ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
May 15, 2002
5:30 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 Beth Kerttula
Representative Mary Kapsner

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Fred Dyson
Representative Vic Kohring
Representative Jim Whitaker

Senator Jerry Ward

COMMITTEE CALENDAR

WORK GROUP RE: SUBSISTENCE ISSUES [including HJR 41]

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

BRUCE M. BOTELHO, Attorney General
Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: During work session, discussed HJR 41 and answered questions.

CHARLES E. COLE

406 Cushman Street
Fairbanks, Alaska 99701
POSITION STATEMENT: During work session, discussed HJR 41 and answered questions.

ACTION NARRATIVE

TAPE 02-45, SIDE A
Number 0001

[The first 30 seconds of tape is blank, but nothing substantive is missing.]

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 5:30 p.m. Representatives Masek, Scalzi, Fate, McGuire, Green, Chenault, Stevens, and Kapsner were present at the call to order. Representative Kerttula arrived shortly thereafter.

WORK GROUP RE: SUBSISTENCE ISSUES [including HJR 41]

CO-CHAIR MASEK began the work group session on subsistence issues by announcing that the committee would discuss HJR 41; she requested that Attorney General Botelho provide an update. She pointed out that members had been provided a new handout ["Subsistence Questions and Answers"] put together by the Alaska Department of Fish & Game (ADF&G). [Additional documents had also been provided by ADF&G and others.]

Number 0140

BRUCE M. BOTELHO, Attorney General, Department of Law, reminded members that the genesis of HJR 41 was a subsistence summit convened by the governor in August, consisting of 40-some individuals from around the state representing various community, religious, business, and commercial interests, as well as governmental interests including, in particular, tribal governmental interests. The summit called upon the governor and the legislature to work towards a constitutional amendment that would have a twofold effect: provide for a rural subsistence priority in the taking of fish and game and other renewable resources, and return management of fish and game to the state in a unitary management system, rather than the current dual management system. The governor had then appointed an 11-member committee to draft a constitutional amendment, HJR 41, which contains three parts.

ATTORNEY GENERAL BOTELHO explained [subsection (a) of HJR 41]:

> The first is a declaration of purpose or policy of the state. And I think, in short, one should see it as a declaration to honor the subsistence traditions of Alaska's First Nations. The commentary that we provided reflects our view that this is to be seen as a statement of policy but not an enforceable right. It is simply a recognition of what prompts the overall discussion of a subsistence priority in the first instance, that it was triggered by and initiated as a way of protecting Alaska's indigenous cultures.

Number 0350

ATTORNEY GENERAL BOTELHO discussed subsection (b):

> Subsection (b) is really the heart of the proposal that would ... allow the state to come into conformity with federal law. Title VIII of ANILCA [Alaska National Interest Lands Conservation Act] basically says that the federal government will manage for subsistence uses on federal lands in the state, and that that management will be for the benefit of rural residents, ... who will have a priority in the taking of fish and game and other renewable resources, and, second, that under that management there must be significant, meaningful, local participation in the formulation of those regulations that ... are to guide the priority.
>
> But the law also goes on to say that if the State of Alaska wishes to assume that management, not only with respect to its own lands but on federal lands, it must adopt a law of general applicability that provides for the same priority and the same level of participation [and] uses the same definitions that the federal law provides for.
>
> As I know most or all of you are aware, the state legislature ultimately enacted just such laws of general applicability; they were certified by the Secretary of the Interior in 1986. We had had previous regulations that had provided for that priority; those were struck down by the Alaska Supreme Court as being beyond the authority of just the boards of fish and game, which is what triggered legislative

action. But for most of the period ... late 1980 through 1989, in one form or another, we did have a rural subsistence priority in the state.

On the last day of September 1989, the Alaska Supreme Court issued its decision in McDowell v. State, which declared that the legislature was without ... constitutional authority to enact legislation that provided for a rural priority - that is, one that would bar, conclusively, persons living in urban Alaska from participating in subsistence hunting and fishing. And that really is what triggers the now almost 12 years of debate over a constitutional amendment to allow the state to pass the very laws which ANILCA would authorize, the transfer of authority from the federal government to the state.

Number 0585

ATTORNEY GENERAL BOTELHO continued:

Subsection (b) ... would actually direct the legislature to provide such a priority ... under the sustained yield principle. That is to say, one must first satisfy that requirement before there can be any harvest of the resource, but that persons ... residing in the ... rural area of the state would have first priority on the resource.

And let me underscore the use of the term "area", because what we contemplated as a drafting committee was something that might loosely be described as a local priority. Our view was - remains - that [persons], merely by being rural, should not be given the right to hunt in an area of the state that they've not traditionally hunted or fished ..., so that we avoid the situation where there's a claim that a Barrow resident can fly to Angoon ... and participate in a subsistence deer hunt, for example.

Number 0758

The second part of subsection (b) - first you have the priority to residents of a rural area, or rural residents of an area - ... is to satisfy and basically overturn a second Alaska Supreme Court decision, involving the Kenaitzes, and that has to do with what

we generally know as Tier II. What do you do when there's not enough fish and game ... population to meet all the needs of residents of the area? How do you decide who should have access when there's not enough to go around?

ANILCA set up the basic formulation: you look first of all, in deciding who gets it, [at] the degree of dependence on that resource; the availability of other resources; and the third element has been, in essence, proximity to the resource. And Alaska law provided for exactly the same three-part test for Tier II.

The Alaska Supreme Court in Kenaitze v. State struck down the proximity criterion - that is, that could not be a factor in determining, when resources are so scarce that you can't satisfy all subsistence user needs, who should get a priority. And, again, in our discussions virtually everyone we've talked to ... was of the view that proximity to the resource makes sense and, as a consequence, should be part of our amendment, basically to have the effect of reversing the Alaska Supreme Court's decision in the Kenaitze case.

Number 0940

ATTORNEY GENERAL BOTELHO discussed subsection (c):

Subsection (c) is not a requirement at all of ANILCA; it will not have an effect, one way or another, in terms of bringing us closer to compliance. But it was intended to reach a concern that many persons across the political spectrum have raised with us, and that is to say that there are people outside rural Alaska who have a legitimate claim to say that they have a subsistence tradition or custom and should have some priority and access to the resource.

The people who are described variously could be what we've called the "surrounded villages": Eklutna is a good example, [as are] the Kenaitzes in the Kenai, of persons [for whom] the traditions ... were always rural in nature, that there was a way of life and, through no fault of their own, [they] had been basically surrounded - brought into the most urban areas of the state. Should they have an opportunity

to continue to practice their traditional way? There has been concern about Alaskans who have spent major portions of their lives in rural Alaska and continue to have some ... direct contacts with rural Alaska, but now find themselves in urban Alaska. Should they have an opportunity to participate?

On the other hand, we have heard from those who have said ..., "Well, if you provide for these kinds of priorities, what you're doing is diluting the availability of these natural resources, because there'll be more people qualifying, and that means there'll be less to go around ... for everyone, so whatever you do, ... don't consider this." ... Where we fell on this was to say the legislature should be authorized to grant a lower subsistence priority that would still trump personal use [or sport] or commercial uses. But it would be left to the legislature to make the decision in its own discretion about whether that's good policy or not, or to experiment with it or not. And we wanted to make sure that the legislature believed it had the flexibility to do so.

So those are the three elements of the proposal that we've put together.

Number 1115

CO-CHAIR MASEK noted the presence of Representatives Dyson and Kohring, [ADF&G] Commissioner Rue, and former attorney general Charles Cole.

ATTORNEY GENERAL BOTELHO requested that Mr. Cole be allowed to join him at the witness table, since he was one of the drafters.

Number 1200

REPRESENTATIVE STEVENS asked how proximity would affect people who perhaps grew up in a Native village but are now living in an urban area.

ATTORNEY GENERAL BOTELHO responded that [HJR 41] doesn't answer that question except to the extent the legislature could decide to grant some access by urban Alaskans to participate in a subsistence harvest. For example, practices have been adopted by regulation by ADF&G that allow for proxy hunting and fishing:

if an adult child of a village family lives in Fairbanks but has parents who cannot take part in a harvest, that son or daughter could travel to the village and harvest on behalf of the parents; that is true today. He said, "I don't think this amendment would particularly change ... that kind of arrangement." He added, however, that the express authorization in [HJR 41] would allow [the legislature] to expand that. He suggested there is a good argument that the subsection probably isn't even a requirement, and that [the legislature] has that authority, "whether we confer it or not."

Number 1344

CHARLES E. COLE added:

> We had a big debate over this section because, as General Botelho said, to the extent that you grant a lower-tier priority - but a priority above the sports fisherman or sports hunter - you are really depriving those people of the rights that they have now. And also, to the extent that you grant these priorities, to some degree you really put more pressure on the resource in rural areas and, therefore, you run the risk of depriving the true subsistence user of resources which may be necessary even to ... preclude a Tier II function. So ... that's the reason we left that to the legislature....

MR. COLE pointed out that [if HJR 41 passes and is adopted by the people] presumably it will be in the constitution for decades. Therefore, [the drafters] had wanted the legislature to deal with those problems as they arise, and to have flexibility as Alaska's demographics change.

Number 1451

ATTORNEY GENERAL BOTELHO, in response to Co-Chair Scalzi, explained that [if HJR 41 passes the legislature] a summary, rather than the actual resolution wording, to his recollection, would appear [on the ballot] as a yes-or-no question.

CO-CHAIR SCALZI requested that members receive the language that is subject to going on a ballot, in order to have better dialogue in the deliberations in the next couple of days. With regard to subsection (b), he characterized it as having one tier that is "personal use, commercial, et cetera," another tier that is "primary subsistence," and then "other categories of

subsistence users, to be defined, I assume, by direct dependence [on] the resource [as the] mainstay of livelihood and proximity to [the] resource." He asked whether he was interpreting that correctly.

ATTORNEY GENERAL BOTELHO replied, "Not entirely." He explained that before any harvest can take place, there must be a harvestable surplus. There is a constitutional requirement to satisfy the sustained yield principle, and it is just good management as well; there must be enough escapement of fish, for example, to make sure the species will survive. At the point where harvest is allowed, then, there is a general categorization. He explained:

> At the top of that pyramid, if there [aren't] enough resources to satisfy ... all uses in the harvest, subsistence would have the highest claim on the resource. Generally speaking, the second category in our state is sport harvest, and finally, commercial harvest. And we have another category, and you mentioned it, which is personal use; that is really an urban, ... nonsubsistence area - read "urban" - category that ... is almost a proxy for subsistence. It's not quite, but it is the urban, and we call it equivalent. It has a call before sport and commercial use.
>
> Subsistence itself is broken down into basically two categories. [In] the federal scheme, all rural residents have an entitlement for subsistence purposes on federal lands. But if, again, there isn't enough to satisfy those needs, we hit what is called Tier II, and that is where ... the test, applied individually, comes into play. We look at the customary and direct dependence on the resource; we look at their proximity - where they live - to the resource, and whether there are alternative resources available to them.

Number 1793

ATTORNEY GENERAL BOTELHO, in response to Co-Chair Scalzi, clarified that a person must go through the "general subsistence door" before reaching Tier II.

CO-CHAIR SCALZI suggested the state's regaining control of its resources is the main impetus for most Alaskans [to have a constitutional amendment.] He then offered his understanding

that Section 807 of [ANILCA] provides the ability for an aggrieved party to go directly to federal court, rather than going through the state courts. He asked, "Is this anticipated to be altered, changed, or accepted? And if it is accepted, have we essentially gotten our state management back?"

Number 1870

ATTORNEY GENERAL BOTELHO answered:

> Our proposed amendment does not in any way ... rely on modification or elimination of that provision. I think it's fair to say that there are members of the drafting committee who would support some change to that provision. I think it's also fair to say that no member of the drafting committee would envision a situation where the federal courts will not have some role to play.
>
> It is a federal law. People have a right to seek redress of federal laws in federal courts. The question that I think most arises is, "Well, to what extent are we surrendering management ... by having the possibility of federal court oversight?" And ... in my view, there's not a great threat to the overall management regime. And I'll explain. And first of all, a fundamental premise: a governmental action is virtually always going to be subject to court review. So it will either be state court or federal court. So the first question is judicial oversight generally. Actions of government are going to be subject to judicial oversight. I assume theoretically there can be concern about it being a federal court versus a state court.

Number 1969

> Second, the language in 807 is rather restrictive in ... these ways: First of all, there has to be ... exhaustion of administrative remedies; ... if there's a review process within the state administrative system, ... a person cannot go to federal court until that has been exhausted. We have, by the way, a parallel requirement in state law in terms of administrative (indisc.). Second, the remedies that the court is able to implement in 807 [are] also limited. The focus is not an overall invalidation of

whether we're in compliance or not, but whether the specific action being ... challenged somehow violates the priority that's required. And the court's authority is that it can only direct the agency to bring or write a regulation that is in conformity with the priority, and, second, that it only lasts for the term of the regulation - and in fish and game terms, that is virtually always an annual kind of cycle. So the remedies that the federal court can provide are very limited.

There is a provision that prevailing parties are able to get their costs and attorney's fees. ... If this were another state, that might be a big issue, but in Alaska, which has the so-called English rule, parties who win are already entitled to reasonable costs and attorney's fees. So, again, I don't think that this is some major, revolutionary concept.

Number 2075

ATTORNEY GENERAL BOTELHO, in response to Co-Chair Scalzi with regard to state remedies, said it would be, "the state, the boards themselves" at the administrative level; beyond that, it would be the court system. He said there isn't an ability of the federal courts to oversee the Alaska state courts on this issue; it is a separate judicial path.

CO-CHAIR SCALZI reiterated, "But it says that they can go right to the federal courts."

ATTORNEY GENERAL BOTELHO referred to Section 807 and mentioned administrative remedies.

CO-CHAIR SCALZI offered his understanding, then, that there is no state court in between.

ATTORNEY GENERAL BOTELHO confirmed that.

Number 2128

MR. COLE concurred with Attorney General Botelho's testimony in its entirety. He then emphasized two points. First, he knows of no federal statute in which the federal courts aren't empowered to enforce or to interpret, he said, adding, "That's just the general jurisdiction of federal courts. So it seems to me, in my view, there's no way we will ever get around that,

given the way it's now written." Second, one of the "battlegrounds" of discussion is whether the state administrative agencies' decisions would be given deference by the federal courts. He said:

> The courts by and large, with some exceptions, give deference to the actions of administrative agencies when they are dealing with their field of expertise. And ... it's been our view, from the state's perspective, that ... when the federal courts come into play in this area, as you've just mentioned, that they should be required to give deference to the actions of the state administrative agencies - fish and game. That would give us another level of protection, and we should firmly insist on that.

Number 2213

CO-CHAIR SCALZI remarked, "We do talk about due deference a lot in management." He asked whether that language would be necessary as part of any change to Section 807 of ANILCA or a constitutional amendment.

ATTORNEY GENERAL BOTELHO replied that in his view, if that language were to be inserted, it should be in the federal law, not the state constitution.

Number 2244

REPRESENTATIVE GREEN said it seems that anytime there is a bag limit, it would fall into the category of "shortage" because people couldn't take all they wanted. Therefore, a subsistence [priority] would be triggered, which he suggested could be statewide because the shortages are everywhere.

ATTORNEY GENERAL BOTELHO concurred with respect to the first point, that the very existence of bag limits indicates some shortage. He said, however, that with fish stock populations, in particular, subsistence is not viewed on a "macro, statewide basis." Rather, it is looked at in terms of areas. When people talk about the Nelchina caribou herd, he noted, they aren't talking about every caribou herd in the state. He added, "That's why our view has been that subsistence, for all practical intents and purposes, is always in place."

Number 2340

MR. COLE added:

> That's why we provided, in this language, when it's necessary under ... the sustained yield principle to impose any restrictions on the taking of fish, wildlife, or other renewable resources - whenever there are restrictions, i.e., a bag limit, then ... subsistence is (indisc.).

REPRESENTATIVE GREEN responded, "So we're already there, in everything," adding that he doesn't know of anywhere in the state that there isn't a limit.

MR. COLE replied:

> That language comes right out of ANILCA. ... We weren't crafting anything when we did this; we just looked at ANILCA, and that's what it plain says, and those are the words that come out of there. So we weren't tinkering with anything or being creative in any way.

REPRESENTATIVE remarked, "That doesn't win any points with me just because it came out of ANILCA." On a different point, he posed a scenario in which one person lives at the headwaters of a river and another lives where that river meets the sea. If the first person had a subsistence preference, then the person closer to the ocean would be precluded from taking fish needed to fulfill that priority. Representative Green asked whether that will be addressed in [HJR 41] or whether it makes it clear enough that there won't be a problem.

Number 2438

MR. COLE responded:

> You see, that points up the danger which I think the state is facing with the federal administration, because if the person at Fort Yukon [is] entitled to this priority which you've just mentioned, now, the federal subsistence board is going - and is required as a matter of law - to enforce that principle under ANILCA. So the question then becomes, "How does the board do that?" And to the extent that fishermen down below are taking salmon in state waters, ... my concern has always been that the federal subsistence board is soon - soon - going to assume management of

all of these waters ... so that it's not just ... enforcing this fishing in federal waters, but is going to be enforcing these priorities and restrictions on state waters. So that's how this territorial effect is going to eventually come into play. ...

I took a day and I researched it just exhaustively. ... And it's just clear that the federal government has that power. It starts in Kleppe [v. New Mexico]. There's a case in the Minnesota waters, the Canoe Lakes (ph) or someplace up there; ... that was very clear - they said we're going to resolve an issue that wasn't resolved in Kleppe. Then there's an Idaho case on it there.

And as you look through, you find cases throughout virtually all the circuits in which that principle that the federal government, ... to the extent that it's necessary to achieve a federal end on federal lands, can take action ... to achieve that end on state land. And that seems to be the settled law. So I just point that out, that when you talk about where we're really heading in this area, I'm fearful that's where we're heading, and we should head it off, to use a pun.

Number 2567

ATTORNEY GENERAL BOTELHO added:

Whether or not this amendment is adopted, we're faced with that issue today, and the state does have a subsistence priority now; it's not based on place of residence. We struggle with that issue virtually every year. ... My sense is, ... with respect to subsistence harvesting on the "upriver versus downriver," that there is a great appreciation in rural Alaska about that very conundrum, and that people do share resources and satisfy those basic subsistence needs, even if ... it has, in many instances, meant the full curtailment of commercial fishing, for example, but that to the extent there isn't enough to satisfy all subsistence users, there is also - and part of the culture has really been - the sharing of those resources up and downriver.

And for its part, I think the state has also looked ... to see what other, alternative resources are available ... to rural Alaskan in making that decision as well. I think on the ground ... the villages of rural Alaska have, on their own, without state intervention, also tried ... to make sure that no one goes hungry who depends on the resource.

Number 2652

REPRESENTATIVE GREEN said:

If Alaska was granted statehood on equal grounds with others ... and then subsequent to that there is a federal law that's passed specifically for this state, as opposed to the other 49 states, I can remember that last year you indicated that ... the state did have a pretty good case, but that it was dropped. ... Do you feel that if we don't modify our state constitution, and that someone else can show damage because of federal intervention, that that would justify a case to raise again, and perhaps be heard ultimately by the supreme court?

ATTORNEY GENERAL BOTELHO responded:

I probably need some refreshment because I'm not sure on this particular point -- if it's the question of the constitutionality of ANILCA, my view always has been that Congress clearly has the power to enact legislation that governs its lands, ... plenary authority over its lands. ...

I think the companion part of it is a doctrine that was fairly implicitly adopted during the Nixon Administration, ... a form of federalism which allows Congress ... to put stipulations on ... states; that is to say, as in this instance, "State of Alaska, you don't have to manage on our lands. You can continue doing exactly what you're doing right now. We'll do it our way here. But if you want it, and if it's important enough to you, we'll let you have that authority [under] these conditions. We're not directing that you have to do this at all." That act would be unconstitutional, ... or, I think, [it] makes a good argument, at least, that that would be an

> imposition directed to state officials that Congress could not make.
>
> But the fact [is] that Congress has simply said, "Here it is; if you want it, you can get it only if you satisfy these conditions." ... If Alaska wants to manage throughout the state, including the public lands of the state, it has to pass laws of general applicability that comply with the same priority the federal government exercises, and it must provide for the same definitions and participation.

Number 2821

REPRESENTATIVE GREEN suggested Kleppe could affect state and private lands as far as game is concerned. He also suggested the state should have control of its waters, but acknowledged that it is under debate. He mentioned the possible imposition of federal restrictions on state lands.

TAPE 02-45, SIDE B
Number 2859

MR. COLE suggested it seems almost a given that if there is to be a restriction on federal land with regard to caribou, for example, then there should be one on state lands; the same is true for salmon. He remarked, "My point is that we are going to be faced year after year with encroaching federal power on state lands and state, close quote, waters. And so ... we should ... get that control back in the state as rapidly as we can, because pretty soon the federal government, under ANILCA, is going to be managing on all these state lands and waters." He acknowledged that the foregoing might overstate the case a little.

REPRESENTATIVE GREEN said it seems ridiculous that the state will have to do it the federal way in either case, by changing the constitution to comply with ANILCA or else by maintaining it but ending up doing it the federal way regardless. He suggested it is paramount to go to the U.S. Supreme Court. "We're never going to be able to agree," he said. "I can't possibly give up my state's rights because the federal government is threatening me with taking over my state's rights."

MR. COLE responded:

> I'll put it in one word. As we live in these states, ... we must recognize - whether we ... like it or not,

> in a way - that the federal law is the supreme law of the land, ... constitutionally and by statutes. ... It isn't as though we're plowing new ground here. ... This has been the law for ... 200 and some years. And ... whether we like it or not, ... that's the way it is. ... There's lots of federal laws that I personally deplore, but I obey them because they're the supreme law of the land. And ... I just think we in this state must recognize that and get along with our business, recognizing that principle.

CO-CHAIR MASEK acknowledged the presence of Representative Whitaker.

Number 2712

REPRESENTATIVE FATE asked how the state can regain control if, as suggested, the [federal] subsistence board supersedes [state] management in allocation of fish in the rivers.

ATTORNEY GENERAL BOTELHO answered:

> If the amendment passes and we pass the appropriate implementing statutes, the federal subsistence board ceases to exist. It will be the [state] boards of fish and game that will be making the final decisions in terms of ... not just allocation, but questions about ... what is rural, what is ... in the particular areas, those stocks and populations that are found to be in need of restriction, identifying basically the areas for each of those stocks and populations that ... would constitute the area for which the priority would (indisc.). They basically will have the full management role; there will be no federal management role.

Number 2636

REPRESENTATIVE FATE asked what process exists to mitigate problems that will arise as some rural areas cease to be rural in the future.

MR. COLE said that is why he'd argued, unsuccessfully, that subsection (b) should begin, "The legislature may provide", rather than, "The legislature shall provide", to enable the legislature to deal with the demographics over the coming decades. He cited Washington State, admitted to the Union in

1889, as an example, and mentioned the Yakima Indian Reservation; he also cited Arizona, which was admitted in 1912. He suggested it might not be in the best interests of the Native peoples to have "shall" because there already are problems in Alaska in places like Eklutna where the demographics are changing. He concluded, "So that's why I thought we should have 'may', to deal with what you say."

REPRESENTATIVE FATE asked why Mr. Cole's argument hadn't prevailed [in formulating HJR 41].

MR. COLE said he was outvoted.

Number 2505

ATTORNEY GENERAL BOTELHO offered the following:

> I think there are two points. First of all, whether it's "may" or "shall", with regard to the demographics that really isn't an issue. All of us recognize that "rural" is not static and there will need to be administrative, legislative decisions about what constitutes rural, and it's going to change. Both the federal and the state systems have always recognized that there will be changes to what constitutes rural in the state. And they're not going to be easy choices anytime you get into a situation where you have a transition area going from rural to nonrural. But I think virtually everyone in the process recognizes that's a possibility.
>
> "Shall" versus "may", more specifically, and why, I think, the strong majority believe that it should be "shall", was a reflection in part, ... in varying degrees, on the ease to distrust that if there were simply an authorization to the legislature ... to provide the priority, that the legislature might well not choose to provide it, and, I think, a basic concern that by making it simply permissive, the legislature, for whatever reason, might conclude that it would not try to meet the needs of its rural residents, Alaska Native and non-Native. And so I think that was a large part of ... the concern about mandating it.
>
> I will say at the same time that the test, in terms of compliance with ANILCA, is not contingent on its being

"shall" or "may". The authorization needs to be there. The test and what will be examined by the Secretary of Interior to determine compliance are the laws that come out of the constitutional amendment - that is, the statutes you enact, and not the amendment itself. The amendment by itself will not bring us into compliance.

Number 2372

MR. COLE expressed confidence in the ability of the legislature and said that to the extent the legislature doesn't provide that priority, ANILCA kicks in and becomes effective. He said he'd thought that saying "may" [in subsection (b)] would allow the Natives peoples to be protected regardless, because they still would be protected by ANILCA.

REPRESENTATIVE FATE brought attention to the definition of "subsistence" and said:

I sometimes have a problem with that, not in trying to delineate whether they truly subsist anymore or whether they did 50 years ago or whether it's supplemental or what. But ... one of the recognized parts of that definition is it depends on fish and wildlife where the dependence is quite high. Am I mistaken in that? And if I'm not mistaken, I'd just like to go on a little bit further with that. ...

There are some areas in the state, even as we speak, where that dependence is not based on economics, but is based on more a traditional lifestyle, where they can go to the stores because the income is high, where they do not really depend on that, but ... only through the traditions - that I think are important, incidentally - ... do they still maintain that lifestyle, but truly they don't have to. How is that going to be dealt with? Or is it going to be dealt with as ... we, for example, may have gas in the Interior, on the river systems, that the state develops? You're going to see not just demographic changes; you're going to see economic changes. Is that going to be dealt with at all?

Number 2229

ATTORNEY GENERAL BOTELHO responded:

In terms of what constitutes subsistence uses, the place I start is just looking at what it was that Congress itself intended when it enacted Title VIII [of ANILCA]. And it simply described it as customary and traditional uses by rural Alaskans of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making of and selling of [handcrafted] articles, or barter or sharing for personal or family consumption, and for customary trade.

The focus is first on customary and traditional uses by rural Alaskans, and then, again, for personal consumption and use. The other two are perhaps more subsidiary - that is, the making and selling of articles and barter. It's not clear to me, Representative Fate, whether you're focusing on the traditional means, which, of course, itself changes over time: the snowmobile as opposed to the sled [or] the use of bow and arrow as opposed to a rifle. The focus here is on the uses.

And clearly there [is] some focus on methods and means as well, ... but that's something we've basically delegated to the experts that we have in fish and game to make - and ultimately to our boards - in determining [what] is the appropriate gear that may be used. What are the appropriate species that have been harvested customarily and traditionally - not every species currently in the state has that tradition. I don't see this as so much an issue, again, at the constitutional level as (indisc.--papers shuffling) the administrative level, which has, I think, pretty great flexibility but also has the expertise that one could not expect either from the people voting on a constitutional amendment to include or, for that matter, the legislature (indisc.) necessarily.

Number 2085

REPRESENTATIVE FATE indicated he has some fears about it because the titles, including that for the proposed constitutional amendment, relate to subsistence. He said that is why he wanted clarification about the definition of subsistence. He added, "It wasn't just what you mentioned, and I appreciate that, but

it's also the very fact that their economics change ... in these rural areas, and whether or not that will have an impact on the title 'subsistence' as it is ... referred to in the amendment itself of the constitution does, I think, affect that change, and it certainly - at least psychologically, I think - will affect the decision of some people."

Number 2045

CO-CHAIR MASEK offered her understanding that under ANILCA the federal government has definitions for customary and traditional uses, customary trade, and rural resident, but that the state doesn't have those definitions. She requested confirmation.

ATTORNEY GENERAL BOTELHO responded, "Or regulations. And we do have some of our own; ... there are some areas where we have definitions that have no corresponding federal definitions, and vice versa."

CO-CHAIR MASEK mentioned ANILCA and the terms "noncommercial, long-term taking, use of fish and wildlife, to a specific area, and it has to be an established use, and then the customary trade means limited noncommercial exchange for money, and rural resident is rural community or area substantially dependent on wildlife." She added, "But as the attorney general said, we don't have any, really, definition in statute, though, that defines what is customary and traditional; it's probably done under regulation, but it's not in statute."

ATTORNEY GENERAL BOTELHO replied, "That's right - it is done in regulation." He offered to check further.

MR. COLE told Representative Fate:

> But Congress has dealt with that ... by federal statute; it's dealt with what subsistence means and what subsistence is; ... there again, we're stuck with it. I think that's ... how I would answer your question, "What are we going to do about these things?" Well, until Congress changes ANILCA, then those definitions of subsistence [are] in ANILCA; that's what we're faced with.

Number 1894

REPRESENTATIVE McGUIRE agreed with Mr. Cole about the argument regarding "may" and "shall". She questioned the logic in having

subsection (b) say "shall", when subsection (c) - which also recognizes subsistence use, but on a lower level - says "may".

ATTORNEY GENERAL BOTELHO, noting that he'd already addressed the "shall" portion, said the "may" was a reflection "that we could see strong, competing arguments about whether the legislature should or should not have the ability to grant lower subsistence priorities, that there were different groups of people who believe they should have entitlement; others were of the view that any subsidiary subsistence priorities would seriously ... damage the core group that we were trying to reach." He elaborated:

> I don't think we were being crassly political, but I think we were trying to find a formulation that we thought would garner additional votes [for the proposed amendment]. And part of the message that we heard, in talking with legislators and hearing their pronouncements about concern that "if it's just a rural priority, we're not buying it," we tried to find an avenue that would try and address a spectrum of concerns: on the one hand, concerns about urban Natives who would otherwise have no ability - or some subset, in particular, the situation described by the Eklutnas and the Kenaitzes - and on the other hand, certain urban hunters and fishers who would claim that they had a subsistence tradition and way of life that should be recognized. We wanted to empower the legislature to be able to deal with that if it would make a difference. And so ... it's a whole range of potential groups that could benefit.
>
> As [Mr. Cole] indicated, this was one of the most hotly debated parts of our proposed amendment. That's part of the reason it is not mandatory, as we recognized there were these competing interests, some who said, "Forget the idea altogether," others who said, "Why, this is actually moving us in the right direction." And we wanted to, I guess, signal directly that we saw this as an option. And as I commented before, I think most of us agree that the legislature probably has the authority ... to do what we proposed here without a constitutional amendment. But this certainly would remove that legal argument.

Number 1690

REPRESENTATIVE McGUIRE again lauded the argument put forth by Mr. Cole, saying that in her mind, it can only be political to use "shall". If the legislature doesn't do it through statutes, then ANILCA will kick in. She said:

> I would argue just the opposite should be made as a political statement: the word "may" ... should be there. And I think that part of that should be that if this does go through, and if we do end up reaching some consensus, if it happens to be this version, that there ought to be some steps made toward creating some trust between the legislature and the parties and interests here. I think the downside is nothing, because certainly with "may" there ... the results are going to be the same anyway, and the upside ... is good in the sense that it may build some trust.

ATTORNEY GENERAL BOTELHO responded:

> And I subscribe to your view. I think the very act of the deliberations we're going through now, the seriousness with which you're taking it, is ... one of those steps in terms of rebuilding that confidence that we'd like all Alaskans to have towards ... our elected [officials].

Number 1605

REPRESENTATIVE McGUIRE interjected and said her questions relate to the definitions, which are in three distinct portions: customary and traditional use, mentioned in the first section; customary and direct dependence as the mainstay of livelihood; and, in subsection (c), customary and traditional use. She said:

> The statement was made that it's already in federal law and we're stuck with it, so to speak ... or we're going to live with it. ... Is it your opinion, ... should a constitutional amendment like this, if it were in this form, pass, that the legislature would have the authority and ability to go back in and reexamine those definitions on some level, at each of those different levels, to define what those things mean?

Number 1532

ATTORNEY GENERAL BOTELHO replied that he thinks there is a degree of discretion to do that, first, to the extent federal law isn't in direct conflict over definitions. "And I think customary and traditional is an area that has some flexibility," he said, indicating [the legislature] has already acted once in terms of defining customary and traditional; he acknowledged that there is a point at which a definition might be considered so unreasonable "that it would be outside your discretion."

ATTORNEY GENERAL BOTELHO said ultimately there will be two tests. The first, probably the most serious, is review by the Secretary of the Interior of the entire regulatory scheme that Alaska establishes, less the constitutional amendment than the specific statutes put into place and whether they provide, in [the Secretary's] view, the requisite priority, definitions, and participation. He suggested the state is "generally in a position to implement once that ... sign-off has taken place." He said the second possible check would be some challenge in court about whether [the state's] definition either itself conflicted with ANILCA or was being applied in a way that conflicted with ANILCA. He added, "I don't think the remedy there is to completely invalidate the program, but to ... push for some form of more limited change in state law."

Number 1398

REPRESENTATIVE McGUIRE said at its core she supports the idea that people ought to be able to live off the land, and that "those peoples who have been doing it the longest ought to be able to continue that use." She suggested it starts to get complicated in this precise definition area, however, which sets up "pyramids" and thereby narrows availability of the resource. If customary and traditional use is defined so broadly that too much of the resource is used up, and there is an inability to go to the next step, she said that is where she starts "to have some tension." She elaborated:

> And what I'm talking about here is living off the land, the second part, where you say "as a mainstay of livelihood," living off the land, ... eating it, consuming it, bartering it to the extent that you need for energy costs or things like that; that's fine. But we have seen some examples in Canada, for example, with First Nations, ... where the pendulum has swung too far, and you have situations where you have such a high degree of commercial, if you will, subsistence use, but really more commercial use of a resource,

that you ... deplete the resource to the point that other users then don't have any meaningful or fair opportunity to participate at all - granted, on a lower level, but at all.

And so that's my concern, and that's where I want ..., as we continue these debates, to really focus on. Is it a monetary amount? I don't know; maybe that's one way to go. I don't know what would ... satisfy ANILCA. ... I want people to be able to have those traditional and customary uses, but I want them to really be those things, and not ... so much more. ... When I say that, it doesn't mean that I am suspect, because I know that [for] Native people, by their very culture, ... it is inherent to preserve and respect the culture. ... But there's always that potential that if you expand it so broadly, ... we're going to enter into that crises period where there just isn't enough room for those on the lower level, and I'd hate to see that. ...

I live in South Anchorage. I have neighbors that ... truly fill up their freezers every winter - my husband and I do too - with fish and meat, and live off it. Granted, we have a grocery store just around the corner, and I recognize that. But there are people that do truly enjoy and live upon the fish and game that are here in Alaska, and I'd just ... hate to see that happen. So we'll continue to talk.

Number 1196

ATTORNEY GENERAL BOTELHO noted that those points reflect discussion over the years in terms of the statutory framework. He said although there hasn't been widespread abuse, instances have caused people to wonder what noncommercial barter is, for example, or limited kinds of sales. He offered his sense that there has been fairly universal recognition of the need to deal with the issue in order for people to be comfortable on all sides about the importance of subsistence, and that it not be a guise for commercial activities. He said there are some good ideas that could be addressed, and a great opportunity to deal with these issues during the next several days.

Number 1072

REPRESENTATIVE STEVENS suggested that when restrictions are necessary, and only then, will there be a priority, because [HJR 41] doesn't say there will be a priority when there is an abundance. He mentioned ANILCA and federal law and asked, "Is that next step part of ANILCA?" He referred to a comment by Nelson Angapak at a previous hearing [April 5] that "priority must be given to subsistence harvest patterns and practices even when there is an abundance of the resource." He inquired about the necessity of that.

Number 1004

ATTORNEY GENERAL BOTELHO replied:

> This is almost in the nature of a theological debate, and I say that only half facetiously. And that is because if there is an abundance, by its very definition or nature, every need is satisfied, including the subsistence need; it would be the first need, but it would mean all the other needs are satisfied. ... I can say, "Well, subsistence is always in effect because when there's an abundance all these needs are taken care of," and ... there are others who say, "Well, no, we don't have subsistence, in essence, when there is an abundance because everybody's needs are satisfied, and it only kicks in when there is a shortage."
>
> I think it really is a nonsensical distinction; I haven't been persuaded otherwise. ... If there is an abundance of the resource, every need, by definition, is satisfied, most importantly, the subsistence need. And when there's a shortage, subsistence kicks in.

Number 0886

MR. COLE added that he doesn't know what abundance means, because there is never so much that everybody gets to take as much as he or she wants. And subsistence users don't get to take as much as they want either; there are established rules and regulations with regard to amounts and allocation. He suggested Commissioner Rue could better explain and said, "It works, really, pretty well out there, as a matter of practice." He gave hypothetical examples of allocations, noting that the sustained yield principle limits the amount of harvest.

Number 0770

REPRESENTATIVE STEVENS asked whether ANILCA speaks to that issue.

ATTORNEY GENERAL BOTELHO responded, "Not in terms of abundance, but it talks about the necessity of restriction." He read from [Section 802 of Title VIII of ANILCA, the policy section], with comments:

> "... nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska" - and here is the operative language - "when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population...."

ATTORNEY GENERAL BOTELHO noted that it has the same basic operative language, "when it is necessary to restrict".

CO-CHAIR SCALZI announced that the committee would continue with questions and then take testimony the following morning.

Number 0636

REPRESENTATIVE KAPSNER expressed concern about the willingness to go only so far as "may", rather than "shall", however good the intentions are towards Native Alaskans. She said:

> I want to preface what I'm going to say with a comment: This is not a Native issue anymore. This is largely a Native issue; Natives are concerned about it. But when we talk about it in the state, it's always characterized as a Native issue. This is a rural issue. Many Native people wish that we could go back and this was just a Native discussion, but we're not there anymore, and we'll never go back to a Native discussion. This is a rural - not versus - but a rural issue in the state. Sixty or sixty-five percent of rural Alaska is non-Native. This is not a Native issue.
>
> I think that entities in the state have a tendency to ... characterize us as being noncompromising: "Oh, those Native people, they won't budge." And every special session that we have not been successful [in]

getting a rural priority ... has been blamed, I think, in some part on Native people. And I think that that is unfair, first of all.

Secondly, I am concerned that there is a willingness to only go so far as "may" and not go to "shall". ... I've only been here [as a legislator] for four years, but I have seen things that I ... never would have expected statesmen from my own state to do - things such as zeroing out the subsistence division of the Department of Fish and Game. And there are members of this committee who chose to do that. That gives me very much alarm, because ... it's not like the subsistence division promotes subsistence over any other use. It's not like they teach people how to do subsistence. ... It's really not even the division of subsistence; it's the division of research. But I think because it has that label of "subsistence," it's an easy target.

I've sat in a legislature that has advocated to make speaking any other language but English at meetings of state agencies illegal. ... And so I don't have a lot of confidence that this is a group of people who, without "shall" or implementing language, is going to give rural people ... their rights.

Number 0395

MR. COLE replied:

ANILCA is there regardless of whether it's may or shall. ANILCA is your fundamental protection, and it will last there, ... absolute in its terms, as long as that statute is on the federal books. So the rural people ... are totally protected, whether it's shall or may, until Congress changes ANILCA. And that, in my view, is not likely to happen in my lifetime or yours either.

REPRESENTATIVE KAPSNER responded:

That's why rural people are quite content with federal management. It used to be, ... in other subsistence special sessions, you had rural people advocating the hardest for ... the state regaining control, and that

> sentiment isn't there anymore. We're ... quite pleased with ... federal management....

MR. COLE said:

> I'm surprised that the rural people, including the Native people, have continued to support the state constitutional amendment, and I applaud them for doing it, because I think in the long run it's in their best interest that they do, that we can solve these problems ourselves in Alaska best, as we come together to resolve [them]. And that's why I've supported this for the last 12 years.

Number 0269

REPRESENTATIVE GREEN asked, "How can ANILCA be held to be constitutional when it provides for special treatments, both by states and by groups?"

ATTORNEY GENERAL BOTELHO noted that he and Mr. Cole had discussed that just that day. He requested that Mr. Cole reply first.

MR. COLE cited handicapped parking and federal progressive income tax provisions as examples where there is inequality; with regard to the first, he pointed out that legislators had decided some people need that parking place more than he does, and he called it a rational legislative enactment. He suggested that in some ways equal protection is a public myth; he said thousands of statutes have unequal provisions, but those are within legitimate aims of this body and Congress. He indicated the question is whether something is a reasonable provision to achieve a legitimate end and doesn't impact fundamental constitutional rights.

TAPE 02-46, SIDE A
Number 0001

MR. COLE pointed out that this legislature has passed many statutes that don't provide equal protection.

REPRESENTATIVE GREEN noted that handicapped parking and [federal] income tax aren't specific to one state or another. However, [HJR 41] relates to where a person is located.

MR. COLE asked whether provisions for hunting in the Okefenokee [National Wildlife Refuge in Georgia] are the same as for north of the Brooks Range with respect to the taking of game, for instance. He noted that they are federal preserves. He said Congress is able to look at these particular tracts of land and exercise its plenary power to deal with federal land. In this case, [ANILCA] is to achieve the end of providing subsistence for rural peoples who live off the land. He indicated the question is whether it is a rational provision to achieve those ends. He said that clearly it's a permissible end "to allow rural people to need these resources historically and currently ... for their subsistence"; that's a rational objective. As to whether the means Congress has chosen to achieve that end is reasonable, he suggested that Representative Green would agree it is. "End of question," he concluded.

Number 0236

ATTORNEY GENERAL BOTELHO added that it doesn't have to be a perfect fit. For example, there will be some rural Alaskans who have no need to subsistence hunt and fish, whereas some in urban Alaska will be identified who have no other means. He said that generally speaking, the courts won't require a perfect fit; it has to be a rough fit. Although a more closely tailored fit might be required depending on the right, he said that for an issue dealing with the taking of fish and game, for example, "it's a nice, rational shorthand - rural." He added, "If one looks at ANILCA, Title VIII, Section 801, which really are the congressional findings, there's no doubt ... [that] if they have legitimate governmental objectives [and] they have found a rational means to achieve those objectives, it's going to be upheld by the courts - and so far, in fact, have been where ... they've been tested."

MR. COLE recalled reading a case in Montana a number of years ago in which the U.S. Supreme Court said hunting and fishing are not among the highest federal protected rights or privileges like freedom of religion, freedom of press, and so forth. Mr. Cole said the right to hunt and fish falls way down on the scale of protected rights. He clarified that he was just reporting on what he believe the law is, rather than stating his personal feelings. Noting that he has worked on this issue for 12 years, he said, "I've come to what I think is the right conclusion, and it's changed about 180 degrees.... I really think that we ought to do it, and get it behind us, so we can get on to facing these other great problems we have together in this state."

Number 0513

REPRESENTATIVE GREEN noted that often there has been a list of [conditions] brought up when there has been an issue of changing the constitution, such as getting a compromise from the federal government to change some provisions of ANILCA. Noting that [HJR 41] doesn't require such a change, he asked, "Do you think by acquiescing that there would be any chance to get compromise after we change our constitution, or are we hoisted on our petard and there ain't no way out of this?"

MR. COLE replied, "No."

REPRESENTATIVE GREEN asked, "On all three."

MR. COLE said he'd lost track.

REPRESENTATIVE GREEN strongly disagreed with Mr. Cole, but said he understood.

MR. COLE responded, "You remember, [U.S.] Senator Stevens enacted some definitions here, and they were generally concurred [with] and seemed to be a step forward, and then they dropped out by lapse of time, you know."

Number 0628

ATTORNEY GENERAL BOTELHO responded:

> If I could distinguish myself from [Mr. Cole] on this point, only to this extent: you're certainly right - there have been proposed changes before, and clearly, I think, they will be considered. But what we have offered, though, does not provide for any ANILCA changes and, again, it was a reflection that we were unable to reach consensus on that point within the drafting committee. A majority did not believe that there was a need for ANILCA changes, and there was a fairly large minority who did believe that it made sense. ... But in terms of timing, I think it's also fair to say that those who believe that changes should take place did not believe they had to be a prerequisite to the constitutional amendment.

Number 0699

REPRESENTATIVE KERTTULA said:

> Intellectually, I understand what you're saying between "may" and "shall", and I do understand about ANILCA and the protections for Native Alaskans. But if we put "may" in this and we send it to the voters and adopt it and then the legislature doesn't act, where does that leave us with our fisheries? What happens to the other areas? ... Perhaps we have protected the group under ANILCA, but by not adopting [laws], if we don't do that, ultimately ... we're right where we are now, are we?

MR. COLE replied, "Yes." He expressed confidence, however, that the legislature will enact laws of general applicability consistent with ANILCA because of the desire to regain control over those resources.

Number 0812

ATTORNEY GENERAL BOTELHO added:

> I don't agree with [Mr. Cole's] analysis, but it brings me back to comments and a concern that Representative Green flagged, and that is the state's rights issue. ... I'm not motivated primarily because I want to bring the state in compliance with federal law. Over the years that I've been involved with ... this issue, I think I've ... learned a lot. But my sense is that most Alaskans would say, number one, subsistence should be the top priority. I haven't met a legislator who would disagree with that; I haven't met a legislator who would disagree that most places we would identify as Bush Alaska shouldn't have the priority. ... I've found a sense of that culture, where we can still see it vibrantly today.
>
> A lot of the battleground is really over the edges, in some respects. But the reason for looking at a constitutional amendment and looking for "shall" perhaps less than "may" has not much to do with ... what role the federal government plays, but it's a statement about ourselves and what we think ... is important to Alaska, and that we stand on our own to say, "We think subsistence is the most important thing, and ... we - as the people of Alaska, not the people under duress by the federal government - direct

our legislature to act," and with the ... assumption that they will act.

Number 1025

And I'm not troubled if it's "may"; I'll be honest with you ... there as well. But I think the primary message is that we should be doing this not because of some external reason, but because we think this is the right thing to do for our state, and we want to make a statement about what kind of state we live in, and that we have pride in the fact that we have ... both [a] Native and a rural way of life that we think is part of who we are, and what we're proud of. And that's the reason to act, ... and not focus that this is the federal government trying to cram something down our neck. ...

I'm not the biggest state's rights champion, but I respect that there are lines that the federal government should not cross. I think, on this one, ... this would be the right thing to do if ANILCA didn't exist. There may well be a day when ANILCA does not exist. And, of course, that's part of [Mr. Cole's] view, as well, in terms of why it should be "may". (Indisc.--coughing) still to have our basic law declare the importance of subsistence to who we are as a state, I think is really important.

Number 1077

REPRESENTATIVE FATE mentioned testimony that the Department of the Interior would have to sign off on regulations or statutes that flesh out any constitutional amendment. He characterized ANILCA as a stopgap and offered his understanding that the federal courts would have final jurisdiction. He asked:

Did it ever come up in your conversation at all ... that perhaps a constitutional amendment wasn't needed, that you could do this ... by statute law, providing in that statute law that you had language that said that perhaps, for example, that the Department of Interior would have either concurrence or oversight on these statutes, recognizing that one legislature can't hold the other one hostage, but you still would have all these protections, including language in the statute itself. Was this ever discussed?

ATTORNEY GENERAL BOTELHO answered:

> As you have formulated it, the answer is no. I'm not sure that it could be achieved in any event. ... The conundrum is this: The state does not get to manage on federal lands if it doesn't have a law of ... general applicability that provides for the rural priority, but the Alaska Supreme Court says, "Legislature, under the current constitution you don't have the authority to enact just such a law." And so ... there isn't a paradigm I see that would bring us to that unitary management by legislation alone. And that really was ... the effort that Governor Hickel undertook, and [Mr. Cole] was part of an intense effort in Governor Hickel's first year ... to try and see if there was a solution for it of a constitutional amendment. And ... a lot of good was done that really has been the basis for a lot that has followed. But we're unable to find an answer.

Number 1260

MR. COLE said:

> I think the answer to your question is "no" because the McDowell case said that we couldn't do it. ... But beyond that, ... we tried some innovative other view and approaches, but we sort of, I think, at the end concluded that they were just too complicated and just wouldn't ...

Number 1306

CO-CHAIR SCALZI commented that his experience with federal law is very limited, but said:

> During the IFQ [individual fishery quota] debate that we went through, I was one of the people that signed on as a friend of the state. And when we were sued because of the alliance against IFQs and took it all the way through the federal courts. And the halibut Act is one of those Acts that you talk about that's very similar to ANILCA in that it provided, in 1923, initially, federal sovereignty over halibut in our waters. And even though we became a state and we have a three-mile limit of state jurisdiction and control,

the halibut Act of 1923, and then reauthorized in 1953, I think, superseded that. So I found out that there's two things that ... we can't regulate in the state of Alaska in our waters, and one is halibut and the other's fur seals, and it was because of those two federal Acts that kind of go hand-in-hand with what we're talking about here.

CO-CHAIR SCALZI and CO-CHAIR MASEK thanked Attorney General Botelho and Mr. Cole for their participation. [End of discussion of subsistence issues, including HJR 41.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 7:25 p.m.