

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 2, 2007

1:32 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Vic Kohring
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 203

"An Act creating the Kodiak Narrow Cape Public Use Area."

- MOVED CSHB 203(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 4

Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents.

- HEARD AND HELD

HOUSE BILL NO. 220

"An Act prohibiting computer-assisted remote hunting."

- MOVED CSHB 220(RES) OUT OF COMMITTEE

HOUSE BILL NO. 132

"An Act designating the first Tuesday of May as Alaska Agriculture Day."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 203

SHORT TITLE: KODIAK NARROW CAPE PUBLIC USE AREA

SPONSOR(s): REPRESENTATIVE(s) LEDOUX

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) RES, FIN
03/28/07 (H) RES AT 1:00 PM BARNES 124
03/28/07 (H) Heard & Held
03/28/07 (H) MINUTE(RES)
04/02/07 (H) RES AT 1:00 PM BARNES 124

BILL: HJR 4

SHORT TITLE: KENAI/KASILOF SUBSISTENCE PRIORITY

SPONSOR(s): REPRESENTATIVE(s) OLSON

01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) FSH, RES
02/23/07 (H) FSH AT 8:30 AM CAPITOL 124
02/23/07 (H) Scheduled But Not Heard
02/26/07 (H) FSH AT 8:30 AM BARNES 124
02/26/07 (H) Heard & Held
02/26/07 (H) MINUTE(FSH)
03/02/07 (H) FSH AT 8:30 AM BARNES 124
03/02/07 (H) Moved CSHJR 4(FSH) Out of Committee
03/02/07 (H) MINUTE(FSH)
03/05/07 (H) FSH RPT CS(FSH) NT 3DP 1NR
03/05/07 (H) DP: JOHNSON, EDGMON, SEATON
03/05/07 (H) NR: LEDOUX
03/28/07 (H) RES AT 1:00 PM BARNES 124
03/28/07 (H) Scheduled But Not Heard
04/02/07 (H) RES AT 1:00 PM BARNES 124

BILL: HB 220

SHORT TITLE: BAN COMPUTER-ASSISTED REMOTE HUNTING

SPONSOR(s): REPRESENTATIVE(s) BUCH

03/26/07 (H) READ THE FIRST TIME - REFERRALS
03/26/07 (H) RES, JUD, FIN
04/02/07 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

SUZANNE HANCOCK, Staff
to Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke on behalf of the sponsor of HB 203, Representative LeDoux.

JEROME SELBY, Mayor
Kodiak Island Borough
Kodiak, Alaska

POSITION STATEMENT: Encouraged the committee's support of HB 203.

RICK GIFFORD, Manager
Kodiak Island Borough
Kodiak, Alaska

POSITION STATEMENT: During hearing of HB 203, highlighted the importance of the proposed Kodiak Narrow Cape Public Use Area.

LARRY DEVILBISS, Director
Division of Agriculture
Department of Natural Resources
Palmer, Alaska

POSITION STATEMENT: During hearing of HB 203, emphasized the need for any land classifications not to eclipse the existing grass leases.

PAT LADNER, President & CEO
Alaska Aerospace Development Corporation (AADC)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 203.

DICK MYLIUS, Director
Division Mining, Land and Water
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 203, answered questions.

DOUG LETCH
Kodiak, Alaska

POSITION STATEMENT: Testified on HB 203.

CONRAD JACKSON, Staff
to Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 4 on behalf of the sponsor, Representative Olson.

DARREL WILLIAMS, Resource Officer, Environmental Scientist
Ninilchik Traditional Council
Ninilchik

POSITION STATEMENT: During hearing of HJR 4, provided information.

DANIEL REYNOLDS
Ninilchik, Alaska

POSITION STATEMENT: During hearing of HJR 4, opined that Ninilchik has proven customary and traditional use on the Kenai Peninsula.

JOHN HILSINGER, Director
Division of Commercial Fisheries
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Testified on HJR 4.

ROD ARNO, Executive Director
Alaska Outdoor Council (AOC)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HJR 4.

JOHN SKY STARKEY
Ninilchik, Alaska

POSITION STATEMENT: Testified in opposition to HJR 4.

REPRESENTATIVE BOB BUCH
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 220.

ROD ARNO, Executive Director
Alaska Outdoor Council (AOC)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 220.

JOE KLUTSCH, President
Alaska Professional Hunters Association, Inc. Board of Directors
Alaska Professional Hunters Association, Inc. (APHA)
Copper Center, Alaska

POSITION STATEMENT: Testified in support of HB 220.

RONNIE ROSENBERG
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 220.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Resources Standing Committee meeting to order at [1:32:35 PM](#). Representatives Gatto, Johnson, Seaton, Roses, Guttenberg, and Wilson were present at the call to order. Representatives Edgmon, Kawasaki, and Kohring arrived as the meeting was in progress.

HB 203-KODIAK NARROW CAPE PUBLIC USE AREA

[1:32:52 PM](#)

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 203, "An Act creating the Kodiak Narrow Cape Public Use Area."

[1:33:08 PM](#)

SUZANNE HANCOCK, Staff to Representative Gabrielle LeDoux, Alaska State Legislature, speaking on behalf of Representative LeDoux, sponsor of HB 203, specified that the updated version of the sponsor statement states that there are five public use areas recognized in state law. Therefore, it acknowledges the existence of the Knik Arm River Public Use Area.

[1:33:53 PM](#)

REPRESENTATIVE WILSON moved to adopt CSHB 203, Version 25-LS0732\E, Bullock, 4/2/07, as the working document. There being no objection, Version E was before the committee.

[1:34:31 PM](#)

MS. HANCOCK noted that the committee packet should include a conceptual amendment addressing some of the concerns brought forth at the prior hearing. Ms. Hancock explained that the changes incorporated in Version E were primarily the legal description of the Kodiak Narrow Cape Public Use Area. The Department of Natural Resources (DNR) eliminated about 10,000 acres from the original land designation. The term "may" was changed to "shall" with regard to the management plan.

[1:35:33 PM](#)

CO-CHAIR GATTO turned to public testimony.

[1:35:52 PM](#)

JEROME SELBY, Mayor, Kodiak Island Borough, said that HB 203 is an important bill to Kodiak. He related that several years ago there was an attempt to transfer this land to the University of Alaska, which indicated that it was going to dispose of a significant amount of the land. The land, which he characterized as a significant piece of public recreation land on the Kodiak road system, was at risk. He pointed out that most of the land on the road system is privately owned and there's little land that is easily accessible by automobile for the Kodiak community to utilize for recreation purposes. After the land was withdrawn from the university legislation, the community came together to discuss the best classification for the land, one that allows multiple uses such as hunting, fishing, grazing, and the rocket launch. He thanked Representative LeDoux and Senator Stevens who worked with DNR to develop this classification. Mayor Selby acknowledged that designating the area as a public use area doesn't mean the land is locked up forever. However, it raises the threshold such that it requires returning to the legislature if another use of this land is allowed. In conclusion, Mayor Selby requested the committee's support of HB 203.

[1:39:27 PM](#)

CO-CHAIR GATTO asked if the rocket launch is the same as the Alaska Aerospace Development Corporation (AADC).

MAYOR SELBY replied yes. In further response to Co-Chair Gatto, Mayor Selby explained that the AADC is a wholly-owned state subsidiary corporation. The AADC has a lease on a portion of the area to be designated as the Kodiak Narrow Cape Public Use Area, which the community fully supports.

[1:39:58 PM](#)

CO-CHAIR GATTO posed a scenario in which AADC leaves, and asked if the land would revert back to the state.

MAYOR SELBY said that the AADC has a lease from the state and thus it will continue to be state land. In further response to Co-Chair Gatto, Mayor Selby related his belief that [the proposed Kodiak Narrow Cape Public Use Area] amounts to about 46,000 acres.

[1:40:27 PM](#)

RICK GIFFORD, Manager, Kodiak Island Borough, reiterated the importance of the area to the public. He, too, thanked Senator Stevens and Representative LeDoux for introducing HB 203.

[1:41:38 PM](#)

LARRY DEVILBISS, Director, Division of Agriculture, Department of Natural Resources, related that his only concern is that everyone should be aware that this proposed public use area lays over existing cattle leases. This would not be as valuable a recreation area if it were not for the prior cattle ranching. The cattle leases exist with the existing leases stating that the recreational use is available. He explained that he wanted to be sure that any new classifications don't eclipse the existing grass leases.

[1:44:03 PM](#)

PAT LADNER, President & CEO, Alaska Aerospace Development Corporation (AADC), Department of Administration, began by relating AADC's support for HB 203. He also related support for public recreation. The AADC has 3,717 acres under an inter-agency agreement from DNR as well as around 8,000 acres total for safety and security. Mr. Ladner said that he reviewed HB 203 in order to ensure that AADC's operations are not hampered. He opined that public safety and environmental [safety] are of paramount importance. When AADC embarks on dangerous operations, access to the area is closed. The aforementioned only occurs during a launch, which is about six hours prior to the launch. Helicopters are utilized to ensure no one has wandered into the area and local vessels are utilized to form a corridor in the water to ensure that a vessel doesn't wander into the area during the final count of the launch.

[1:47:16 PM](#)

REPRESENTATIVE GUTTENBERG asked if there are public airstrips [located in the proposed public use area]. He then asked if AADC has an air strip.

MR. LADNER specified that AADC does not have an airstrip. Although AADC's long-range plan has reviewed the possibility of an airstrip, the organization doesn't have the funds or the plans to do so at this time.

[1:48:26 PM](#)

DICK MYLIUS, Director, Division Mining, Land and Water, Department of Natural Resources, offered to answer any questions.

[1:48:43 PM](#)

REPRESENTATIVE SEATON asked if it's necessary to include a provision specifying under Section 1 that one of the purposes is the continuation of the missile launch facility.

MR. MYLIUS opined that the missile launch facility is already adequately protected by the language in Section 1(b) and (c) of HB 203.

[1:50:08 PM](#)

REPRESENTATIVE SEATON surmised then that the conceptual amendment that would include a provision to continue to allow grazing uses is just a reiteration of what is contained in Section 1(b) and (c).

MR. MYLIUS said that although that's generally correct, he related his understanding that some desired for the grazing use to have a bit higher profile in the purpose section. In further response to Representative Seaton, Mr. Mylius said that from DNR's regarding the launch facility's use Section 1(b) and (c) is sufficient.

[1:51:21 PM](#)

REPRESENTATIVE EDGMON, referring to page 2, lines 24-25, inquired as to the differences between public use area and a state park system.

MR. MYLIUS clarified that state park units are lands that are generally not considered multiple use. As a general rule the lands are typically set aside specifically for recreation-related purposes. Therefore, as a general rule parks are closed to mineral entry and there are usually limitations on leasing. Grazing is usually not allowed. Mr. Mylius said that the least intensively managed areas are generally public recreation areas, such as Chena State Recreation Area or Nancy Lakes. However, those recreation areas are closed to multiple use, such as grazing. The next higher level is state parks that may have additional restrictions and regulations.

[1:52:48 PM](#)

REPRESENTATIVE EDGMON related his understanding that a management plan is required for state parks.

MR. MYLIUS said that although DNR has prepared management plans for most state parks, he was unsure if there is legislation requiring such.

[1:53:10 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to what Version E changes in regard to the legal description of the proposed public use area.

MR. MYLIUS characterized the change as primarily a drafting change. The legal description in HB 203 versus Version E aren't significantly different, except in how the tidelands are described. Basically, Version E squares off the boundary in the tidelands area. In HB 203 the tidelands were established at a certain distance from the shore. However, Legislative Legal and Research Services felt that the language in HB 203 was inconsistent with similar language in other legislation. Mr. Mylius specified that the new legal description doesn't significantly change what areas are included in the proposed public use area.

[1:54:38 PM](#)

REPRESENTATIVE KAWASAKI inquired as to why the provision on page 2, line 14, provides such a strict definition of "additional uses."

MR. MYLIUS related that HB 203 was, to some extent, patterned after the legislation for the Knik Arm Public Use Area in which existing uses were specifically identified. He further related that DNR doesn't have a strong concern whether the list is specified or not.

[1:56:10 PM](#)

CO-CHAIR GATTO inquired as to what would happen if the specified additional uses become a conflict with grazing leases.

MR. MYLIUS responded that such an issue would need to be sorted out through a management plan. Although the language on page 2, line 14, specifies that "the commissioner shall allow additional uses," it doesn't necessarily mean that every use listed would

be allowed in all areas. The department doesn't view the list as all-inclusive or that all the listed uses have to be allowed throughout the public use area. He noted that some of the earlier public use areas don't include such a list.

[1:57:56 PM](#)

CO-CHAIR GATTO asked if DNR would have any problem with changing "shall" to "may" on page 2, line 14.

MR. MYLIUS answered that would be fine, and perhaps even preferable.

[1:58:14 PM](#)

CO-CHAIR JOHNSON pointed out that use of the term "may" could result in not allowing the uses as well as allowing the additional uses. Therefore, he expressed the need to be specific such that it's not restrictive but rather inclusive.

[1:58:44 PM](#)

REPRESENTATIVE SEATON surmised that under the "shall" language DNR would have the authority to limit uses for habitat degradation or does having that language in statute mean that DNR loses its ability to regulate for the protection of habitat or the purposes of the legislation.

MR. MYLIUS replied no because the lead-in sentence says, "Consistent with the purposes of AS 41.23.240(1) and (2), which refer to maintaining, protecting, and enhancing year-round public recreation and enjoyment and use of fish and wildlife. Although AS 41.23.240(1) and (2) does not specifically refer to habitat protection, the language could be read to allow DNR to regulate a use that is degrading a resource for which the public use was established.

[2:00:32 PM](#)

CO-CHAIR GATTO turned attention to page 2, line 27, which specifies that the "commissioner may prohibit or restrict uses determined to be incompatible." If it's hunting season and someone shots a moose, would the person who owns the leases be able to say that's dangerous. He asked if something such as that has been envisioned.

MR. MYLIUS replied no, and explained that the leases don't grant rights to the grazer to prohibit public uses, including hunting. He reminded the committee that the proposed public use area would still be state land and the only right the grazer has is to have the animals present and the construction of fences, if those are consistent with a plan. Still, the leaseholders can't restrict public use and can't control hunting.

[2:02:21 PM](#)

DOUG LETCH indicated that although he is staff to Senator Gary Stevens and has done some work on this legislation in the Senate, he is speaking on his own behalf today. He noted his agreement with Representative Johnson that the legislation is trying to protect the existing uses of the Kodiak Narrow Cape. As a resident of Kodiak, Mr. Letch indicated that he likes HB 203.

[2:03:51 PM](#)

CO-CHAIR GATTO, upon determining no one else wished to testify, closed public testimony.

[2:03:54 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Conceptual Amendment 1, as follows:

Section 41.23.240 is amended to read:

(3) Allow for the continued use of this area for grazing uses and operations consistent with state land use plans and other applicable laws and regulations.

Renumber accordingly.

There being no objection, Conceptual Amendment 1 was adopted.

[2:04:41 PM](#)

REPRESENTATIVE ROSES related his understanding that the language doesn't supersede any of the existing laws or regulations, and thus leases would have to be obtained and go through the process.

[2:05:35 PM](#)

REPRESENTATIVE WILSON moved to report CSHB 203, Version 25-LS0732\E, Bullock, 4/2/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 203(RES) was reported from the House Resources Standing Committee.

HJR 4-KENAI/KASILOF SUBSISTENCE PRIORITY

[2:05:58 PM](#)

CO-CHAIR GATTO announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 4, Requesting the Federal Subsistence Board to reconsider its decision regarding the subsistence fishery priority given to Ninilchik residents. [Before the committee is CSHJR 4(FSH).]

[2:07:03 PM](#)

CONRAD JACKSON, Staff to Representative Kurt Olson, Alaska State Legislature, explained that HJR 4 requests that the Federal Subsistence Board reconsider its November 2006 decision regarding the subsistence fishery priority given to Ninilchik, Happy Valley, Hope, and Cooper Landing residents. He noted that the committee packet should include a map illustrating the location of the aforementioned communities. The customary and traditional (C&T) use determinations provide subsistence priority to the residents of Ninilchik and Happy Valley for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest as well as parts of the Kasilof River. A similar C&T determination grants the subsistence priority to the residents of Cooper Landing and Hope for the Kenai River drainage. He noted that the committee packet should include the request for reconsideration (RFR) filed by the Alaska Department of Fish & Game (ADF&G).

[2:09:23 PM](#)

MR. JACKSON turned attention to the RFR for Ninilchik, and highlighted the following language from it: "Reconsideration is required because, in adopting that final rule, 'the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law.'" The same language is found in the RFR for Ninilchik for the Kasilof River drainage. With regard to Hope and Cooper Landing for the Kenai River drainage and waters north of the drainage, the RFR says,

"Reconsideration is required because, in adopting the final rule, 'the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law,' and because new 'information not previously considered by the Board' demonstrates that the Board's determination was based on incorrect information and assumptions." These [RFRs] clearly illustrate that the C&T determination is flawed. Mr. Jackson informed the committee that there were some studies [referenced in the document titled "ADF&G Comments on FRFR06-02/03/08 Ninilchik C&T for the Kenai River"] that may have been misinterpreted. One such study showed that only 7 percent of the Ninilchik households claim annual use of the Upper Kenai Area fisheries and a total of 28 percent of Ninilchik residents claimed any such usage ever during their lifetime. The survey found that Ninilchik residents experienced the highest use from fisheries closest to Ninilchik, such as the Ninilchik River and Deep Creek. The sponsor, he related, agrees with ADF&G that the C&T determinations are flawed. Therefore, HJR 4 requests that the Federal Subsistence Board revisit those considerations and take a closer look at the eight criteria upon which the board is required to follow in making C&T determinations.

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CO-CHAIR GATTO asked if on page 2, line 2, the intent is for the term "reconsider" to mean "reverse." He further asked if such a language change would be clearer or go too far.

MR. JACKSON said use of the term "reconsider" is appropriate as the desire is to request that the board review the eight factors that it's supposed to utilize when making the C&T determinations.

[2:13:38 PM](#)

DARREL WILLIAMS, Resource Officer, Environmental Scientist, Ninilchik Traditional Council, began by relating that he is a federally qualified subsistence user. He further related that he participated in the delivery of the information provided to the Federal Subsistence Board in the C&T process. Mr. Williams said that he's present today because it seems that there has been some misinformation. He noted that he provided the committee with a document [titled "HJR 4 Reasons to Oppose By Ninilchik Traditional Council"] that reviews some of the instances that have arisen through the [C&T] process. Mr. Williams pointed out that this process has gone on for seven years and he said he was sure that no one has been able to

review all seven years of the documentation. The aforementioned is evidenced, he said, in discussions of the survey information and how it was used to prove or disprove or to meet the thresholds of the eight factors of the Alaska National Interest Lands Conservation Act (ANILCA). He recalled a survey performed by Jim Fall that has been held up as a reason to scrutinize [the C&T process]. One of the problems that resulted from the survey information was the use of stratification techniques to be able to determine subsistence use in various communities; these techniques were inconsistent. For example, in the community of Nicolai the survey was stratified into new believers and old believers within the same community and who would be eligible for subsistence use and who wouldn't. He recalled that in the Fall survey, the longest residency identified and surveyed was 10 years. In a community such as Ninilchik, which has written documentation back to the 1840s, that doesn't seem realistic. The target population seemed to be missed, he said. The state addressed this many times throughout the process by various staff. Since it's been one of the longest C&T processes that the Federal Subsistence Board has performed, it has been carefully done with legal counsel through the Office of the Solicitor. If the state had significant new evidence that [the C&T determination] was wrong, it would be submitted in a proposal to the Federal Subsistence Board and go through the process. Mr. Williams pointed out that during this process there have been RFRs and special action requests and has required extensive legal counsel. He further pointed out that the RFRs and special action requests have been reviewed federally and withstood the threshold of the C&T determination on the eight factors.

[2:18:13 PM](#)

MR. WILLIAMS, in response to Representative Guttenberg, opined that there tends to be fear with this particular C&T determination that there will be a large number of people taking a large amount of fish. As a comparative example, Mr. Williams inquired as to how many minutes it would take to catch 500 fish if one was commercial fishing. The 500 fish was a threshold that was taken into consideration through the C&T process.

[2:20:47 PM](#)

DANIEL REYNOLDS said that Ninilchik has proven customary and traditional use on the Kenai Peninsula and has provided substantial evidence to support the C&T determination. Drawing from the meetings he attended, Mr. Reynolds said that [the

Regional Advisory Council and ADF&G] had substantial time to obtain evidence to support their claims.

2:22:02 PM

JOHN HILSINGER, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game, stated that the state is deeply troubled by the C&T determinations that were granted to Ninilchik, Happy Valley, Hope, and Cooper Landing. As Mr. Jackson noted, the [department] has filed a RFR. Mr. Hilsinger informed the committee that the aforementioned communities, under state law, are considered nonrural and part of the Anchorage, Mat-Su, and Kenai nonsubsistence area. The Federal Subsistence Board regards these communities as rural even though they are surrounded by nonrural communities. Furthermore, the Federal Subsistence Board has found that these communities have C&T use in the Kenai and Kasilof River drainages as well as other waters in the northern portion of the Kenai Peninsula. Mr. Hilsinger opined that the Federal Subsistence Board didn't base its decisions on evidence that adequately meets the eight factors required by federal regulation for making a C&T determination. For example, the regulations require demonstration of a long-term and consistent C&T use pattern of the fish resource on federal lands by a community. As Mr. Jackson noted, the Federal Subsistence Board misused the data provided by the department and reviewed the number of people who have ever used the area in their entire lifetime. However, when one reviews the proportion that uses it any given year, it's less than 7 percent. The same pattern existed with the communities of Hope and Cooper Landing for many of the species in the area. The Fall report was well done and one must understand that the methodology utilized in that report was by random sample. Only by using a random sample, can a survey represent the usage by the entire community. Although there have been other studies performed regarding subsistence use in Ninilchik, they were targeted to certain portions of the community and certain user groups. Therefore, they don't represent the entire community. Moreover, the fact that many of those surveyed had not lived in Ninilchik for very long is a characteristic of that community. Because of the low usage of many of the stocks on federal public lands, the Federal Subsistence Board used a new definition of stock. The Federal Subsistence Board found that the stocks traditionally used by the people of Ninilchik were the same stocks that occur in the Upper Kenai River. However, the aforementioned is inconsistent with any commonly understood definition of fish stocks. The board also failed to take several factors into consideration,

such as the changing demographics of the communities, the impact the available road system has on use levels, and type of use. In the case of Ninilchik, its access to and use of more common local fisheries in either the marine waters near Ninilchik or in the Ninilchik River in Deep Creek [wasn't taken into consideration]. The Federal Subsistence Board also failed to consider historical tribe use areas, which in the case of Ninilchik didn't include the Upper Kenai River.

[2:26:41 PM](#)

MR. HILSINGER pointed out that when Congress established the Kenai National Wildlife Refuge under ANILCA, subsistence uses were left out of the purpose of the refuge. When all of the aforementioned is considered collectively, the state doesn't appear to support a long-term consistent pattern of community use. With regard to other issues, he highlighted that Cook Inlet fisheries are already fully allocated and the Federal Subsistence Board's decision will ultimately result in unnecessary restrictions of existing established uses, such as commercial sport and personal use. Mr. Hilsinger said that there are conservation issues involved with this. If the department felt there was additional harvest allowable of those stocks, the department would've already supported the many proposals for increased harvest. Although the recommendation that the Southcentral Regional Advisory Council is going to make on these fisheries to the Federal Subsistence Board is more conservative than the original proposal of the residents, it's not conservative enough, particularly for certain stocks such as rainbow trout and steelhead. Mr. Hilsinger then opined that the Federal Subsistence Board has failed to adopt written policies and procedures for C&T determinations and closures that have been required by the U.S. Secretary of Interior. Mr. Hilsinger said this isn't really a question of putting food on the table because the state provides a broad array of personal use, educational, and recreational fisheries that provide ample opportunity for people to harvest fish for personal and family consumption. Furthermore, in most of these communities the amount of fish harvested under those state fisheries is a small fraction of what people would be allowed to take if they took all that they were allowed.

[2:29:38 PM](#)

CO-CHAIR GATTO asked if the eight factors that have to be met are clear.

MR. HILSINGER said that the eight factors mainly refer to the patterns of use. For example, the first factor is a long-term consistent pattern of use, excluding interruptions beyond the control of the community. The second factor is a pattern of use recurring in specific seasons for many years. Mr. Hilsinger said that the eight factors "refer not only to the pattern of use but the handling, preparation, preservation, handing down knowledge." Therefore, [the department] looks for the background information that supports that the community has met each of these patterns. The [department] believes that it should be substantial information because a preference that restricts other users is being provided. Therefore, the information supporting that should be fairly clear.

[2:31:22 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), related that the AOC supports passage of HJR 4. He highlighted that the intent of ANILCA was not to have a subsistence priority on the Kenai Peninsula. There is no provision in the Kenai National Wildlife Refuge to provide for a subsistence opportunity. "Instead, unlike all the others, it's to provide in a manner compatible with these purposes, opportunities for fish- and wildlife-oriented recreation. And also, unlike any of the other parks created by ANILCA, the Kenai Fjords National Park does not have a provision for subsistence priority in that national park," he related. He then reminded the committee that the state designates the Kenai Peninsula as a nonsubsistence area.

[2:32:59 PM](#)

CO-CHAIR GATTO asked if ANILCA established parks, refuges, or both.

MR. ARNO answered that ANILCA established both parks and refuges. He noted that the Kenai National Wildlife Refuge was an extension under Title 3. Under Title 2 of ANILCA falls the establishment of new parks, under which the Kenai Fjords National Park was established. Both of those exclude a priority for subsistence. Mr. Arno related that in the late 1970s he attended the meetings on ANILCA that U.S. Representative Mo Udall had and recalled that over 70 percent of the Alaskans that testified at the Anchorage meeting said that the Kenai Peninsula was the area at which they recreationally hunted and fished. In response to Co-Chair Gatto, Mr. Arno confirmed that U.S.

Representative Udall was involved with the lands referenced in Section 17(d)(2) of Alaska Native Claims Settlement Act (ANCSA).

[2:34:55 PM](#)

JOHN SKY STARKEY testified in opposition to HJR 4. Mr. Starkey related that the bill addresses the C&T determination for Ninilchik. After checking with the solicitor, he said that although he didn't get a clear answer, he isn't sure that it includes Happy Valley. With regard to the Kenai Peninsula being different from the rest of Alaska as far as ANILCA is concerned, he related that notion has been legally rejected many times. He said the solicitor's opinion, the Katie John decision, and other decisions by courts are based on public lands, which are on the Kenai Peninsula and have nothing to do with whether or not the refuge itself was set aside for subsistence. Mr. Starkey then recalled that part of the sponsor statement and ADF&G's justification of this resolution is that there would be a crippling impact on the Kenai Peninsula that may result in the shutting down of other fisheries. In the tribe's opinion, this is a counterproductive way to approach the issue and has caused much fear. In fact, there have been threats against Ninilchik people on the Kenai Peninsula. The fact is that a couple of weeks ago, the Southcentral Regional Council forwarded a recommendation to the Federal Subsistence Board, which won't impact any other fisheries. According to Office of Subsistence Management fisheries staff and wildlife fisheries staff, there aren't conservation problems. Therefore, he encouraged a more productive approach, rather than the fear-mongering that's occurring. Mr. Starkey pointed out that many of the arguments are legally based, such as whether there's substantial evidence and whether the Federal Subsistence Board has followed its regulations. If the aforementioned is what needs to be addressed, then the board or the courts will decide. However, the legislature is being asked to weigh-in because it's a policy matter. The legislature is being asked to use its political clout to ask the board to do something. From the standpoint of the Native community, it seems a bit unbalanced that the legislature would weigh-in against the tribe that has established C&T use rather than letting the process go through the normal legal channels, he opined. For example, if the legislature wanted to become involved in policy issues on an equal basis, the community of Saxman has recently been found to be nonrural by the Federal Subsistence Board. However, the legislature isn't weighing in and asking the Federal Subsistence Board to review what's occurring in Saxman. Mr. Starkey opined that [the legislature is involved] because the Kenai Peninsula

has always been a controversial area regarding subsistence. In fact, this controversy started years ago and the eight criteria were developed because of the controversy on the Kenai Peninsula. At a joint meeting of the Board of Fisheries and the Board of Game, the eight criteria were used to deny C&T use throughout the Kenai Peninsula. The state was sued in the Kenaitze Indian Tribe vs. State of Alaska based on the findings that no one on the Kenai Peninsula was entitled to subsistence. In that case, the Ninth Circuit Court found that the State of Alaska was not following the law. The history was reviewed by a federal judge last March. The judge found that the Ninilchik Indian Tribe had been poorly treated for 50 years and it was time to do something administratively to allow the Ninilchik Indian Tribe subsistence use. The most important criteria of the eight criteria, is the long-established pattern of use of the resource. He said it was important to note that the criteria includes an essential aspect that says that the Federal Subsistence Board must consider interruptions beyond the control of the community when making such a determination. "It's beyond dispute that Ninilchik has been denied for 50 years ... their opportunity for a traditional subsistence fishery on the Kenai Rivers ... because of commercial and sports fishing and conservation reasons for one reason or another the State of Alaska and the federal government have denied them that use," he opined. Therefore, the Ninilchik Indian Tribe has had to survive for 50 years, catching what they can to maintain their way life. The Federal Subsistence Board reviewed the current pattern of use and how the 50-year period of regulatory prohibition of their way of life impacted things. The Fall report was reviewed in detail by the Federal Subsistence Board and people disagreed about the outcome, he said.

[2:41:57 PM](#)

MR. ARNO highlighted that a federal judge said that the intent was that all federal land would be used for subsistence. However, that's not what's on the record with regard to the intent of ANILCA when the Kenai National Wildlife Refuge was created, as there was a specific exclusion for the priority for subsistence use on the refuge. Furthermore, the specific exclusion for subsistence hunting in the Kenai Fjords National Park was based on the testimony gathered prior to the passage of ANILCA.

[2:42:56 PM](#)

MR. STARKEY clarified that nothing in ANILCA says that subsistence isn't allowed on the Kenai Peninsula.

[2:43:31 PM](#)

CO-CHAIR GATTO, upon determining no one else wished to testify, closed public testimony.

[2:43:55 PM](#)

REPRESENTATIVE SEATON moved to report CSHJR 4(FSH) out of committee with individual recommendations and the accompanying fiscal notes.

[2:44:05 PM](#)

REPRESENTATIVE GUTTENBERG objected. Representative Guttenberg said that for him it boils down to the following statement by Mr. Hilsinger: "Cook Inlet resources are already all allocated." Representative Guttenberg related his understanding that Mr. Hilsinger is saying that the matter has been taken care of and [the department] likes the result. However, there are other processes that allow, through the Federal Subsistence Board, others to have input. This resolution seems to relate that [the legislature] doesn't want to consider [other processes]. He opined that the aforementioned is inappropriate. Representative Guttenberg said he viewed this as an opportunity outside of the state's Board of Fish and Board of Game.

[2:46:02 PM](#)

REPRESENTATIVE WILSON opined that this is difficult because one side says the eight factors have been met and one side says they have not.

[2:46:54 PM](#)

REPRESENTATIVE KAWASAKI noted his agreement with Representative Wilson that there's a lot of information, but there isn't information with regard to the original language from the Federal Subsistence Board regarding the claim that the eight factors have been met. Therefore, he suggested that more information and time is necessary. In response to Co-Chair Gatto, Representative Kawasaki said that he was in favor of holding HJR 4.

[2:47:31 PM](#)

REPRESENTATIVE ROSES reminded the committee that ADF&G had already filed an appeal, which is going forward whether the legislature takes action or not on HJR 4. He remarked that he sees validity on both sides of the issue, which makes it difficult to come to a decision.

[2:48:21 PM](#)

REPRESENTATIVE SEATON related his understanding that there is quite a bit of data regarding that the eight criteria were not met and that the written policies required by the U.S. Secretary of Interior weren't adopted. Furthermore, there wasn't a road to the area on the Kenai Peninsula where the C&T expansion is desired until 1952, and until that time it has been by sport methods and means. Therefore, Representative Seaton said he feels comfortable requesting that the Federal Subsistence Board review the criteria and policies and reconsider the decision. He pointed out that this isn't overriding the decision of the Federal Subsistence Board. He characterized this as a logical step rather than going straight to court.

[2:50:14 PM](#)

CO-CHAIR GATTO announced that HJR 4 is being held for another day and that it will possibly be taken up at the next committee meeting. [The objection to the motion to report CSHJR 4(FSH) from committee was left pending.]

HB 220-BAN COMPUTER-ASSISTED REMOTE HUNTING

[2:50:59 PM](#)

CO-CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 220, "An Act prohibiting computer-assisted remote hunting."

[2:51:08 PM](#)

REPRESENTATIVE BOB BUCH, speaking as the sponsor of HB 220, paraphrased from the following sponsor statement [original punctuation provided]:

This bill would outlaw computer assisted remote hunting in Alaska. This practice began in Texas in 2005 when an entrepreneur offered "hunters" the ability to shoot big game on

his land via remote control technology.

Computerized hunting – or internet hunting, as it is sometimes called – enables a person anywhere in the world to hunt big game from the comfort of their homes. Through the use of the internet, a computer can be hooked up to a webcam and rifle mounted on a remote control rig. The “hunter” is able to control the aiming and firing of the rifle from their keypad and to make a kill with the click of a mouse.

Currently, twenty five states have passed legislation to ban internet hunting. Nine other states have legislation pending to outlaw it.

HB 220 has three important provisions. First, it would prohibit individuals from engaging in internet hunting in Alaska. It would also prohibit anyone from providing services or operating facilities in the state to enable computerized hunting activities. Finally, it would make sure that future technology designed to assist the legitimate needs of handicapped or disabled hunters would not be subject to the ban created in the bill.

I urge your support of HB 220.

REPRESENTATIVE BUCH informed the committee that those in support of HB 220 include the Humane Society, the National Rifle Association (NRA), the American Society for the Prevention of Cruelty to Animals (ASPCA), hunting organizations, and the Alaska Department of Fish & Game (ADF&G).

[2:53:55 PM](#)

CO-CHAIR GATTO asked if there could be a situation in which an individual is watching television and when a commercial comes on, he/she could aim a rifle, press a button, and an animal could fall somewhere in Alaska. Someone in Alaska would pickup the animal and butcher to ship to the person.

MR. BUCH said that could potentially occur. He stated that he doesn't agree to such and wants to ensure that it doesn't occur.

[2:54:54 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), related AOC's support for HB 220. He further related that the AOC is built on the premise of being outdoors and computer-assisted remote hunting flies in the face of that.

[2:55:27 PM](#)

CO-CHAIR GATTO characterized computer-assisted remote hunting as an abomination.

[2:55:58 PM](#)

JOE KLUTSCH, President, Alaska Professional Hunters Association, Inc. Board of Directors, Alaska Professional Hunters Association, Inc. (APHA), informed the committee that APHA represents guides and outfitters around the state. Mr. Klutsch related his support for HB 220, as written. He emphasized that computer-assisted remote hunting is not hunting. He noted that the committee should have a letter he wrote related to hunting, which he characterized as a real life drama. Computer-assisted remote hunting is the organized killing of an animal via cyberspace and robotics. Therefore, he requested that this not be referred to as "hunting." Mr. Klutsch commended the sponsor of HB 220.

[2:58:09 PM](#)

REPRESENTATIVE SEATON moved to adopt CS for HB 220, Version 25-LS0795\C, Kane, 4/2/07, as the working document. There being no objection, Version C was before the committee.

[2:58:54 PM](#)

RONNIE ROSENBERG testified in support of HB 220. She opined that computer-assisted remote hunting reduces animals to nothing more than a pawn in a video game. She said that computer-assisted remote hunting shouldn't be allowed in Alaska.

[2:59:21 PM](#)

CO-CHAIR GATTO, upon determining no one else wished to testify, closed public testimony.

[2:59:37 PM](#)

REPRESENTATIVE ROSES related his understanding that HB 220 would prohibit computer-assisted remote hunting in Alaska as well as such hunting in another state from a computer in Alaska.

MR. BUCH confirmed that to be the case.

[3:00:01 PM](#)

REPRESENTATIVE GUTTENBERG referred to page 1, line 5, and asked if the sponsor would want to consider inserting the term "and service" following the term "facility".

MR. BUCH said that he would take that under advisement.

[3:00:30 PM](#)

REPRESENTATIVE WILSON moved to report CSHB 220, Version 25-LS0795\C, Kane, 4/2/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 220(RES) was reported from the House Resources Standing Committee.

[3:01:01 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:01 p.m.