

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 7, 2001

2:10 p.m.

MEMBERS PRESENT

Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Beverly Masek, Co-Chair
Representative Joe Green

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 12

Proposing amendments to the Constitution of the State of Alaska relating to hunting, trapping, and fishing.

- MOVED CSHJR 12(RES) OUT OF COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 7(RES)

Supporting reinstatement of the United States Department of the Interior directive exempting the United States Bureau of Land Management in Alaska from the mandatory wilderness review process.

- MOVED CSSJR 7(RES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 72(FIN)

"An Act relating to 'take-a-child-hunting' seasons for big game."

- BILL HEARING RESCHEDULED TO 3/12/01

PREVIOUS ACTION

BILL: HJR 12

SHORT TITLE:CONST. AM: HUNTING, TRAPPING, FISHING

SPONSOR(S) : REPRESENTATIVE(S) DYSON

Jrn-Date	Jrn-Page		Action
02/02/01	0224	(H)	READ THE FIRST TIME - REFERRALS
02/02/01	0224	(H)	RES, JUD, FIN
03/07/01		(H)	RES AT 2:00 PM CAPITOL 124

BILL: SJR 7

SHORT TITLE: REINSTATE WILDERNESS STUDY PROHIBITION

SPONSOR(S) : RESOURCES

Jrn-Date	Jrn-Page		Action
01/24/01	0159	(S)	READ THE FIRST TIME - REFERRALS
01/24/01	0159	(S)	RES
02/12/01		(S)	RES AT 3:30 PM BUTROVICH 205
02/12/01		(S)	Moved CS(RES) Out of Committee MINUTE(RES)
02/13/01	0354	(S)	RES RPT CS 4DP 2NR NEW TITLE
02/13/01	0355	(S)	DP: TORGERSON, PEARCE, TAYLOR, KELLY;
02/13/01	0355	(S)	NR: LINCOLN, ELTON
02/13/01	0355	(S)	FN1: ZERO(S.RES)
02/15/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
02/15/01		(S)	MINUTE(RLS)
02/15/01	0386	(S)	RULES TO CALENDAR 1OR 2/15/01
02/15/01	0388	(S)	READ THE SECOND TIME
02/15/01	0388	(S)	RES CS ADOPTED UNAN CONSENT
02/15/01	0388	(S)	ADVANCED TO THIRD READING UNAN CONSENT
02/15/01	0388	(S)	READ THE THIRD TIME CSSJR 7(RES)
02/15/01	0389	(S)	PASSED Y16 N3 E1
02/15/01	0389	(S)	ELLIS NOTICE OF RECONSIDERATION
02/16/01	0412	(S)	RECON TAKEN UP - IN THIRD READING
02/16/01	0413	(S)	PASSED ON RECONSIDERATION Y14 N1 E5
02/16/01	0413	(S)	CSSJR 7(RES) TRANSMITTED TO (H)
02/19/01	0362	(H)	READ THE FIRST TIME - REFERRALS
02/19/01	0362	(H)	RES

03/07/01

(H)

RES AT 2:00 PM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE FRED DYSON
Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801
POSITION STATEMENT: Spoke as sponsor of HJR 12.

WAYNE REGELIN, Director
Division of Wildlife Conservation
Alaska Department of Fish and Game (ADF&G)
PO Box 25526
Juneau, Alaska 99802-5526
POSITION STATEMENT: Testified on HJR 12.

STEPHEN WHITE, Assistant Attorney General
Natural Resources Section
Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Testified on HJR 12.

JESSE VANDERZANDEN, Executive Director
Alaska Outdoor Council (AOC)
PO Box 73902
Fairbanks, Alaska 99707-3902
POSITION STATEMENT: Spoke in support of HJR 12.

WAYNE WOODS
PO Box 3037
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HJR 12.

JEAN WOODS
PO Box 827
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HJR 12.

NOEL WOODS
PO Box 827
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HJR 12.

ROD ARNO

(No address provided)

Palmer, Alaska 99645

POSITION STATEMENT: Testified in support of HJR 12.

CLIFF JUDKINS

(No address provided)

Wasilla, Alaska 99687

POSITION STATEMENT: Testified in support of HJR 12.

KEN BARBER

(No address provided)

Palmer, Alaska 99645

POSITION STATEMENT: Testified in support of HJR 12.

DARWIN PETERSON, Staff

to Senator Torgerson

State Capital, Room 427

Juneau, Alaska 99801-1182

POSITION STATEMENT: Spoke on behalf of the sponsor of SJR 7.

ACTION NARRATIVE

TAPE 01-18, SIDE A

Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 2:10 p.m. Members present at the call to order were Representatives Scalzi, Fate, McGuire, Chenault, Stevens, and Kapsner. Representative Kerttula arrived as the meeting was in progress.

HJR 12-CONST. AM: HUNTING, TRAPPING, FISHING

CO-CHAIR SCALZI announced that the first order of business was HOUSE JOINT RESOLUTION NO. 12, Proposing amendments to the Constitution of the State of Alaska relating to hunting, trapping, and fishing.

Number 0135

REPRESENTATIVE FRED DYSON, Alaska State Legislature, sponsor of the bill, clarified that the version before the House Resources Standing Committee was the "C version" [the original version of HJR 12, version 22-LS0250\C]. He specified that the only changes [proposed to the constitution] are found on lines 10, 11, and 12. The resolution would put into the constitution the "widespread assumption" that hunting, trapping, and fishing are

part of our heritage, making it clear that [that heritage] is a priority for [Alaskans]. Representative Dyson stated that changing a constitutional law is "one way that we, as a culture and a people, come together to state our values." He surmised that HJR 12 expresses the opinion of the vast majority of Alaskans, and presenting it as a constitutional amendment would keep it secure from the ever-changing popular opinions of the future.

Number 0386

[There was a motion to adopt HJR 12 for discussion purposes, but it was already before the committee.]

WAYNE REGELIN, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), testified on HJR 12. Mr. Regelin stated that ADF&G recognizes the importance of hunting, trapping, and fishing to Alaska's residents, and a substantial amount of his time is spent ensuring that heritage is preserved. Furthermore, ADF&G believes that it is a "big deal" to change the constitution; it is not done easily or frequently, "for good reason." Mr. Regelin said that the current constitution has served ADF&G well, and its concerns with the [proposed] constitutional amendment lie with "the unknown." He cautioned about making the bill about the "right to hunt," explaining that although that specific language is not in the resolution, lawyers might be able to interpret the resolution's use of the word "heritage" as giving people "some new right." Furthermore, Mr. Regelin outlined a possible scenario in which people might say, "It's my ... constitutional right to hunt, you can't close the season," or, "It's my constitutional right to fish, and I'm going to fish when I want to, and sell [the fish]." If those examples were to happen, the burden of proof would fall on the state, because it is a matter of interpreting the state's constitution.

MR. REGELIN expressed concern that the resolution might potentially impact subsistence hunting and Tier II hunts - both of which he said are unique to Alaska - as well as the commercial fishing industry. He suggested that Steve White could address the issue from the standpoint of law. He mentioned having recently spoken to Paul Lenzini, the attorney for the International Association of Fish and Wildlife Agencies, who has worked with "all of the other states that have passed this recently." Paul recommended closely examining the bill, putting it in context with other parts of the constitution, and

making sure that it is not in conflict with "our sustained yield mandates."

MR. REGELIN indicated that ADF&G hasn't taken a position on the resolution, because it wants to "make sure that we don't have unintended consequences and do something that's going to hurt us, rather than help us."

Number 0804

REPRESENTATIVE FATE stated that the resolution looked "clean." He asked Mr. Regelin if he was prepared "to look into the future and tell me what any of those unintended consequences might be." Representative Fate said that the resolution preserves something already in existence; therefore, he asked Mr. Regelin to explain how he could consider its impact to be detrimental.

MR. REGELIN replied that before he talked to the Department of Law and Paul Lenzini, he believed the resolution to be free of problems. However, Mr. Lenzini had cautioned him to beware of using the words "public good" in the constitution, because that would conflict with the sustained yield mandate. Mr. Lenzini also recommended that the phrase "by law" should be "by law and regulation." Mr. Regelin noted that Mr. Lenzini is a reputable lawyer, whose representation in "supreme court" has been sought after by legislators. He mentioned an analysis by the attorney general of Tennessee that outlines why Tennessee did not adopt similar language into its constitution. Tennessee's attorney general wrote that the language of the resolution gave the antihunting groups "a forum to attack us." Mr. Regelin admitted that he didn't know how that would manifest itself, but pointed out that it was enough of a concern for Tennessee's attorney general that he decided not to adopt that resolution. Mr. Regelin stated his concern that "good lawyers can read anything they want to into things."

REPRESENTATIVE FATE posed the following question:

If the unintended consequences for it were to abolish hunting, trapping, and fishing, ... would that, therefore, be under the aegis of your department? Would you condone that, so that all you had to do is just manage the game and not have to worry about any of these other things?

MR. REGELIN answered that he hadn't thought that through. He surmised that ADF&G could be challenged by someone's

"constitutional right to hunt" if ADF&G were to close a season. Subsequently, ADF&G may experience repercussions in development planning because it may impact people's hunting opportunities, which may be perceived as their constitutional right. He said, "I certainly don't ... know how you would manage wildlife in Alaska without hunting as part of the tool. [It's] the basic, fundamental part of wildlife management."

REPRESENTATIVE FATE indicated that there are just as many groups that are antihunting - and that number is growing - as there are hunting groups. He said concern for both groups must be shown.

CO-CHAIR SCALZI said that he thought Mr. Regelin had made it apparent that he supports the concept of the resolution, but wants to defer it to the legal experts to interpret.

MR. REGELIN concurred, adding that ADF&G has been able to meet the challenges of the antihunters thus far.

Number 1239

REPRESENTATIVE KAPSNER asked Mr. Regelin if he thought that Article VIII in the constitution provided "adequate protection and guarantee for hunting, trapping, and fishing."

MR. REGELIN replied that he was not that familiar with that part of the constitution, and was unable to recall the wording, partly due to the fact that he was not feeling well.

REPRESENTATIVE KAPSNER suggested that Steve White could be asked the same question.

REPRESENTATIVE KERTTULA asked Mr. Regelin:

If our constitution put hunting rights above sustained yield rights - which [would be] essentially what, I think, an [unintended] consequence of [the] bill would do - what would the logical problem be with management, then? Wouldn't you have to put the hunting rights above all others, and couldn't you then run into a problem with sustained yield?

MR. REGELIN answered that he thinks "that's a possibility that that may be the way that you could get challenged by people that just want to stop things."

Number 1303

STEPHEN WHITE, Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law, testified on HJR 12. He said he was not present to testify against the [resolution], because the purpose and concept of it is "laudable." Currently, seven states have [a] "constitutional right-to-hunt provision." He mentioned that recently, several states have had similar propositions before them, which has spurred a lot of discussion between attorneys general nationwide. Mr. White said he belongs to a network of attorneys general who discuss current legislative issues. He began a collection of comments a few months ago, anticipating the proposal of a constitutional right to hunt in Alaska.

MR. WHITE stated that the proposal is very similar to ones adopted by North Dakota and Minnesota. He said that it is very beneficial that the resolution does not use the words "right" or "privilege." Conversely, he concurred with Mr. Regelin that the resolution "does raise some implications, some possible unforeseen consequences."

MR. WHITE indicated a letter from Paul Lenzini, dated March [26], 1996, "in which he discusses the then-proposed Minnesota constitutional provision," and raises two legal concerns, which are highlighted on the second page of a handout from Mr. White, included in the committee packet. He outlined the difference between changing a statute versus changing the constitution, saying that there's more finality when a constitution is changed. As Mr. Lenzini wrote, it transfers the "decision-making authority from the legislature to the courts." If this resolution were to become a constitutional amendment, and if it were challenged, the burden of proof would be shifted to the State of Alaska to prove that the "public good" was met.

MR. WHITE explained that unless there is a clear picture of what the "public good" means when the legislation creates this resolution, then it is left to attorneys and litigants to present their interpretation to the court. He offered an example: "'Public good' is my right to hunt, my right to fish, without ... the state either limiting it or ... allocating some of those resources to some other purpose."

MR. WHITE referred to his other handout, also included in the committee packet, which is a report compiled by the International Association of Fish and Wildlife Administrators' legal committee. He directed the House Resources Standing Committee's attention to page five, which lists potential

problems of revising the constitution, including implications if the constitutional amendment fails and implications for state fish and game management if it passes. Mr. White said these problems are listed as "general terminology," and may or may not be relevant to Alaska. [The Department of Law] has not been able to think of all the various ways that people could take the language and interpret it to serve their purposes.

MR. WHITE read the conclusion on page seven of the same handout: "From the perspective of both the resource management agency as well as the hunter, making hunting a constitutional right may fundamentally alter and drastically interfere with wildlife management as currently practiced." He stated that [Alaska's] constitution already provides for sustained yield, "that is, it provides for conservation of the ... fish and game resources as a paramount management philosophy." Mr. White continued:

I don't know whether ... the purpose of the first part of this resolution is to reinforce that, where it says, ... "shall forever be preserved", whether it's talking about conservation in terms of the resource or whether it's talking about ... these particular activities.

Our constitution also allows us to allocate resources between different uses. The boards can allocate hunting and fishing opportunities between commercial and sport and recreational. And within various user groups our constitution already provides the two basic mechanisms - conservation and allocation - upon which our system is based.

Whenever you put something else in the constitution, the courts usually think, "Well, there must be a purpose for this. If the constitution already provides for this, why did the legislature and voters of Alaska decide to add something to it?" So they always look for a new ... purpose. In other words, it's not there just for redundancy; there must be some reason for it. So they will seek to find out what the purpose of these new terms are, and that's where they will begin to, perhaps, find purposes or reasons or implications that might not have been intended.

Number 1830

CO-CHAIR SCALZI stated that after being heard in the House Resources Standing Committee, the resolution would be referred to the House Judiciary Standing Committee and to the House Finance Standing Committee. He suggested that the House Resources Standing Committee focus on "the aspects of resource itself, and whether or not it's consistent with our constitution," and consider leaving some of the legal questions to the House Judiciary Standing Committee. Co-Chair Scalzi asked Mr. Regelin if he thought that there was a conflict between the intent of this resolution and the subject of sustained yield that is presently in the [Alaska State] Constitution.

MR. WHITE replied that he doesn't think this [resolution] "negates or directly contradicts the concept of sustained yield," explaining that the courts look at the constitution as a whole and attempt to reconcile any conflict. His concern is with the definition of "public good." Mr. White stated, "One person's 'public good' might be another person's 'public ill.'"

Number 1927

REPRESENTATIVE STEVENS asked Mr. White if he agreed with Mr. Regelin's suggested use of the words, "by law and regulation."

MR. WHITE answered yes.

Number 1963

REPRESENTATIVE KERTTULA posed the following question:

If we're amending the statement of policy in Article VIII, and we get into a situation where we've got a depleted resource, ... don't we just ask for problems with how we're going to deal with the right to hunt, versus the sustained yield? ... Isn't that part of the problem?

MR. WHITE replied that the sustained yield is clearly a "mandate for management." He stated that it would be difficult to argue "public good" would be something that would override sustained yield, and that "public good" is to be interpreted in some way to require the state to deplete its resources. He admitted that it could be a difficult argument.

REPRESENTATIVE KERTTULA responded by asking Mr. White about the language that reads "forever preserved". She suggested there

might be a conflict with "forever preserved", if [ADF&G] ever had to close a [hunting, trapping, or fishing] season, for instance.

MR. WHITE responded that it would be difficult to interpret whether "forever preserved" referred to preserving the uses of resource, even to the point where there is no resource, or preserving the "vitality of the resource itself." Strong legislative history is needed, in order to counter the many possible interpretations. In response to a question by Co-Chair Scalzi, Mr. White said that the statement on behalf of sustained yield is comprehensible and the courts would not "take something that's less certain and say that it ... would trump sustained yield." The courts look at all provisions equally, and try to harmonize them.

Number 2104

REPRESENTATIVE KAPSNER indicated a red-flag situation concerning migratory fish and game, where areas may have to be closed down to fishing or hunting, but someone claims a right to fish because of the new amendment.

MR. WHITE indicated that Mr. Regelin had addressed that question, and he restated that when a person has a constitutional right to fish, then the state will have to produce evidence that that person's "public good" is subordinate to a greater "public good." It shifts the burden on how that management position would be defended, and is a difficult concept.

REPRESENTATIVE FATE stated that the House Resources Standing Committee had gone off on a "red herring" by discussing management issues, rather than adhering to the focus of the resolution, which was about preserving heritage. He suggested that the committee first make sure that there was no conflict between the wording of the resolution and the sustained-yield clause already in the constitution. Then it could go back and - with the concurrence of the resolution's sponsor - make an amendment to clarify any terms dealing with management issues.

Number 2265

MR. WHITE concluded by offering an alternative for the sponsor of the resolution. He suggested that the sponsor consider creating legislation to adopt this resolution in statute, rather than as a constitutional amendment, much like an existing

statute that established a priority for subsistence uses. Although a statute can more easily be changed by other legislation, "it doesn't carry as many implications as in the constitution."

Number 2302

REPRESENTATIVE KERTTULA disagreed with Representative Fate's estimation of management discussion as a "red herring." She mentioned the idea of "referring back to Section 4" as a good one, and asked for affirmation from the witness that [ADF&G] already manages hunting, trapping, and fishing.

MR. WHITE concurred.

Number 2340

JESSE VANDERZANDEN, Executive Director, Alaska Outdoor Council (AOC), testified via teleconference in support of HJR 12. He noted that the AOC had sent a letter to Representative Dyson in support of HJR 12, because the resolution embodies the protections of hunting, trapping, and fishing. He pointed to historical evidence that consumptive uses have been limited over the past 30 years, citing examples such as Sheep Mountain, Cooper Lake, and Paint River. Mr. VanderZanden made note of a current lawsuit against the state that "seeks to mandate appointment of board [of] game members that solely represent nonconsumptive uses." On behalf of AOC, he thanked the House Resources Standing Committee for hearing this resolution, and offered any assistance necessary to help the resolution to pass.

Number 2494

REPRESENTATIVE KERTTULA asked Mr. VanderZanden to specify which nonconsumptive uses concerned him and the AOC.

MR. VANDERZANDEN replied that he had been referring to a lawsuit currently against the state to require the Board of Game to appoint some members who represent nonconsumptive uses. He stated that AOC believes that consumptive and nonconsumptive uses are not incompatible. He offered popular definitions of nonconsumptive uses such as "viewing" and hiking. Mr. VanderZanden talked about HJR 12 "adding an extra layer of protection to what's commonly termed ... 'consumptive uses,' whether it be hunting, fishing, and trapping, [as it is] in this case." AOC has seen a constant threat to those particular uses.

REPRESENTATIVE KERTTULA asked Mr. VanderZanden if he thought that nonconsumptive use had a place in the balancing of our constitution.

MR. VANDERZANDEN explained that his intention in his previous testimony was not to delineate between consumptive and nonconsumptive. He stated that he did not want to put limitations on what those words [mean]. He reiterated that the AOC supports the added layer of protection that HJR 12 offers to the consumptive-use activities of hunting, trapping, and fishing.

REPRESENTATIVE KERTTULA referred to people who go out just to take photographs or just to view [the outdoors], and inquired whether Mr. VanderZanden thought that those people should be mentioned in the resolution to avoid making delineations.

MR. VANDERZANDEN responded that although many people who hunt, trap, and fish also go out sometimes just to view nature or take pictures, many of AOC's members feel that there is a "grave threat" to hunting, trapping, and fishing, specifically.

Number 2727

REPRESENTATIVE KAPSNER commented that she hoped she hadn't previously given Mr. VanderZanden the impression that she was opposed to HJR 12; she mentioned the area of Western Alaska that she represents, and said, "We're all for preserving that heritage, as well." She listed the priorities of the state's management of resources: first, sustained yield; second, subsistence use; third, commercial use; and fourth, sport use. Representative Kapsner stated her concern that when resources become limited and the state cuts back on sport use of resources, sport users might say, "Well, my rights are being infringed upon."

MR. VANDERZANDEN answered, "Alaska's not the first out of the gate in trying to afford some additional protections to these types of uses." He said the AOC is encouraged by some of the discussion that is going on, and the fact that other states are attempting to pass similar legislation. Furthermore, Mr. VanderZanden stated that he did not have the legal expertise to give an opinion regarding Representative Kapsner's last statement.

REPRESENTATIVE KAPSNER specified that although other states are developing similar legislation, Alaska is the only state that is

giving up navigable waterways. Alaska's constitution is unique because of its protection of subsistence users, who use 3 or 4 percent of the resource. Subsequently, Representative Kapsner is "wary of copying other states, just for the sake of copying them, because we are so unique."

Number 2888

WAYNE WOODS, third-generation Alaskan outdoorsman, testified via teleconference in support of HJR 12. He stated that 90 percent of his family's income is derived from his activities as a "master guide." He expressed dismay over the lack of stewardship of our fish and wildlife resources by "the present administration," noting that it is "a real disservice to both the resource and current and future generations of Alaskans who depend on it." Mr. Woods said, "I consider myself a nonconsumptive user until I see a particular animal that I wish to harvest, as law, opportunity, and inclination allows."

Number 2977

JEAN WOODS, long-time resident of the Matanuska-Susitna area, testified via teleconference in support of HJR 12. She stated that she is a consumptive user who eats fish and game. Ms. Woods said HJR 12 would reinforce Article VIII, Sections 3 and 4, [regarding] common use and sustained yield. As a nonattorney layperson, she considered the language of HJR 12 to be "clear and straightforward."

TAPE 01-18, SIDE B

Number 2992

NOEL WOODS, testifying via teleconference, requested that the House Resources Standing Committee send a copy of the legal advice that it has been given to the Matanuska-Susitna legislative information office. Mr. Woods spoke on behalf of the Matanuska Valley Sportsmen (MVS), a group of approximately 800 members from Eagle River, Anchorage, Palmer, Wasilla, Willow, and Talkeetna. The MVS is concerned about the condition of [Article] VIII in the Alaska State Constitution, regarding sustained yield. He referred to previous testimony about the burden of proof falling on the state. Mr. Woods requested "that the [House Resources Standing] Committee demand the justification of the lack of predator control at this time, in light of the constitutional requirement of sustained yield."

CO-CHAIR SCALZI requested that Mr. Woods remain on the subject of HJR 12.

MR. WOODS stated that [MVS] is very much in support of HJR 12 and doesn't see a difference between consumptive and nonconsumptive users. Furthermore, MVS believes that HJR 12 is not meant as a divisive issue; people who want to look at animals and those who want to shoot them will both be shortchanged without this legislation.

Number 2788

ROD ARNO, a long-time hunter from Palmer, testified via teleconference in support of HJR 12. He thanked Representative Dyson for sponsoring HJR 12, and urged its passage out of the House Resources Standing Committee. He mentioned the Alaska Wildlife Alliance as a group who is "advocating for our demise" and is suing the Board of Game. He said that there is a need for a layer of protection from those people opposed to hunting, trapping, and fishing, stating that those same people influence people who are non-hunters.

MR. ARNO said:

Obviously, because of the harvestable surplus as a limited supply, ... we, as hunters, trappers, and fishermen, will never be able to (indisc.) 51 percent of the growing population to feed the hunters, trappers, and fishermen, and we need the support and protection that other minorities are afforded.

Number 2704

CLIFF JUDKINS, hunter and fisherman for 45 years, testified via teleconference in support of HJR 12. He thanked Representative Dyson for introducing the resolution. He mentioned that he was presently "attending the game board meetings" in Anchorage, and commented that there are issues being brought up "that could use the lesson of this legislation that has been adopted in the past."

Number 2666

KEN BARBER, a hunter and trapper, testified via teleconference in support of HJR 12. He commented on his observation of the disappearance of trapping in Arizona, Washington, and Colorado, and stated that it is only a matter of time before the same

thing happens in Alaska with hunting and fishing rights. In regard to Mr. Regelin's previous comment about the possible cost to the state, Mr. Barber said, "Personally, I don't care about cost to the state. I think the animals in this state - and the people - deserve a lot more than the cost."

Number 2617

SUE ASPLUND, Cordova District Fisherman United (CDFU), testifying via teleconference, asked Representative Dyson to clarify how commercial uses of hunting, trapping, and fisheries resources would be addressed under the semantics of HJR 12.

Number 2582

REPRESENTATIVE DYSON replied that although he was not sure of the answer, he thought that HJR 12 would add another layer of protection for commercial fishermen, as well. The Board of Fisheries is in control of the allocation of resources, and that will continue if the resolution is passed. He pointed out that if the forces that are opposed to consumptive use of Alaska's renewable resources gain power, then [hunters, trappers, and fishermen] will "be amongst the first to lose on that." Representative Dyson restated another witness's remark that hunter, trappers, and commercial and noncommercial fishermen are a minority, and are "in jeopardy of losing our right to utilize renewable resources, at the will of the majority, unless we act decisively to put those protections at the highest level of law that we can, which is the constitution."

Number 2488

MS. ASPLUND clarified that she was trying to ascertain whether or not HJR 12 would, "in some way or another, change the prior uses, above and beyond the subsistence priority, between (indisc.) commercial users of the resource."

CO-CHAIR SCALZI surmised that the word "fishing," as written in HJR 12, would include all the common uses of fishing in the state.

REPRESENTATIVE DYSON concurred.

Number 2459

REPRESENTATIVE KAPSNER asked Representative Dyson if HJR 12 would indeed make all users equal.

REPRESENTATIVE DYSON answered that HJR 12 "protects the heritage of all users." He hoped that the resolution would give the people of rural Alaska - who statistically may be more involved in hunting, trapping, and fishing - some comfort, knowing that an attempt was being made to change the state's constitution, in order to assure every Alaskans' right to preserve his or her heritage.

Number 2415

REPRESENTATIVE McGUIRE asked Representative Dyson how similar his resolution was to those of North Dakota, Virginia, and Minnesota, and what were the results of any legal challenges those states might have faced.

REPRESENTATIVE DYSON responded that, to his knowledge, HJR 12 differs from and surpasses the other states' legislation, because it "avoids the language of making it an unalienable right" and includes the complete list of hunting, trapping, and fishing.

REPRESENTATIVE STEVENS inquired of Representative Dyson whether Mr. Regelin's suggestion of inserting the words "law and regulations" was a point of concern or a solution to a problem.

REPRESENTATIVE DYSON replied that he did not think, at that point in time, that the addition of those words would cause him "any consternation," although further testimony may reveal that it would be prudent to remove those words. He commented on the great respect he had for Mr. Regelin, and made a commitment to the House Resources Standing Committee to get the best input possible on the issues, stating that he will not let this resolution go beyond the House Judiciary Standing Committee without asking the types of questions that will prevent lawsuits or problems in the future.

Number 2240

REPRESENTATIVE McGUIRE stated for the record that she is uncomfortable with the idea of adding language about "regulatory power" to the resolution, stating that the effects of adding it are unknown. She urged the sponsor of the [resolution] to explore that language at the [House] Judiciary [Standing Committee] level.

Number 2213

REPRESENTATIVE FATE concurred with Representative McGuire's remark. He referred to a document with the heading, "Right to Hunt." He emphasized that there is a difference between protecting the right to hunt and protecting the heritage of the state. In regard to earlier comments, Representative Fate said, "And I didn't mean to infer that a red herring was something that we're trying to deviate, or trying to pull the attention away." Representative Fate related his belief that HJR 12 "doesn't give an absolute right for that person to hunt." He asked Representative Dyson if that interpretation was correct.

REPRESENTATIVE DYSON answered that although he did not fully understand constitutional law, he thought Representative Fate's interpretation was correct. He said:

All rights in our constitution are subject to reasonable regulation, and there's nothing here that ... says that bag limits and seasons ... can't be [set] ... to control and manage the resource, just as it doesn't say that anyone has an absolute right ... to hunt or fish at any given particular time [or] ... to be successful at hunting and fishing. What the law has - in several "cascading" opinions - is a right to a reasonable opportunity.

REPRESENTATIVE DYSON stated that HJR 12 was not in contradiction with sustained yield, because "there's no heritage left if there's no game left." He emphasized that sustained yield "trumps" all other resource uses.

Number 2041

REPRESENTATIVE FATE made a motion to move HJR 12 out of the House Resources Standing Committee, with individual recommendations and an attached zero fiscal note.

REPRESENTATIVE KERTTULA requested a brief at-ease.

CO-CHAIR SCALZI called an at-ease. He called the meeting back to order at 3:29 p.m.

Number 2005

REPRESENTATIVE KERTTULA offered a conceptual amendment:

On line 11, after the words "shall be managed", I'd like to, along the same lines as Representative Fate's suggestion ... [add] "in accordance with the sustained yield principle in Article VIII, Section ... 4."

REPRESENTATIVE DYSON indicated that the proposed amendment was fine with him [as sponsor].

REPRESENTATIVE KERTTULA remarked that she thought this amendment would make it clear that there was no intent to override the sustained yield mandate already in the constitution.

Number 1887

REPRESENTATIVE FATE moved to report HJR 12, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 12(RES) was reported out of the House Resources Standing Committee.

SJR 7-REINSTATE WILDERNESS STUDY PROHIBITION

Number 1795

CO-CHAIR SCALZI announced the next order of business was CS FOR SENATE JOINT RESOLUTION NO. 7(RES), Supporting reinstatement of the United States Department of the Interior directive exempting the United States Bureau of Land Management in Alaska from the mandatory wilderness review process.

DARWIN PETERSON, Staff to Senator Torgerson, Alaska State Legislature, spoke on behalf of the sponsor of CSSJR 7(RES). Mr. Peterson described the resolution for the House Resources Standing Committee and read excerpts from the sponsor statement as follows:

In 1981, the Secretary of the Interior under President Reagan issued a directive stating that BLM [Bureau of Land Management] land in Alaska may not be considered for wilderness review as required by Section 603 of the Federal Land Planning and Management Act of 1976. The Secretary issued this directive in order to comply with congressional mandates found in ANILCA [the Alaska National Interest Lands Conservation Act].

More specifically, those congressional mandates are Sections 1320 and 1326 of ANILCA, often referred to as the "no more clauses," which exempt Alaska from future

federal [wilderness designations and] withdrawals exceeding 5,000 acres. ANILCA Section 1326(b) states that no further studies of federal land in Alaska shall be conducted for the purpose of establishing conservation areas, such as wilderness designations.

SJR 7 was introduced in response to a last-minute rescission of this directive by Interior Secretary Bruce Babbitt, as he was leaving office with the Clinton Administration. Secretary Babbitt's rescission is contrary to an Interior Department policy that has been an important tool for management and development in the state of Alaska for almost twenty years. The rescission was done without public comment or consideration of the state of Alaska. And the most disturbing aspect of this rescission is that BLM will be able to manage its roadless land in Alaska as de facto wilderness areas in the expectation that Congress will eventually enact approving legislation.

Number 1690

CO-CHAIR SCALZI asked if there were any questions. Hearing none, he stated that the language of the resolution was straightforward and the chair was in support of it.

Number 1650

[There was a motion to adopt CSSJR 7(RES), version 22-LS0415\L, for discussion purposes, but it was already before the committee.]

REPRESENTATIVE FATE suggested to Mr. Peterson that the title be changed. He explained, "The average person's going to see [the title] and he's going to say, 'What you're doing here is exempting the Bureau of Land Management from the provisions of the Wilderness Act,' which means that they might construe this as meaning that they're really exempt from being under the mandatory regulation as embodied in ANILCA."

MR. PETERSON replied that that had been a concern of the Senate Resources Committee when SJR 7 was originally drafted. He noted that one of the changes in the committee substitute was made in an effort to clarify the title. He stated that the words "in Alaska", on page 1, line 2 [in the title of CSSJR 7(RES)], would perhaps alleviate concerns that this [resolution] might exempt BLM nationwide from the Wilderness Act.

Number 1545

REPRESENTATIVE McGUIRE moved to report CSSJR 7(RES), version 22-LS0415\L, with the attached zero fiscal note and individual recommendations, out of the House Resources Standing Committee. There being no objections, CSSJR 7(RES) was reported from the House Resources Standing Committee.

CO-CHAIR SCALZI referred to his draft letter regarding the request for enforcement against poaching in Southeast Alaska's fishing waters and asked the committee if members had any objections to moving the letter on to the House Special Committee on Fisheries.

REPRESENTATIVE KERTTULA mentioned that she was still "synthesizing" comments from some fishing communities, but had no objection to addressing those comments at the House Special Committee on Fisheries meetings.

ADJOURNMENT

Number 1388

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:40 p.m.