

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

May 16, 2002
9:20 a.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

OTHER LEGISLATORS PRESENT

Representative Peggy Wilson
Representative Ken Lancaster

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 41
Proposing an amendment to the Constitution of the State of Alaska relating to providing for priorities for and among subsistence uses in the allocation of fish, wildlife, and other renewable resources.

- HEARD AND HELD

PREVIOUS ACTION

BILL: HJR 41

SHORT TITLE: CONST. AM: PRIORITY FOR SUBSISTENCE USES

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/15/02	2279	(H)	READ THE FIRST TIME - REFERRALS
02/15/02	2279	(H)	RES, JUD, FIN
02/15/02	2279	(H)	FN1: (GOV)

02/15/02	2279	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/15/02	2279	(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)	Heard & Held
04/05/02		(H)	MINUTE(RES)
05/15/02		(H)	MINUTE(RES)
05/16/02		(H)	RES AT 9:00 AM CAPITOL 124

WITNESS REGISTER

SENATOR JERRY WARD

Alaska State Legislature
Capitol Building, Room 423
Juneau, Alaska 99801

POSITION STATEMENT: Offered proposed amendment to HJR 41.

DICK BISHOP

Alaska Outdoor Council (AOC)
1555 Gus's Grind
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified in opposition to HJR 41.

FRANK C. WHITE, SR.

Leader, Wolf Clan;
Member, Alaska Native Brotherhood (ANB), Camp 2;
Delegate, Central Council of the Tlingit and Haida Indian Tribes
of Alaska (CCTHITA)
320 West Willoughby
Juneau, Alaska 99801

POSITION STATEMENT: During hearing on HJR 41, testified about
people's right to hunt and fish, and the necessity of that
ability in small towns where there are few jobs.

GREG ROCZICKA

P.O. Box 927
Bethel, Alaska 99559

POSITION STATEMENT: During hearing on HJR 41, testified on his
own behalf and on behalf of the Orutsararmut Native Council;
encouraged members to look at the proposed wording offered by
Senator Ward; cautioned about attempts to amend ANILCA.

GEORGE RIDLEY

Sitka ANB Camp 1
456 Katlian Street

Sitka, Alaska 99835

POSITION STATEMENT: Testified against provisions in [HJR] 41 because of the desire to continue what is customary and traditional, including barter and trade.

BUDDY BROWN, President
Tanana Chiefs Conference, Inc. (TCC)
122 First Avenue, Suite 600
Fairbanks, Alaska 99701

POSITION STATEMENT: Conveyed TCC's opposition to HJR 41 and support for a Native preference because trust in the legislature has eroded, but spoke about including non-Native rural residents and having co-management involving the tribes, the state, and the federal government; emphasized a need for reconciliation on all issues affecting Alaska Natives.

CARL ROSIER
Territorial Sportsmen, Inc.
P.O. Box 20761
Juneau, Alaska 99802

POSITION STATEMENT: Testified in opposition to HJR 41; voiced support for subsistence for all Alaskans, and for having the effective date of any constitutional amendment coincide with the repeal of provisions of Title VIII of ANILCA.

PATRICK WRIGHT
P.O. Box 90386
Anchorage, Alaska 99509

POSITION STATEMENT: During hearing on HJR 41, presented letter from the Anchorage fish and game advisory committee in opposition to amending the constitution to comply with ANILCA; testified on his own behalf, asking that specific sections of the constitution not be changed, and that there be fairness.

MARGARET ROBERTS, Interim Executive Director
Alaska Inter-Tribal Council (AITC)
431 West 7th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: During hearing on HJR 41, presented AITC's position on behalf of chairman Mike Williams that there be no compromises to ANILCA, that customary and traditional subsistence use be a priority, that there be a Native preference, and that there be tribal co-management.

GLEN BIEGEL
5957 Barry Avenue
Anchorage, Alaska 99507

POSITION STATEMENT: During hearing on HJR 41, presented an alternative proposal for resolving the subsistence issue that doesn't require changing the constitution.

ANNA P. KATZEEK
421 West 10th
Juneau, Alaska 99801

POSITION STATEMENT: Testified during hearing on HJR 41 about the subsistence lifestyle; spoke about the need for Natives, both urban and rural, to have subsistence foods.

SELINA EVERSON
Alaska Native Sisterhood (ANS) Grand Camp
(No address provided)

POSITION STATEMENT: Testified during hearing on HJR 41, indicating the governor's proposed constitutional amendment will guide this issue in the right direction.

ALFRED MCKINLEY SR.
Alaska Native Brotherhood (ANB) Grand Camp
P.O. Box 21713
Juneau, Alaska 99802

POSITION STATEMENT: Testified in support of HJR 41.

JULIE KITKA, President
Alaska Federation of Natives, Inc. (AFN)
1577 C Street, Suite 300
Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HJR 41 with some amendments; expressed support for full implementation of Title VIII of ANILCA.

CAROL DANIEL, Legal Counsel
for Alaska Federation of Natives, Inc.
8141 Alatna Avenue
Anchorage, Alaska 99507

POSITION STATEMENT: Offered that HJR 41 could work, depending on the implementing laws; discussed concerns and suggested amendments to comply with Title VIII of ANILCA.

PAT JACOBSON
P.O. Box 8707
Kodiak, Alaska 99615

POSITION STATEMENT: Testified in opposition to HJR 41; expressed concerns about equal rights and asked members to support the Bondurant v. Norton lawsuit instead.

JAKE JACOBSON

P.O. Box 1313

Kodiak, Alaska 99615

POSITION STATEMENT: Testified in opposition to HJR 41 and asked members to support the Bondurant v. Norton lawsuit.

EILEEN NORBERT

P.O. Box 1858

Nome, Alaska 99762

POSITION STATEMENT: Testified in support of HJR 41, suggesting that any amendment should be to provide co-management of hunting and fishing resources.

RAY NIELSON, JR.

208B Kogwonton Street

Sitka, Alaska 99835

POSITION STATEMENT: Testified on HJR 41.

BILL TEGOSEAK, Executive Director

Inupiat Community of the Arctic Slope (ICAS)

P.O. Box 934

Barrow, Alaska 99723

POSITION STATEMENT: Testified in support of HJR 41.

DALE BONDURANT

31864 Moonshine Drive

Soldotna, Alaska 99669

POSITION STATEMENT: During hearing on HJR 41, emphasized his belief in a constitutional democracy that provides equality for everyone, and that he doesn't want the constitution changed.

MERLIN KOONOOKA

(No address provided)

Gambell, Alaska 99742

POSITION STATEMENT: During hearing on HJR 41, testified about the subsistence lifestyle and the cost of transporting goods to his village.

DONALD WESTLUND

P.O. Box 871

Ward Cove, Alaska 99928

POSITION STATEMENT: Testified in opposition to HJR 41 and suggested supporting the Bondurant v. Norton lawsuit.

ROGER SMITH

P.O. Box 2473

Kodiak, Alaska 99615

POSITION STATEMENT: Testified in opposition to HJR 41; suggested either a change in ANILCA or a supreme court decision on the equal protection clause is needed.

JOE WILLIAMS, President
Organized Village of Saxman;
Vice Chairman, Alaska Inter-Tribal Council
R2 Box 2
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified during hearing on HJR 41, speaking against further compromises and asking where the equality is in the schools, roads, and police protection in rural Alaska.

TOM DOOLEY
P.O. Box 2175
Kodiak, Alaska 99615

POSITION STATEMENT: Testified in opposition to HJR 41; expressed concern for the rights of his children and grandchildren; suggested leaving the state constitution alone; asked legislators to look after all Alaskans.

ACTION NARRATIVE

TAPE 02-47, SIDE A
Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 9:20 a.m. Representatives Masek, Scalzi, Fate, Green, Stevens, and Kapsner were present at the call to order. Representatives Kerttula, Chenault, and McGuire arrived as the meeting was in progress.

HJR 41-CONST. AM: PRIORITY FOR SUBSISTENCE USES

CO-CHAIR MASEK announced that the committee would take testimony on HOUSE JOINT RESOLUTION NO. 41, Proposing an amendment to the Constitution of the State of Alaska relating to providing for priorities for and among subsistence uses in the allocation of fish, wildlife, and other renewable resources. [HJR 41 had been heard on April 5 and discussed during the committee's work group session on subsistence on May 15.]

Number 0152

SENATOR JERRY WARD, Alaska State Legislature, came forward, offering a proposed amendment in the form of a work draft for an

unnumbered Senate joint resolution labeled 22-LS1693\L,
Utermohle, 4/18/02, which read:

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

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF
ALASKA:**

*** Section 1.** Article VIII, Constitution of the
State of Alaska, is amended by adding a new section to
read:

**Section 19. Subsistence Use of Fish and
Wildlife.** The legislature may provide a
preference to residents to take a fish or
wildlife population for subsistence use when the
harvestable surplus of the fish or wildlife
population is not sufficient to provide for all
beneficial uses of the fish or wildlife
population. The preference shall be accorded to
residents who reside in the vicinity of the fish
or wildlife population and have customarily and
traditionally used the fish or wildlife
population in a rural area for subsistence.

*** Sec. 2.** The amendment proposed by this resolution
shall be placed before the voters of the state at the
next general election in conformity with art. XIII,
sec. 1, Constitution of the State of Alaska, and the
election laws of the state.

CO-CHAIR MASEK called an at ease at 9:23 a.m. and called the
meeting back to order at 9:24 a.m.

Number 0291

SENATOR WARD remarked that as urban Native legislators, he and
Co-Chair Masek, who had discussed this amendment previously,
have been at odds with some other Native people over this issue.
He also said he has been approached by U.S. Senators Ted Stevens
and Frank Murkowski, Congressman Don Young, Governor Tony
Knowles, and Lieutenant Governor Fran Ulmer, all who said, "Find
an Alaska solution." Senator Ward told members he has spent a
lot of time trying to do so. Acknowledging that this is
delicate ground, he said that according to the 2000 census,

62,646 rural Alaska Natives qualify for subsistence, and 35,243 urban Natives do not.

Number 0544

SENATOR WARD talked about divisions among people and said this is not about dividing; he acknowledged it perhaps won't make everyone happy, either. He noted that at both an [Alaska] Outdoor Council meeting and at AFN [Alaska Federation of Natives], people promoted the same language: subsistence is a God-given right and is the highest priority for fish and game. He explained, "That's the basis of my amendment. My own personal view is that if you catch a fish to eat it, you have a priority over anybody who catches a fish to sell it." He noted that the basis of his proposal is not to manage people, but to manage a resource, with a local priority triggered during a time of shortage.

Number 0739

SENATOR WARD told members that in the four and a half years he and [Co-Chair Masek] have been working on this, not one legislator has stated opposition to somebody's living off the land. He said if someone lives in an area and there starts to be not enough to go around, then anybody who lives off the land and has lived off the land should get "first crack at it," which is what his proposal does.

SENATOR WARD urged members to look for the positive aspects of the proposal and to find areas of commonsense agreement for "an Alaska solution"; he suggested it has a real possibility of working. He pointed out that this proposal contains ideas from others including Representative Dyson, [Senator] Halford; [former governor] Jay Hammond, and the late Don Bennett. He said:

This is ... kind of a combination of ... my life, being a Republican legislator and also being an Alaska Native and, foremost, being an Alaskan, and understanding one overriding principle: ... I'm Alaska Native. Nobody in this world will ever discriminate against me; I will not allow it to happen, and I will not allow anybody to discriminate against anybody else. I have a God-given right to subsistence. And so does [Representative] Mary Kapsner.

Number 0937

SENATOR WARD asked that members not start by thinking of changes to his proposed wording, but by thinking whether this is something all sides can live with, and whether any dispute can be resolved in the statutes themselves. He expressed appreciation to Co-Chair Masek for taking this stand, as well, on equal rights for all Alaskans. He concluded by saying he was willing to compromise in order to reach a solution, but not to compromise his moral values. He offered his belief that this proposal doesn't compromise anybody's moral values.

Number 1302

REPRESENTATIVE GREEN suggested hearing from testifiers and then reading the proposal, at which point it would make more sense. He asked whether Senator Ward would return to answer questions after testimony was heard in the upcoming special session.

SENATOR WARD answered in the affirmative. He noted that he and Co-Chair Masek were the only people who had seen the proposed amendment.

Number 1383

REPRESENTATIVE FATE thanked Senator Ward, mentioning that his own wife is an urban Native who has dealt with this for many years. He also paid tribute to Bill Hager (ph), recently deceased, who he said was one of the driving forces behind this issue.

SENATOR WARD indicated Mr. Hager, whom he knew, was on the Alaska Outdoor Council and believed subsistence is a God-given right. Senator Ward remarked, "That's our common thread we have to have; he also agreed, if you catch a fish to eat it, you [have] a priority over anybody that catches a fish to sell it. It's the highest priority."

Number 1516

DICK BISHOP, Alaska Outdoor Council (AOC), testified that he lives just outside Fairbanks "in a rural setting but in an urban area" and therefore wouldn't qualify for a subsistence priority under HJR 41; he said that describes the basic problem with this proposition. Mr. Bishop said [HJR 41], like the federal law to which it is designed to conform, "discriminates among Alaskans, and does so unfairly." He offered his belief that the priority is in effect all the time, not just when there is a shortage,

because it is in effect whenever there are restrictions or regulations. As a biologist, he said, it is clear to him that "regulations are there to enable management on a sustained yield principle and avoid shortage," and that they are rarely in reaction to shortage. He said:

It's also not based on a need for the resources, a dependence on the resources, a lifestyle that is living off the land, as Senator Ward referred to, which really does, in a thumbnail, summarize it. There's no relationship in the federal law or in HJR 41 that ties it to the dependence on those resources for one's livelihood or lifestyle.

Number 1606

MR. BISHOP addressed what he said would be imposed on all Alaskans by [HJR 41]. At its most basic level, he said, it violates all Alaskans' civil rights and establishes "two and a half classifications of Alaskans: the 'haves' who will get a rural priority; the 'half-haves' who may get a [lesser] priority [if] they live in an urban area, according to this proposition, and if they have the right background ...; and then there's the larger number that will receive no priority at all." He continued:

One of the questions is whether there needs to be a priority at all in order to accommodate subsistence uses. I would point out to you that until 1978 there was no subsistence law in the State of Alaska, and it is a tribute to Alaska Natives that they ... have succeeded in maintaining and perpetuating their cultures. And I think that is a tribute to the really important part ... of sustaining and perpetuating cultures, and that is, it really depends on the values that people place on that culture. I would ... discourage the legislature ... from accepting the challenge to pass a law which is presumed to ensure the survival of a culture, because you can't pass a law that will ... provide that guarantee.

A couple of years ago, three years ago, in testimony, I believe, to this committee - maybe it was longer ago - the president of AFN said that no law would be acceptable to AFN if it didn't guarantee the survival of their communities and cultures. And ... I encourage you to examine ... that challenge very

carefully and, again, do not be deceived that you can pass a law that will guarantee the survival of communities and cultures. There isn't such a law.

Number 1758

MR. BISHOP continued:

I would like to point out that ... HJR 41 is a unique proposition in that it's the first time, to the best of my knowledge, that anywhere in Alaska's constitution ... there is special recognition of a policy by the state to a particular racial group of Alaskans. I think that's totally inappropriate. It says that the state policy will be to recognize the subsistence tradition of indigenous peoples of Alaska.

My question is, if this is not ... a tilted treatment, and if it is intended to sustain the subsistence lifestyle and subsistence uses, why should it not recognize the subsistence traditions of all Alaskans? If it's going to recognize and ... provide for the perpetuation of subsistence, let it recognize the subsistence traditions of all Alaskans. And as Senator Ward said, we do share those values.

You'll find, if you look in the uncodified ... statutes of the State of Alaska, that there are findings from 1992 that discuss and describe those shared values among various people in Alaska of all extractions and all backgrounds, that say these are shared values that have to do with the respect for the resources and the pride ... and self-respect that comes from providing for oneself and contributing to your own self-sufficiency as a subsistence user. And at that time, ... the committee that prepared that submitted it ... to [then] Governor Hickel as part of state law. I provided the initial draft of that language. I urge you to look at those findings and see if they don't express what we've been trying to convey in reaching a solution on this issue.

Number 1868

MR. BISHOP concluded by saying [AOC] is not opposed to subsistence uses or a subsistence priority if it deals with all Alaskans fairly and equitably. In response to Representative

McGuire, he offered to provide the committee with a copy of the 1992 findings he'd mentioned.

Number 1934

FRANK C. WHITE, SR., Leader, Wolf Clan; Member, Alaska Native Brotherhood (ANB), Camp 2; Delegate, Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA), testified that he'd received an honorable discharge from the U.S. Marine Corps in 1963 after graduating from Mount Edgecumbe High School in 1955. He indicated his people came out of Glacier Bay with the other three main tribes pushed from there during the Small Ice Age some 9,000 years ago; until about 1600 or 1700, when Europeans arrived along with their diseases, they numbered in the thousands.

MR. WHITE emphasized that his primary food, perhaps 90 percent, has been from living off the land; he cited seal and deer meat as examples. Some food, put aside for potlatches in memory of loved ones, he characterized as spiritual food, especially when it comes out of Glacier Bay and then is provided to the elders first, followed by those with big families; what remains after sharing with the foregoing is for the general population, he explained. If the food comes from Glacier Bay, it is spiritual because they are eating the same foods their ancestors ate, and those who are given foods from the homeland are especially grateful because of where the food comes from.

Number 2190

MR. WHITE noted that food has been obtained from the whole of Icy Strait - in Tlingit called "the big dish" because of the ability to get any kind of food there. He said the entire town of Hoonah depended on the Inian Islands for fish, especially, but that is no longer true because the area was closed "without representation." He pointed out that the grocery store was a source of salt, sugar, rice, and flour.

MR. WHITE questioned comparing small villages with big towns; for example, there are only 20 or 30 people in a village who have jobs, whereas the rest need to live off the land. That is why people come to the big cities looking for jobs, he noted. Before the Europeans arrived, he said, his people survived over 10,000 years without welfare; he mentioned an archaeologist who had dug up artifacts at Home Shore dating to after the Small Ice Age. He concluded with the following story:

There was an elder who was gaffing fish with ... a ten-foot-long gaff hook. And while in the process of doing this [someone from the Alaska Department of Fish and Game came up to him and asked him for his permit. He said, "Before I show you mine, you go around that bend of the river there, and you ask my brother there ... for his permit." That fish and game [person] ran ... around the bend, and he come running right back down, and he was running fast. ... And there was a bear walking behind him. He ran all the way to his boat.

We have the same right as that bear of living off the land. That's the [moral] of that story. ... I'd like to echo Senator Ward's comment about a God-given right. And that's our God-given right.

Number 2434

REPRESENTATIVE McGUIRE noted that she lives in an urban area, but her father moved from Oregon to Alaska because he loves to be outside and to hunt and fish; she said their freezer is full of fish and game to eat during winter, and that her father has felt passionate about his ability to live off the land. She asked, "Where do we place people like my father, or people who live in my district who have chosen to live in a city, but in their hearts and in their roots, they, too, want to live off the land and want to continue to do that, and that's the reason why they chose to come to Alaska in the early days, to be a part of this great land?"

MR. WHITE replied:

Well, there's a lot of Caucasians living among us, and they have the same rights as we do to live off the land, because it is God-given, whether you live ... in a big city or ... in a small town. But the small towns, we totally - over half ... or three-quarters - really depend on this, more than the big cities, because ... there's jobs in the big cities. There's not enough jobs in the small towns.

Number 2580

GREG ROCZICKA, representing himself and the Orutsararmiut Native Council (ONC), testified that he has wrestled with this issue for 20-some years and spent two terms on the Board of Game, a

portion as chairman. He said he'd struggled and failed, throughout the years, in finding a logic to his being able to use game populations on the Koyukuk River or the Copper River, or to take Sitka black-tailed deer; he has no dependence on those. Rather, his dependence is on the Kuskokwim drainage. He encouraged members to look at what Senator Ward had proposed.

MR. ROCZICKA said that since the McDowell decision, the state has been in an unworkable situation, exacerbated by administration over the last decade that hasn't pursued management for sustained yield. He indicated management should be for Tier II, for shortage. He said:

Earlier this week, I was at federal subsistence board meetings, and I have to tell you, frankly, that they frighten me. There's ... no onus on them to manage for the resource or try to come up with some kind of a scheme or ... a management structure that can provide and balance for the most users possible. Their switch is either on or off; ... there's no in-between. They're also, given the nature of their appointment for sitting on their seats, they're essentially division heads, and they're under directive out of Washington, D.C.; it comes down through the Department of Interior. You've got the head of the BLM [Bureau of Land Management]; you've got the head of the [National] Park Service; you've got the BIA [Bureau of Indian Affairs]; the [U.S.] Fish and Wildlife Service; and the [U.S.] Forest Service. And it's a quasi-military regime.

MR. ROCZICKA cautioned against changing Title VIII of ANILCA [Alaska National Interest Lands Conservation Act], which at the beginning says that "this is in response, to ... address the obligations that were left unfulfilled by ANCSA [Alaska Native Claims Settlement Act] when aboriginal hunting and fishing rights were extinguished." He expressed concern that lessening that priority would be asking people to open up ANCSA again, which he suggested the Native community perhaps would be happy to renegotiate.

Number 2909

GEORGE RIDLEY, Sitka ANB Camp 1, testified before the committee, noting that he is a Raven from the Tongass tribe. He said, "We're not in favor of [HJR] 41 in that we would like to see the customary and traditional ways carried on; along with that would

be the barter and trade...." He said subsistence is such a small portion of the fish or any kind of harvesting; he mentioned gathering food for oneself, one's family, and one's community, as is done in Sitka with giving to the elders, for example.

TAPE 02-47, SIDE B
Number 2989

MR. RIDLEY noted that coastal people say that when the tide goes out, the table is set. He expressed hope that it would continue as it is. He said the food, gathering, language, and customs all go together, and that this is a small but very important part of the customary and traditional way of life. He expressed hope that the legislature would come to "a fair and equitable consensus" on this.

Number 2874

BUDDY BROWN, President, Tanana Chiefs Conference, Inc. (TCC), testified on behalf of the 42 member tribes of TCC, as well as the 16 (indisc.) predominantly Athabascan Indians "that are in our territory." He offered TCC's current position of wanting to press for a Native preference, "whereas before we had been much more part of the process, working with the governor, working [with] various members of the legislature, where we had gone along with a rural preference." He explained:

Because of some of the decisions and some of the attitudes that have been directed at us and at our areas, it's forced us to really start to protect ourselves. And I appreciate the comment from Representative Green yesterday pointing out that the Native way of life, the Native culture, really is a vulnerable one. And it is. It's an open way of life, that we have essentially opened our arms to the rest of Alaska, and those who wish to come to Alaska to live here, to participate in our way of life. ...

We are now in a position, though, where we're having to sort of protect ourselves to preserve our way of life because of that vulnerability. And as a part of that, we are now to the point [where] our leadership has directed me to start advocating for a Native preference, recognizing, of course, that there are rural non-Natives who choose to live in our communities that also deserve our protections, so that

they would be a part of a scheme of things that we would like to put in place.

And another component would be co-management between the tribes, the state, and the federal government. Currently, we are engaging in some federal co-management between the ... tribal governments in our area and the federal government. And I appreciate the remarks from a previous testifier about some discomfort with the federal system, but it's a system that we have been living with for well over ten years now, and with every passing year have grown more and more accustomed to it, much more comfortable with it.

We've come to learn all the nuances with the federal system. Yes, we do have our struggles with them, but we've learned how to overcome those and get past those to where we now feel much, much more comfortable with the federal system because it has been much more inclusive, taking input from us, allowing us to provide input into the decision-making process, [and] much more open to addressing our issues.

Number 2733

MR. BROWN continued:

... While we do thank the governor for his efforts, we are at this time not in support of HJR 41. And I say this for a reason, and let me back up a little bit, if I may, just in closing. I think something has started this morning, and it's really the beginning, and it's not the end, and it's a reconciliation. And as a part of that reconciliation, we do need to incorporate everyone's needs, address everyone's needs, and then address all the issues that are out there. But you have to recognize, also, that we are talking about a Native way of life. ... We are now talking about an Alaska way of life, but it began as a Native way of life.

I'd venture to say that if there were not Natives living in Alaska, you would not be here deliberating on this issue; we'd be deliberating on something else - maybe sports versus commercial. But since you are talking about subsistence, it really originated from the Native culture. And I heard Mr. Bishop correctly

say last night to the religious leadership, at a meeting last night, that he made a choice to participate in that Native way of life, but fundamentally he did point out that it's a Native way of life that he has chosen to participate in. And it's a system that is very open, very inclusive, and it points to the vulnerability that I just talked about, and the need for us to begin protecting ourselves. But there is a reconciliation that needs to ... begin.

Number 2666

MR. BROWN continued:

And this subsistence debate here doesn't happen in vacuum. ... We've had a whole legislative session that has really led us to not trust the legislature, as a Native people, as much as we used to. ... And unfortunately that trust has been lost. ... And until you earn it back, it points to the need for any sort of a mandatory constitutional amendment, if you are to deliberate on one.

MR. BROWN, who called himself "a born and bred subsistence person" from Huslia, emphasized subsistence as a way of life, and that religion isn't separate but is incorporated into all aspects and activities, all day, including the teaching of values to children when hunting and fishing, for example. He mentioned that the creation stories go back to the time when people were animals, and referred back to Mr. White's story about the elder and the bear. He said it is a way of life that "we've opened up to the rest of Alaska, and now, unfortunately, is in danger of no longer being a part of Alaska." He suggested that a reconciliation process relating to all issues affecting Alaska Natives is needed before there can be a truly "Alaska solution."

Number 2485

CARL ROSIER, Territorial Sportsmen, Inc. (TSI), testified that TSI is a Juneau-based sportsman's organization, a "true conservation group" that has supported strong, hands-on management of fish and game resources since 1945; with about 1,200 members, it is active statewide on fish and game issues. He stated:

We support this concept of protecting subsistence uses for all Alaskans. We strongly oppose ... the governor's proposed solution to the subsistence crisis, on the basis [that] the proposal will extend bad federal law, which currently only applies to federal lands, to include all state and private lands and waters, including all navigable waters. Federal court jurisdiction, which now only applies to federal lands, ... would be extended to all state and private lands and waters, including all navigable waters.

MR. ROSIER said [HJR 41] permanently modifies the most basic principles of the state constitution - equal protection and common use of the resources - with no guarantee ANILCA will be changed. Simply amending the constitution won't return state management. Rather than solving the "urban-rural crisis," he said, [HJR 41] further divides Alaskans through an arbitrary standard, with some users becoming third-class citizens; it also discriminates against many Alaskans who have cultural ties to resources, including Natives and non-Natives. He asked the committee to keep in mind that those promoting HJR 41 are the same people "who promised to appeal the Katie [John] case to finality."

MR. ROSIER offered a basic tenet, that if there is to be a change in the constitution, the effective date must coincide with the removal of "the discriminatory provisions of Title VIII of ANILCA that [have] created this mess that we're in here today." He quoted from an unspecified source, questioning whether the return of state management would allow more protection for the interests of non-Native urban hunters and fishermen; federal law will still be supreme, he said, and the state might have to correct any action if it strays [according to federal law], or might have to give management back to the federal government. He also suggested that modifying the constitution will cause people to give up "a number of our basic human rights." He indicated HJR 41 doesn't even come close to meeting the requirements for a long-term, workable solution.

Number 2186

PATRICK WRIGHT testified before the committee, saying he was speaking on his own behalf, but noting that he serves as an elected member on one of the 80-some local fish and game advisory committees statewide. He read the following letter to legislators, signed by the chairman of the advisory committee:

The Anchorage fish and game advisory committee requests that you protect individual civil liberties in our Alaska constitution. Therefore, this advisory committee asks that you represent all Alaskans equally, and do not promote any constitutional amendment that would diminish those civil liberties for access to fish or wildlife. We do not support amending the Alaska constitution to comply with the Alaska National Interest Lands Conservation Act. Our position was taken by unanimous vote in the January 15, 2002, meeting of the Anchorage fish and game advisory committee.

MR. WRIGHT offered his own testimony as follows:

Now, I'm here today to tell you that Alaska has a model constitution. Specifically, I'm saying not to change these sections: Inherent Rights section, Due Process section, the Common Use section, Sustained Yield section, No Exclusive Right of Fishery section, and Uniform Application section. I'm also asking you to champion states' rights, because I'm confident that we, as Alaskans, can be good stewards through our open public regulatory process in adjusting seasons, bag limits, and methods and means. Let's maintain a fairness for all, and leave a legacy that will not fractionalize or hamper future generations. It's an Alaskan heritage.

Number 2060

MARGARET ROBERTS, Interim Executive Director, Alaska Inter-Tribal Council (AITC), noting that AITC is composed of 189 federally recognized tribes within Alaska, informed the committee that she was presenting the position [of AITC] for chairman Mike Williams, who was unable to attend. She said AITC applauds the efforts of Governor Knowles to resolve the issue, but nevertheless has stood firm for ten years in its position that there not be any compromises to ANILCA, that customary and traditional subsistence use be a priority, that there be a Native preference, and that there be "tribal co-management." She offered [Resolution 2002-03] from AITC, which had passed three days before.

MS. ROBERTS told members that the tribes in Alaska have come a long way in working with the state through the Knowles Administration; she said the Millennium Agreement has really

been working. She suggested the state could have doing a lot more for [the people] instead of spending so much on lawsuits fighting subsistence. She stated hope that the legislature would resolve the issue, but said, "Whether you do this year or next year, Alaska Natives will continue to hunt and fish, and we will continue to work on our efforts for tribal co-management."

Number 1701

GLEN BIEGEL testified before the committee, presenting an eight-page alternative to HJR 41 [titled "Solution to subsistence in Alaska"] and a one-page synopsis [titled "Solution to fishing subsistence in Alaska"]. Acknowledging that his proposal contains new ideas and doesn't change the constitution, he highlighted the goals: guarantee access to fish for all Alaskans; provide for a subsistence preference; provide a preference for the poor; provide for personal and community charity, and for community-to-community partnerships; forge legislative priorities; and minimize impact on commercial and sports fishing.

CO-CHAIR MASEK called an at-ease at 10:36 a.m. to distribute copies. She called the meeting back to order at 10:49 a.m.

Number 1591

MR. BIEGEL, noting that he is from Anchorage, told members his proposal is that every Alaskan be eligible to claim an allotment of fish, with the ability to do one of four things: claim a subsistence allotment; claim a recreational allotment; transfer the allotment to a nonprofit; or return the allotment to the state to be managed as directed by the legislature. He offered his expectation that nonprofit groups will form community-to-community partnerships to provide for additional subsistence needs in times of shortage; nonprofits may also distribute fish directly to the poor. The state-managed "pool" will be distributed to subsistence users, the poor, and sports fishermen, and finally be returned to the commercial pool once all public-use needs are met.

MR. BIEGEL, noting that the current split is about 98 percent for commercial uses and 2 percent for "other public uses," estimated that the amount of fish to be split up in this allotment would be no more than 5 percent of the total. The commercial fish allocation wouldn't lose out except in times of shortage. He pointed out that the written document contains questions and answers; he said Rynniva Moss [staff to

Representative Coghill] was assisting him in getting it written as a bill. Reiterating that it doesn't change the constitution, he said he'd heard that it might not even require a law, but perhaps can be implemented through regulation.

MR. BIEGEL offered his belief that providing a preference for the poor is critical in any solution. He also suggested his plan can be used to manage all renewable resources. For fish, he pointed out, allocation between commercial and public use is at issue; for other renewable resources such as big game, there is always a shortage, he said, but in this case, the preference for subsistence "would be greater than that for fish under this plan." He noted that he'd talked to Representative Fate about this briefly, and said he would appreciate any further discussion or getting this alternative into bill form.

Number 1353

REPRESENTATIVE GREEN remarked that this has a possibility to answer not only the subsistence problem, but also the commercial-private use [dispute]. He asked Mr. Biegel whether he has addressed the fact that the time during which a school of fish passes a particular area might last only a day or two.

MR. BIEGEL answered:

When you form a community-to-community partnership, you're going to have peaks and valleys of takings that go on all over the state. And, really, the formation of those partnerships between people who have a much larger spread and people who are very dependent on a local resource is going to help spread out and address those shortages, because the shortages that we're talking about will be very brief, in general, and they'll be very localized for any subsistence shortage that goes on. ... What will help in addressing that is by having a different community which can also provide resources - [that] you have a partnership with, to help you with providing that subsistence resource - you're going to have a better chance at smoothing those peaks and valleys in your [takings], and getting you what you need to get through the winter, and getting the takings that you require.

Number 1257

REPRESENTATIVE GREEN asked whether that would be triggered by [the Alaska Department of Fish and Game], what the trigger would be, and whether it would only relate to a stock in a certain area, rather than being statewide.

MR. BIEGEL answered:

Shortages would occur just in a local area, ... here and there. And ... I'm not proposing changing the management. I want the resource maximally allocated. We don't want escapement to exceed what it needs to be, and that should be a goal of any plan that addresses subsistence. We don't want to waste fish ... or any game.

Number 1218

REPRESENTATIVE KAPSNER said:

This is a really intriguing idea, Mr. Biegel. I was just wondering: the litmus test for all of the proposals that are before us is whether or not it's in compliance with ANILCA. And one of the benefits that other proposals have had is that they've been in the hopper all session, and many of the sponsors have had a chance to talk to Drue Pearce in the Secretary of the Interior's office, and their solicitors have looked at them to see if it's in compliance with ANILCA. I was wondering if you've done that.

MR. BIEGEL reiterated that he isn't proposing a constitutional amendment and added:

I think our constitution will survive a court test, but I'm willing to take whatever the courts say on that whenever it is tested. So this solution is a solution to the Alaskan problem. If the feds, indeed, can force us to change our constitution, although it's a related issue, it's an issue I think we should fight. I think that this state has a responsibility to fight for its right to take care of its citizens in the way it sees fit. ... And [Representative] Fate has a lot of the ideas and court citings, and so on and so forth, relating to that. ... I'm not an expert on law, haven't talked to anybody about this, and I'm not trying to answer ANILCA. To me, I think ANILCA does

not survive the court challenge if it's taken to the [U.S.] Supreme Court.

REPRESENTATIVE KAPSNER said the whole idea is to get state management back.

Number 1052

CO-CHAIR MASEK announced at 10:58 that the committee would recess to a call of the chair in order to attend the House floor session. She apologized for not yet getting to the testifiers waiting on teleconference.

[End of this tape; no testimony is missing.]

TAPE 02-48, SIDE A
Number 0001

CO-CHAIR MASEK reconvened the House Resources Standing Committee meeting at 2:15 p.m. Members present at the call back to order were Representatives Masek, Fate, Kerttula, Kapsner, Stevens, McGuire, and Green; Representatives Scalzi and Chenault rejoined the meeting as it was in progress.

Number 0134

ANNA P. KATZEEK testified that she is Tlingit and belongs to the Thunderbird Clan of Klukwan in Haines, where she grew up. Speaking of her cultural upbringing, she said the Tlingit people had respect for the salmon; for the land, which provided trees that enabled them to have houses; and for every living thing. Noting that she teaches Tlingit language and cultural stories, she pointed out that most cultural stories are character building - "counseling with the little ones." She emphasized respect for the salmon and animals, citing stories relating how an animal can hear a person hunting it in the woods, for example, or noting that her father would speak in Tlingit to the salmon: "It is so nice of you wanting to come to us so we could have a portion of you."

MS. KATZEEK spoke about the need for quiet on the lakes because of the tiny, young salmon, which will return after going out to sea; she recalled how her father took her to Chilkoot Lake for sockeye salmon and taught her to paddle slowly so as not to disturb the young fish. Today, however, [floatplanes] land and outboard motors are used on the lake; she said it has brought tears to her eyes as she thinks of the effect on the young

salmon, which she fears may disappear. She emphasized respect for the animals and the food, not taking more than is needed, and sharing with those people who cannot get their own food. Stressing that culture is a way of life, and that "subsistence is the way of our culture," she concluded by saying:

No matter how rich we are, we're still going to be hungry ... for our foods. ... The urban people, the urban Natives, should also have a right to it. And because I said "Natives" ... you say it's racial. Can't help it - it was our Native food. ... We can't help but hunger for those things, and that's what I'm here for. And, like I say, I'm representing the senior citizens and the future generation.

CO-CHAIR MASEK noted the presence of Representatives Wilson and Lancaster.

Number 1046

SELINA EVERSON, Alaska Native Sisterhood (ANS) Grand Camp, came forward to testify. She told members her subsistence lifestyle doesn't depend on how much money she has in the bank, or where she lives. "It is who I am," she said, noting that Natives have lived off the renewable resources of the land for thousands of years. She said:

We are not here to demand the whole pie. We are simply asking for your understanding, your knowledge, your compassion for the subsistence lifestyle of the rural Natives, of Alaskans everywhere. You may not be able to legislate our survival or my survival as a person. By the same token, you cannot legislate my subsistence lifestyle out of existence. As long as we are alive, the generations following us will wonder what we did to defend and protect our lifestyle. Subsistence is an integral part of our existence.

Number 1248

MS. EVERSON indicated the governor's constitutional amendment will guide this issue in the right direction; she urged legislators to do so. Noting that the constitution is made "to defend us," she concluded, "By the same token, you have to defend the Native people under the Constitution of the State of Alaska. Let history remember you, your understanding, your

fairness as you debate and decide where the subsistence issue will go."

Number 1351

ALFRED MCKINLEY SR., Alaska Native Brotherhood (ANB) Grand Camp, testified in support of [HJR 41]. He told members he was born in Hoonah and raised there and in Excursion Inlet, where he and his parents lived off the land and got king salmon; they also got mountain goats from Glacier Bay, although that is now forbidden. Mr. McKinley said he is also an executive committee member of the ANB and a delegate to the central council [CCTHITA]. Referring to testimony the previous day about equal rights, he said he'd served in the armed forces against his will; he asked how equal that is. He also referred to appropriation bills passed [by the legislature] and asked whether there is discrimination against rural communities that, to his belief, get hardly any money, although they need money for schools.

Number 1646

MR. MCKINLEY referred to ANCSA. Saying ANILCA is the law of the land, he mentioned resolutions from the ANB Grand Camp and the CCTHITA that state the position of no compromise and no amendment with regard to ANILCA. He said, "We're only going to move forward ... [and not] backwards." He said the fight is for 2 percent for subsistence. He referred to statistics that 1 percent [of fish is allocated] for sports, and 97 percent for commercial fishermen. He indicated that according to testimony about priorities, however, subsistence is supposed to be on the top, with sports second and commercial fishermen last.

MR. MCKINLEY mentioned the construction industry, jobs in offices, discrimination, and that his people aren't working. He suggested the law in 1978 was a good one, although unfortunately the Alaska Supreme Court cited the wrong record, making only one reference to the state constitution. He remarked, "Our people voted for statehood so that they can manage their own resources in Alaska and elect our own [legislators]. ... But here we are today: now we're going backwards again." He expressed hope that legislators would support [HJR] 41 and let the citizens of Alaska vote on this issue. He pointed out that the recent [advisory] vote in Anchorage was in favor of letting the people vote on it.

Number 2201

JULIE KITKA, President, Alaska Federation of Natives, Inc. (AFN), came forward to testify, accompanied by AFN's in-house counsel, Carol Daniel. She urged legislators to ensure maximum involvement and participation from people around the state, including participation via teleconference. She said many people hadn't come to Juneau [for this hearing] because of discouragement about how long this conflict has gone on, but that if there were a show of a good-faith effort by the legislature, those people would weigh in.

MS. KITKA referred to a 13-page document, "Requirements for State Re-assumption of Subsistence Management on the Public Lands." Calling it "our best analysis of what needs to be done in order for the state to regain management," she urged legislators to look at this point-by-point legal analysis and have their own counsel review it. She said it isn't the solution, but is the "parameters of the universe of how to solve this." Referring to proposals and ideas presented by Senator Ward and others, she suggested AFN's document would help in determining whether to move forward with those.

Number 2520

MS. KITKA suggested Alaskans are stuck in a conflict that has its roots in a gross misunderstanding among peoples, topped with layers of political agendas and so forth over the years. She urged a nonpartisan approach in trying to reach a resolution and move forward as a state. She discussed three aspects of the gulf among peoples. First, she said, this is a life-and-death issue for Alaska Native people; it is at the heart of Native culture and the way of life, which they will do everything they can to protect for the next generation. She urged legislators to make a conscious effort to understand, and she remarked, "Many of our people are highly offended how politicized a subsistence way of life has become, and feel like what they have been passed on by their parents and grandparents is just being tossed around lightly."

MS. KITKA next discussed miscommunication about what people aspire to. She told members, "Native people are not aspiring to have all the fish and game; as Al McKinley Sr. mentioned earlier, we're only talking about 2 percent of the resources." She said it doesn't make sense for it to be so difficult an issue to resolve, and to put in place protections in the constitution, statutes, and regulations for this way of life. Third, she mentioned the range of options, suggesting that

sometimes people get stuck in ruts, partly because of miscommunication.

Number 2923

CO-CHAIR MASEK clarified that the 2 percent refers to fish, not game at this time.

MS. KITKA noted that Mary Pete [Director, Division of Subsistence, ADF&G] had put together a very good briefing on how much of the resource is being talked about, and that ADF&G has detailed village-by-village [statistics] with regard to the poundage of wild game that people depend upon, as well as statistics on fish. She indicated the statistics aren't perfect because of budgetary problems, but emphasized that there is hard data for the committee to use.

MS. KITKA pointed out that the State of Alaska is a recent form of government in Alaska, whereas people have been here thousands of years. She suggested reflecting on Article XII, Section 12, of the state constitution and asking what it means that the Native people are "not to be disturbed in their fishing." She said people have been reflecting on the McDowell decision, but not reflecting about other commitments in the constitution, and to see whether the state, in good faith, is honoring those. Ms. Kitka said she would be very interested in the legislature's response on that.

Number 3237

MS. KITKA urged new members, especially, to review the statement of policy preceding the beginning of Title VIII of ANILCA, with regard to what Congress intended Title VIII to do. She noted that at statehood Alaska had about 225,000 people; based on talking with people involved in the constitutional convention at that time, she said, there wasn't a lot of concern about impacts on subsistence hunters and fishermen because of the low population. However, increased population and competition for resources now drive this issue. She urged reflection on Native peoples' needs for certainty in the legal framework - both in the state constitution and in statutes - that their way of life will be protected permanently.

Number 3424

MS. KITKA offered her understanding that in part Congress enacted Title VIII of ANILCA because Alaska Natives are

virtually the only indigenous peoples in the U.S. still living on their lands that haven't been forcibly removed to reservations. She said this recognizes a national interest in continuing this way of life and these land-based cultures, and she characterized the way of life as a national treasure. She mentioned participating in the national arena, including a U.S. Senate Committee on Indian Affairs oversight hearing on subsistence hunting and fishing. She explained:

They held that at our urging because we urged them to take a look at how people are doing on the ground in our communities, how are people being impacted by the fish shortages, how [is] their way of life being impacted by this continuing conflict between the state, the state legislature, and all this - what is happening on the ground. ...

The second reason we asked them to hold the hearing is the Native people have not, over these years, just sat on the sidelines as the state has dealt with this conflict; we have continually put forward ideas and suggestions on ... ways to resolve that. And in that congressional hearing, we laid out a number of different ways that this conflict can get resolved, different components that would strengthen the state's management of fish and game, ... proposals such as the co-management, which is what is on the leading edge in fish and game management across the Arctic in Canada and other places, on that.

Number 3675

MS. KITKA said although co-management is treated as unusual in Alaska, where there are 200-plus villages, it is a well-accepted practice of involving the local people and their way of life in management in Canada, where there are more than 1,000 villages. She told members:

We believe that as you look at the pieces of bringing together a resolution of this conflict, ... co-management will come right to the forefront as one of those pieces that need to be adopted by the state and implemented in the solution. It's not the only solution, but it's a very important component if ... you believe in devolving government and involving people at the most local level; that's what you have to look [at] in terms of co-management, is that it is

... involving the people most affected by this, involved at the most local level, and involving things that affect their lives. And I urge you to consider that when you look at the mix of things as far as bringing resolution to this.

Number 3790

MS. KITKA requested inclusion in the record of the document mentioned earlier, "Requirements for State Re-assumption of Subsistence Management on the Public Lands." She offered the belief that the conflict is way beyond just regaining management, and is about protecting the traditional way of life. However, many people have been working toward regaining state management, she noted, adding, "This is our analysis of what it takes. ... If you disagree with it or if your counsel disagrees with it, we'd sure like to know, but ... that's our best thinking, and I think that you'll find it very helpful."

Number 3938

MS. KITKA turned attention to HJR 41, noting that AFN had participated in good faith in the governor's subsistence summit. She expressed appreciation for observations from the churches and the religious community, especially, which recognized that they have a fundamental interest in protecting the subsistence way of life on moral grounds, human rights grounds, and religious freedom grounds. She said although not everyone agreed during the summit, it was constructive; she pointed out a new development, saying one of the most surprising and pleasing agreements was a recognition that co-management had to be a piece of this resolution.

MS. KITKA offered her preference for having all the pieces on the table - a constitutional amendment, a statute, and regulatory changes - so people can see what they are getting into. She noted, however, that only one component was addressed by the drafting committee appointed by the governor. She suggested this will be easier to resolve for the long term with all pieces viewed at once, but acknowledged it might not be possible because drafting statutes takes a lot of time. She explained:

When you deal with constitutional amendment language, some of the words and terms are so vague that they mean different things to different people, or they're undefined on that, and state statutes is the only way

you're going to give people an idea of what you really mean by that, and what you're intending to do. And, again, to pull people together to have consensus on that, resolve that, you need that type of work and that type of specificity in order to move forward. ... Most of the different groups, from our experience on that, would be very hesitant on signing on to something in which there were so many ... unknown blocks, and what that meant.

Number 4243

MS. KITKA told members AFN supports [HJR 41] with some amendments because of perceived gaps. She said, "We have, in fact, drafted some amendments which we think will strengthen that proposal on that. And so, we would urge that you consider looking at that constitutional amendment as a possible part of ... the solution." She offered to discuss the proposed amendments, but said:

Basically, the bottom line of our position is, we're in full support of the full implementation of Title VIII of ANILCA, both the spirit and the letter of the law, and we'll be looking at any solutions and determining our positions on any solutions based on whether or not it fulfills the spirit and the intent ... of that law.

And then the secondary thing we'll be looking at is, how will it actually impact people on the ground? ... Our people have tried to make the state system work for years and years; in areas in which we've not been able to make it work, we've been involved in court cases and trying to litigate different aspects, to try to protect different people's interests or different areas' interests on that. And so we're very interested in - ... whatever you consider - how it really works on the ground and how ... lives will be affected, and whether or not this truly does provide protection for the long term, or is it just a Band-Aid that is not really going to solve anything, or just an exercise.

Number 4458

CO-CHAIR MASEK requested clarification about concerns related in a letter sent from Nelson [Angapak] when Ms. Kitka was unable to attend the [April 5] hearing.

MS. KITKA deferred to Carol Daniel.

Number 4612

CAROL DANIEL, Legal Counsel for Alaska Federation of Natives, Inc. (AFN), agreed the testimony submitted by [Mr. Angapak] outlines some of the problems AFN sees with the current wording of HJR 41. First, she said, [subsection] (a) is not strong enough because it is just a policy statement and doesn't guarantee "a protection for a way of life." Second, subsection (b) could be interpreted to mean that customary and traditional uses are only protected when there is a resource shortage, and that people's customs and traditions cannot be protected through regulation unless there is a shortage. Under federal law and cases that interpret the federal law, [customary and traditional practices are protected through regulation]. [Part of the bracketed portion isn't on tape, but was taken from the committee secretary's log notes.]

TAPE 02-48, SIDE B

Number 4724

MS. DANIEL said without seeing the statute or regulations, it's difficult to know whether the law would protect customary and traditional patterns of taking and use of subsistence resources. Also, under ANILCA all rural residents who live in communities that have customary and traditional uses of a resource are entitled to the priority; however, it's unclear in the wording of [HJR 41] where the boundaries of this new local priority would be drawn. If the statute were written to encompass a community's customary and traditional harvest areas, she offered, it might comply with Title VIII of ANILCA, which is implemented to have a priority for all the rural residents who harvest in the area; if it were drawn narrowly, however, she thinks it wouldn't comply if it cut out some residents who customarily and traditionally harvest in certain areas.

MS. DANIEL also noted that [HJR 41] doesn't ensure that communities such as Eklutna or Saxman that have become surrounded by an urban population would qualify as a community; she suggested the original idea behind subsection (c) was to provide "the plus of a rural-plus-type priority." She expressed concern that the current wording might not adequately address

residents of surrounded communities; she said subsection (c) appears to require an individualized permitting system whereby each individual in a surrounded community would have to prove eligibility for subsistence. She added, "It was far from clear to us whether those communities could collectively qualify ... as tribal communities, which is the way they've always practiced their hunting and fishing, and it's a communal activity; it's not something one does alone."

MS. DANIEL said those are the basic concerns, although she could go into a more extensive legal analysis. She concluded, "Basically, we think ... that the amendment could work, depending on the implementing laws, ... but there need to be some amendments to the language of the actual constitutional amendment in order, we think, for it to ... be in compliance with Title VIII of ANILCA."

Number 4314

CO-CHAIR MASEK asked Ms. Kitka whether she'd had a chance to look at the proposed Senate joint resolution presented by Senator Ward that morning [text provided previously].

MS. KITKA affirmed that, indicating an analysis was in progress; she offered to have [Ms. Daniel] go over it. Ms. Kitka suggested the bottom line, from one assessment, is that a constitutional amendment isn't needed for the legislature to do what Senator Ward is suggesting. In addition, it won't allow the state flexibility to come into compliance with ANILCA in order to regain management. Addressing specifics, she said the preference would be in place only in times of shortage; unless there were a shortage, the boards of game or fish would have no means to provide special "sessions" or seasons or bag limits to local residents. Also, the priority isn't mandatory, but when the legislature does grant a subsistence priority, it goes to those in the "vicinity", which to her belief is vague and, from an initial reading, isn't a legal term of art or defined in state or federal law. She suggested, therefore, that unless one looked at the statute and saw whether it was narrowly or broadly defined, for example, one wouldn't know what it meant.

Number 4024

MS. KITKA continued with Senator Ward's proposal. She said that without the implementing statute, it isn't clear whether the priority would apply to every individual who lives in the vicinity in which there is a shortage, or whether it is based on

"some set of individual characteristics" of demonstrated use of the fish and game resource; there are a lot of vagaries and, without the statute to see what is intended, a lot of unknowns. Furthermore, she said, it sounds as if there would continue to be "subsistence non-use areas." Referring to mention by Senator Ward of urban Natives and Natives living in areas surrounded by urban growth, she said it's hard to see how Ninilchik, Saxman, or Kenaitze would benefit, for example. She said it isn't clear whether those goals meet with regard to this language or are opposite goals.

Number 3928

MS. KITKA also noted the use of "customarily" as opposed to "customary and traditional", which is defined; "customarily" is an undefined term that could have a totally different meaning. She concluded:

We take very seriously Senator Ward's suggestion to look at things in a positive light and not just pick things apart. ... But what we're looking at is, does it comply with the spirit and the intent of Title VIII of ANILCA and the congressional policy that the Congress laid out, or does it fall short, and if it falls short, is it even better than what we have there? And it's our assessment here that there's just too many vagaries in there, too many unknown things. Without a statute to see how it really would work, or even ... a further outline of what a [statute] would look like, it would be hard to say that this would be better than ... just keeping Title VIII of ANILCA and its protections, and trying to work [towards a] constitutional amendment that allowed the state to have the flexibility to do that route.

MS. KITKA commended Senator Ward for coming up with ideas to put on the table, and encouraged others to do the same.

Number 3746

REPRESENTATIVE McGUIRE referred to Ms. Kitka's mention of Article XII, Section 12, of the state constitution. She said, "I'm curious to know why you believe in the McDowell decision that the supreme court ignored that, if it has the meaning ... that you're saying it does."

MS. KITKA offered the belief that the McDowell decision is wrong, and that there is flexibility in the state constitution. She said, "But there is not a lot we can do if the state supreme court says no, there isn't the flexibility." She added, "That's why we've been working all these years to try to get that flexibility to the legislature." Ms. Kitka continued:

If the legislature doesn't want the flexibility to be able to pass laws on that, ... we just want full implementation of the federal law; we want those protections and those commitments that the Congress made fully implemented, and we want our people's way of life protected ... for a long time. So we've always believed that the McDowell decision was wrong. We've also looked at avenues - is there a way to bring that issue back up to the supreme court, basically pass the statute that ... was struck down on that and bring it back up there on that. And that doesn't really look like an option, but we sure wish we could figure out a way for them to revisit that and reverse that.

Number 3605

REPRESENTATIVE MCGUIRE referred to AFN's handout, "Requirements for State Re-assumption of Subsistence Management on the Public Lands." Noting that a section defines customary trade, she pointed out that this is an area of contention. She also noted that the document mentions differences in definitions in ANILCA, the statutes adopted in 1992, and regulations. She said:

Your position paper ... reflects upon Section 803 in ANILCA, which does say for barter or for sharing, for personal or [family] consumption, and for customary trade. And ... we have defined customary trade to mean for personal or family consumption. And ... you say, accurately, that we were able to resolve the inconsistency, but that should we act again, we would now need to resolve that by statute in any implementing legislation; we'd need to resolve that inconsistency.

REPRESENTATIVE MCGUIRE asked Ms. Kitka whether it is AFN's position or hers that customary trade ought to be unqualified, or whether there ought to be some definition such as the state's notion, so far, that it ought to be sharing for personal or family consumption, or whether it should be broader.

MS. KITKA replied that she would ask [Ms. Daniel] to address that, but said there are big, broad issues that need attention, as well as lower-tier issues such as customary trade, which is still important to the Native people. She said the major issue before the legislature is because the state constitution doesn't have the flexibility for the state to pass a law to regain management; therefore, federal law is being implemented under court order.

Number 3251

REPRESENTATIVE McGUIRE explained why the issue of barter and trade is important to her. She agreed the issue before the legislature is whether to comply with ANILCA to regain state management; she said her constituents in Anchorage, overall, support resolution of this issue. However, a fundamental sticking point relates to the "pyramid" she'd discussed that morning: the top use in times of shortage is that necessary to maintain one's lifestyle, followed by customary and traditional use; under HJR 41, there is then the ability to enact a statute for urban dwellers who can prove a customary and traditional use, and the rest of the uses follow.

REPRESENTATIVE McGUIRE said because there always are bag limits, there is always a shortage. She said she wants rural and Native Alaskans to be able to live off the land as they have for years; however, if the category is too broad and the resource becomes so depleted that the bottom tiers aren't included, then she won't be doing a good job for her constituents who see hunting and fishing as a fundamental part of their lives and culture and traditions, too, albeit in a different way. She said this is a critical sticking point for some urban Alaskans who fear their ability to hunt and fish will be minimized because the use at "the top" will be so broad that there won't be enough left.

Number 2944

MS. KITKA responded that she thinks Native people, at least many she works with and represents, have a lot of respect for other Alaskans and their traditions for hunting and fishing. She said, "We are very well aware that a lot of people have moved to the state to continue hunting and fishing. But it is not the same as the Native subsistence way of life. And it doesn't mean that we have any less respect for them and their families and their desire to pass on what they're doing."

MS. KITKA reiterated that she believes this conflict is overpoliticized, and that the amount of resources taken [by Alaska Natives] is so little. She offered her perception that objection to customary [barter and] trade stems mostly from commercial interests, which already get 96-97 percent of the resources. She said it appears unbalanced and unfair, and that the issue is overblown. Ms. Kitka remarked, "We're not saying we want it all." She suggested the legislature must look at the big picture. She offered her belief that Native people aren't abusing customary trade; citing Canada as an example, she said a lot of customary trade goes on among communities as part of the way of life. She indicated perhaps this is overpoliticized because of some of the court cases, for instance.

Number 2655

REPRESENTATIVE MCGUIRE clarified that the people in her district who are concerned aren't commercial fishermen, hunters, or guides. Rather, they are ordinary folks who fish and hunt to put food in their freezers; it isn't a monetary issue, but relates to personal users who are afraid that [having barter and trade be part of the subsistence priority] will eliminate use at the bottom part of the tier, and eliminate what these people believe to be a fundamental part of their lives. She said she wasn't advocating for commercial use.

CO-CHAIR MASEK asked members to avoid debate in order to have time to hear from all the testifiers.

Number 2511

REPRESENTATIVE STEVENS referred to subsection (b) of [HJR 41], which says there will be a priority when restrictions are necessary. Referring to testimony by Nelson Angapak [on behalf of AFN at the April 5 hearing] and Attorney General Botelho and Charles Cole [at the May 15 hearing], he asked, "What is the point of having a priority in times of abundance? Is it really necessary?"

MS. KITKA replied by noting that in the Bobby case, the courts ruled that the regulatory system must do everything it can to have the least impact on people "as they continue to do what they're doing." She called it an important court case, a recognition that government shouldn't interfere in people's lives and should adjust seasons and bag limits "around people the way that they live." She asked Representative Stevens to take a look at that.

REPRESENTATIVE STEVENS requested that Ms. Kitka provide it to the committee.

Number 2249

MS. DANIEL added that the concern is more with the interpretation of the priority. The court cases have interpreted the federal statute to provide the legislature or federal subsistence board - whichever state or federal agency is implementing the law - a means for people to continue to live a subsistence way of life that continues their patterns of harvest and use. In the Bobby case, the state regulations at the time imposed individual bag limits on a village that had no village store; not every individual there hunted, and a few hunters in the village hunted for everyone. So the court recognized that the Board of Game should take that into consideration when adopting bag limits for that particular village. And because there is a subsistence priority, subsistence should be given a priority, and it should reflect people's customs and traditions in terms of how they harvest (indisc.). Therefore, the concern is that if there isn't a subsistence priority in place during times of abundance, then under what law would the boards of fish or game be justified in imposing different bag limits or seasons for different users?

Number 2049

CO-CHAIR SCALZI asked, "Would you support amendments to ANILCA that clarify, but not weaken, ANILCA, for purposes of this particular legislation?"

MS. KITKA replied, "I think that we're of the view that we don't want ANILCA opened up." She said [AFN] has testified over the years of its concerns that if ANILCA were opened up, national interests such as the environmental community and others would weigh in on different issues. She said:

And so we are very hesitant about opening up ANILCA at all, and especially we're hesitant about opening it up at all if there is a way for the state to resolve this here in the state, by Alaskans - and there is a way to do that. And so we're not inclined to support any opening up of ANILCA, even on defining terms or things like that.

MS. KITKA expressed interest in being involved in discussions of how the pieces will fit together - a constitutional amendment, statutes, and regulations - and looking at definitions of terms in that context. She again conveyed concern that once ANILCA is opened up, it will be uncontrollable, and she reiterated the desire for full implementation of ANILCA, both the spirit and the letter of the law.

Number 1820

CO-CHAIR SCALZI returned to the issue of commercial fishing and offered his belief that the dispute isn't with allocation among different user groups so much as it is concern about shutting down a [commercial] fishery until the subsistence needs are met a thousand miles upstream.

Number 1740

REPRESENTATIVE FATE referred to Ms. Kitka's testimony that this issue relates to approximately 2 percent of the resources. With regard to game, he said ADF&G's records show the take for human consumption is 3 to 5 percent; other documents indicate it might be closer to 3 percent, and it varies according to the area. He asked:

How do you mitigate the problem ... of taking at 2 percent? If it is 3 percent, for example, it only leaves 1 percent for the rest of the consumers; if it's the 5 percent, which is the upper end of that scale, it still only leaves 3 percent. The ... statistics show that probably about close to 80 percent is taken by predators. How do you mitigate this problem, because even at 2 percent there may be not enough, based on present statistics, ... of the game animals to satisfy both.

Number 1632

MS. KITKA, noting that she didn't have the ADF&G report in front of her, said Mary Pete of ADF&G's Division of Subsistence had testified before a congressional hearing and included a lot of data on use of fish and game. She mentioned that there are figures with regard to the replacement value if the state's lack of action in protecting subsistence destabilizes the whole subsistence economy. Urging Co-Chair Scalzi to look at the state figures on that, she remarked, "To me, it's a very compelling thing about how fragile the subsistence economy is,

and people's dependency on that. And this continuing uncertainty has the potential to destabilize that." After apparently obtaining figures, she then said:

They're saying that the replacement value - this is the state figures - in the subsistence economy, if you had to replace what subsistence people take on an annual basis, you're talking between 131.1 million to 218.6 million dollars, if you translated the poundage of fish and meat, and the subsistence economy was destabilized to the point where you saw these big crashes. That's ... dollar amounts that the state estimates, that economy.

MS. KITKA said it really is more than just management of fish and game. It is a whole, separate economy, a mixture of subsistence and cash that provides people a means of sustaining themselves and their families; she mentioned pride and self-sufficiency. She said:

I really believe it's in the state's policy to do everything that they can to sustain that and solve this conflict and not put at risk this economy and destabilize it by policies that are not clear, that policies don't have in the strongest terms possible the strength and importance of the subsistence way of life. As I've said, the replacement value is very high, and especially [if] you look on the national level, where they're debating welfare reform and all these other things on that. The subsistence economy is a very strong economy that should be backed by the state. But it also helps people survive.

MS. KITKA offered to submit the ADF&G report for the record. She urged members to look at it, and emphasized the need to look at how people are being impacted on the ground.

Number 1207

PAT JACOBSON testified via teleconference, noting that she lives in Kodiak. She questioned how Section 19 [proposed by HJR 41], which recognizes the traditions of indigenous people and accords priority to customary and traditional uses, also recognizes the rights and privileges of all U.S. citizens as being equal. She emphasized civil rights and the possibility of disassociating 85 percent of the state's citizens. Ms. Jacobsen expressed discomfort with the vagueness and subjectivity of the phrase

"whenever it is necessary" [subsection (b)]; she questioned who would determine it, and how. She mentioned limits placed in Kodiak on sport-caught king salmon without any biological foundation, and said politics often play too large a role, without a sound, logical reason. She conveyed concern that "whenever it is necessary" could turn into "always".

MS. JACOBSON recounted how a Native friend had related her concerns about subsistence, mentioning outboard motors, snow machines, rifles with ten-bullet clips, and so forth, but also wanting to retain the old Native ways. Ms. Jacobson said, "They wanted subsistence rights above all over people, and they wanted to continue to not have to pay taxes ... on much, if anything. She said they can't have it both ways." Saying this is an issue of fairness, Ms. Jacobsen suggested the settlement in 1972 was to concede, forever more, any issue of compensation to [Alaska Natives]. She asked whatever happened to [ANCSA] and mentioned the conveyance of 96 percent of the privately owned land in the state, as well as other privileges. Referring to testimony that morning about wanting to preserve Native ways, she asked whether that should be facilitated at the expense of other groups and their rights to equality. She said, "We are all U.S. citizens and deserve to be treated equally. This is a very polarizing issue, and if this resolution passes, I believe it will polarize citizens of this state even more."

Number 0902

MS. JACOBSON asked members, rather than supporting HJR 41, to support the lawsuit Bondurant v. Norton "in its journey to be heard by the U.S. Supreme Court, which I believe will be the only possibility for a fair solution to this issue." Ms. Jacobson concluded by saying she believes in the U.S. Constitution and equality for all; a 32-year resident of Kodiak and "a 26-year retired teacher," she said it has been customary and traditional for her to hunt and fish all her life.

Number 0814

JAKE JACOBSON testified via teleconference in opposition to HJR 41, noting that he'd lived in Alaska since 1967, "always as a rural Alaskan following subsistence pursuits." He said subsistence is a lifestyle and way of life that takes many forms. He read from Section 19(a) [of HJR 41], pointing out that nobody is mentioned beyond the indigenous peoples of Alaska. He said the constitution specifically forbids prioritizing the users - rather than the uses - of the

resources, and protects all citizens from action that disenfranchises many to provide special rights to others.

MR. JACOBSON read from subsection (b) and commented, "Clearly put, any season or bag limit for any species is a restriction on taking, and therefore customary and traditional use priorities for indigenous people shall be in effect all the time if HJR 41 passes, in times of abundance and in times of shortage." He continued:

Section 19(c) allows for lower priorities to other residents of the state so long as they do not diminish the subsistence priority of rural residents of the state. Here again, most Alaska citizens are disenfranchised. Their constitutionally guaranteed equal rights and equal access are denied. And we see the commercial sale of subsistence-caught salmon and halibut becoming legal for those select few who qualify, at the expense of everyone else.

Should this become law, a legalized cap system will be created. Far from bridging the urban-rural divide, this will increase the polarization visited upon our state by Title VIII of ANILCA. The only just and final solution to this issue is that the constitutionality of Title VIII of ANILCA be adjudicated in the U.S. Supreme Court. ... A suit to do just that is in progress, and I urge you to lend your legislative support to that suit, known as Bondurant v. Norton, in hopes that it will receive prompt attention of the federal courts, for the good of all Alaskans.

Number 0540

EILEEN NORBERT testified via teleconference in strong support of HJR 41, urging its adoption as submitted by Governor Knowles. She told members:

You've heard many times over the years how dependent rural residents are on subsistence hunting and fishing or customary and traditional practices that include vital aspects of our social, economic, spiritual, and cultural lifestyle. Rural Alaskans take only a miniscule percentage of the total harvest of fish and game in the state, as you've heard mentioned - these figures are available from your own Department of Fish

and Game; I believe it's only 4 to 6 percent - yet we rely in rural Alaska most heavily on these resources to feed our families and for our cultural viability.

I'd like to tell you a sad but true story that affirms the importance [of] and reliance [on] subsistence for our people. When subsistence fishing was closed here in Nome for the first time in 1991, an elder was so hungry for fish, she searched the beach for dead fish to eat. She found two that were partially decayed. She picked them up anyway and later ate them. This is totally, totally unacceptable, degrading, unhealthy, and inhumane, but she was so hungry for her traditional diet.

If our way of life is not protected, we have no other alternative but to request perpetual subsistence protection from the federal government. I urge the legislature to adopt [HJR] 41, and if any amendments are made to the governor's resolution, it should be to provide co-management of hunting and fishing resources.

Number 0321

RAY NIELSON, JR., testified via teleconference that he is a Tlingit and a Kiksadi who sits on the "customary and traditional" committee for the Sitka Tribe of Alaska, is on the subsistence committee for ANB Camp 1, and holds a subsistence seat on the fish and game advisory committee. Mr. Nielson told members he teaches the lifestyle of subsistence - "hunt, fish, gather, advocate, cook" - and has a favorite saying: "To cook it tomorrow, you have to fight for it today." On the advisory committee, he represents Natives and non-Natives, and all in Sitka qualify under federal management and federal jurisdiction. Calling Anchorage the largest village in Alaska for those Native people who choose to live there, he said the ballot measure will (indisc.); if not, the status quo is fine.

MR. NIELSON told members he exercises his right to have a customary and traditional subsistence lifestyle, including his right to trade, barter, sell, share, and give away, "as granted by the public court in the Jackson versus U.S. government [case]"; he said only the Supreme Court can take that away from him. He asserted that the state lets the charter [fishing] industry run free but makes it difficult for those who depend on subsistence foods and natural resources for survival as their

ancestors did. He said the federal system allows for participation, co-management, and cooperation with the tribes, and asked, "Who knows better than the local tribal people?" He concluded by saying he doesn't plan on changing who he is; what he does; or what he cooks, eats, hunts, fishes for, or gathers. "I will still advocate for my people and elders," he said, adding that he'd learned from elders who are gone, and advocates as liaison to his people, and to the young, for the future.

Number 0020

BILL TEGOSEAK, Executive Director, Inupiat Community of the Arctic Slope (ICAS), testified via teleconference in support of HJR 41, noting that ICAS is the regional tribal government for eight tribal villages above the Arctic Circle. A 58-year-old resident of Alaska and the North Slope, he began by offering some personal history.

TAPE 02-49, SIDE A
Number 0001

MR. TEGOSEAK noted that he is a Vietnam War veteran. He then highlighted the importance of subsistence at the village level and said, "The soul of the Native community is to provide subsistence for all, on the basis of need." Today, he sees a real need to pass on a message indicating Native communities aren't so much against the right of urban Alaskans to go out and hunt for the natural resources in Alaska; the important issue is that the Native people in Alaska, wherever they are, have always depended on "the subsistence provided by the Creator of this world and this universe," and that there is a grand design. He concluded by stating that he supports HJR 41 and believes it is important that the voters make this decision.

Number 0409

DALE BONDURANT testified that he has been involved in this issue "about as long and as hard as anybody in the state." A 55-year state resident and a 78-year U.S. citizen, he expressed pride in having a constitutional democracy that believes in equality for everybody. Noting that he is president of the Alaska Constitutional Legal Defense Conservation Fund, he remarked, "We don't go after anything for ourselves personally; we go after constitutional rights for everybody." He told members:

I think we all value our customs and traditions, and I think that's important. But when one group and one

exclusionary class demands that their "customary and traditionals" are better than the others, I am against it. And that's one of the things that our constitution says.

MR. BONDURANT reported that he'd done a quick analysis of the state and federal constitutions, finding that "the proposals that are coming across the board to change our constitution would violate 22 articles of the state constitution and 59 points within those articles." He commented, "Now, that's a heck of a way to destroy the best constitution of any state in the United States"; he added that many constitutional scholars have said it is the best. He also said more time was spent on adopting Article VIII than any other part. He continued, "It would also violate 8 sections of the U.S. Constitution and 40 points of it, and we've got a very good U.S. constitution." He urged legislators to uphold their oath of office to protect and defend the state and federal constitutions to the best of their ability.

MR. BONDURANT offered four documents, noting that he'd brought 70 copies to distribute to legislators.

Number 0731

CO-CHAIR SCALZI asked Mr. Bondurant to inform the committee about the other states "that are joined in this."

MR. BONDURANT replied:

Well, during this Katie John case, I'd claimed the governor tried to lose the case, and he was doing a good job: he never questioned the state changing their position or anything like that, and he could have got the ... the federal government [to] throw it out of the court, if he had done that. But he was designing this case to fail. Well, he got in a bind, as 14 other states walked in and handed amicus briefs to the United States Supreme Court to defend the states' rights to manage their own resources. And with those 14 states submitting amicus briefs to the United States Supreme Court, [Governor] Knowles decided that he didn't want it appealed to the Supreme Court of the United States. And after promising everybody that, he dropped it.

CO-CHAIR SCALZI indicated he'd wanted to show that the information Mr. Bondurant was presenting has been backed up by other entities.

MR. BONDURANT added, "There are 14 states that sent amicus briefs, and we're asking 49 states to come in ... and defend Alaska's right to manage their fish and game, and not the federal government."

Number 1005

MERLIN KOONOOKA testified that he is from Gambell and serves as one of the two elder representatives on the Kawerak Inc. board. He pointed out the rural nature of his village and the strong subsistence lifestyle there. He said he is always concerned about "the failure of organizations such as this ... to realize the legitimacy of our cultural and traditional way of life." Offering to illustrate with his own day-to-day life, he told members:

When I walk out to the point on the edge of the sea, or when I climb up the mountain in the back of the village to observe the conditions on the land and the sea, to plan our daily subsistence activities, I stand there and I come to realize that my father, my grandfather, and our ancestors have stood on the same spot doing what I am doing. And as long as I am standing there, as long as I am alive and there are others like me in the other villages in rural Alaska, we represent [an] alive subsistence lifestyle. And I feel that no one can stop this way of life and take it away from us. ...

I think we all agree on one thing, that when we call this land "The Great Land," if you look at the map, also, you come to realize that rural Alaska comprises a vast area geographically in the state. And you also come to realize that we've done this in a 10,000-year time span. And when you look at the other side, where the population center of Alaska is located, you come to see that it comprises only a small portion of the geographic area, and ... this has been in existence only for a couple of hundred years. But I think we should get together and work on living together, and ... truly make it a great land for all of us.

MR. KOONOOKA told of traveling with his wife to Nome: although food costs much more there than in Anchorage, it is a savings [compared with prices in Gambell]. He mentioned the high excess-baggage rates at the Nome airport when returning home. Furthermore, he told of buying a small piece of carpet in Anchorage at a good price; however, the airline charged more than twice the purchase price. He expressed frustration and asked, "How can we justify equal access when we have to pay for our lifestyle in the villages? How can you justify equal access to our resources for what little we have? And it's the other way around also: you can't justify equal access from our point of view - economic opportunities of the Western world."

Number 1617

DONALD WESTLUND testified via teleconference in opposition to HJR 41, noting that he has lived in Southeast Alaska for more than half of his 51 years. Indicating he isn't Native but has reviewed [ANCSA], he remarked, "They have 44 million acres." He said the 2000 census indicates there are 98,000-some [Alaska Natives]; he said an individual gets 440 square acres, which for a household of three people is 1,320 acres or 2.2 sections of land, since a section is 640 square acres, equivalent to one square mile. This is private land for subsistence purposes, he said, land that others cannot hunt or fish on [without permission]. He expressed concern and thanked Representative McGuire for understanding what is going on. He said only the governor can settle this, but hasn't. He stated opposition to HJR 41. He also suggested it is counterproductive for AFN members and other Natives to segregate themselves out by saying "our people." He said he would like the representatives of the state to all sign on to the Bondurant v. Norton lawsuit.

Number 2035

ROGER SMITH testified via teleconference, noting that he is a Kodiak resident and has lived in Alaska since 1968; his wife and sons were born in Alaska. He stated opposition to HJR 41, offering his belief that it would enshrine a form of discrimination in the state constitution. He said that to him, the resolution says the majority of Alaskans, "when they get on the fish and wildlife bus, must ride in the back."

MR. SMITH commended the state for a terrific job managing fish and wildlife, and told members that if he believed this constitutional amendment alone would bring the state back into the management "driver's seat," he would support it in a minute;

however, he believes the federal government won't give up management as long as Title VIII [of ANILCA] reads as it does, and as long as somebody who is aggrieved "can go immediately to a federal judge." He offered that either a change in ANILCA or a decision by the supreme court on the equal protection clause would be necessary to straighten this out. Mentioning greed and divisiveness caused by the subsistence problem, Mr. Smith said he didn't have the answer but that HJR 41 wasn't it.

Number 2237

JOE WILLIAMS, President, Organized Village of Saxman; Vice Chairman, Alaska Inter-Tribal Council (AITC), testified via teleconference, noting that he is a full-blooded Tlingit born and raised in Ketchikan. He referred to AITC's testimony that morning against any more compromise and said, "As my brother ... Representative Bill Williams would say, 'A deal is a deal. No more compromises.'" He asked where the equality is in the schools, roads, and police protection in rural Alaska; he asked those who are talking about equality to address those issues first, "and then we'll talk about just the 2 percent of what this whole issue is all about." He also asked why Article XII, Section 12, of the state constitution isn't being addressed; he read from that section, saying that forever is a long time. He concluded by reiterating, "A deal is a deal."

Number 2513

TOM DOOLEY testified via teleconference in opposition to HJR 41, noting that he is a 39-year resident of Kodiak; has been fishing commercially for 37 years; has been a member of the fish and game advisory board in Kodiak for 23 years; and is one-quarter American Indian - Creek, Choctaw, Chickasaw, and Cherokee. He said that his big concern is for his children and grandchildren, whose rights would be sold down the river by this. Mr. Dooley reminded legislators that they are put into office to represent the people of Alaska, not just one group or entity. Alluding to ANCSA, he said 96 percent of the state's private land now belongs to the Native 15 percent of the population. He said most rural Natives receive housing assistance if they apply for it, heating-fuel assistance in winter, and free medical and dental care; they also receive quarterly or annual checks [from their Native corporations], and many draw other assistance. He said these make a big difference in being able to survive and live in Alaska. He suggested protecting the state constitution, one of the best in the Union because [the drafters] had so many

other constitutions to pick the best parts from. He closed by asking legislators, "Please do your job and look after us all."

Number 2924

CO-CHAIR MASEK announced at 4:20 p.m. that the meeting would be recessed to a call of the chair. She noted that two testifiers remained on teleconference and one remained locally.

Number 2925

Co-CHAIR MASEK called the meeting back to order at 6:20 p.m. Present at the call back to order were Representatives Masek and Stevens; Representatives Scalzi, Stevens, Fate, McGuire, and Green joined the meeting shortly thereafter.

CO-CHAIR MASEK announced that some members weren't able to attend because of the closing of the session. She thanked testifiers, apologized to the two people remaining on teleconference, and requested that people submit written testimony. [HJR 41 was held over.]

ADJOURNMENT

Number 3253

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 6:05 p.m.