



LAWS OF ALASKA

1992

Second Special Session

Source
CCS HB 601

Chapter No.
1

AN ACT

Relating to the taking of fish and game; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: July 14, 1992

Actual Effective Date: Sections 6 - 8 take effect July 15, 1992; sections 1, 2, 4, and 9 are conditional; sections 3 and 5 take effect October 1, 1995

AN ACT

1 Relating to the taking of fish and game; and providing for an effective date.

2

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

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

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

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

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

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

8 (b) It is the purpose of this Act

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

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

13 (c) It is the intent of the legislature that

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

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

17 * Sec. 2. AS 16.05.258 is repealed and reenacted to read:

18 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND
19 GAME. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board
20 of Game shall identify the fish stocks and game populations, or portions of stocks or
21 populations, that are customarily and traditionally taken or used for subsistence. The
22 commissioner shall provide recommendations to the boards concerning the stock and
23 population identifications. The boards shall make identifications required under this
24 subsection after receipt of the commissioner's recommendations.

25 (b) The appropriate board shall determine whether a portion of a fish stock
26 or game population identified under (a) of this section can be harvested consistent
27 with sustained yield. If a portion of a stock or population can be harvested consistent
28 with sustained yield, the board shall determine the amount of the harvestable portion
29 that is reasonably necessary for subsistence uses and

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

- 1 (A) shall adopt regulations that provide a reasonable
2 opportunity for subsistence uses of those stocks or populations;
- 3 (B) shall adopt regulations that provide for other uses of those
4 stocks or populations, subject to preferences among beneficial uses; and
- 5 (C) may adopt regulations to differentiate among uses;
- 6 (2) if the harvestable portion of the stock or population is sufficient
7 to provide for subsistence uses and some, but not all, other consumptive uses, the
8 appropriate board
- 9 (A) shall adopt regulations that provide a reasonable
10 opportunity for subsistence uses of those stocks or populations;
- 11 (B) may adopt regulations that provide for other consumptive
12 uses of those stocks or populations; and
- 13 (C) shall adopt regulations to differentiate among consumptive
14 uses that provide for a preference for the subsistence uses, if regulations are
15 adopted under (B) of this paragraph;
- 16 (3) if the harvestable portion of the stock or population is sufficient
17 to provide for subsistence uses, but no other consumptive uses, the appropriate board
18 shall
- 19 (A) determine the portion of the stocks or populations that can
20 be harvested consistent with sustained yield; and
- 21 (B) adopt regulations that eliminate other consumptive uses in
22 order to provide a reasonable opportunity for subsistence uses; and
- 23 (4) if the harvestable portion of the stock or population is not
24 sufficient to provide a reasonable opportunity for subsistence uses, the appropriate
25 board shall
- 26 (A) adopt regulations eliminating consumptive uses, other than
27 subsistence uses;
- 28 (B) distinguish among subsistence users, through limitations
29 based on
- 30 (i) the customary and direct dependence on the fish
31 stock or game population by the subsistence user for human

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- 1 consumption as a mainstay of livelihood;
- 2 (ii) the proximity of the domicile of the subsistence
- 3 user to the stock or population; and
- 4 (iii) the ability of the subsistence user to obtain food if
- 5 subsistence use is restricted or eliminated.
- 6 (c) The boards may not permit subsistence hunting or fishing in a
- 7 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
- 8 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
- 9 where dependence upon subsistence is not a principal characteristic of the economy,
- 10 culture, and way of life of the area or community. In determining whether
- 11 dependence upon subsistence is a principal characteristic of the economy, culture, and
- 12 way of life of an area or community under this subsection, the boards shall jointly
- 13 consider the relative importance of subsistence in the context of the totality of the
- 14 following socio-economic characteristics of the area or community:
- 15 (1) the social and economic structure;
- 16 (2) the stability of the economy;
- 17 (3) the extent and the kinds of employment for wages, including full-
- 18 time, part-time, temporary, and seasonal employment;
- 19 (4) the amount and distribution of cash income among those domiciled
- 20 in the area or community;
- 21 (5) the cost and availability of goods and services to those domiciled
- 22 in the area or community;
- 23 (6) the variety of fish and game species used by those domiciled in the
- 24 area or community;
- 25 (7) the seasonal cycle of economic activity;
- 26 (8) the percentage of those domiciled in the area or community
- 27 participating in hunting and fishing activities or using wild fish and game;
- 28 (9) the harvest levels of fish and game by those domiciled in the area
- 29 or community;
- 30 (10) the cultural, social, and economic values associated with the
- 31 taking and use of fish and game;

1 (11) the geographic locations where those domiciled in the area or
2 community hunt and fish;

3 (12) the extent of sharing and exchange of fish and game by those
4 domiciled in the area or community;

5 (13) additional similar factors the boards establish by regulation to be
6 relevant to their determinations under this subsection.

7 (d) Fish stocks and game populations, or portions of fish stocks and game
8 populations not identified under (a) of this section may be taken only under
9 nonsubsistence regulations.

10 (e) Takings and uses of fish and game authorized under this section are
11 subject to regulations regarding open and closed areas, seasons, methods and means,
12 marking and identification requirements, quotas, bag limits, harvest levels, and sex,
13 age, and size limitations. Takings and uses of resources authorized under this section
14 are subject to AS 16.05.831 and AS 16.30.

15 (f) For purposes of this section, "reasonable opportunity" means an
16 opportunity, as determined by the appropriate board, that allows a subsistence user to
17 participate in a subsistence hunt or fishery that provides a normally diligent participant
18 with a reasonable expectation of success of taking of fish or game.

19 * Sec. 3. AS 16.05.258 is repealed and reenacted to read:

20 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND
21 GAME. (a) The Board of Fisheries and the Board of Game shall identify the fish
22 stocks and game populations, or portions of stocks and populations, that are
23 customarily and traditionally used for subsistence in each rural area identified by the
24 boards.

25 (b) The boards shall determine

26 (1) what portion, if any, of the stocks and populations identified under
27 (a) of this section can be harvested consistent with sustained yield; and

28 (2) how much of the harvestable portion is needed to provide a
29 reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

30 (c) The boards shall adopt subsistence fishing and subsistence hunting
31 regulations for each stock and population for which a harvestable portion is

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1 determined to exist under (b)(1) of this section. If the harvestable portion is not
2 sufficient to accommodate all consumptive uses of the stock or population, but is
3 sufficient to accommodate subsistence uses of the stock or population, then
4 nonwasteful subsistence uses shall be accorded a preference over other consumptive
5 uses, and the regulations shall provide a reasonable opportunity to satisfy the
6 subsistence uses. If the harvestable portion is sufficient to accommodate the
7 subsistence uses of the stock or population, then the boards may provide for other
8 consumptive uses of the remainder of the harvestable portion. If it is necessary to
9 restrict subsistence fishing or subsistence hunting in order to assure sustained yield
10 or continue subsistence uses, then the preference shall be limited, and the boards shall
11 distinguish among subsistence users, by applying the following criteria:

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

16 (d) The boards may adopt regulations consistent with this section that
17 authorize taking for nonsubsistence uses a stock or population identified under (a) of
18 this section.

19 (e) Fish stocks and game populations, including bison, or portions of fish
20 stocks and game populations, not identified under (a) of this section may be taken
21 only under nonsubsistence regulations.

22 (f) Takings authorized under this section are subject to reasonable regulation
23 of seasons, catch or bag limits, and methods and means. Takings and uses of
24 resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

25 * Sec. 4. AS 16.05.940 is amended by adding new paragraphs to read:

26 (36) "customary and traditional" means the noncommercial, long-term,
27 and consistent taking of, use of, and reliance upon fish or game in a specific area and
28 the use patterns of that fish or game that have been established over a reasonable
29 period of time taking into consideration the availability of the fish or game;

30 (37) "customary trade" means the limited noncommercial exchange,
31 for minimal amounts of cash, as restricted by the appropriate board, of fish or game

1 resources; the terms of this paragraph do not restrict money sales of furs and
2 furbearers.

3 * Sec. 5. AS 16.05.940(36) and 16.05.940(37) are repealed.

4 * Sec. 6. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, as in effect
5 on the day before the effective date of sec. 2 of this Act, the Board of Fisheries, Board of
6 Game, and Department of Fish and Game shall adopt regulations necessary to implement the
7 provisions of secs. 1, 2, and 4 of this Act.

8 * Sec. 7. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries
9 and the Board of Game expeditiously adopt regulations necessary to implement secs. 1, 2, and
10 4 of this Act.

11 (b) Regulations adopted by the Board of Fisheries, Board of Game, or Department
12 of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of secs. 1,
13 2, and 4 of this Act.

14 (c) Regardless of whether regulations in effect on July 1, 1992, and adopted under
15 the authority of AS 16.05.251, 16.05.255, or 16.05.258, as that statute read on the day before
16 the effective date of sec. 2 of this Act, are inconsistent with the provisions of secs. 1, 2, or
17 4 of this Act, they may continue to be implemented and enforced until the effective date of
18 sec. 2 of this Act.

19 * Sec. 8. TRANSITION. After January 1, 1995, the Board of Fisheries, Board of Game,
20 and Department of Fish and Game may adopt regulations to implement AS 16.05.258, as
21 amended by sec. 3 of this Act. Regulations adopted under this section may not take effect
22 before the effective date of sec. 3 of this Act.

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

27 (b) This review period is intended to allow for further research and to gain experience
28 in implementing this Act and regulations adopted under secs. 6 and 7 of this Act. It is the
29 intent of the legislature that the governor convene a representative group to provide
30 recommendations to the governor before the end of the review period. It is the intent of the
31 legislature that representatives of the legislature and persons with a history in the formulation

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1 of subsistence legislation in this state participate in the group.

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

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

7 * **Sec. 10.** Sections 6 - 8 of this Act take effect immediately under AS 01.10.070(c).

8 * **Sec. 11.** Sections 1, 2, 4, and 9 of this Act take effect on the effective date of
9 regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of
10 Game.

11 * **Sec. 12.** Sections 3 and 5 of this Act take effect October 1, 1995.