

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 4, 2007

1:04 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Co-Chair  
Representative Craig Johnson, Co-Chair  
Representative Vic Kohring  
Representative Bob Roses  
Representative Paul Seaton  
Representative David Guttenberg

**MEMBERS ABSENT**

Representative Peggy Wilson  
Representative Bryce Edgmon  
Representative Scott Kawasaki

**COMMITTEE CALENDAR**

HOUSE BILL NO. 132

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

- MOVED HB 132 OUT OF COMMITTEE

HOUSE BILL NO. 176

"An Act creating the Fort Rousseau Causeway State Historical Park."

- MOVED CSHB 176(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.

- MOVED CSHJR 4(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 194

"An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high

voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignation of certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 194(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 132

SHORT TITLE: ALASKA AGRICULTURE DAY

SPONSOR(S): REPRESENTATIVE(S) GATTO

02/14/07	(H)	READ THE FIRST TIME - REFERRALS
02/14/07	(H)	EDT, RES
03/27/07	(H)	EDT AT 5:00 PM CAPITOL 106
03/27/07	(H)	Moved Out of Committee
03/27/07	(H)	MINUTE(EDT)
03/28/07	(H)	EDT RPT 5DP
03/28/07	(H)	DP: DOLL, LYNN, GATTO, JOHANSEN, NEUMAN
04/02/07	(H)	RES AT 1:00 PM BARNES 124
04/02/07	(H)	Scheduled But Not Heard
04/04/07	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 176

SHORT TITLE: CREATE FORT ROUSSEAU CAUSEWAY PARK

SPONSOR(S): REPRESENTATIVE(S) WILSON

03/05/07	(H)	READ THE FIRST TIME - REFERRALS
03/05/07	(H)	RES, FIN
03/28/07	(H)	RES AT 1:00 PM BARNES 124
03/28/07	(H)	Scheduled But Not Heard
04/04/07	(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
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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  
04/02/07 (H) Heard & Held  
04/02/07 (H) MINUTE(RES)  
04/04/07 (H) RES AT 1:00 PM BARNES 124

BILL: HB 194

SHORT TITLE: FINES AND OFFENSES

SPONSOR(S): RESOURCES

03/14/07 (H) READ THE FIRST TIME - REFERRALS  
03/14/07 (H) RES, JUD, FIN  
03/28/07 (H) RES AT 1:00 PM BARNES 124  
03/28/07 (H) Scheduled But Not Heard  
04/04/07 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

Sandra Wilson, Intern  
to Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sponsor statement on behalf of Representative Carl Gatto for HB 132.

CLIFF STONE, Staff  
to Representative Peggy Wilson  
Alaska State Legislature  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sponsor statement on behalf of Representative Peggy Wilson for HB 176, Version E.

MICHAEL EBERHARDT, Superintendent  
Southeast Area

Division of Parks & Outdoor Recreation  
Department of Natural Resources (DNR)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on HB 176, Version E.

MELANIE LESH, Legislative Liaison  
Office of the Commissioner  
Department of Natural Resources (DNR)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on HB 176, Version E.

WYN MENEFEY, Chief of Operations  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 176, Version E.

HARVEY BRANDT  
Sitka, Alaska

**POSITION STATEMENT:** Supported HB 176, Version E.

ROBERTA FLOOD  
Sitka, Alaska

**POSITION STATEMENT:** Supported HB 176, Version E.

MARLENE CAMPBELL, Director  
Government Relations  
City and Borough of Sitka  
Sitka, Alaska

**POSITION STATEMENT:** Supported HB 176, Version E.

REPRESENTATIVE KURT OLSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions as the sponsor of HJR 4.

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

**POSITION STATEMENT:** Answered questions on HJR 4.

HEATH HILYARD, Staff  
to Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sponsor statement for HB 194 on behalf of the House Resources Standing Committee.

AL CAIN, Criminal Justice Planner  
Statewide Enforcement Specialist  
Division of Sport Fish  
Alaska Department of Fish & Game (ADF&G)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 194.

STEVE ARLOW, Captain  
Commander, C Detachment  
Division of Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 194.

WYN MENEFEE, Chief of Operations  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 194.

DICK MYLIUS, Director  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 194.

BURKE WALDRON, Lieutenant  
Central Office  
Division of Alaska Wildlife Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on HB 194.

#### **ACTION NARRATIVE**

**CO-CHAIR CARL GATTO** called the House Resources Standing Committee meeting to order at [1:04:45 PM](#). Representatives Gatto, Johnson, Kohring, Seaton, and Roses were present at the call to order. Representative Guttenberg arrived as the meeting was in progress.

HB 132-AGRICULTURE DAY

1:04:50 PM

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 132, "An Act designating the first Tuesday of May as Alaska Agriculture Day."

Sandra Wilson, Intern to Representative Carl Gatto, Alaska State Legislature, presented the sponsor statement for HB 132 on behalf of Co-Chair Gatto. She said that HB 132 would designate the first Tuesday of every May as Alaska Agriculture Day. This bill is meant to educate people on what agriculture means to the state, and to give recognition to the farmers and those in the industry who feed us and provide more than \$50 million annually to the economy of the state. It will allow schools a bigger chance to educate students on modern agriculture and what it is to our society and our economy, she explained.

CO-CHAIR GATTO added that HB 132 gives children another day to focus on. An activity could be for kids to begin growing plants three months in advance and then prepare the ground to plant them on Agriculture Day.

1:07:01 PM

CO-CHAIR GATTO called for public testimony, then closed public discussion after ascertaining there was no further testimony.

REPRESENTATIVE SEATON noted that discussions are underway about moving the state's shellfish hatcheries and shellfish mariculture into the Division of Agriculture, Department of Natural Resources (DNR). He said he is not offering an amendment, but that he thought it an appropriate topic to bring up for the record because all farming should be recognized.

CO-CHAIR JOHNSON inquired whether this would include fish farming.

REPRESENTATIVE SEATON countered that it would include all farming that is permitted in Alaska.

1:08:22 PM

REPRESENTATIVE SEATON moved to report HB 132 out of committee with individual recommendations and the accompanying fiscal

notes. There being no objection, HB 132 was reported from the House Resources Standing Committee.

REPRESENTATIVE GUTTENBERG expressed his support for HB 132 upon arriving immediately after the vote.

HB 176-CREATE FORT ROUSSEAU CAUSEWAY PARK

1:09:08 PM

CO-CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 176, "An Act creating the Fort Rousseau Causeway State Historical Park."

CO-CHAIR JOHNSON moved to adopt the proposed committee substitute (CS) for HB 176, Version 25-LS0181\E, Bullock, 3/28/07, as a work draft. There being no objection, Version E was before the committee.

1:10:01 PM

REPRESENTATIVE SEATON requested an explanation of the changes between the proposed CS and the original bill.

CLIFF STONE, Staff to Representative Peggy Wilson, Alaska State Legislature, explained that the Department of Natural Resources came to Representative Wilson's office with some minor changes to the cadastral survey that had originally been provided for the bill. The changes included adding the survey number and fine tuning the description of a couple of the lots.

1:10:55 PM

REPRESENTATIVE SEATON inquired whether the change in the description materially affects the size of the state park.

MR. STONE replied it does not. It is roughly 58 acres of upland only.

1:11:13 PM

CO-CHAIR GATTO asked for a description of the causeway.

MR. STONE explained that the causeway was created during World War II (WWII) when the military used rock and gravel to fill the areas between a series of small islands west of the then U.S. Navy's Sea Plane and Operating Base in Sitka, which is now a

state airport. On each island there are concrete bunkers and magazine posts, most of which still exist today and are in fair condition.

[1:12:46 PM](#)

CO-CHAIR GATTO inquired what the meaning of a historical park is.

MR. STONE responded that it is simply a name that was chosen by the Sitka Trail Works. There was some debate as to whether to use historic or historical in the name.

[1:13:18 PM](#)

CO-CHAIR GATTO asked whether Fort Rousseau is a park in the same sense that Yosemite National Park is a park.

MR. STONE answered that it is. Some of the language for Fort Rousseau is the same language as for other state parks, such as Fort Abercrombie State Historical Park on Kodiak Island.

[1:13:51 PM](#)

CO-CHAIR GATTO inquired what things would be off limits under park status that were previously okay.

MICHAEL EBERHARDT, Superintendent, Southeast Area, Division of Parks & Outdoor Recreation, Department of Natural Resources (DNR), explained that a park designation withdraws the land from the roles of general state lands and puts it under management by the Division of Parks & Outdoor Recreation. The land is then subject to all of the division's regulatory authority for general park lands and will be managed for the purposes established under the bill.

[1:15:23 PM](#)

CO-CHAIR GATTO asked what is changed in regard to fishing, hunting, trapping, and snow machining.

MR. EBERHARDT stated that the Sitka community is pushing hard for this park in order to protect the existing uses of camping and recreating and to enhance the historical aspect. None of the tidelands or submerged lands where there are fishing activities is included in the boundaries, and there is no upland game hunting on the causeway at this time. There should no

conflict with hunting or fishing, he said, because during the public comment period there has been no mention of any conflicts with existing activities.

[1:16:36 PM](#)

MR. STONE, in response to Representative Seaton, confirmed that the fiscal note of \$16,800 would come from the general fund and the other expenses would be paid from other revenues.

REPRESENTATIVE SEATON noted that installation of a dock is planned for fiscal year (FY) 2008 and that it would use \$500,000 from the [2006 Alaska Cruise Ship Initiative] tax. Has there been approval of that allocation, he asked, or is it just a potential idea in the planning stage.

MR. STONE responded that it is a proposal, a wish list, for the future that has been brought to the attention of Representative Wilson and Senator Stedman.

REPRESENTATIVE SEATON appreciated that projects are being identified for funding by the cruise ship initiative that voters approved. He noted that the dock project is on page 4 of the "Sitka Fort Rousseau Historical State Park (World War II Causeway) Development Plan Summary".

[1:18:47 PM](#)

REPRESENTATIVE GUTTENBERG said he would have liked to have seen a map of the area and its location in relationship to Sitka.

MR. STONE replied that he provided a colored map and DNR had provided several maps for the committee's packets.

[1:20:12 PM](#)

CO-CHAIR JOHNSON inquired whether there is public access to the area by any other means besides the water.

MR. STONE said the water is the only accessible point because airport development resulted in closing the [land] access to the causeway.

MR. STONE, in response to Co-Chair Gatto, said the U.S. Army Corps of Engineers built the causeway.

[1:21:07 PM](#)

CO-CHAIR GATTO observed that the airport runway is over a mile long and close to Sitka. He asked whether a car could be driven to the causeway.

MR. STONE explained that there is no longer access by car due to the installation of security fencing, but that the causeway did have car access long ago. In further response to Co-Chair Gatto, Mr. Stone confirmed that permission for access would not be granted by airport authorities. In response to Representative Guttenberg, Mr. Stone stated that the main access to the causeway is by boat. Sitka Trail Works also makes a skiff available to the public, he said. The area gets heavy use during the summer months by local residents who skiff to the causeway to picnic and visit the site.

[1:22:18 PM](#)

CO-CHAIR JOHNSON inquired whether cruise ships will be able to conduct tours to the causeway or will turning it into a park deny an entrepreneur the opportunity to make money.

MR. STONE said the long-range plan is to open the causeway to tourists through the sale of [tour] packages in order to fund the improvements that are planned. There are plans to market this and get as many people as possible out there.

[1:23:22 PM](#)

CO-CHAIR GATTO noted that the smaller cruise ships would be the likely ones to come to this destination. The word park rings all sorts of bells that there will be park rangers and restrictions to trails and official cabins. Would this park allow a person to run across the property any way he or she feels like, he asked.

MELANIE LESH, Legislative Liaison, Office of the Commissioner, Department of Natural Resources (DNR), stated that it would not be as tied up as Co-Chair Gatto's first example, it would be open and more like the second example. Any future grant monies would make it a more attractive destination with further development so it could be a cruise ship shore excursion.

[1:25:06 PM](#)

CO-CHAIR JOHNSON asked whether this is more of a public use area than a park.

MS. LESH said there are distinct categories for uses that are allowed depending on whether the designation is a public use area or a park. She deferred to Wyn Menefee.

WYN MENEFE, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), explained that the special designation of public use area allows lands to be managed with a purpose, but they are still general state lands. Therefore, all of the general rules, regulations, and uses are applicable unless the public use area specifically creates regulations that either prohibit or restrict a certain type of use. Land under park designation is withdrawn from public domain, he said, and different statutes and regulations apply. The generally allowed uses on general state lands are no longer allowed on park lands. Typically, hunting and fishing are still allowed in parks, but sometimes the parks have more restrictive language, such as no shooting within one-quarter mile of a facility, whereas general state lands would not have that restriction. He noted that refuges are general state lands co-managed with ADF&G. There is usually some purpose for creating a special use area, such as preventing motorized use.

[1:28:42 PM](#)

REPRESENTATIVE GUTTENBERG compared the Fort Rousseau Causeway with Cape Chiniak, another WWII historical site. He asked whether WWII is the only cultural aspect of the causeway.

MR. STONE responded that he is very familiar with Cape Chiniak and the WWII placements there. His talks with Sitka Trail Works people and other residents supporting this project indicate that the WWII history is the sole use.

[1:30:08 PM](#)

CO-CHAIR GATTO remarked that he feels privileged to see some of the top secret military information from 1943 relating to the causeway.

MR. STONE said, "Anything for the chair."

[1:30:25 PM](#)

REPRESENTATIVE SEATON noted that City and Borough of Sitka [Resolution No. 2005-28] supports historical preservation of the causeway and an ADA accessible walkway. It appears that there

is well founded local support, but has there been any opposition to making this an historical park, he asked.

MR. STONE replied that he has found none. He said he has 60-70 letters from folks supporting this project and that they have been supporting this for several years.

[1:31:39 PM](#)

CO-CHAIR GATTO opened the hearing to public testimony.

HARVEY BRANDT stated that he is a retired educator and former national park ranger, and now a grandfather, who has lived in Sitka for 40 years. He said he has taken hundreds of students to the site: teachers in workshops from throughout the state of Alaska, public school students from Sitka and throughout Southeast Alaska, and college and university groups. It is truly an historic spot, he said. Sitka was one of the major defensive installations in Alaska, along with Kodiak, Dutch Harbor, and Anchorage. During the interlude between the terror of Pearl Harbor and the relief of the Battle of Midway, the military hurriedly prepared this defensive installation. It is over 8,000 feet long connecting numerous islands. Large guns were placed in a triad from Biorka Island, [Kruzof Island] on which Mount Edgecumbe is located, and the end island of the causeway. In these three spots, he said, the military had six inch guns which would have triangulated on any enemy ship coming in. There are numerous bunkers and other things that are very sturdily built and are some of the primary historic spots. It is only accessible by water, but it is a spot that is truly loved by all those who visit it. It is not a spot where people go to fish or hunt, it is fundamentally a place for a picnic and a hike and learning some history. He said he is a strong advocate of this as a community resource for learning more about WWII and the war's importance to Alaska history. When flying into Sitka the necklace of islands comprising the causeway can be seen from the air, he noted.

CO-CHAIR GATTO thanked Mr. Brandt for bringing children out to the causeway and showing them the difficulties faced by people during WWII.

[1:36:09 PM](#)

ROBERTA FLOOD addressed the question of why the causeway should be dedicated an Alaska state park. She said she is a landscape

artist and is a member of Sitka State Parks Citizens Advisory Board. She presented the following testimony:

The cultural and natural history provided by the causeway will be a great interpretive tool for locals and for the thousands of visitors Sitka receives every summer. The significant role played out during WWII here in Alaska is a little known part of history to most Americans. We have the opportunity to tell this chapter of one of the most significant and historical events that have shaped the world today. Not only do we have a landscape that served as a backdrop to the buildup of troops in Alaska, but we have significant structures and remnants to help illustrate the story. The causeway contains siting positions, gunnery placements, and radio rooms to name a few. This interpretive experience will be unlike any museum experience. It will be almost a living history with tangible elements that will aid in interpreting the scale of events and the feeling of what it may have been like to be a soldier here during the war on the western-most brink of protecting the United States shoreline. In addition to this WWII story, Alaska's Native culture will be served well by sensitive interpretive of the causeway islands and how the Tlingit have served as stewards to these lands for generations. The islands many uses such as hunting and fishing grounds and burial grounds will be recognized and interpreted with the guidance with the Sitka Tribe of Alaska. Finally, the natural history of Alaska may be interpreted here. There are many stories to be told about the geological formation of the islands and Sitka Sound, their colonization of plant species, and the sea life that supports our town and Native peoples.... I think it would be a great waste of our natural and cultural resources to let this opportunity pass us by.

[1:38:38 PM](#)

CO-CHAIR GATTO commented that the soldiers assigned here during WWII probably thought they had pretty good duty.

MS. FLOOD agreed.

[1:38:51 PM](#)

MARLENE CAMPBELL, Director, Government Relations, City and Borough of Sitka, noted that she has been a member of the Sitka State Parks Citizens Advisory Board since the late 1980s. She concurred with everything that has been stated. She explained that since the 1980s Sitka has been aware of the causeway's massive deterioration as a result of absolutely no management of the area. There have been problems with graffiti and dangerous building deterioration, but no one was in charge, she said. It was part of the airport management area and the Department of Transportation & Public Facilities was theoretically in charge. However, the agency had a hands-off philosophy and would not allow people out to maintain the site. Ms. Campbell said there has now been much effort to clean up the alder and provide safe pathways to walk from island to island and there has also been abatement of the minimal contamination that was found. Attempts have been made since the 1980s to obtain management of the causeway through the National Park Service, the City and Borough of Sitka, and citizens groups. Finally, there is now a mechanism to manage this extremely important site through the Alaska State Parks system, and the whole community is very excited about this. She said she does not know of anyone opposed to this effort. Concerns about ensuring that Native interests are represented will be honored. There has already been a Congressional appropriation of over a half million dollars specifically earmarked to upgrade the area, she noted, and improvements, interpretation, and maintenance will be done without draining the state's budget. There is a web site showing pictures of the site. The City and Borough of Sitka and the community strongly support this effort and are thankful for the work of Representative Wilson and her staff.

[1:42:02 PM](#)

CO-CHAIR GATTO asked whether the \$500,000 from the cruise ship tax has been applied for or is just a consideration.

MS. CAMPBELL said she believes it is just a consideration. The Sitka Trail Works folks have been very active on this. The effort here is to not be a drain on the state budget, she said. It is unsafe right now without a dock and dock access is very much needed for small boats. The proposed dock would be small so it would be unable to handle large cruise ships.

[1:43:14 PM](#)

CO-CHAIR GATTO closed the public testimony.

REPRESENTATIVE SEATON moved to report the committee work draft for HB 176, labeled 25-LS0181\E, Bullock, 3/28/07, as written, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 176(RES) was reported from the House Resources Standing Committee.

HJR 4-KENAI/KASILOF SUBSISTENCE PRIORITY

[1:44:12 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 was CSHJR 4(FSH).]

CO-CHAIR GATTO noted that public testimony was previously heard. He closed public testimony after ascertaining that no additional people wished to testify.

[1:45:09 PM](#)

REPRESENTATIVE GUTTENBERG commented that the previous testimony was dueling testimony, and no one has squared that up or given a better explanation. The people supporting HJR 4 argued that the Federal Subsistence Board (FSB) did not do its job the way it is supposed to.

REPRESENTATIVE KURT OLSON, Alaska State Legislature, responded correct.

[1:46:04 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether the state lost its arguments as they were making them, whatever those arguments were, and now there is another set of state arguments.

REPRESENTATIVE OLSON replied correct.

CO-CHAIR GATTO noted that this was a November 2006 decision [by the Federal Subsistence Board].

[1:46:48 PM](#)

CO-CHAIR JOHNSON said this is an example of clearly overstepping the traditional and cultural uses that subsistence is based on.

It is appropriate for this resolution to go forward and, hopefully, have some impact.

REPRESENTATIVE SEATON discussed his concern that a saltwater usage is being used to extend a traditional right for an upstream area because the fish in the stream had passed through a saltwater area in Cook Inlet where they were being caught. He feared it could set a precedent that could be very detrimental to any stream where there is a saltwater fishery. He said this is a very new concept that should be reconsidered.

REPRESENTATIVE OLSON stated that Representative Seaton cut right to the heart of the issue, as did the previous two speakers.

REPRESENTATIVE OLSON, in response to Co-Chair Gatto, said the resolution would go to the House floor next.

[1:48:27 PM](#)

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

REPRESENTATIVE GUTTENBERG objected. He said he is unsure what happens next and whether the state has the ability to go to court to appeal this, or whether there is some other legal process outside of asking the Federal Subsistence Board to reconsider. He understood that this was seven years in the making and HJR 4 would be asking the Federal Subsistence Board to appeal its own decision. The FSB must have had a checklist of things that are required to be done in order to get through this process and this would be saying that it did not.

[1:49:50 PM](#)

CO-CHAIR GATTO directed attention to language in the bill [page 1, line 13,] stating, "fall short of meeting the eight factors ...." He inquired how many of those factors were not met.

REPRESENTATIVE OLSON deferred to the Alaska Department of Fish & Game (ADF&G).

[1:50:18 PM](#)

CO-CHAIR GATTO asked Representative Olson to relay to the committee ADF&G's opinion and any statements of fact that are not rebuttable since there is no one present from ADF&G.

CONRAD JACKSON, Staff to Representative Kurt Olson, Alaska State Legislature, said he cannot speak for ADF&G, but that he can point to ADF&G's various Requests for Reconsideration (RFRs) [included in the committee's packets]. He said it appears to him that on almost every page ADF&G points out another circumstance where the Federal Subsistence Board seemed to not quite be there.

[1:51:04 PM](#)

CO-CHAIR GATTO inquired whether Mr. Jackson believed ADF&G had reasonable argument.

MR. JACKSON answered yes.

[1:51:18 PM](#)

REPRESENTATIVE GUTTENBERG asked whether it is the state's, ADF&G's, or administration's intent to take this into the courts. He said that for him this would be the next obvious place to challenge this.

MR. JACKSON guessed the state would take this to court. He understood that HJR 4 is the step the state needs to take in order to say it has exhausted all opportunities for appeal, otherwise the state would not have standing in court.

REPRESENTATIVE GUTTENBERG surmised that if the legislature was divided and the bill did not pass, the administration would have no problem taking it to court.

[1:52:36 PM](#)

CO-CHAIR GATTO drew attention to the 8/3/06 letter in the committee's packet from ADF&G Commissioner McKie Campbell which states: "As you are aware, the State of Alaska has grave concerns regarding recent FSB decisions establishing customary and traditional use ...." He noted that this is a statement that is now part of the record. There is nothing that can be done in committee to either defend or oppose the likelihood of a lawsuit, he said.

REPRESENTATIVE SEATON said that exhausting all forms of administrative appeal is the universal procedure before going through the court system, and a request for a reconsideration by the body that makes the regulation is a normal part of the

administrative appeals process. He said it seems to him that HJR 4 is perfectly in line with this process and he is therefore comfortable with moving the resolution.

[1:55:24 PM](#)

REPRESENTATIVE GUTTENBERG maintained his objection to the resolution.

A roll call vote was taken. Representatives Seaton, Roses, Kohring, Johnson, and Gatto voted in favor of CSHJR 4(FSH). Representative Guttenberg voted against it. Therefore, CSHJR 4(FSH) was reported out of the House Resources Standing Committee by a vote of 5-1.

The committee took an at-ease from 1:56 p.m. to 1:59 p.m.

HB 194-FINES AND OFFENSES

[1:59:10 PM](#)

CO-CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 194, "An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignation of certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

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HEATH HILYARD, Staff to Representative Carl Gatto, Alaska State Legislature, presented the sponsor statement on behalf of the House Resources Standing Committee. He explained that HB 194 is a re-introduction of HB 384 from the Twenty-Fourth Alaska State Legislature. It is a collaboration between the Department of

Public Safety (DPS), the Alaska Department of Fish & Game (ADF&G), and the Department of Natural Resources (DNR). Originally, HB 384 simply updated fines and fees associated primarily with non-criminal violations and infractions throughout statute. In the course of drafting HB 194, the Department of Law and Legal Services advised that the bill needed to comport all sections of statute that had like-type fines for noncriminal violations in order to prevent any potential constitutional conflicts with disparity and prosecution. This is what contributes to the length of the bill, he said, but in reality it is quite similar [to HB 384]. It is just conforming amendments to update fines from \$500 to \$750 for these noncriminal violations and infractions.

MR. HILYARD noted that a second difference between the previous bill and HB 194 is that ADF&G has requested the legislature to also consider updating the fine structure for class A misdemeanors associated with various crimes under fish and game statutes. The Twenty-Third Alaska State Legislature updated fines associated with class A misdemeanors from \$5000 to \$10,000; however, in the course of that some of the ADF&G statutes were not updated to incorporate that increase. Thus, there are several sections in the bill that deal with AS 16.

MR. HILYARD lastly explained DNR's involvement in the bill. When the Twenty-Fourth Alaska State Legislature created the Knik River Public Use Area, DNR was granted enforcement and penalty authority over those lands specifically. It was brought to Representative Gatto's attention that DNR would like to have that type of penalty and enforcement authority for all of the lands it oversees. This authority is provided under Section 37 of the bill, thus giving DNR a tool to address people who are misusing public lands. Section 43 is a conforming amendment that repeals enforcement of the Knik River Public Use Area because Section 37 now gives DNR the broad authority over all state lands.

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AL CAIN, Criminal Justice Planner, Statewide Enforcement Specialist, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), said he does not have any specific testimony as Mr. Hilyard covered ADF&G's concerns, but that he is available to answer any specific questions regarding Sections 6-18 in the bill.

REPRESENTATIVE SEATON asked whether the provision of Section 9, which changes the language to "guilty of a class A misdemeanor", is another way of saying "punishable by a fine of not more than \$10,000, or imprisonment for not more than six months" for the wanton waste of salmon.

MR. CAIN said correct. At the beginning of statehood there were not class A and class B misdemeanors, they were just called misdemeanors. Therefore, this would bring the wanton waste of salmon into alignment with all the others and make them standard class A misdemeanors [punishable by] up to a year in prison and up to a \$10,000 maximum fine.

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REPRESENTATIVE SEATON referred to Section 37, page 9, line 13, which would provide that an authorized state employee can arrest or issue a citation under the enforcement authority of AS 38.05.755. Does this mean the employee can arrest somebody, he asked, because most of the bill is about increasing the fines from \$500 to \$750 and Section 42 defines minor offense.

MR. HILYARD read from page 9, line 9, of the bill regarding penalties under AS 38.05.750: "A person who violates a provision of this chapter or regulation adopted under this chapter, AS 41.23, AS 46.15, or AS 46.17, for which another penalty is not specifically provided is guilty of a class B misdemeanor ...." He said what would constitute a class B misdemeanor under this section would have to be answered by DNR.

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REPRESENTATIVE GUTTENBERG noted that under its new authority DNR would have the ability to enlist ADF&G's efforts in enforcing DNR regulations. He inquired whether this would cause any conflicts for ADF&G or result in requests for which ADF&G did not have the authority or training.

MR. CAIN said he does not see any conflict with the mission of ADF&G, which is mainly management and research. Many ADF&G biologists have law enforcement commissions for those times when they encounter a serious offense in the field or are informed by the public of something that is in progress. He said that ADF&G biologists are not the primary enforcers in the state, rather it is the folks in the new Division of Alaska Wildlife Troopers under the Department of Public Safety. There is a great deal of merit in giving DNR law enforcement authority over their lands,

he said, because under current law there are no criminal penalties even if the troopers are called in, there are only civil remedies currently available to DNR. This would just enhance DNR's abilities at enforcement and would not conflict with or shortchange the missions of DPS or ADF&G. In further response to Representative Guttenberg, Mr. Cain said he understood that DNR personnel, not ADF&G personnel, would be trained and commissioned for enforcement on DNR lands.

STEVE ARLOW, Captain, Commander, C Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), explained that for any enforcement issues falling outside of civil remedies, DNR would call DPS and DPS would be the uniformed entity that would do the enforcement due to the training necessary. For civil issues, DNR deals with it civilly.

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REPRESENTATIVE SEATON noted that under Section 37, [page 9,] lines 18-26, an authorized employee of DNR would have the power to arrest or issue a citation to a person who violates a provision of this chapter or a regulation adopted under this chapter. Do the police authorities feel that this is an appropriate amount of authority for an employee of DNR, he asked.

CAPTAIN ARLOW stated that this is a very valid concern and that this is how he reads Section 37, as well. He said ADF&G has always had language in its regulations similar to this and on issues that it feels uncomfortable with, ADF&G has always deferred to DPS. There are ADF&G biologists who have police authority with full arrest authority. However, he said, he is unsure whether DNR has ever had this.

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WYN MENEFEE, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), addressed the issue of whether DNR has had this authority before and what is DNR's intent with that authority. He said the Division of Parks & Outdoor Recreation has statutes that are almost identical to this that give the authority to issue citations, make arrests, and become peace officers of the state for the purposes spelled out in the statutes. Thus, DNR has wielded this authority before. The parks division has a full training program and any peace officer that is enforcing those

statutes and regulations must go through the training process. The Division of Mining, Land and Water is not intending to set up a whole separate armed enforcement staff, he said. It would create a program to train and commission certain staff for writing citations and issuing fines for certain offenses, but the intent is not to issue this power to every employee of the mining division.

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CO-CHAIR GATTO inquired whether an authorized employee of DNR under the provisions of Section 37, page 9, line 18, would be part of a special group.

MR. MENEFFEE said correct. The mining division would first have to set up a training criteria that the employees would go through. Once the employees met the training and were approved by the division as being qualified to issue citations, the commissioner would be requested to commission the employees.

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REPRESENTATIVE SEATON asked whether there is a difference between the training that would be required to issue a citation and the training needed for arresting people.

MR. MENEFFEE explained that many state and federal agencies have authorities to issue citations, but many do not go to the extent of being able to do felony arrests. The magnitude of the offense often is the determiner, he said. This bill would give DNR the ability to set up bailable offenses, many of them could be down to \$50. Interactions with someone doing the offense could be done on a low enough key that training to carry a weapon would not be needed. For instance, the U.S. Forest Service has Level 1 and Level 2 enforcement officer training. If it got to an uncomfortable situation or a more severe offense, DNR would still go to the Alaska State Troopers. He said this also gives the troopers the ability to cite someone for a criminal offense for a DNR regulation, an ability the troopers do not have right now.

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REPRESENTATIVE SEATON said he is comfortable with the ability to write citations, but uncomfortable with expanding this to authority for arresting, especially since DNR would want a state trooper there for arresting anyway. He asked whether anything

in this provision would be lost by eliminating the words "arrest or" under Section 37, page 9, line 26.

MR. MENEFEER advised leaving in the word arrest because DNR has park rangers who are already trained to do arrests. If park rangers were commissioned for general state land as well as parks they could help with law enforcement situations. Troopers are oftentimes not available because of higher pressing engagements such as burglaries, he said, so DNR does not want to take away the ability of park rangers to come across and make an arrest when needed. Eventually, DNR may have one or two elect people go through more advanced training. The state troopers do not have enough staff to cover the whole state all the time and DNR would like to be able to depend on itself "to handle some of the upper end stuff."

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REPRESENTATIVE GUTTENBERG shared Representative Seaton's concern about the ability to arrest. He said he is unsure where this actually ends when the troopers do not have enough resources so DNR then puts its own people into the field.

CO-CHAIR GATTO surmised that DNR enforcement personnel would have a badge and an identification card so that when they approached a violator they would have a certain amount of authority as a DNR official. If the violator objects to the DNR official, then the violator could be offered the state troopers.

REPRESENTATIVE GUTTENBERG reiterated that he is unsure because he did not want to end up with a DNR police force.

DICK MYLIUS, Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), stated that it is not DNR's intention to have a police force. He said DNR does want to have the ability to rely on its existing forces if necessary, and this is the reason for that provision.

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REPRESENTATIVE SEATON inquired whether Mr. Mylius is saying that DNR needs to have the authority for its employees to arrest somebody or to have the troopers arrest somebody.

MR. MYLIUS responded that this would give the authority to the employees of DNR and it would also give that authority to police officers and park rangers as it relates to the DNR regulations.

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REPRESENTATIVE SEATON understood that what Mr. Mylius is saying is that DNR needs this authority to make arrests in order for police officers of the state to be able to enforce DNR regulations.

MR. MYLIUS replied that, as it relates to state park rangers, this is true.

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CO-CHAIR GATTO understood that what is being asked of the committee is to create another division of enforcement. He guessed it may be a good idea, but that there would be some resistance to it.

CO-CHAIR JOHNSON said his concern is that in order to enforce laws and arrest people, the enforcement official will be armed. The broadness and lack of direction are concerning. He said he would like to see stricter control.

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CO-CHAIR GATTO asked whether handcuffs and weapons will be involved for this enforcement.

MR. MYLIUS responded that this is not the intention for the folks within the Division of Mining, Land and Water. The intention is that these folks would only have the authority to issue citations, and any arrests, if necessary, would be by the troopers or a state park ranger.

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CO-CHAIR GATTO surmised that the purpose of the training is to handle citation situations where there is no enforcement device such as a gun or handcuffs.

MR. MYLIUS said the problem right now is that DNR has no authority other than to tell people to stop what they are doing and to get the attorney general's office to send a letter that tells the violator to stop which is not effective in terms of in-the-field enforcement. Primarily, DNR is looking for the citation authority by Division of Mining, Land and Water employees. The arrest is a backup for those circumstances where

it is necessary, but DNR is envisioning that somebody else would be doing that for the department.

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CO-CHAIR GATTO asked whether Village Public Safety Officers (VPSO) are armed.

MR. MYLIUS answered that he is unsure what authority VPSOs have.

CO-CHAIR GATTO said he is asking the question to determine whether there are enforcement officials who do not have weapons and must call in other authorities with police power when the situation warrants.

MR. MYLIUS said he believes this is the kind of authority that the ADF&G employees have.

BURKE WALDRON, Lieutenant, Central Office, Division of Alaska Wildlife Troopers, Department of Public Safety (DPS), stated that VPSOs are not armed. In response to further questions from Co-Chair Gatto, Lieutenant Waldron said that VPSOs investigate misdemeanor crimes and respond in a type of first responder capacity to emergencies. The VPSOs handle the situation and preserve the evidence until troopers can arrive on scene. Lower misdemeanors ....(indisc.--online microphone failure).

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REPRESENTATIVE ROSES inquired whether a VPSO has arresting authority under current regulations

LIEUTENANT WALDRON answered, "Yes, they do." In further response to Representative Roses, Lieutenant Waldron confirmed that when a trooper is present but unable to provide assistance due to injury, the VPSO does have arrest authority. He said VPSOs often make arrests for such things as driving under the influence (DUI) and misdemeanor domestic assaults.

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REPRESENTATIVE ROSES asked whether a DNR employee absent arresting authority could make an arrest in a situation where the employee is accompanied by a trooper, but the trooper for whatever reason becomes disabled and is unable to complete the arrest.

LIEUTENANT WALDRON said he is not 100 percent certain of the answer. Troopers have a broad arrest authority, but he would have to research it.

REPRESENTATIVE ROSES responded that it is not the trooper he is concerned about, it is the DNR employee.

LIEUTENANT WALDRON said he had misunderstood the question. "So you are asking if they took the arrest authority out of this, could DNR still make the arrest if a trooper was not with them."

REPRESENTATIVE ROSES replied absolutely. He asked if the arrest would hold up as being proper.

LIEUTENANT WALDRON said he did not know.

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CO-CHAIR GATTO referred to Section 37, page 9, line 26, and noted that the question is in reference to striking the word arrest and limiting it to issuing a citation. This is a major change, he commented.

MR. MENEFEE said his understanding is that if it does not say arrest, an employee of the Division of Mining, Land and Water would not be able to arrest somebody. If it only says that the division can issue a citation, then that is all that could be done. He said he could not answer the question of whether the authority is broad enough, but that the troopers may be able to arrest the person for a violation of this. Under current law, a park ranger's commission only allows him or her to make arrests within a state park; there is no authority to make an arrest on general state lands, thus a trooper would have to come in. Because a park ranger is under DNR authority, not under trooper authority, the wording on page 9, line 18, "an employee of the department authorized by the commissioner", would apply to park rangers. Under this language a park ranger's commission could be expanded to enforce AS 38.05 and make an arrest on general state lands because a ranger's training is similar to a state trooper's. But, a park ranger could only arrest if it says "arrest" here [page 9, line 26]. He understood the concern over "arming up" the people of the Division of Mining, Land and Water, but said this is not the intention.

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MR. HILYARD recognized the department's concern about wanting to retain some degree of enforcement authority. He suggested the possibility of a conceptual amendment "to distinguish that an employee of the department or any other person authorized by the commissioner is authorized to issue a citation, but that the arrest authority ... for this section of statute is retained by a police officer." He said the bill goes to the House Judiciary Standing Committee next and there will likely be similar discussion in that committee.

REPRESENTATIVE SEATON inquired whether it would work to take out the words "arrest or" on page 9, line 26, and add a subsection (c) after line 26 that says something like, "a peace officer in the state may initiate arrest of a person who violates a provision of this chapter or the regulations adopted under this chapter."

MR. MYLIUS said the proposed conceptual amendment would work for DNR because the department's intent is to have that enforcement authority only for those folks that already have that kind of training.

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CO-CHAIR GATTO stated that the question is whether to give the commissioner of DNR the ability to authorize someone to make arrests.

MR. MYLIUS replied that DNR would like that authority to be available to state park rangers who are already peace officers. It would work if the bill is worded such that the authority to arrest is limited to peace officers. He said the intent is not to give arresting authority to employees of the Division of Mining, Land and Water, but the way the bill is worded now, they could be given that authority.

CO-CHAIR GATTO commented that the bill does not say that division employees would be given that authority, it is up to the commissioner to decide who would be given the authority. He asked how significant this part of the bill is to DNR given the difficulties that can arise in getting a state trooper out to the location.

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MR. MYLIUS stated that it is not that important for the Division of Mining, Land and Water, nor is it even the division's

intention, to have that authority vested in its employees. The authority was wanted so that it could be used by people within the department that are existing peace officers, which are state park rangers. Thus, the conceptual amendment where the arrest authority would be limited to those who already have the proper training and authority under other statutes would be fine.

CO-CHAIR GATTO surmised that this authority is not needed because there are already people within DNR that have arresting authority.

MR. MYLIUS said the difference is that [DNR people with arresting authority] do not have the authority to enforce these regulations on general state lands. Right now, state parks authorities are limited to units of the state park system, so they do not currently have the authority to arrest people for violation of DNR's general land regulations that are adopted under Title 38.

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MR. CAIN explained how ADF&G manages the exact language that is written in HB 194. Basically, the enforcement language in the bill is a carbon copy of what is in AS 16.05.150-170. At the present time, that language is enforced. All ADF&G biologists were given the authority to arrest by statute promulgated back around statehood. However, ADF&G does not presently have any biologists that are authorized to make an arrest. He said ADF&G has written an enforcement policy prohibiting its employees from making an arrest because of the very topics being discussed by the committee. A one week training course is provided for biologists and it is called an orientation rather than law enforcement training because a person cannot be trained in five days to a proper level to be able to take action against people's constitutional rights as is done in an arrest scenario. No ADF&G biologists have weapons, he said. There are a few biologists who do issue bail citations, but all other law enforcement issues are immediately referred to DPS.

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REPRESENTATIVE SEATON moved a conceptual amendment as follows:

page 9, line 26, after "(3)"  
delete "arrest or"  
page 9, after line 27

insert "[subsection (c)] A police officer in the state may initiate arrest of a person who violates a provision of this chapter or regulations adopted under this chapter."

CO-CHAIR GATTO objected to the conceptual amendment. Does a police officer not already have that authority, he asked.

REPRESENTATIVE SEATON said no, that the testimony is that the police officers, especially the state park rangers, do not have the authority to enforce the DNR regulations. This would give any police officer, including the park rangers that are trained, the ability to initiate that arrest as well as do the citation.

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MR. MYLIUS noted that a police officer would not include park rangers, so "our preference would be that it would be 'peace officer' as opposed to police officer."

REPRESENTATIVE SEATON accepted that as a friendly amendment.

MR. MYLIUS, in response to Co-Chair Gatto, said the department thinks the conceptual amendment is okay as proposed.

CO-CHAIR GATTO withdrew his objection.

There being no further objection, the conceptual amendment was adopted.

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REPRESENTATIVE ROSES moved to report HB 194, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 194(RES) was reported out of the House Resources Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:48 p.m.