

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 19, 2002

2:01 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 29

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife.

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska authorizing a priority for subsistence users of replenishable natural resources; and providing for an effective date.

- HEARD AND HELD

HOUSE BILL NO. 14

"An Act relating to subsistence use of fish and game, to fish and game advisory committees, and to permits for historic or traditional uses of fish and game and harvest practices; amending the definition of 'domicile' for purposes of the Fish and Game Code; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 11

Proposing amendments to the Constitution of the State of Alaska relating to subsistence use of wild food resources and to the harvest of fish and wildlife.

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HJR 29

SHORT TITLE:CONST AM: SUBSISTENCE FISHING AND HUNTING

SPONSOR(S): REPRESENTATIVE(S)DYSON

Jrn-Date	Jrn-Page		Action
01/14/02	1946	(H)	PREFILE RELEASED 1/4/02
01/14/02	1946	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1946	(H)	RES, JUD, FIN
01/14/02	1946	(H)	REFERRED TO RESOURCES
03/27/02		(H)	RES AT 1:00 PM CAPITOL 124
03/27/02		(H)	-- Meeting Postponed to 4/5/02 --
04/05/02		(H)	RES AT 1:00 PM CAPITOL 124
04/05/02		(H)	Scheduled But Not Heard
04/05/02		(H)	MINUTE(RES)
04/19/02		(H)	RES AT 1:45 PM CAPITOL 124

BILL: HJR 4

SHORT TITLE:CONST. AM: SUBSISTENCE USERS

SPONSOR(S): REPRESENTATIVE(S)DAVIES

Jrn-Date	Jrn-Page		Action
01/08/01	0019	(H)	PREFILE RELEASED 12/29/00
01/08/01	0019	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0019	(H)	RES, JUD, FIN
01/08/01	0019	(H)	REFERRED TO RESOURCES
03/27/02		(H)	RES AT 1:00 PM CAPITOL 124
03/27/02		(H)	-- Meeting Postponed to 4/5/02 --
04/05/02		(H)	RES AT 1:00 PM CAPITOL 124
04/05/02		(H)	Scheduled But Not Heard
04/05/02		(H)	MINUTE(RES)
04/19/02		(H)	RES AT 1:45 PM CAPITOL 124

BILL: HB 14

SHORT TITLE:SUBSISTENCE USE OF FISH AND GAME

SPONSOR(S): REPRESENTATIVE(S)DAVIES

Jrn-Date	Jrn-Page		Action
01/08/01	0027	(H)	PREFILE RELEASED 12/29/00
01/08/01	0027	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0027	(H)	RES, JUD, FIN
01/08/01	0027	(H)	REFERRED TO RESOURCES
03/27/02		(H)	RES AT 1:00 PM CAPITOL 124
03/27/02		(H)	-- Meeting Postponed to 4/5/02 --
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04/05/02		(H)	Scheduled But Not Heard
04/19/02		(H)	RES AT 1:45 PM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE FRED DYSON
Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HJR 29.

EDWARD FURMAN
P.O. Box 1791
Cordova, Alaska 99574

POSITION STATEMENT: Testified in opposition to HJR 29.

GARY CHARLES PATTON
P.O. Box 873436
Wasilla, Alaska 99687

POSITION STATEMENT: Testified on HJR 29; opposed any legislative Acts or anything else that should interfere with the exclusive economic zone west of the Copper River to Icy Bay.

DON WESTLUND
P.O. Box 7883
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified on HJR 29; expressed disappointment in the removal of the section relating to the availability of alternative food resources.

DICK BISHOP, Lobbyist for
Alaska Outdoor Council (AOC)
1555 Gus's Grind
Fairbanks, Alaska 99707

POSITION STATEMENT: Testified on HJR 29; said AOC had no formal position on HJR 29 but urged the committee to take action that

demonstrates that subsistence uses of fish and game for personal and family consumption are provided for under the Constitution of the State of Alaska.

DENNY WEATHERS

P.O. Box 1791

Cordova, Alaska 99574

POSITION STATEMENT: Testified on HJR 29; opposed legislation that will take away the urban use of subsistence.

DALE BONDURANT

Alaska Constitutional Legal Defense Fund

31864 Moonshine Drive

Soldotna, Alaska 99669

POSITION STATEMENT: Testified briefly on HJR 29, noting that the Alaska Constitutional Legal Defense Fund currently has a suit in court with the federal government.

DELISE CALCOTE

P.O. Box 1105

Chickaloon, Alaska 99674

POSITION STATEMENT: Testified in opposition to HJR 29; claimed [Alaska Natives] didn't get to vote for statehood, ANCSA, or ANILCA, and suggested [HJR 29] is an attempt for everybody to think that [Alaska Natives] are having their rights represented.

MARY BISHOP

1555 Gus's Grind

Fairbanks, Alaska 99707

POSITION STATEMENT: Testified on HJR 29; submitted alternative language she said she believed was identical in meaning, but easier to read and understand.

REPRESENTATIVE JOHN DAVIES

Alaska State Legislature

Capitol Building, Room 415

Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HJR 4 and HB 14.

ACTION NARRATIVE

TAPE 02-33, SIDE A

Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 2:01 p.m. Representatives Fate, Green, Chenault, Stevens, Scalzi, and Masek were present at the

call to order. Representatives McGuire, Kapsner, and Kerttula arrived as the meeting was in progress.

HJR 29-CONST AM: SUBSISTENCE FISHING AND HUNTING

[Contains testimony on HJR 11, HJR 4, HB 14, and SCR 25]

CO-CHAIR MASEK announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 29, "Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife."

Number 0056

CO-CHAIR MASEK told the committee that due to scheduling, testimony would be limited to approximately one minute. She also recognized that Representative Davies was present during the meeting.

Number 0165

REPRESENTATIVE FRED DYSON, Alaska State Legislature, sponsor, testified. He said:

Two or three years ago, ... Mark Hanley said, "... I'm very concerned about all the subsistence solutions that are presently being discussed, because they do not protect most or many Alaskans from their community becoming urban under the federal definition." He rightly pointed out that Dillingham, Bethel, and Barrow ... are in danger of becoming urban, and therefore disqualified. He said, "I'm not interested in a solution that doesn't protect those folks and their subsistence usage." That got me thinking about, How do we put that in our ... subsistence solution?

[Former Governor] Jay Hammond has ... [said] a solution for us on the subsistence issue is one that gives the priority to the people in the area, the so-called local, as opposed to rural, solution. The bill is before you, and we're ... into several iterations of it. The bill that is before you - we've accomplished both of these - protects communities from an arbitrary classification as "urban" under federal law, and it institutes proximity and direct use for ... livelihood as the criteria for who gets the priority on use of the resource during the times when

there is not enough of the resource to go around for all users. It is my hope that if we put it in our constitution, that [in] times of shortage, real subsistence is the highest and best use of the resource and trumps all others.

Number 0426

REPRESENTATIVE GREEN moved to adopt CSHJR 29, version 22-LS1100\0, Utermohle, 4/6/02, as the working document before the committee. There being no objection, CSHJR 29, Version 0, was before the committee.

Number 0480

REPRESENTATIVE DYSON continued:

If this were to become part of our constitution, we establish that in times of shortage the highest and best use is for subsistence for livelihood, and ... the folks who get the first priority ... are the ones that live closest. ... So, you'll notice ... [Section 1, subsection (b)] ... anticipates that the legislature will pass laws ... addressing how that happens; ... it's the lawful use, and it also ... puts in the constitution the sustained yield principle of management. I have talked with a number of folks around the state; ... when we marched on the subsistence march in Anchorage, ... I passed it around to several of my Native leader friends, and everyone of them said, "Yeah, that'll work"; ... two who have sat in this body said, "That's just real close to what the Hickel task force came up with." I think it has real merits.

Number 0558

REPRESENTATIVE DYSON continued:

There will be ... three categories of criticisms. ... It doesn't answer the rural preference in Title VIII of ANILCA [Alaska National Interest Lands Conservation Act]. There's a body of thought that says that the Secretary of the Interior could certify the proximity to the resource meets the intent and the spirit of the word "rural" in Title VIII. Now, by the time we get to Special Session, I hope to have opinions both from

one of our attorneys here and from the Department of [the] Interior, and I've asked, for that, ... what are the possibilities of that happening, because ... that's a key question that we've got to get answered. If we've got a chance, I think this is one of the better solutions that's on the table, if it could be certified as meeting the intent and spirit of Title VIII of ANILCA.

The other concern ... is that once you put it in the constitution, ... subsistence use in an area trumps all others. Then there's the worry by commercial fishermen - like I've been for the last 25 years - that that might be interpreted that until the last person who subsistence fishes at the end of the last creek that feeds the system that produces salmon [gets the opportunity to catch fish], ... all commercial interests will be shut down. The fishery I've been involved [in] ... only lasts about three weeks; 50 percent of the fish will go through in about three or four tides, ... and if the fishery is shut down, waiting for the last subsistence user on the last creek, ... the opportunity to harvest will be gone (indisc.). I think the managers ... have gotten quite good at it, and with our help ... any needed legislation can take care of them, but it's a legitimate concern.

Number 0762

REPRESENTATIVE DYSON continued:

I'm hoping that my friends in AFN [Alaska Federation of Natives] and other groups will be able to say, "You know, this is what we wanted; we always wanted subsistence" I think this meets that criteria, because it protects Native and other subsistence hunters and fishermen from getting arbitrarily disqualified because their community gets too big, like Dillingham, Barrow, or Bethel. It also protects - it's a major concern of mine - the folks who are in the urban areas, who are very legitimately involved in subsistence hunting and fishing, and the very delightful people that I've represented for 12 years now, the Eklutna's. Under the Babbitt-Knowles-Clinton solution, they can't fish in their own fish camp, where the evidence is they've been for at least a

1,000 years, and I would argue probably at least 3,500 years. So, I hope it ... has a chance at meeting the requirements of ANILCA; it gives a great deal more protection for rural residents, and does not preclude ... people who live near urban areas or [are] participating in a legitimate subsistence activities. Thank you.

Number 0866

REPRESENTATIVE GREEN mentioned that past administrations were opposed to solutions that required "easing up" of the interpretation of ANILCA. Referring to [Section 1, subsections] (a) and (b), he expressed concerns about the legal interpretations of those subsections. Those subsections, he suggested, could be interpreted to mean that subsistence would be the highest and best use. He remarked, "That I can't handle; that obviously goes against the intent of our constitution." Representative Green brought attention to a change in subsection (b) relating to the availability of alternative food [resources], and suggested the change was good. Expressing concerns about proximity, he said, "Constituents that live in my town are not going to be part of that subsistence issue, even though if we go back to traditional use, they would"; he also suggested that constituents in Anchorage - including Natives - "fail in both of these."

Number 1032

REPRESENTATIVE DYSON remarked:

No matter what we do, including doing nothing, we have the problem of, if we get a court decision that says anytime we have season and bag limits, you're in, ... de facto, the default position of having not enough for all beneficial users, we won't decide that; my guess is that'll be a court decision

REPRESENTATIVE GREEN, referring to proximity, said, "If you live there and there's a shortage, ... before outsiders or others come in, you should have the right to it."

Number 1147

REPRESENTATIVE DYSON remarked:

Subsistence ... is doing it near where you live. ... Most of Alaska's aboriginal people went ... to fish camp in the summer, and if caribou changed their migration pattern, they'd go ... where they were at, not where they weren't at. And that all makes sense, and I'm open - if there's a way to fix that - I'm open to it; ... I'm just reluctant to go very far down the road of this all being decided based on what you have been doing.

REPRESENTATIVE DYSON mentioned a friend of his who had changed his lifestyle to raise his children in a subsistence lifestyle. He remarked, "It doesn't allow somebody to make a conscious change about how they're going to do it," and he suggested that he didn't want people in those circumstances to be precluded.

Number 1306

EDWARD FURMAN testified via teleconference [his testimony was read by the LIO moderator] as follows:

How are the members of Congress, and Senators, and state legislators - from the President to the attorney general's office, supposed to uphold the constitutional rights when they don't even know the constitution themselves?

MR. FURMAN stated, "And this is the way I feel, ... and I've heard the cry - I hear you're knocking but you can't come in."

Number 1467

GARY CHARLES PATTON testified via teleconference. Indicating he is a member of the Katalla Nation, he remarked:

Our territory stretches ... from the Copper River to Icy Bay out to Middleton Island; we're going to ... enter a petition of facts onto the table here for all eyes to see. We are opposed to any legislative Acts, or anything else, that should interfere with our ... exclusive economic zone west of the Copper River to Icy Bay, and we'd like to lay this petition of facts on the table here today. We'll have an affidavit that's a proof of claims; we'll have a synopsis containing the major thesis of this Katalla/Tlingit multiple-issue complaint, a bill of particulars with a conclusion, and there will be an attached complaint

addendum that will go with this. The management under the regime, currently, has done a terrible job; it has allowed our resources to fall into the hands of somebody else. This land, these waters - these are for our needs; I have no problem with people who live here, but I have a problem with the resource fate [being put] into the hands of somebody else. They've done a terrible job of mismanagement.

Number 1618

DON WESTLUND testified via teleconference. He said he was disappointed that Representative Dyson had removed the portion of the bill relating to the availability of the alternative food sources. He remarked, "If you have a run of sockeye salmons that don't make it up the river that year, but you have an adequate amount of chums or pinks or silvers going up the stream, why should you not be satisfied with that alternative food source to the residents?" He continued, "The state's constitution is one thing, and we still haven't proven that it needs to be changed." Mr. Westland suggested that until the matter goes to court, he didn't see [the bill] as a worthwhile alternative.

Number 1718

DICK BISHOP, Lobbyist for Alaska Outdoor Council (AOC), testified via teleconference. He suggested that the legislature had the opportunity to take the lead on the subsistence issue. The best alternative for the legislature, he suggested, is to take action that clearly demonstrates that subsistence uses of fish and game for personal and family consumption are provided for under the Alaska constitution without resorting to discriminatory criteria. Mr. Bishop said the legislature could help with ANILCA amendments that he believes are needed to remove the taint of discrimination, ensure sound management, and restore Alaska's equal footing with other states in the management of its fish, wildlife, and waters. He suggested that if by conforming to ANILCA none of those goals can be accomplished, then of the proposed constitutional amendments on subsistence, the only ones that would allow this to happen under their terms are HJR 11 and HJR 29.

MR. BISHOP said AOC hasn't taken a formal position on the proposed CS for HJR 29 [Version 0], but is very encouraged by Representative Dyson's efforts to find a fair and clearly stated approach to providing for a subsistence priority. He suggested

there were several elements that would need to be included in language [being considered], and [HJR] 29 covers a lot of them. The standard, he continued, should be the same for any Alaskan who wishes to qualify for priority use; allocations to priority use should be activated by a resource shortage, not just by the existence of regulations; and the priority should only apply to fish and game. The [priority] should go to Alaskans whose self-sufficiency is linked to the uses of fish and game. He said the legislature shouldn't be tempted by the illusion that if a discriminatory rural-priority amendment is approved, then the conflict will end. It won't, he said; it'll get worse.

Number 1866

CO-CHAIR SCALZI, referring to proximity of the [population], asked Mr. Bishop if he supported that section of the bill.

MR. BISHOP reminded the committee that AOC had not taken a formal position on the bill. He remarked, "If you combine that element with other elements, then you aren't leaving it open to simply a rural priority, and that, I think, provides some latitude for a more rational approach."

Number 1919

DENNY WEATHERS testified via teleconference. Noting that she had provided the committee with written testimony on HJR 29, HJR 11, HJR 4, and HB 14, she remarked:

After viewing all three House resolutions and bills, I find that I must oppose all four. Both Representative Dyson and Davies' plans will take away the urban use of subsistence, ... which is wrong. I am a 27-year rural resident. The Alaskan people are the owners of the state's resources, not the government; Alaskan people include both rural and urban dwellers. I thought Alaska's constitution, the one that you took an oath to protect, basically stated that ... the natural resources of Alaska are to be managed as a public trust; ... the public should have the broadest possible access to the use of the state's natural resources; ... most important, management of renewable resources must be on the basis of a sustained yield. Let's not amend the constitution; let's defend it.

It is time to tell the [federal government] to pack up and get out. Alaska is supposed to be a sovereign

state, according to the Alaska Statehood Act, approved on July 7, 1958, and signed by the President, January 3, 1959. I would like to see more bills like SCR 25, relating to the public trust for fish and wildlife in Alaska. This is what Alaska needs, legislators that put Alaska first and foremost. Thank you for the opportunity to testify, and I also appreciate the fact that Mr. Dyson and Mr. Davies are trying to do something, but I would really like you to uphold the constitution first; are there any questions?

Number 2051

DALE BONDURANT, Alaska Constitutional Legal Defense Fund, testified briefly via teleconference. He said, "We have a suit in court with the federal government over this," and noted that he was submitting additional [written] testimony.

Number 2085

DELISE CALCOTE testified via teleconference, noting that her mother's [family originated] from Afognak Island near Kodiak Island, and her grandfather [originally came] from an area south of Naknek. She said she moved to the Cook Inlet area in 1969, had worked on the Exxon Valdez oil spill, and is part of the class of 700 subsistence-damaged claimants that has still not been paid. She noted that she had worked for Chickaloon [Native] Village, the Cook Inlet Marine Mammal Council, and the Cook Inlet Treaty Tribe, which she said had been working on the beluga [whale] issue with tribes in the area. Ms. Calcote remarked:

We have all this information, and [have been] gathering information on damages that are occurring here in the Cook Inlet, and on the fishing, and the limitations of subsistence fishing; ... being in law, you have to go all the way back to do the research of where all this law came from; ... looking at constitutional law, ... this Article XII, Section 12; the State of Alaska, its employees and agencies still have no codes and ordinances behind that. We have never given up. ... We didn't get to vote for statehood, and if P.L. [Public Law] 280 was attached to it, there was a little provision section that said that we all should've voted in every village, and had it certified by Secretary of [the] Interior - that never happened.

Number 2173

MS. CALCOTE continued:

If we had the Indian citizenship rights of the 1920s, then why didn't we get to vote for it, and why was [there] that little provision that we had to vote, have to speak English, and write English in order to vote for [the] constitution? We didn't get to vote for ANCSA [Alaska Native Claims Settlement Act], ANILCA, and to diminish us ... as ... an ethnic minority in our own land. I don't want to even see any kind of a vote on the constitution, because for us to even go and vote at this time, when we didn't get to vote for it in the first place, is just a sham, and an attempt for everybody to think that we really are having our rights represented. We have international rights; we have never ever given up; we have never voted, and I don't want to see one Alaska Native vote for this.

Number 2246

MARY BISHOP testified via teleconference, noting that she would submit alternative language for HJR 29. She said she believed [the alternative language] was identical in meaning, but was easier to read and understand, and she suggested it was really critical in a constitutional amendment. She recommended using the term "depleted resource", which she said makes it clear that the shortage is not due to regulations. Ms. Bishop suggested that subsistence is a holy word and remarked, "Government cannot decide who holds which values or who belongs to which religion, and no government can tell a person whether he or she is a subsistence user." These are personal identities, she said, often strongly held, often poorly defined, and in the case of subsistence, with multiple definitions. She remarked that it is "the state, the [federal government], and everyone's separate personal definition."

MS. BISHOP asked, if Katie John moved to Fairbanks, whether the federal government could logically tell her that she was no longer a subsistence user. She said she has spent 25 years listening to and participating in the subsistence debate, and she has come to some conclusions, which she would offer in the hope that it can help resolve or at least move "us" toward some better understanding of one another, and a possible solution.

Ms. Bishop remarked, "I think HJR 29 is a move toward that because it recognizes that subsistence is something that all of us can do, but that 'priority' is not, and I think that's what we have to recognize." She continued, "Subsistence is a holy word, priority use is not"; she noted that she would submit the remainder of her testimony in writing.

Number 2409

CO-CHAIR SCALZI turned attention to Section 1, subsection (b), and suggested amending the section for clarity by adding the word "resource" to the word "population".

REPRESENTATIVE DYSON said the bill was technically accurate in the way that it's written, but was confusing to read. He said he thought about adding the phrase "fish and game" before "population", and remarked, "This bill does not talk about gathering, and we thought about that, and we didn't want to get into the logging issue particularly." He suggested that it is fish and game where the issues are, and remarked, "It is not my sense that we need to ... protect berry gathering, which really comes to mind in the same way, first of all because those things are not subject to management." Representative Dyson remarked, "One of the folks that called in and testified didn't like the fact that [in Version 0] we had taken out the phrase ["availability to alternative food resources"]; what we were thinking when we took that out was access to grocery stores." He said the thought was not about the fish and game population, but about people not being disqualified because they live too close to [a village].

Number 2539

REPRESENTATIVE McGUIRE offered a conceptual amendment [Amendment 1], inserting the language "fish and game" before the word "population" on lines 7-10 and 13-16.

Number 2581

CO-CHAIR MASEK asked if there was any objection to [Amendment 1]. There being no objection, she announced that Amendment 1 was adopted.

Number 2590

REPRESENTATIVE KAPSNER pointed out that for consistency line 13 should be changed, because it referred to "fish or wildlife".

REPRESENTATIVE DYSON said, "It already says fish and wildlife, and probably we ought to ... make it consistent and make it fish and wildlife all the way through."

CO-CHAIR MASEK again asked if there was any objection to [Amendment 1]. There being no objection, it was so ordered.

Number 2638

CO-CHAIR MASEK indicated HJR 29 would be held for further consideration.

Number 2690

REPRESENTATIVE DYSON, sponsor, withdrew his request to have HJR 11 heard by the committee. He explained:

This was my first attempt, and I believe that what you have just heard HJR 29 supersedes the need for this. If there's some wording in here that strengthens the case, I'd be open to it, maybe as a subsequent discussion, ... but ... I withdraw my request for you to hear HJR 11.

HJR 4-CONST. AM: SUBSISTENCE USERS
HB 14-SUBSISTENCE USE OF FISH AND GAME

[Contains discussion of HJR 29]

CO-CHAIR MASEK announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 4, "Proposing amendments to the Constitution of the State of Alaska authorizing a priority for subsistence users of replenishable natural resources; and providing for an effective date," and HB 14, "An Act relating to subsistence use of fish and game, to fish and game advisory committees, and to permits for historic or traditional uses of fish and game and harvest practices; amending the definition of 'domicile' for purposes of the Fish and Game Code; and providing for an effective date."

Number 2746

REPRESENTATIVE JOHN DAVIES, Alaska State Legislature, sponsor, testified. Noting that HJR 4 and HB 14 are companion legislation, he said he appreciated the fact that the committee

was hearing [HJR 4, HB 14] and Representative Dyson's bills simultaneously. He remarked, "I think that [Representative Dyson] and I are trying to get to the same place, but we're coming from opposite sides ... of a very important line in the sand that's been drawn relative to amending our constitution." He continued, "And I think Representative Dyson's assumption is that we can get to the point where we want to be without amending the constitution in a way that's consistent with the present version of ANILCA [Alaska National Interest Lands Conservation Act]." Representative Davies said his assumption was the opposite: he didn't think [the objective was attainable] without amending the constitution to be consistent with ANILCA.

Number 2801

REPRESENTATIVE DAVIES suggested that despite some significant but relatively small differences, he and Representative Dyson [had the same objective]. Representative Davies said he called his general proposition the "dotted line proposal," because he has listened to the debates and the concerns about the solutions being characterized as "zip code biology" - an emphasis on people's zip codes and places of residence. He said he was trying to blur the distinctions that are in those zip code lines, areas that are rural-versus-urban or areas that are subsistence-versus-nonsubsistence. Representative Davies expressed concerns about people living in remote areas such as Bethel that may be classified as urban in the future, and people living in areas classified as urban, such as Eklutna and Fairbanks, who live a subsistence lifestyle. He remarked, "I'm trying to, within the constraints that we find ourselves in, get to a place where most of us agree we want to go." He continued, "I start off, then, with the presumption that for a variety of political, ... legal, and historical reasons, it is not practical to change ANILCA." Representative Davies indicated it was his goal to amend the constitution as minimally as possible in obtaining the objective. He indicated HJR 4 doesn't contain the word "rural"; instead, it refers to place of residence.

REPRESENTATIVE DAVIES called attention to Section 19, which read [original punctuation provided]:

The legislature may, consistent with the sustained yield principle, provide a priority for subsistence users in the taking of fish and wildlife and other replenishable natural resources based on place of residence, dependence on replenishable natural

resources for subsistence uses, or customary and traditional use of replenishable natural resources for subsistence uses.

REPRESENTATIVE DAVIES reiterated that the bill does not contain the word "rural" and said, "That's why you'll see Steve White's [Assistant Attorney General, Department of Law] opinion in there, that maybe this could get us there." He continued, "It's true: this by itself doesn't get us there; you have to enact a statute that's also consistent with this, ... so it's permissive in that sense. ... This constitutional amendment does not require us to be consistent with ANILCA." He continued, "It only allows us to be consistent with ANILCA." Representative Davies reiterated that he wants to amend the constitution as minimally as possible to allow [the state] to eventually come into compliance, but also [obtain the objective].

CO-CHAIR MASEK mentioned that HJR 4 was "tied in" with HB 14.

Number 2977

REPRESENTATIVE DAVIES said he thought it was necessary to draft HB 14 at the same time as HJR 4 to demonstrate that a statutory framework could be constructed that would be consistent.

TAPE 02-33, SIDE B
Number 2989

REPRESENTATIVE GREEN remarked:

Have you and Steve [White] talked about line 8, where it talks about users rather than uses, and would this then be contrary to ... Section 4 of Article VIII, where it talks about uses? The reason I bring that up is, "users" was a real sticking point when we went through this battle about three years ago.

REPRESENTATIVE DAVIES said he hadn't had discussion on that point with Mr. White, but from his point of view "we" have to remain consistent with ANILCA.

REPRESENTATIVE GREEN remarked, "So, ... then, we would think that perhaps there might be yet another change to that where we use "uses". I think in the other section you'd probably go to "users", then, ... so there's not a conflict."

REPRESENTATIVE DAVIES said if it could be shown that one or the other is preferable to somebody and it works, then he'd be happy with that.

REPRESENTATIVE GREEN asked whether he cared as long as it was consistent.

REPRESENTATIVE DAVIES replied that he didn't care and eventually [the statutory language] would have to be consistent.

Number 2902

REPRESENTATIVE DAVIES turned attention to HB 14 and said:

What it ... says is ... subsistence is ... the primary use. Then it has this sort of onion skin approach to it, and it backs off; when ... there's plenty of game and there's no ... shortages. The dotted line thing says ... if you're in rural Alaska and your area's classified as subsistence areas, then you automatically have a subsistence preference, but if you live in a nonsubsistence area or a rural area, you can apply for one based on some of these criteria that the boards of fish and game would establish under this constitutional amendment. So, ... it's as close as I can come to providing a subsistence preference for ... everybody, but be consistent with ANILCA; that's ... what I'm trying to do there. Then, I also take a look at the situation of shortages ... versus ... plentiful supply.

When fish and game are plentiful, any subsistence user anywhere in the state can hunt subsistence anywhere in the state under my statute, so it's wide open. As [fish and] game becomes more ... restricted, ... the ... restrictions on your bill - you hunt and fish as a subsistence user - get [tighter]. ... It's complicated. There's a whole long string of circumstances, but it eventually narrows down to this idea of locality - subsistence users whose ... life really depends on that stock [or population] in their back yard.

Number 2808

REPRESENTATIVE DAVIES remarked, "It starts off very broad, ... and it moves down to a preference that's based on this idea of

locality." He said a lot of the concepts that Representative Dyson talked about are, in a sense, incorporated in "what I'm talking about here."

Number 2782

CO-CHAIR SCALZI referred to a portion of the sponsor statement, which read in part, "allow the Legislature to provide a priority for subsistence users of fish, wildlife, and other replenishable natural resources on state land, based on place of residence, dependence upon, or customary and traditional uses of the replenishable resources." He asked if that meant that a person may live in an urban area. He pointed out that that was a distinction between Representative Dyson's bill and [HB 14]. Co-Chair Scalzi referred to residency and asked who would determine eligibility [for a subsistence priority].

REPRESENTATIVE DAVIES answered, "The boards."

CO-CHAIR SCALZI asked if the criteria would also be developed by the boards.

REPRESENTATIVE DAVIES responded, "Correct."

Number 2737

REPRESENTATIVE GREEN said:

I brought up the fact that any restriction ... - the same problem of Representative Dyson's bill - that says anytime there's a bag limit, then this is in effect, because there is a restriction, ... so if there's a bag limit, you are in a restricted zone. So, this is what we'd be living with, unless they removed any kind of bag limit, and we know that's not going to happen.

REPRESENTATIVE DAVIES said this scheme will not satisfy those people who don't want to have a subsistence preference in place all the time, because this would be in place all the time; the nature of the preference would change given the relative plentitude of [fish] and game.

Number 2689

REPRESENTATIVE GREEN responded, "That's my concern," and remarked:

A few years ago, ... some of the people on the [committee weren't here], and this was one of the big sticking points, ... anytime you impose this, then ... you've got a problem. What Representative Davies talks about is ... on the very close edge to doing it, because when we were doing it ourselves, before the Katie John [lawsuit] triggered this, ... [the Alaska Department of] Fish and Game did it very similar to that. The bill that I brought out a few years ago was predicated on that same general idea, that those people closest to the area, that live on that, should have first priority, ... and it shouldn't be coming in whether you're Native or anything else; you shouldn't be coming into that area at the jeopardy of those people. I think everybody in the state agrees with that, and it was working wonderfully by [ADF&G]; then we ran afoul of the Secretary of the Interior and the insistence on [complying with] ANILCA

REPRESENTATIVE GREEN continued:

So, ... can we get Secretary [of the Interior] Norton to look at this? If we can't change ANILCA, can we change ... the interpretation a little bit? If so, then maybe we can work ... a deal like this without changing our constitution. When the governor dropped the Katie John suit after the 9th Circuit Court of Appeals had ruled, ... in the expansion period, rather than the ... time allotted to it, that forbade the legislature from coming in, because they said we hadn't filed timely. The concern I have is that until we go to the ... Supreme Court, we're constantly going to have this kind of a problem.

We can get close, but we can't get there, because there are some of us who feel that if we give our standing position in the state constitution, then ... when some fisherman or some other person can show damage, and is willing to take it through the steps that we had gone through on Katie John - got right to the door of the Supreme Court and lost it - until we're ready to do that, and the Supreme Court accepts it, drops the hammer and [says] this is the law of the land - you now will live with it, and all of us will say ... good, better, and different ... we have to live under that - until that happens, I'm afraid

little nuances like this are going to be a sticking point, because there really isn't anything new here that we haven't already gone through, and that's my problem.

Number 2537

REPRESENTATIVE DAVIES replied that he disagreed that it was the Secretary of the Interior [Bruce Babbitt] that caused that issue. Instead, he said, it was the McDowell case [which was heard by the Alaska] Supreme Court that said [Alaska's] law was inconsistent with its constitution. He remarked, "The problem is, ... we have a federal law that's under ... treaties that we have with aboriginal [people]." Representative Davies remarked, "My reading of history and my reading of the current politics in the nation is different [from] yours, and that's ... why my presentation here was saying that I think that we're going to have to amend our constitution to be, in some way, consistent with ANILCA." He continued, "I don't believe that, in any substantive way, ... the politics of the land will allow us to change that, and so if you concur on that, ... then I think that this is the best approach."

Number 2470

REPRESENTATIVE DAVIES remarked:

There are people that are concerned about the equal access clause in our constitution, and I am too. This does not repeal the equal [access] clause, even though some people think that it's tantamount to doing that; it does not; it's still there. We had those laws in place - I believe that 99.99 percent of the time, you would not, ... in practice, be able to see one whit of difference in the way people would live under that constitutional amendment than they did before with our previous interpretation of it.

So, it's a question of, do you want to ... insist on that last hundredth of percent of principle, and suffer the consequences that we're suffering now with federal management, or do you want to swallow your pride just a little, ... [and] amend the constitution in the minimal. I submit that this is the minimal possible way to do it and still be able to be consistent with [ANILCA]. This is not mandatory language; many of the Alaska Native folks want

mandatory language now. I asked the bill drafter to take the previous status quo prior to [the] McDowell [case], and draft the minimum possible change to be consistent with the new reality. That's what I think this is; ... it's obviously a compromise; it's not going to be what you want in your preference, and it's not, ... probably, what my friends at the Alaska Federation of Natives want in there. I think it is a compromise that could get us there, and ... the vast majority of the time ... you wouldn't be able to tell the difference between having that constitution amendment or not. The equal access clause would be paramount, and it would be the law of the land.

Number 2387

REPRESENTATIVE GREEN remarked:

My concern is, as we were told before, if you're looking at the Yukon [River] and we had this enacted, would we still have potential problems moving up the Yukon [River], where there could be a subsistence priority granted over a downstreamer who didn't have that priority, and then back to a priority, and then back to a nonpriority. I'm sure you've seen that possible ... coral snake approach going up the Yukon [River], and I'm concerned that reasonable people, we don't have a problem It's the unreasonable people that I'm concerned about There is that potential, and where it is there are going to be ... unscrupulous lawyers who'll say yes, here's an opportunity to create a lot of problems, ... and so that's my concern. The unintended consequences of that one-hundredth of a percent or whatever that number might be.

Number 2309

REPRESENTATIVE DAVIES said the bill provided a significant amount of deference to the boards of fish and game. He remarked:

My personal belief is, whenever we have a chance to get primacy, that we ought to go for it, and I think that it's those people that live here and make their homes here, ... who have their mind set as Alaskans, are going to be the ones that are best able to make

those [choices]. I think that if we have the ... Alaska boards of fish and game setting the rules, that ... situation, that coral snake issue that you're talking about, while it could be a sticky thing, and it probably will [be], there will be difficult decisions to be made about ... possible shortages; you're going to have to anticipate those, but I think our boards will be able to do that.

REPRESENTATIVE GREEN commented:

I would certainly concur with that, if left to their own devices; if they weren't hamstrung in certain ways or ... didn't have the fear that ... here comes a sticky point litigation, I agree, I think we've proven it. When we became a state, we said ... we can establish a fish and game [department] that will restore the salmon runs. I mean, the federal government just about did us in, and we did, we built those things up way beyond anybody's expectation. I don't think anybody in 1959 dreamed that you'd have the escapement and the returns that we've had in the past through [ADF&G]. They've done a wonderful job, and I support that 100 percent; if they could do it without encumbrances, I'd be all in favor of it. But when ... litigation comes, I'm thinking we've got to be able to have a place to stand; otherwise, we'll be at the will of the federal government

Number 2198

REPRESENTATIVE MCGUIRE thanked Representative Davies for tackling a problem she referred to as very complex, and said it's been a travesty to watch people, who would otherwise be friends, become enemies over this issue. She remarked, "It's taken away so much time and energy that people could be using in other areas." She turned attention to Section 4, which read:

(c) The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish and game. [THE BOARDS SHALL ADOPT THESE REGULATIONS WHEN THE SUBSISTENCE PREFERENCE REQUIRES A REDUCTION IN THE HARVEST OF A

FISH STOCK OR GAME POPULATION BY NONSUBSISTENCE
USERS.]

REPRESENTATIVE McGUIRE asked, "What was the wisdom in requiring the Board of Fisheries and the Board of Game to eliminate their requirements that they already have, that says that will provide a subsistence permit when the subsistence preference requires a reduction of harvest by nonsubsistence users?" She said in giving those people who need the resource the most the ability to access it, there is still a responsibility to manage the resources wisely and see how they relate to other uses.

Number 2108

REPRESENTATIVE DAVIES replied that the point isn't to eliminate subsistence permits. Instead, he said, the language that he was replacing it with is much more general and is inclusive of most of that; the key change - a sticking point - requires that the regulations are only in effect when there's a shortage. He said, in his view, to be consistent with ANILCA, the regulations have to be in place consistently; what he is trying to do is have the regulations in place all the time but have their effect [be broadened].

REPRESENTATIVE McGUIRE, referring to Representative Davies' notion of trying to do the least amount to try to solve the constitutional problem, asked if he believed that allowing the board to continue to issue those permits, even when it isn't a time of shortage, would in some way undermine the "constitutional part of it." She asked if that was a "giving" point.

REPRESENTATIVE DAVIES remarked, "I don't think you could do it without doing that, ... and that's why I ... think that's ... one of the sticking points that we get to; ... my finesse of that is to have the regulation in place all the time, but to have its effect differ ... depending on the plentifulness of game."

Number 2063

REPRESENTATIVE McGUIRE, referring to Representative Dyson's bill, said he talks a lot about consumption, and that a key element of [the objective] is the ability of people to put food on their table. She said it is a valid concern, and it's more valid in places where people can't get to a grocery store; however, there are also people in the [Anchorage] district that are subsistence users. She said she was supportive of the idea

of establishing regulations that would allow them to prove customary traditional use; she suggested people in her neighborhood [in Anchorage] would be able to do it. Representative McGuire expressed concern that consumption was not mentioned in Representative Davies' bill and asked, "So, how do you envision the part about being able to use subsistence to make money," and whether the earning limit was \$5,000. She asked Representative Davies if he viewed subsistence as a consumptive issue or viewed it as such that a user could profit in order to [purchase] different types of food; she asked how the bill addressed that issue.

REPRESENTATIVE DAVIES remarked, "That specific issue, ... mostly, is ducked in this bill." He offered his view that, fundamentally, there is a significant difference between subsistence and the cash economy; his idea of subsistence is people using fish and game for their own and their families' nutrition. He pointed out that the word "nutritional" was included in the language of the bill, and referred to HB 14, page 4 [line 15]:

A subsistence area is an area or community where dependence on fish and game for nutritional and other subsistence uses is a principal characteristic of the economy, culture, and way of life of the area or community.

REPRESENTATIVE DAVIES, referring to page 4, line 23, said [paragraphs] 1-13 were factors that the board can consider in "making those kinds of determinations." He remarked, "Not because I don't want to make the decision myself but because I think it's best made by the boards, ... with the advice of the regional advisory councils, ... to make those determinations." Representative Davies said he thought there were some issues with the way game was shared in Native communities. He remarked, "And to a more limited extent, barter, and an even more limited extent, actually, sale, that are customary and traditional and ought to be honored, but they ought to be limited significantly."

Number 1852

REPRESENTATIVE MCGUIRE said she shared that same philosophical value, and remarked, "I have repeatedly stated, I want to work toward a solution on subsistence, but to preserve those basic, basic goals." She continued, "There is also a distinction between barter and then the actual cash sale, and those things

can be worked out; ... I think that [ADF&G] could probably spend some time working out how that is." Representative McGuire, referring to Canadian subsistence, expressed concern that the sale of skins and fish has had a resulting negative effect on the resource. She remarked, "I think in doing this, we're trying to preserve the ability to have a subsistence way of life and put food on your table, but we also have to keep in mind, I think, that we have an obligation to make sure that the resource itself is managed wisely."

REPRESENTATIVE DAVIES, in response to Representative McGuire, said subsistence use in general is only few percent of the total [amount of fish taken annually].

REPRESENTATIVE MCGUIRE replied, "And that's what I want to keep it at. I just don't want it to get to a point where it becomes a ... commercial means."

Number 1753

REPRESENTATIVE KERTTULA asked if urban residents who customarily and traditionally rely on subsistence [receive] a type of priority, and whether the urban subsistence priority would diminish the rural subsistence priority in times of shortage.

REPRESENTATIVE DAVIES said in [extreme shortage situations] the local rural subsistence will [have priority]. He remarked, "You have to get to that point eventually or you won't be consistent with ANILCA. ... I think that's going to be so rare that you'll hardly ever see it."

REPRESENTATIVE GREEN remarked, "I think you're absolutely right, ... with the exception of trying to manage this from the other side of the Mississippi"

Number 1658

CO-CHAIR MASEK indicated HJR 4 and HB 14 would be held for further consideration.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:15 p.m.