or circumvention of fish or game management  
8 programs.

9 \* Sec. 8. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the nonwasteful taking of,  
11 fishing for, or possession of fish, shellfish, or other fisheries  
12 resources by a person qualified under AS 16.05.258 for subsistence  
13 uses with gill net, seine, fish wheel, long line, or other methods and  
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and  
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable  
18 resources for direct personal or family consumption as food, shelter,  
19 fuel, clothing, tools, or transportation, for the making and selling  
20 of handicraft articles out of nonedible by-products of fish and wild-  
21 life resources taken for personal or family consumption, and for the  
22 customary trade, barter, or sharing for personal or family consump-  
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]  
24 persons related by blood, marriage, or adoption, and a [ANY] person  
25 living in [WITHIN] the household on a permanent basis;

26 \* Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

27 (28) "fish stock" means a species, subspecies, geographic  
28 grouping or other category of fish manageable as a unit that, at any  
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a  
3 single species or subgroup whose members in whole or in part use, or  
4 may be found at any time or during any season of the year in or on,  
5 land, air, or water subject to state jurisdiction;

6 (30) "nonwasteful" means making reasonable use of a har-  
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident  
9 engaged in customary and traditional subsistence as a way of life;

10 (32) "subsistence hunting" means the nonwasteful taking of  
11 game animals by a person qualified under AS 16.05.258 for subsistence  
12 uses by methods and means defined by the Board of Game.

13 \* Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are re-  
14 pealed.

15 \* Sec. 12. This Act takes effect June 1, 1986.

16

9/25/85

some recognition in findings of devalue-ness of issue - call for fairness.

# DISCUSSION DRAFT

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting."

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

8 \* Section 1. FINDINGS AND INTENT. (a) The legislature finds that

9 (1) hunting and fishing are <sup>economically & culturally</sup> important to residents of many  
10 small, remote areas communities in the state as a principal means of obtaining  
11 food; *and sustaining a subsistence life style and culture.*

12 (2) the Congress, in enacting the Alaska National Interest Lands  
13 Conservation Act, intended to ensure, in their words, "the continuation of  
14 the opportunity for subsistence uses by rural residents of Alaska" who are  
15 dependent on subsistence uses and for whom "no practical alternative means  
16 are available to replace the food supplies and other items gathered from  
17 fish and wildlife";

18 (3) even in areas communities in which there are practical alternative  
19 means of obtaining food, many residents rely on fishing and hunting to  
20 obtain a substantial portion of their food;

21 (4) the opportunity to fish and hunt is <sup>equally</sup> vital important to  
22 many Alaskans throughout the state, not only for obtaining food, but also  
23 for the experience itself. *recreational and commercial purposes equally related to their lifestyle and culture*

24 (b) It is the intent of the legislature

25 (1) to establish as a principle of resource management by the  
26 Board of Fisheries and the Board of Game a preference for subsistence uses  
27 of fish and game in those areas "where no practical alternative means are  
28 available to replace the food supplies and other items gathered from fish  
29 and wildlife which supply rural residents dependent on subsistence uses";

1 and

2 (2) that the Board of Fisheries and the Board of Game have broad  
3 flexibility to manage the state's fish and game, and that they use this  
4 flexibility to ensure the sustained yield and best use of all fish stocks  
5 and game populations.

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

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

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

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

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

17 (4) establishing the <sup>including appropriate gear boats vessels and other</sup> means and methods <sup>such items</sup> employed in the  
18 pursuit, capture and transport of fish;

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

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

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

27 (8) investigating and determining the extent and effect of  
28 disease, predation, and competition among fish in the state, exercis-  
29 ing control measures considered necessary to the resources of the

1 state;

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

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

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

11 (12) regulating catch-and-release sport fishing for selected  
12 fish stocks;

*(14) with. to add  
Regs. for appeal  
procedure.*

13 (13) regulating commercial, sport, personal use, and subsis-  
14 tence fishing *as otherwise necessary for the conservation, utilization and development*  
15 *of fisheries.*

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

17 (b) The Board of Fisheries shall adopt regulations in accordance  
18 with the Administrative Procedure Act (AS 4..62) for? [PERMITTING] the  
19 taking of fish for subsistence uses unless the board determines, in  
20 accordance with the Administrative Procedure Act, that adoption of the  
21 regulations will jeopardize or interfere with the maintenance of fish  
22 stocks on a sustained-yield basis. Whenever it is necessary to re-  
23 strict the taking of fish to assure the maintenance of fish stocks on  
24 a sustained-yield basis, or to assure the continuation of subsistence  
25 uses of such resources, subsistence use shall be the preferred [PRI-  
26 ORITY] use. If further restriction is necessary, the board shall  
27 establish restrictions and limitations on and priorities for these  
28 consumptive uses on the basis of the following criteria:

*needs  
L20  
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29 (1) customary and direct dependence upon the resource as  
the mainstay of one's livelihood;

- (2) local residency; and
- (3) availability of alternative resources.

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

(d) <sup>All include but not limited to</sup> Subsistence fishing authorized under this section is subject to reasonable regulation of seasons, catch limits, methods, and means.

(e) <sup>to reasonable regulation w/ elim of other uses</sup> If the Board of Fisheries determines that (1) a particular fish stock is not a customary and traditional source or not a significant source of subsistence for rural subsistence area residents and (2) subsistence is not the best use of that fish stock, the board may provide that the fish stock may not be taken under subsistence regulations.

(f) The Board of Fisheries shall establish an appeal procedure for persons aggrieved by the adoption or repeal or enforcement of a subsistence fishing regulation. The aggrieved person must exhaust this administrative remedy before bringing a legal action challenging the regulation.

\* Sec. 5. AS 16.05.255(a) is amended 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 water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;
- (2) establishing open and closed seasons and areas for the taking of game;
- (3) establishing the means and methods employed in the pursuit, capture and transport of game;
- (4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;

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

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

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

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

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

14 (10) regulating sport hunts and subsistence hunts.

15 \* Sec. 6. AS 16.05.255(b) is amended to read:

16 (b) The Board of Game shall adopt regulations in accordance with  
17 the Administrative Procedure Act (AS 44.62) for [PERMITTING] the  
18 taking of game for subsistence uses unless the board determines, in  
19 accordance with the Administrative Procedure Act, that adoption of the  
20 regulations will jeopardize or interfere with the maintenance of game  
21 resources on a sustained-yield basis. Whenever it is necessary to  
22 restrict the taking of game to assure the maintenance of game re-  
23 sources on a sustained-yield basis, or to assure the continuation of  
24 subsistence uses of such resources, subsistence use shall be the  
25 preferred [PRIORITY] use. If further restriction is necessary, the  
26 board shall establish restrictions and limitations on and priorities  
27 for these consumptive uses on the basis of the following criteria:

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

1 (2) local residency; and

2 (3) availability of alternative resources.

3 \* Sec. 7. AS 16.05.255 is amended by adding new subsections to read:

4 (d) Subsistence hunting authorized under this section is subject  
5 to reasonable regulation of seasons, bag limits, methods, and means.

6 (e) If the Board of Game determines that (1) a particular game  
7 species is not a customary and traditional source or not a significant  
8 source of subsistence for rural subsistence area residents and (2)  
9 subsistence is not the best use of that game species, the board may  
10 provide that the game species may not be taken under subsistence  
11 regulations.

12 (f) The Board of Game shall establish an appeal procedure for  
13 persons aggrieved by the adoption or repeal or enforcement of a sub-  
14 sistence hunting regulation. The aggrieved person must exhaust this  
15 administrative remedy before bringing a legal action challenging the  
16 regulation.

17 \* Sec. 8. AS 16.05.330 is amended to read:

18 Sec. 16.05.330. LICENSES AND TAGS REQUIRED. (a) Except as  
19 otherwise permitted in this chapter, a person may not engage in  
20 personal use fishing, subsistence fishing or sport fishing, including  
21 the taking of razor clams; in <sup>sport</sup> hunting, subsistence hunting, trapping,  
22 or fur dealing; in the farming of fish, fur, or game; or in taxidermy,  
23 without having the appropriate license or tag in actual possession.

24 (b) When obtaining the appropriate license or tag in (a) of this  
25 section, an applicant who asserts residency in the state or in a rural  
26 subsistence area shall provide the license vendor with the proof of  
27 residence that the department requires by regulation.

28 \* Sec. 9. AS 16.05.340(a) is amended by adding new paragraphs to read:

29 (18) personal use fishing license . . . . \$10

1 (19) subsistence fishing license . . . . \$10

2 (20) subsistence hunting license . . . . \$12

3 However, the fee for a license under this paragraph or (18) or (19) of  
4 this subsection is 25 cents for an applicant who is the head of a  
5 family or a dependent member of that family, or who is solely self-  
6 supporting, upon proof presented by the applicant that the applicant

7 (A) is obtaining or has obtained assistance during the  
8 preceding six months under any state or federal welfare program  
9 to aid the indigent, or

10 (B) has an annual family gross income of less than  
11 \$5,600 for the year preceding application.

12 \* Sec. 10. AS 16.05.940(23) is amended to read:

13 (23) "subsistence uses" means the customary and traditional  
14 uses [IN ALASKA] of wild, renewable resources by a resident of a rural  
15 subsistence area of the state for direct personal or family noncommer-  
16 cial consumption as food, shelter, fuel, clothing, tools, or transpor-  
17 tation, for the making and selling of handicraft articles out of  
18 nonedible by-products of fish and wildlife resources taken for direct  
19 personal or family noncommercial consumption, and for the customary  
20 trade, barter, or sharing for direct personal or family noncommercial  
21 consumption; for the purposes of this paragraph, "family" means all  
22 persons related by blood, marriage, or adoption, and any person living  
23 within the household on a permanent basis;

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

25 (28) "personal use fishing" means the taking of, or the  
26 attempt to take, finfish, shellfish, or other fishery resources in an  
27 area other than a rural subsistence area by a resident for direct  
28 personal or family consumption, not for sale or barter, by means of  
29 gill net, dip net, seine, pot, fishwheel, long line, or other [similar]

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means defined by the Board of Fisheries; personal use fishing is limited to areas which, in the judgment of the board, can support both personal use fishing and sport fishing because of an abundance of fishery resources in the area;

(29) "resident of a rural subsistence area" means

(A) a person who, for 12 consecutive months, has maintained in a single rural subsistence area a permanent place of abode and a voting residence;

~~(B) a member of the military service who has been stationed, or a dependent of the member who has been living, for the preceding 12 consecutive months in a single rural subsistence area is a resident of that area; or~~

~~(C) an alien who, for 12 consecutive months, has maintained in a single rural subsistence area a permanent place of abode;~~

(30) "rural subsistence area" means a community or area of

delete the community

the state in which there are no practical alternative means for replacing food supplies and other items that are gathered from fish and game by rural residents who are dependent on subsistence resources, as determined by the Board of Fisheries or the Board of Game after considering the following criteria:

(A) lack of cash economy, sources of employment, or stores in the community;

(B) customary and traditional community dependence for sustenance on the consistent harvest and use, in a cost effective manner, of fish or game that is near or reasonably accessible from the community;

(C) remoteness of the community and lack of access by road, regularly scheduled barge, ferry, railroad or airplane

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service; and

(D) community population of less than 500 persons;

(31) "subsistence hunting" means the taking of a game animal by a resident of a rural subsistence area for subsistence uses by means defined by the Board of Game.

\* Sec. 12. AS 16.05.257(h)(1) is repealed.

1/15/85

# WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

\* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.

(b) Maintaining healthy populations of fish and wildlife is important to the state because healthy populations provide opportunities for a subsistence life style, for trophy and other sport hunting and fishing, for commercial fishing and for wildlife viewing.

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive needs;

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, and information needed to maintain sustained yield, healthy populations, and opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 \* Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the  
4 Board of Game regarding the adoption, amendment, and repeal of regu-  
5 lations;

6 (15) provide information to the Board of Fisheries and the  
7 Board of Game as needed to carry out their statutory duties.

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

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

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

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the  
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,  
19 escapement levels, and sex, [AND] size, age, and other limitations  
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including  
22 gear, tackle, and vessels, employed in the pursuit, capture, and  
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-  
25 ments for means used in pursuit, capture, possession, tagging, and  
26 transport of fish;

27 (7) [(6)] classifying as commercial fish, sport fish,  
28 personal use fish, subsistence fish, indigenous fish, exotic fish,  
29 nonindigenous fish, hatchery fish, or predators or other categories