

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2160 SCOMM 81: . SPECIAL SESSION (SUBSISTENCE), June 1992/HB 601

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trying to bring up this morning, as I recall, that someone could take this position of the Fish and Game Board to court, and say, "We are entitled to subsistence on these stocks." That was the question, not whether they would be right or wrong. It has not been tested at this point. So the point being if the federal court system or the state court says, "Yes, that is subsistence, customary and traditional uses," then what happens? That is the point he was trying to make, I believe.

MR. COHEN:

Mr. Chairman, that was the situation when the board made its decision before, so nothing has changed. I mean, somebody could have brought that issue before a court then and said, "The board made a mistake and Southeast king salmon should have been considered as a subsistence species." So I don't see where we have changed any situation now from where we were under the 1986 law. There's just nothing different that I know of in regard to Southeast king salmon.

SENATOR ELIASON:

Of course that option is always available for any citizen who decides, for instance, that they should have subsistence use of those stocks. Now, just because it has not been tested does not necessarily mean that it might not happen tomorrow if we don't do anything with a constitutional amendment or a law, that this option is out there. That in itself could raise havoc with that specific species as it relates to sport fishing, commercial fishing, and even subsistence uses.

MR. COHEN:

Mr. Chairman, Mr. President. I guess I'm not sure what it is that the Governor's bill does that solves the problem of Southeast kings - not ever being able to be subject to subsistence uses by these people who live in the rural communities of Southeast. I don't know what it does to solve that theoretical problem. All I know is that there is nothing now that I know of that is different than in 1986, and then 1989 or 1988 when the board made that decision. There are maybe people in the room that could fill me

in and then we could talk about it some more, but I guess I just don't see it.

SENATOR ELIASON:

I guess, Mr. Chairman, we didn't foresee back in 1986 or 1988 what is happening to us today either.

SENATOR KERTTULA:

Senator Zharoff.

SENATOR ZHAROFF:

No comment.

SENATOR KERTTULA:

If there are individuals -- if there aren't more questions at this moment, there are some seniors that I understand may be going tonight, and I'm going to extend the hearing for a brief period to give some of them a chance to comment. I think it's the correct and right thing to do. They've come a long way and they have to return. We will have a period for limited testimony by individuals tomorrow, but in any event, if there are some seniors here -- I see Mr. Johns and some others who've come a long way. Mr. Theodore. There are some here, Henry, that wish to testify. Julie, could you kind of monitor so that they could come forward. Those that are leaving tonight -- there are a few that must leave or can't come back tomorrow, of course, they would be the ones that we should have first, regardless of the way they've signed up. I'd particularly like to hear the seniors on this issue at this time. We're going to bring a few forward.

One of our elders is before us. I thank you for coming. If you would introduce yourself and just please proceed. We'll try to restrict it to four or five minutes, three or four minutes, whatever. Please proceed.

WALTER CHARLEY, ELDER & BOARD MEMBER OF CRNA:

I'm Walter Charley.

SENATOR KERTTULA:

Hello, Walter.

MR. CHARLEY:

I am an elder and board member of CRNA. I have seen a few

days. I was born in a little place, a little village called Wood Camp down the river from Copper Center Village eighty-four years ago. So I've seen a few things in this world before up until today.

In the early years, the things that I saw was the people that came in, the miners that came into Alaska. They were wonderful people, some of them. Some of them were different. They would [indisc.]. They used to go out there over the villages and ask permission if they can go into some other place or someplace where there was gold mining or go trapping or build a cabin or something. These are the things that I was raised with.

Another thing that I have in my life, when I was growing up I was taught to respect the law and to respect how you handle the animals, how you handle the meat. If you've got meat, don't take more than you can use. This was one of the things the elders have taught their people in early years. And the trapping. We had traplines. These people that come in the country, they asked if they could please go in with their traplines. The Indian people in each village in Copper River [indisc.], each village had what they used to call a gentleman's agreement. This agreement had a lot to do to help the other people. You can cross their trail but don't go on their trail where their trapline is. This was one of the agreements that we had. Then the other things that we had in our life was that each village had their own agreement and their own laws. The law is that if you are going fishing, you have thirty days or forty days to fish and if you got your fish all limited to what do you need. Then we all just take what is used in the summer. And the other thing says that when they go hunting—I just said this again, but I'm going to repeat it. Say, if you need meat, if you've got enough meat, remember your relatives or your neighbors.

But, you know, today we're still doing these things. If we've got enough fish, we take it to some elders, we take it to some Native people that haven't got any. I've got relations, myself I couldn't run fish wheel anymore, so my nephews they bring

me fish, and if they went away, I'd ...

Yet, the thing today the law comes to our village and tells us what subsistence is, what you can't do. That you can't do. Then the people that come in our villages don't have respect for the elders or the villages. If they want a pile of wood, they go up in the woods someplace and they start cutting that wood without asking the village people. Now, we have a land, we have land up there, I've got 160 acres back of my place. Last winter when we didn't have a chance to go out fishing or to go out hunting, the people came in running right across to my village, my property with snowmachines and they go way beyond our places, back our places they shot caribou. Now last fall I had hunting, I hunted over in Denali. I couldn't walk very good. I can't pack anything, so two of my grandsons went along with me. We saw a caribou back on a ridge. I went back there. We went over one ridge, we looked at it with my binoculars, we saw these two caribou just down beyond the second ridge. While we were going down that ridge, one of those three-wheelers came along. [indisc.] I have lost my caribou. We left that part of the country but we went to another place and we got one. This is some of the stuff that should be looked at. One of these ten, fifteen thousand dollar big machines up in one place where it goes across the right place for the Indians. And they go beyond that and they tear up the roads and everything else. That should be looked into. Thank you.

SENATOR KERTTULA:

Walter, I appreciate you coming. Do you have any questions?
Senator Adams.

SENATOR ADAMS:

Walter, can you tell me how subsistence fishing was restricted for the Copper River people when state management took over after statehood in 1960? Can you recall that? Do you remember that?

MR. CHARLEY:

You mean the fish wheel?

SENATOR ADAMS:

Yes.

MR. CHARLEY:

Yes, I was working in Anchorage then. They set the date. We'd been getting fish on the fish wheel first of June. Then the state began a date. They changed the law, they said they were going to put it in the fifteenth of June. So, the village elders -- that's people that are a lot older than I am -- they all get together and there's four of them. They take that fish wheel and out in Anchorage they called me, they told me to tell everybody down there that's official that they were going to put that fish wheel in the first day of June. And if they want to come out and pick up, that's fine. So when the first of June came, Tony Jackson is the one I remember but there were three or more, they took the fish wheel on the first of the month and they started [indisc.] the fish wheel. But they didn't pick them up, but anyway they got the side. Then the Governor said, "Run the fish wheel." So that settled the whole thing. Still putting the fish wheel in on the first of June.

SENATOR KERTTULA:

I often wondered why you and I went to the Democratic Convention that fall. Are there any other questions? Thank you for coming. I'm honored to see you again, Walter. It's been a long time.

MR. CHARLEY:

Thank you for inviting me.

SENATOR KERTTULA:

Is there another elder who would like to testify at this time? Henry, come on forward, if you'd like. Oh, yes, thank you.

BETH JACKSON, REPRESENTING RURAL CAP:

I'm Beth Jackson. I'm from the Copper River. I wrote this myself listening to the elders and I feel that I should say something on a little bit of the history because I'm an Eskimo and I'm living with the Indians. For starters, we are against the Governor's bill because it's going against the ANILCA lands claim

settlement act. Years ago we had freedom to hunt, fish, pick berries, pick roots, without any laws or regulations. We as Natives, have the ability to know when to hunt, when the animals are going to mate so we don't kill them. We never wasted food. We learned to share a life. We respected the bears and animals God gave us. Caribou, moose and fish have been our mainstay since time immemorial and we have survived as cultural people. We used [indisc.] to bring our meat in. We walked and worked hard. We didn't have the equipment non-Natives have now -- fifty thousand dollar campers and off the road vehicles that scare the animals away. Unit thirteen if taken away from us will be a disaster. Every tribe going out to hunt when the season is open, it looks like a war zone. My main concern is the elderly people who are used to eating off the land. That is why we have to deal with cancer and other diseases due to chemicals that our systems cannot take. In conclusion, please give us a chance as Natives to enjoy the life we were used to. Be fair and let us not be huntourists, which means to hunt and be tourists. And if you go up to hunt, you see a lot of those, and we go up with our old cars and pickups that rattle, and it's a sight to behold. Let us amend the Constitution and look at the statutes and get this fighting over with. Give us our freedom back. I feel that it is about time that the Bush Caucus and the Legislature help us. Let's just finish all this so we can go out and hunt and fish and pick berries when we want to and not be afraid of somebody shooting our heads off. We can't even go out and pick berries unless we use a bright coat because they think we're little bears or something. And that is crazy. I would like to talk to some of you, Adams and some of those that I know. Give us a chance to work. I'm a young elder and some of them are old and they've gone through hardships. I've gone through hardships and this is our land. People come in and tell us what to do. We don't tell you what to do because that's not our place. But if you make solutions that are easy for us to learn and to take, we will take them if they are fair. Thank you for listening.

SENATOR KESTTULA:

I believe we have time for another at this time. Henry?

HENRY MAKARKE, REPRESENTING CHUGACH, INC.

Henry Makarke is my name. I'm from the Cordova area. I get a little nervous here, but I'm going to try to tell myself I'm not speaking to a bunch of cyclopes right here. The only difference may be that my skin is a little darker than yours. Okay?

December of 1971 was quite a while. I was kind of young then too at that time. That was the date of the Alaska Native Claims Settlement Act. As I recall, part of that time too us Natives were thrust with a document that hardly any of us understood. It was quite a task for all the Natives who are here now and today. We've tried our best to implement the Alaska Native Claims Settlement Act. I guess looking back at it in as far as how the certain laws that -- look, I'm no attorney or not that well educated. But I have tried to understand some of the laws that apply to us. Some of those laws that protect us as far as the subsistence, the National Marine Protection Act is one of them. The treaty of session also protects us in as far as our lifestyle and how we've lived since time immemorial. Title 8 also protects us, the federal law, which has been not too long ago. Now, there is kind of a controversy in as far as how I look at things myself and how I think that you are trying to look at us Natives. We were here. We've lived our lifestyle. Hopefully we think that maybe you the lawmakers will comply with ANILCA. I don't think that's very hard to do. If we look back in the history, and a lot of you were here while we were here also. We hunted and we fished all our lives. We didn't think anything of it. We didn't make an issue of it. We continue to live our lives the way we have. Now some of you have made an issue out of it. It hurts us, the real people. How do we try to cope with that situation? I guess we'll need how you want to live with us and how we want to live with you. I guess I would say that the Native people of Alaska are best looking at the laws of the land and how they have survived throughout these years. I look at that. I also believe

too with the Native people that there is no room for any type of compromise because they are survivors, the endurance that they have survived all this time. I guess I could end it briefly and shortly, is that if you can pass a limited entry law, why can't you pass a subsistence law? I think it's that simple. You passed a limited entry law. You can pass a subsistence law for the Natives. Thank you.

SENATOR KERTTULA:

We have time to hear from one more person now, and then we will try to come back about nine o'clock tomorrow morning to hear from other organizations and individuals.

MS. KITKA:

Mr. Chairman, I have Howard Luke who would be the final one for today, but I'd also like to extend an invitation to the Senate. We are having an open house at the ANB Hall and people from Southeast are having food and Native dancing. I'd like to welcome you. All of the villagers come in from all the other areas, so if you don't have anything in your schedule, from seven to nine we'll be at the ANB Hall. We'd like to welcome you to come, [indisc.].

HOWARD LUKE:

I'm Howard Luke and I'm from Fairbanks. I've got my own corporation and I'm building a meeting hall up there. I tried to get one of you [indisc.] and I didn't get the money. You turned me down. So I went and did it on my own and I'm doing it and we'll be done with it in about another couple of weeks. I invite you people up there and see what subsistence is. I live with subsistence a whole bunch. Myself, I don't believe you know what subsistence is. Subsistence is our livelihood. Like I cut my finger there not too long ago, about a couple of weeks ago, and I didn't have anything on it then, and I just got pitch on there and I wrapped it up on there and in a couple of days it's not even warm. Now you see, that's our right and I believe that some of you people are going to go back to what we are doing too. You'll be out there, you'll be surprised when [indisc.], you're going to

realize some of this stuff. We've been talking about this [indisc.] a whole bunch of people and it makes sense. Because I'm looking for the future. I'm looking for the kids. This is what I'm doing. I'm hoping the kids and the neighbors do it after me and I go to the night school there as much as I could. I tell the principal that I have just as much a right as you have to say what I want to say to kids, because you are using our [indisc.]. See, I didn't get to any school at all, hardly. I got schooling without getting there. I learned the hard way and I tell you I'm kind of happy I did it the right way. Now I know the both sides of it now. Where I learned -- why probably some of you guys heard me say that before too -- how I learned how to read and write. I was going to school and they had to pay board for me, my mother didn't have it, they couldn't afford it. See, I lost my Dad when I was really young. So I learned everything the subsistence way from my mother. My mother was a good teacher even though she couldn't talk either. She's [indisc.] and she told me to continue to carry on and this is what I'm doing. So I told my mother I wanted to get out and my mother say, "No, there'll be a lot of people around there and you won't understand them, and you'll probably learn how to read and write." Well I told her I could read my name, and she said, "Not only that, you need more. You need some education." I told her I'm going to try to learn while I stay out on the trapline. So she went down to my auntie and my auntie wrote everything down, you know, like moose and caribou and whatever, tea, coffee, and a picture underneath it. And most of the things I learned from catalogs. I tell you, the catalog comes in there and that's how I learned. I learned the hard way. This is what I'm saying about this subsistence. It's terrible. In seven generations right now, they're turning from us now. What I mean is this, it's too much. They're spoiling our people. Right now I'm trying to get some people to work down at my place down there. They ask me, "How much an hour do you pay?" Well, I can't. It's all volunteer what I'm doing right now. It's just too much. Like I'm saying, it's not only my people, it's too much

-- how do you say? Public assistance. It's just too much of that. And I blame the family for a lot of these things. I know I've got cousins in town. I'm all alone. I don't have any family. I want to share with people and this is what I was taught, to share with people. I don't care who they are. I will tell you I have traveled all over the world. I spent time in Russia and I went over to New Zealand. I tell you, I have heard a lot of things and I know how they work things. This is what I'm saying that we can solve this problem one more time be right now, but I'm pretty sure you're not listening to each other. My mother used to talk to me all the time and she said, "You're not listening." She'd say, "You put that piece of rock in your ear and leave it there until I get through talking." And I believe that's what we should try to do. Maybe you can solve some of those problems because we need that. That's our livelihood. We've got to have that. I stop and I start thinking about these things all the time. What are my nephew's kids going to do after this come up? It's too much of this handout and somebody's going to have to pay for these things later on. I believe at about the fifth generation it's the one that's going to have to pay for that, and how are they going to do that? This is what I say, the subsistence is our livelihood and we've got to work this together. I say in my language [indisc. - Native language]; it is what I name my corporation - [indisc. - Native language] camp. Oleeah is luck, it's a [indisc.]. If you take care of that oleeah, if you take care of your luck, whatever you want to do, that thing would come to you. Now right today, I don't have to go look for a job. People come ask me, they come after me. I'm sorry that I didn't start this thirty years ago. I used to be just like everybody else, but I finally talked to myself and told myself that the only time I had friends is when I had money, but now I have no money and now I'm just lost. I mean this thing that we're talking about, I just sit back and you just kick your feet back again, and make this [indisc.] about my generations. The young generation is coming up. What I was taught is if you take care of your luck,

that thing will give itself to you. And the wolf is not the only one that is [indisc.] along there, the moose. It's just like anybody else, if you had a bigger [indisc.], you would go back and go for your seconds or thirds, wouldn't you? Well, it's the same thing. It's the two-legged [indisc.] that's doing it. Look, if they left a bounty on the wolf, I think a Native could have got along a lot better too. Now they got the state to get the helicopters to kill the wolves. Look how much it costs them, hundreds of thousands of dollars now. What do you think of that? We could have that money in our pockets now if they just kept the bounty on stuff like that. So, I thank you all. [Applause]

SENATOR KERTTULA:

We have one other gentleman who sat down, and then we'll adjourn. Does he wish to testify? Does the elder wish to testify? Yes?

JON ANDREW FOR DAVID LEWIS (testified in Native language):

Mr. Chairman, my name is Jon Andrew translating for Dave Lewis. Mr. Chairman and the rest of the Senate staff, he is grateful for his opportunity to be in front of you right now. He said my name is David Lewis and I'm from Chefornak. Chefornak is located 480 miles west of Anchorage site. That means he came over one thousand miles just to testify because he is concerned about his subsistence lifestyle. He said his name is David Lewis, born on January 1, 1916. His people have sent him down to testify before this committee. Their main concern is their own subsistence lifestyle, their customary traditional subsistence lifestyle. It is the way of their elders before them that taught him how to live off the land and utilize the natural resources in their area. His people are concerned about preserving their way of life. that's the only way of life they have known for way before the white men came around. They said first thing is their respect for nature. Second keep the wilderness [indisc.]. Anything they use out there -- they use the area they'll try to keep it clean. That was the way of the people. [tape ends]

Tape 3

Side B

MR. ANDREW:

He said through this state he still believes in their own way of managing their own natural resources as far as where game is are concerned. He says the way of their people when they do go out hunting, they just try to take or caputre what they need in order to avoid waste. If they do go out hunting, they try to figure out how much they will need and they will try to go on getting. In their way, if they take too many the extras are just waste, waste of resource. He said to us i n the same ways in the early days with water [indisc.] they say they do go out and try and get what they need during the time when they do go out and harvest them, especially they have their own rules for not taking eggs fromthe time in spring from taking eggs to the time when they are molding. During the summer time they leave them alone. Their forefathers say if you touch the nest or the egss the mother will leave the nest and that resources is wasted. He said up to this day they always try to pass on their own hunting and fishing practices down to their children and their grandchildren so they don't lose it. Their way of lifestyle is what they are trying to preserve. When other people come and try to manage their natural resources, they don't do a good job of it because they don't live in the area. He came all the way down here to testify about his own subsistence lifestyle. His two main concerns right now are he is not in favor of the Governor's subsistence proposal, but he prefers the one drawn up by the Bush Caucus, and also he'd like to see people over here [indisc.] the needs of their own area. What he said is enough for now because he just wanted to keep on going longer. But his main concern is to preserve Native for the subsistence lifestyle. Thank you.

SENATOR KERTTULA:

I guess Mr. Johns is coming forward, but he'll be the last. We will recess then until 9:15 a.m. tomorrow. Apparently there will be a 9:00 a.m. joint session of the Senate and the President will speak to that. But 9:15 a.m. here we will take testimony

from other user and interest groups, and we'll start restricting the time for testimony, except for any answers to Senate questions. It would be my expectation that early tomorrow afternoon after finishing up this type of testimony, we'll have the sectional analysis, we'll have the bills and any suggested amendments available for debate so that we can go on and report progress as soon as possible to the Senate itself. At this time you have the floor, Mr. Johns.

JERRY JOHNS, REPRESENTING AHTA:

Mr. Chairman, my name is Jerry Johns and I'm from Copper River. I've lived all my life in the Copper River. I was born there. Today I came for the same purpose as the people who aren't here, the Native people from different villages, to support our subsistence rights. I would like to say that I used to hunt from my youth on up with my father and we have been living on subsistence for many years. To live on subsistence is something that you have to have fish and meat. I think right now I could still provide in the woods with just dried fish and some rice and go out there for about ten days; I could still survive on that. That's how my ancestors survived. They survived on meat, fish, muskrats, porcupines, anything they can get. And the way we used to keep meat is jerky dried, boned it way out about thirty miles from home, and they used to pack it in on their backs and had some dogs, too, to help pack in the meat. Right now the way things are, I've been sitting back here for four hours and listened to what's going on in here. It seems like that I can't get everything in my mind what's going on. I'd like to say this. I'd like to see that we have the subsistence rights, the Native people in Copper River and different areas. On unit thirteen where we hunt and fish there are people coming in from Anchorage and Fairbanks. When the season opens they get there about three days ahead of time, put up their camp, whatever they've got, their trailers, and they bring out their big machinery, and get ready to go out and hunt. They camp by the road where the trail goes out to different areas and they take these big vehicles and go right

out there just as soon as the season opens—that morning, they'd be out there ahead of people. We don't have a chance. Us Native people that don't have these big vehicles and stuff like that to have a chance to get out there and get our meat. We could probably go out there walking or something like that, but we won't get very far. By doing this, they chase the moose back about forty or fifty miles just off the highway and we don't have a chance. I'd like to see something done about this because it is ruining the country. I've lived in this country for eight-two years and I've lived in one place. And once the things that have been going on for the last twenty or thirty years, and I know that what I see is done up there is depleting everything for the people. And it won't be long the people will deplete all the moose, no matter if Fish and Game sets up a law and stuff like that. The people will get out there just when they open the season for ten days, they'll be out there for ten or forty miles with those big vehicles and destroy everything. I have seen in my time out there hunting, people go out there and shoot caribou and moose and just take the hindquarters and leave the rest of the meat out there where they killed it. That's been done many, many times and it's going to continue on if we don't have something to say about it. I live on a subsistence [indisc.] for years. We don't have the jobs in Copper River like different places. We used to have a state job with the Alaska Road Commission. When I was young I worked forty-five years for the Department of Highway and we had a job. We were trained as we went to work. Today you've got to be skilled to have any kind of a job in Copper River, and elsewhere too, I guess. I don't know about the other places, but I know, like I said, I have lived in this area for many years. That's what is going on. The people in Copper River don't have a chance of a government job or a state job. Some of them do but they don't last too long because they might get a job cutting wood or something like that, because they don't have the skills. They left high school and they can't get a job. There are young and old people in Copper River who are the same because

they have no way of surviving themselves. I'm here because I want to see that subsistence is done for the people, not only for the Native people. We can be wrong because I say this for everybody that will have food to provide for themselves, but not these people with the ten, fifteen thousand dollar vehicles to go out there and shoot moose and caribou. I want to thank you for listening to me tonight.

SENATOR KERTTULA:

Thank you.

[Applause]

We're in adjournment until quarter after nine tomorrow morning.

ADJOURN

6:35 p.m.

SENATE COMMITTEE OF THE WHOLE

June 16, 1992

9:45 a.m.

(Meeting held in Senate Finance Committee Room)

MEMBERS PRESENT

Senator Jay Kerttula, Chairman
Senator Al Adams
Senator Virginia Collins
Senator Sam Cotten
Senator Shirley Craft
Senator Jim Duncan
Senator Dick Eliason
Senator Paul Fischer
Senator Steve Frank
Senator Rick Halford
Senator Lyman Hoffman
Senator Curt Menard
Senator Drue Pearce
Senator Pat Pourchot
Senator Pat Rodey
Senator Dick Shultz
Senator Arliss Sturgulewski
Senator Robin Taylor
Senator Rick Uehling
Senator Fred Zharoff

COMMITTEE CALENDAR

SENATE BILL NO. 484

"An Act relating to the taking of fish and game; and providing for an effective date."

SENATE BILL NO. 485

"An Act relating to the taking of fish and game for subsistence; and providing for an effective date."

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6/16/92

Tape 92-4

Side A

[Tape begins midspeech]

SENATOR KERTTULA:

... to order in a continuation of the hearing process on the legislation that's now before us. We'll ask Carl Rosier, the Commissioner of Fish and Game to come forward at this time. We've been pretty broad and far reaching, Commissioner. And we would ask that you give us background, and specifically, the reasons and the merit of the legislation, why we need it, why it is desired. But anyway, however, you present the case, please proceed.

MR. CARL L. ROSIER, COMMISSIONER, DEPARTMENT OF FISH AND GAME:

Thank you very much, Mr. Chairman. I appreciate the opportunity to be here this morning. I realize it's summertime and people have a lot of things to do. We've got a extremely important issue before us here that [indisc.] to see if the Legislature can, in fact, take a look-see at the present time. Certainly, I'm in strong support of the bill that was developed through the consensus process of the Governor's Subsistence Council. I feel that this is a balanced bill that addresses a number of the management issues at the state level that are faced by departments here today.

Currently, we have a situation in the State in which the Boards of Fisheries and Game are struggling. They have significant problems with dealing with the allocation issues that go along with the court rulings and federal legislation and that they're faced with operating under today. Certainly, the Board of Fisheries has been essentially stalemated at the present time in dealing effectively with subsistence and the allocation of resources for subsistence because of the current state law. It is felt that the tools are simply not there to, in fact, define who and how and where and when, so to speak, subsistence within the State is, in fact, going to be provided for. As a result, we have

about two years of backlog of proposals that have been submitted by the public. The Board has been unable to, in fact, effectively deal with that group of proposals. The Game Board has done a little better job of allocating resources. But, again, they also have problems. They are, of course, -- we're beginning to see now a divergence between the state management program and the federal program, pretty much on a statewide basis. This is just the beginning on this in terms of some of the game populations. Nevertheless, it is beginning. My feeling that we need to, in fact, get the State law into line with something that the Boards can effectively deal with and kind of clean up the state's house and, at that point, then we can begin to deal with perhaps some of the other side issues that are affecting how we, in fact, manage our resources here in this State.

I believe that the consensus bill that the Governor has submitted here, in fact, does give the Boards the kind of authorities, the criteria to make the decisions that they need to make to, in fact, effectively implement subsistence within the State without adversely effecting the other user groups of the State. Certainly, at the present time, with essentially a scenario in which every citizen certainly has the right under some of the legal determinations -- this fact, places certain resources very much at risk in terms of historical uses of those resources. And I would speak specifically here to some of the commercial fisheries.

Certainly, we've got a scenario, for instance, in the Yukon River, where we have an upriver/downriver scenario. We have subsistence throughout that particular river. And it's a situation in which we almost get into a weak stock management policy scenario in terms of providing for the upriver subsistence and a lesser commercial operation up there versus a major commercial fishery on the lower river that's extremely important to the people on the lower river.

We have a scenario in Southeastern Alaska in which we're dealing with chinook salmon here. We've got a cap on the total

numbers of chinook we can, in fact, harvest under the [indisc. - paper shuffling] here in Southeastern Alaska. Two hundred and fifty three thousand fish. Those fish are currently allocated, basically, between recreational and commercial entities. Certainly, if the request was made at the present time as related to those stocks of fish, for subsistence fishery on these, under existing state law the Board would be, in fact, required to, in fact, provide for that. Basically, we've had, traditionally, a long term personal use type fishery that has gone on in Southeastern in which we've utilized those fish for our own consumption in many communities throughout Southeastern Alaska. But on the other hand, if we, in fact, have to manage for a significant subsistence fishery, that means a major reallocation to those resources here in Southeastern Alaska.

We have other scenarios that such as the small sockeye systems that we have scattered in many areas of the State, not only in Southeastern but in Prince William Sound as well. Many of these small stocks of fish have, in fact, been subjected to a personal use or subsistence type fishery in those areas. These fish, they are generally pretty small. Should we, in fact, make a mistake in terms of what we're harvest on this in order to meet the subsistence priority under current state law, we would, in fact, have to back away from commercial fisheries that have had a long standing use of those particular stocks. I think these are just a few of the examples of the types of issues that we're faced with here at the present time.

Granted, these are not necessarily issues that have, in fact, been brought forth in terms of a court case at the present time. It's my view that we are vulnerable in these particular areas in terms of how we deal with those under the current state law. Certainly, these types of scenarios in my mind are spoken to in the consensus bill that's been submitted to you by the Governor. And I feel that we need to begin to work and clarify and give the Boards the tools to, in fact, work with. Give us the tools to work with as the management entity to, in fact, effectively manage

those resources.

I'm extremely pleased to be able to sit here today and tell you that generally our resources are in pretty good shape. I think I've told many you this before in committee hearings. We've got a pretty good scenario as far as most of our game populations are concerned, as are most of our fisheries populations are concerned. This was not the condition that we inherited back in 1959. We had resources that were in a real mess in this state. And that speaks for the federal involvement in management of those resources. It's my belief that if we're going to effectively manage these for the future, it's going to have to be done under a state program that's proven to be very successfully and has effectively rebuilt most of the populations in this state over the last thirty years since statehood.

SENATOR KERTTULA:

If I may interject, wasn't the fishery the primary problem though under this schedule?

COMMISSIONER ROSIER:

Yes, it was, Mr. Chairman. That's correct. Mr. Chairman, with that, I think that I would say, I would be open to questions on this rather than going on at length and let the senators have at me here.

SENATOR KERTTULA:

Senator Sturgelewski, I'll go around and try to again, one per customer and then back again. Senator Sturgelewski.

SENATOR STURGELEWSKI:

Yes, Mr. Chairman, and perhaps this is a comment more than a question, Commissioner. But I would like, when we get into the specifics of the bill, to have testimony as to specific sections. For example, we can solve, by this bill, the Yukon problem of upriver and downriver. I'd consider that God's little miracle. But, I'd like to know how the bill will address that and also the stocks that are available for subsistence. Because I know that is a big issue. You made a comment, however, and I don't see getting into that right now, but you made a comment about you see a

divergence taking place between federal application law and the State. What exactly is happening? What do you mean there? And I would assume that that's primarily on game.

COMMISSIONER ROSIER:

That's correct. It is primarily on game. We had a situation, for instance, I believe it was on the Forty Mile caribou herd this year. In which basically we had harvested a full complement of the allowable harvest off of that particular herd. The feds came in and opened the season -- a subsistence season very late in the year and provided for a subsistence season on top of the allowable -- once the allowable harvest had already been taken in the general season.

SENATOR STURGELEWSKI:

And you see this bill correcting that?

COMMISSIONER ROSIER:

I don't see it correcting the divergence in the feds. I'm saying that basically we've got to be dealing with this as a state issue right now correcting the state law and the problems that we have with the state law. Then we'll get into, what I consider to be the other issues of the federal involvement here on this.

SENATOR STURGELEWSKI:

This doesn't solve that?

COMMISSIONER ROSIER:

This does not solve ...

SENATOR STURGELEWSKI:

This does not solve the dual management problems.

COMMISSIONER ROSIER:

It does not solve dual management. That's correct.

SENATOR STURGELEWSKI:

Fine. Thank you.

COMMISSIONER ROSIER:

The State needs to get its house in order. Then we can go to the feds.

SENATOR KERTTULA:

Senator Uehling.

SENATOR UEHLING:

Thank you, Mr. Chairman. You alluded to a couple things about some legal cases or pending lawsuits. Are those federal lawsuits that were discussed yesterday before the federal government or are these other kinds of lawsuits that you're speaking of? And how will this bill change the effect of what's going to happen in those courtrooms?

COMMISSIONER ROSIER:

Well, Mr. Chairman, I believe that right now what we have -- I was not here so I'm not sure what the court cases were that were that might have been alluded to here in yesterday's hearing. I was with the House Resources yesterday, so I'm not sure what transpired there. But in terms of the bill and now, basically, the courts are making the decisions. They're second guessing the Boards. Because the Boards do not have the tools to make reasonable decisions ... [tape suddenly ends]

SENATOR DUNCAN:

[begins midspeech] ... and you say you think we're extremely vulnerable to federal intervention and if federal intervention does happen to in Southeast waters, then your major urban areas are excluded from subsistence under federal management. Yesterday, McKie Campbell, I think, was saying just the opposite. The Federal Register, by the way, does indicate that federal management may be a reality in Southeast Alaska, entirely in Southeast Alaska. So I'm wondering why you believe there is such a significant impact on the fishery. My information is that right now Southeast Alaska is less than one percent of fish stock is subsistence use. Statewide basis, less than four percent is for subsistence use. And I guess I have a hard time believing that without your legislation, without the Governor's legislation we would see such a severe impact [indisc.] I really question that rationale. I was wondering if you could expand upon that a little bit. And also bring into your answer the U.S./Canada treaty and how that relates.

COMMISSIONER ROSIER:

That's quite a question. There's a lot of parts and pieces to it there on that, Senator. But, Mr. Chairman, if I might, I think -- let me put it in the context of Cook Inlet. And the reason I use Cook Inlet as an example of where we are at the present time, is that that's real. The letter that the Senator referenced here, went out to all the permit holders in the State. We felt that on this particular issue, all user groups are, in fact, being affected by this. There has been very little response in terms of the whole entire subsistence issue from the commercial fisherman as a group, on this. And it was a matter of bringing those people into the loop here, because certainly their future and their livelihoods were involved in the decisions that were going to be made here.

But using Cook Inlet as an example, as you know the Board of Fisheries early on, set up a subsistence fishery in the Cook Inlet area. It's been back and forth in the courts as to whether or not it was going to operate. But it is currently operating at the present time. The effects are not immediate in that particular scenario. But every person from Anchorage is eligible to participate under state law at the present time in that particular fishery on this. You might say, there's a bit of humor associated with, quote, "the subsistence fishery" that goes on down there at the present time. That's strictly a factor of the learning curve, though in terms of the people's ability to participate, develop the gear and the technology to, in fact, participate efficiently within that subsistence fishery. And they're going to do it in terms of harvesting both kings and sockeyes in Cook Inlet. Given time, basically that resource that is going to, basically, everybody that lives in Anchorage under the present state law, is going to be reallocated into the subsistence fishery. There's only one place that that can come from. It's got to come out of the commercial fishery.

The context of the chinooks that I mentioned earlier here, where we have a cap on the chinooks in Southeastern under the U.S./Canada salmon treaty on this. Basically, what we have is, as

I said allocation to two user groups. The Board has attempted to meet this subsistence personal use of allocation under the sport regulations here in Southeastern. But if you get down to it, I think that we're vulnerable from a legal challenge on setting up a subsistence fishery on chinooks in Southeastern Alaska. If we do that, basically, it's got to be a reallocation of resources from the commercial and the recreational fisheries in order to get to that allocation. We do not have it. I don't want to leave you with the impression that we have a court challenge on this at the present time. We do not. But I think we are, in fact, vulnerable.

SENATOR DUNCAN:

Commissioner, I have a follow-up.

SENATOR KERTTULA:

You have the floor.

SENATOR DUNCAN:

If I could just ask a follow-up for the Commissioner.

SENATOR KERTTULA:

You may.

SENATOR DUNCAN:

Specifically on your statement -- at the end of your first statement before I asked a question, you indicated that you thought -- you were concerned that we were extremely vulnerable to federal intervention of federal management. That was the case with this legislation or without the legislation? But do you mean that you agree with what I was trying to get across yesterday that the federal government does have the legal authority to manage the waters in Southeast and Cook Inlet. Because those under the Submerged Lands Act are coastal waters, that could be classified non-navigable if they wanted to.

COMMISSIONER ROSIER:

Mr. Chairman, if I might. No, I do not for a minute think that the federal government has the right to intervene in management of fisheries resources in the navigable waters of Southeastern Alaska. We've challenged them, as I said, under the

Governor's suit on that particular issue. We were certainly challenging them in terms of the federal government's closure, for instance, of subsistence fishing. And their attempt to close subsistence fishing in the Glacier Bay area. And so, we are saying that, no, federal government. You don't have that authority at all.

SENATOR DUNCAN:

And I would concur that you would say that. I guess I was just wondering if you don't also agree though that under -- particularly they could [indisc.] management just take [indisc.] They could even take that management in the waters of Southeast and Cook Inlet could be classified legally is non-navigable waters.

COMMISSIONER ROSIER:

I can't answer the question as to whether they could or could not be legally designated as -- I think that that's a legal question and I'm not qualified. My feeling is that they are navigable waters and certainly the State's best interests is in keeping them navigable waters because that's where our authority is.

SENATOR DUNCAN:

There's just one other follow-up. Do you disagree with my percentages that I used that statewide less than four percent of the fisheries was taken for subsistence and in Southeast, less than one percent of the fisheries was taken for subsistence?

COMMISSIONER ROSIER:

You have to be careful of that particular figure, Mr. Chairman. In my view, because what you're talking about is that under present state law there is a priority for subsistence. And while that may be the case, as I mentioned before, the potential for growth is there on this. But that growth could be uncontrolled because the Board's lack the authorities to, in fact, deal with it. If there is a growth, the decision is made by the residents of Southeastern Alaska that they want growth in those subsistence fisheries, then they need the tools to do that through

the Board's system. And that's what the bill provides for.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

Thank you, Mr. Chairman. Commissioner, you stated earlier that the Fish and Game Board are struggling to make good decisions around state unless we pass a piece of legislation. Can you tell us how they are going to go and make good decisions with the Governor's bill, which is unconstitutional according to our legal department?

COMMISSIONER ROSIER:

Well, Mr. Chairman, the legal advice that I have as Commissioner of the Department of Fish and Game, from the Attorney General, is that the bill is constitutional and they'll leave it to the lawyers to argue that, I guess.

SENATOR STURGELEWSKI:

If they will.

SENATOR ADAMS:

Follow-up.

COMMISSIONER ROSIER:

They will.

SENATOR ADAMS:

I would like to go and refer you back to a memo that you had received on May twelfth from Cheri Jacobus and I would like to refer you to page number three. And I'll just read it.

"There is a risk that a subsistence preference enshrined in the constitution would be interpreted or inhibit or prevent development of other resource since logging, mines, and so forth." Is this a scare tactic that is being used by the administration because of the support that is coming from groups such as Commonwealth. Would you respond to this please?

COMMISSIONER ROSIER:

No. Mr. Chairman, I don't believe that it is a scare tactic. And it's certainly not a scare tactic by the Administration on this. Again, the risk is there. Who knows what

may, in fact, happen within the Supreme Court on this. But as you put wording into the Constitution, it takes on a different connotation, than if it's in state law. And certainly, subsistence as a priority, say, within the constitution, the designation of that as subsistence takes on a different connotation. It gives it a priority that goes far beyond other resource uses. It's going to be part of the consideration, in my view, of the resource development throughout the state in all areas.

SENATOR ADAMS:

Mr. Chairman, and members, this particular memo here is a flawed idea. Each of the constitutional amendments that have been considered by the Legislature have applied for the taking of fish and game. None has mentioned or in any way affected the use of habitat that fish and game occupy. Or development activities that may take place on habitat. A constitutional amendment has nothing to do or in common with section A-10 of ANILCA. Congress specifically intended section A-10 to create a planning process that takes the potential effect of development activity on subsistence into consideration during the planning process. Neither sponsors, nor any members of the Legislature who supports a constitutional amendment intends the text of their memo to impose a land use planning requirement of any kind. The memo by Ms. Jacobus managed to convince legislators that the purpose of a constitutional amendment is, to any extent, ambiguous as to whether to affect land use decisions. The concern may easily remedy by the Legislature enacting a letter of intent. A letter of intent that describes what the amendment is intended not to do. Ms. Chukopus memorandum [indisc.] asserts that an amendment is a risk to development, but does not say how great Ms. Chukopus believes the risk is or the reasoning that lead to her reason of assessment. Can you tell me if this flawed idea is yours, or a member of this body?

COMMISSIONER ROSIER:

This, in my view, is not a flawed assumption. I believe that

certainly it was arrived at after substantial review and consideration by the staff of the Attorney General's office. And I would not, in any way, attempt to second guess them. I feel strongly that the decisions that -- the content of the memo is right on. It's something that I believe definitely has to be considered as you look at this whole issue of subsistence.

SENATOR KERTTULA:

Mr. President.

SENATOR ELIASON:

Thank you, Mr. [indisc.-coughing] I think that -- I would like to, more or less, focus on the question at hand as to whether where we are today relative to subsistence [indisc. -coughing] in terms of [indisc. - coughing] recent court case, much to the amazement of those of us who were watching closely through the subsistence users, themselves were very offensive, which in effect allowed, in my opinion, the commercial taking of herring roe on kelp. There's no question about it, it was a commercial venture. However, to subsistence and to the court's they were allowed to say it was subsistence and that totally offended the people that I associate with in my district who are subsistence users. In just that one step further. As a matter of fact, I think it's offended a lot of people in AFN. The question is, if nothing happens, if you do nothing, are we still vulnerable to that abuse by numerous people? In other words, can someone who happens to live out of the communities of Sitka, or Ketchikan, Juneau, go out to harvest herring roe on kelp which is a very, very expensive commodity in the Japanese market and sell that and still contend that they are a subsistence user. Are we still vulnerable for that type of action?

COMMISSIONER ROSIER:

Mr. Chairman, in my view, we are definitely still subject to that type of action. The scenario that the Senator has raised involves [indisc.] on kelp, a very expensive luxury item that's enjoyed by the Japanese. The quantity that was involved in the latest court decision was about \$25,000 worth. What the bill does

is define and gives the Board the authority to further define what customary trade is. That's not defined in the ANILCA. It's not defined in the current state law. So we are, in my view, unless we change it, we're still vulnerable.

SENATOR ELIASON:

Unless we do something, this bill or a constitutional amendment or something positive to deal with these issues and your suggestion that we go home doing nothing, that we're going to be vulnerable to these types of abuses until we do something. Is that correct?

COMMISSIONER ROSIER:

That's correct. I think that that comes back to the point that we need to get our own house in order before moving on. Under ANILCA provisions at the present time, on this 807, we would still continue to be vulnerable on this particular issue because we would be subject to federal court oversight. If we do the constitutional amendment, without changes in ANILCA, you still do not get the job done. Because ANILCA still continues to provide federal court oversight of the management programs on this and it's the federal courts that were making the decisions on what customary trade was. Two of them, I believe, one in Hydaburg involved about \$7000 worth of product, and the latest one that I was talking about is about \$25,000. You make that same application to some of the other commercial fisheries. I'll use the Yukon again, as an example, in which we have a major roe operation on the river. Certainly, \$7000 worth of roe as a byproduct of subsistence or commercial -- excuse me, not subsistence but commercial, on this. You're talking about putting a lot of dollars into the hands of individuals who are going to push the law.

SENATOR ELIASON:

Mr. Chairman, I just want to pursue this.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR ELIASON:

I just want to make a point. I'm not quite clear if this assumption is correct. But if you say someone came up from California, new to Alaska. Say they wanted to be [indisc.] to a logging camp in Southeastern and moved to Angoon or Kake or these villages that we have in Southeastern. Within a year they qualify as subsistence user, he's become a resident of Alaska and he'd never seen herring on kelp in his life before but he found through this process it was very valuable. And he was the type of person who would go out and harvest this and sell it on the open market for \$15,000. That would be all right, unless we do something. Is that correct?

COMMISSIONER ROSIER:

That's correct.

SENATOR ELIASON:

Thank you.

SENATOR KERTTULA:

Senator Hoffman.

SENATOR HOFFMAN:

On customary trade, the Board has never defined what customary trade is. But they do have the authority to do that. And, in fact, they can go ahead and address the concerns of Senator Eliason and it's my understanding that they do have that on the agenda for next winter. So, in fact, the whole issue can be addressed without the need for the Governor's legislation. And secondly, you refer to the bill as a consensus bill, but I've talked to many of the Native participants and they never signed off on the legislation. They might have participated and they've never signed off and I don't believe that it is a consensus bill, as you refer to it. The area that I would like to pursue though, is the question of dual management. And you and I spent several hours this last session going over the numerous problems that it would impose upon, not only the budget, the people, but the resources, as well. I would like maybe for us to go over that again. It seems to me that dual management problem, which we are not or the administration is not pursuing to get back at this

point causes the people of this State problems in dollars. It causes problems in conservation. Particularly say a hunter goes out and wants to hunt a moose. That moose does not know where the boundaries are. The hunter may have an idea where those boundaries are but it is very, very difficult and many times impossible to find out even when they're out there in game management units where those lines are. And now they're going to have to find out not only where the game management lines are but also where the federal and state lines are when they're hunting. The federal people are going to have their program and the state is going to have their program. The whole system that we're walking down seems to be setting up a complete mess for the people of this state. And I wonder if you may comment upon how you perceive the state handling the dual management question for the people of this state since you are not trying to resolve that question at this point.

COMMISSIONER ROSIER:

Mr. Chairman, if I might, make the one -- in regards to the consensus bill that I reference here, this is a consensus bill that came out of the Governor's Subsistence Council. I believe I made that clear at the beginning of my presentation here on this. Never indicating that it had been signed off by all user groups, although I would like to say that we have subsequently had sign-offs by the major commercial fishing groups in this state. And we've also had sign-off by major outdoor recreation groups in the state. So those people whose representatives did participate in the process, have come forth and supported, what I call the consensus bill. Not willingly, in all cases, but certainly they have come forth and supported this. Just to clear the air on that.

In terms of the dual management, as I say, it's going to be - it's tough but we've made very strong efforts to, in fact, interact with the feds, so to speak. And to influence and make their decisions and make our data available. We have joint data sharing, for instance, on wildlife populations. Currently, we

operate with a common data base as far as game populations are concerned. But again, over time, obviously, the federal government is probably going to go in a separate direction. And we're seeing signs of that at the present time. We saw -- I mentioned the situation on the Forty Mile caribou herd. Certainly, we've had other instances where the feds have gone their own way on this particular issue. I think it's going to continue to be a mess in terms of how we deal with the feds, until, again, we kind of get our own house in order. Give the Boards the tools to, in fact, deal effectively with the resources of state and private lands. At such time as we've got that house in order, and I think that people, in fact, support the state program. I think that at that point, maybe we can come together as a people within this state and deal with the federal issues that have to be dealt with. The feds are going to be here July 1. That's a fact of life. It's not significant -- it's not going to be any more significant though July 1 this year than it was a year ago on this. Regulations are basically the same. Other than the fact that the feds have pushed us on the issue of intervening in the navigable waters issue within the regulations, the regulations are basically the same at the present time than they were a year ago. Like I say, we're trying to make this thing work, with looking at the resources. But in the long term, the feds are going to be moving in their own direction. And you can depend on it. I think we've tried to deal fairly with the residents of the state on subsistence within this bill, in that, the concerns that were out there that are not addressed, for instance, in the federal [indisc.] subsistence being phased out when you reach certain population levels. There's no provisions for utilization of subsistence resources within the federal law for people that live in the urban areas. Certainly this bill addresses that type of thing. So if we can get our act together, I think we can deal effectively with the feds. Because I think the state as a whole has been very effective in doing that in the past and on an issue like this, let's get our own house in order and then go from

there.

SENATOR HOFFMAN:

Follow up. It's been said that seventy to eighty percent of the big game in the state are on federal land. The problem that I see is that the State of Alaska -- as you said, the feds are going in their own way. They're going to go and do their own thing very shortly. They are going to go ahead and set up their own subsistence guidelines and manage, for the most part, the resources. We in our constitution say that we have to manage our game under sustained yield basis. How are we going to be able to coordinate some of the ways that we manage the resource with the way the federal government is going to manage the resource? I see that there's going to be major problems there. And I think the resources are going to suffer in the long run.

COMMISSIONER ROSIER:

Mr. Chairman, the last statement by Senator Hoffman is probably pretty close to the truth. You are going to see some resources - certain stocks that will very definitely suffer over time. I guess my point is that we've got the federal law that's going to have to be ultimately dealt with, so the sooner we get on with getting our own house in order, the sooner we can begin to turn the attentions on the issues involving federal management program.

SENATOR KERTTULA:

Under the rules that I'm directed, I recognize anyone who hasn't spoken before someone else. Any further questions?

SENATOR HOFFMAN:

No, just a comment.

SENATOR KERTTULA:

Please comment.

SENATOR HOFFMAN:

My comment, I guess, is that that we need to get this house in order, we need to get it in order by getting control of the management of resources and the Governor's petition is not going to do that. And I would say the people of this State should be

ticked off if we lose management of this resource and we, as this body, should be trying to get that management back. And the way to get that back is to put the vote to the people and let them decide so we can get management back. We control the resources in this state.

SENATOR KERTTULA:

Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. Just before -- make a comment here. I did hand out to the members of the committee a letter that was addressed to me from the Aleutians East Borough which was read in part yesterday by Mr. McKie giving us the illusion that this whole thing is under the administration has been smoke and mirrors and illusions all the way through up to this point and probably will continue. They're giving us the illusion that the Aleutians East Borough and the Aleut [ph] corporations do not support the AFN proposal. And that they do support the Governor's bill. I would ask each of you to read the letter in its full context. They did express that they are concerned and they are in opposition to the AFN bill. But they also state that they do not support Governor Hickel's subsistence bill because it is weak on subsistence. Read the whole letter in its context. Not just the bits and pieces there that you want to hear or to have heard from the administration.

Going on then, Mr. Chairman, and I hope that the answers are not smoke and mirrors, Commissioner. My basic understanding is the Department of Fish and Game's basic goals and objectives is the perpetuation and preservation of the resources of this state. Is that pretty much correct?

COMMISSIONER ROSIER:

That's correct.

SENATOR ZHAROFF:

How does that relate in relationship to the people of the state? Who are we saving these resources for?

COMMISSIONER ROSIER:

Certainly, my charge, under Title 16 as Commissioner of the Department, is to manage, extend, enhance the resources in the interest of the people of this state. That's all the people.

SENATOR ZHAROFF:

You know, I think we've all heard, and read stories about survival in the wilderness. If you're in a situation and you have to get food to survive and if something comes along you take it. That's for basic survival, which I guess is, nobody has really come up with a definition of subsistence but that would be basically subsistence, wouldn't it, for survival?

COMMISSIONER ROSIER:

Well, that's certainly one definition and would certainly be part of the definition of subsistence, anyway.

SENATOR ZHAROFF:

Of all the uses, Mr. Chairman, and Commissioner, of the resources of the state, then and I'm thinking of all the different user groups. What user group would have the highest priority?

COMMISSIONER ROSIER:

Certainly the utilization of fish and game resources as the food items in the State, as a matter of policy and as a matter of law, that's been a priority in terms of use of those resources.

SENATOR ZHAROFF:

Which is basically subsistence.

COMMISSIONER ROSIER:

Subsistence, personal use, whatever you want to call it, yes.

SENATOR ZHAROFF:

And then the Legislature has gone ahead and identified subsistence as a priority use and we've done this through legislation. The courts have said that, well, it's not constitutional to do that.

COMMISSIONER ROSIER:

[Indisc.] constitutional.

SENATOR ZHAROFF:

Then what is wrong with putting into the constitution

subsistence as a priority use? I don't care how you word it. I mean you don't like the terminology that we come up with here as a Legislature. Well, let's see something from the administration, from the Department of Law, that says how we should phrase this in the constitution that the highest use of our resources should be subsistence. Do you disagree that we should not have it in the constitution under that premise?

COMMISSIONER ROSIER:

Mr. Chairman, at this time, the administration is not willing to get into a discussion or debate in regards to the constitutional amendment. I'm not going to sit here and get into that particular discussion.

SENATOR ZHAROFF:

Mr. Chairman, I think ...

SENATOR KERTTULA:

You have the floor.

SENATOR ZHAROFF:

I think the Commissioner had opened up the discussion by saying earlier that it would not fit into the constitution. Why put it into the constitution?

COMMISSIONER ROSIER:

Mr. Chairman, if I might ...

SENATOR ZHAROFF:

If you're not going to discuss constitution, well don't bring it up as part of your testimony.

COMMISSIONER ROSIER:

Mr. Chairman, I think, that comment was made in response to a question, if I recall, anyway. It was made in response to a question to me from one of the other senators. I think that that's ...

SENATOR KERTTULA:

Will someone get whoever is making noise out of here. We don't need that. Mr. Gruening, would you check it out. Run them off. Unbelievable, one day a year [indisc. - simult. speech]. What it is. They can quit us. Did you respond Mr. Rosier while

I was in my little diatribe here? Are there further questions of the Commissioner? If not, -- you have the floor.

SENATOR ZHAROFF:

Mr. Chairman, I don't know if I got a complete response to that. If I did, I guess I didn't hear it. I'm still a little bit concerned along those lines then. I think another comment that is probably more along the illusionary track would be perception that we're getting from the administration there, that if there are problems elsewhere around the state, and you have availability of resource in one area, let's say Southeast, Cook Inlet, Kodiak, Bristol Bay, wherever it might be, that all five hundred and twenty five thousand people in the state automatically are going to go that area and exercise their right ... [tape ends midspeech].

Tape 92-4

Side B

[Tape begins midspeech]

SENATOR ZHAROFF:

... present in this state for subsistence take. That was sort of the understanding that I had yesterday. And I was - kept throwing this figure, five hundred and twenty-five thousand people out and that we're going to go -- everybody is going to go into a certain area, take out that harvest, put the commercial fishermen out of business, put the sport fishermen out of business. Put the personal use people out of business and just use it for subsistence. That I don't think is a fair illusion to bring forth.

COMMISSIONER ROSIER:

Mr. Chairman, I would not pretend to sit here and say that all five hundred and twenty-five thousand residents of this state are going to converge on any given area. Certainly, the example that I gave you of Cook Inlet involves literally thousands of folks who travel on a daily basis, especially on the weekends during the summer months down to the enjoy Cook Inlet there. It

wouldn't take five hundred and twenty-five thousand. For the numbers of fish that are involved there given some efficiency measures at the subsistence activities at Cook Inlet, they could run real competition and cause reallocation of resources under the present state law of Cook Inlet.

SENATOR KERTTULA:

Senator Sturgelewski.

SENATOR STURGELEWSKI:

Mr. Chairman, Commissioner. ANILCA, in section 803, defines "family" and it defines "barter". It does not define "customary trade". And that's been a real problem on the Yukon and beginning in Southeast. If we passed a subsistence law and a constitutional amendment and we went to our congressional delegation to get some amendments to ANILCA, it seems obvious to me that customary trade is one that we would benefit by having a federal definition. Although I agree with the comment made earlier by one of the Senator's that the Board -- I believe Senator Hoffman -- has that authority now to define customary trade. But then there's always -- you want to win a court suit. Other than customary trade, if there were to be amendments of ANILCA, what do you think they should be? What do you ...

COMMISSIONER ROSIER:

The key in my mind is, excuse me, section 807, Federal Court Oversight.

SENATOR STURGELEWSKI:

Okay, the Federal Court Oversight, customary trade then would be two issues.

COMMISSIONER ROSIER:

Those would be two issues that I could ...

SENATOR STURGELEWSKI:

That you think are the major issues?

COMMISSIONER ROSIER:

Yes.

SENATOR STURGELEWSKI:

The other issue -- could you briefly tell us the suit on the

navigable waters? How does that relate to -- was that brought about because of Glacier Bay or is it a perspective suit to clarify an issue? Could you just briefly tell us what that suit is about?

COMMISSIONER ROSIER:

Mr. Chairman, Glacier Bay is part of it. But basically in the draft regs that will go into effect July one under the federal system, the number of areas in various areas of the state were included as federal enclaves of state waters. There's a number of areas that stretches all the way from Glacier Bay all the way to the northwest coastal areas. The feds, are in fact, interjecting claiming jurisdiction over resources in those areas. There's areas around Kodiak. There's areas around Alaska [indisc.]. There's areas virtually all over the state that they are now claiming jurisdiction, because they are adjacent to federal withdrawal areas. That's what has stimulated the suit on the part of the Governor, here on this. That they had gone beyond the preliminary regs in terms of intervening in navigable waters.

SENATOR STURGELEWSKI:

Mr. Chairman, I appreciate that information. I really think that we should have at least the -- pointed out those sections in the Federal Register. I think we need to have that. But if I'm to understand that correctly, if they would prevail in this, we would then have an issue of the regulations, I would assume, of fishing in those areas which moves us more from fish and game into fishing. And what I'm wondering, if they're claiming that, is it a point to point basis or is it a three-mile or are we talking about taking over "state waters" by the feds for commercial fishing? If so, I think we've got a very serious, serious issue before us.

COMMISSIONER ROSIER:

At this point, Mr. Chairman, I believe that the challenge is really the management of those areas for subsistence purposes. Because we're talking about subsistence regs. They are not intervening - the feds are not coming in saying, commercial. But

certainly ...

SENATOR STURGELEWSKI:

Well, they certainly will impact commercial, if they do subsistence ...

COMMISSIONER ROSIER:

.. in terms of access to the resources of that area, they would, in fact, adopt regulations that would, in fact, impact the other users.

SENATOR STURGELEWSKI:

So, essentially, they're regulating commercial.

COMMISSIONER ROSIER:

They're regulating within those [indisc.]. That's correct.

SENATOR STURGELEWSKI:

Thank you.

SENATOR KERTTULA:

Before I recognize Senator Cotten, [indisc.] Senator Sturgelewski wanted those areas in the Federal Register pointed out ...

SENATOR STURGELEWSKI:

Mr. Chairman, I think also if we could ask the department ...

SENATOR KERTTULA:

... and I would ask you or you would work with Mr. Gruening who does have staff available. Go right ahead, Senator Sturgelewski.

SENATOR STURGELEWSKI:

Mr. Chairman. I was just going to say that, in addition, if we could through staff ask the Department of Natural Resource to prepare us a map that would show us the areas that would potentially be affected by the subsistence category of federal lands, offshore.

SENATOR KERTTULA:

Mr. Gruening, could you contact DNR and see what is possible to be done there working with fish and game. Maybe Mr. Rosier could be of some assistance to you in that. The next person is Senator Cotten. I think there's going to be some real difficulty

in doing some of these things in the timeframe. Some things can be done. Not all. Senator Cotten, you have the floor.

SENATOR COTTEN:

Thank you. Commissioner, I've got a couple copies of this letter to the permit holders. And obviously, I mean there are some risks here. And one of the other risks that have been talked about and already been discussed while I was out of the room. I apologize for bringing it up again, but it had to do with the Katie John and the Kluti-kaah. The assertion by some that the federal government must now assert jurisdiction over state waters. And I didn't know much about that until the last couple of days, and speaking with some officials in the Department of Interior, now they tell me that their lawyers figure it could go either way. And what are we going to do about that? Isn't that even a greater risk than what we're facing right now? If that is a real threat to state management of commercial fisheries, what's your back up plan in that event?

COMMISSIONER ROSIER:

Well, of course, the back-up plan has been challenged. If I'm not mistaken, I believe that there has been a consolidation of some of those cases on navigable waters. I'm not a lawyer, so I'm not sure what all that means. But as I understand it, ...

SENATOR COTTEN:

These two cases are in front of Judge Holland right now, isn't that true?

COMMISSIONER ROSIER:

Yes, that's correct. They are in front of Judge Holland at the present time. But in terms of what happens, I don't think in those terms, in terms of losing. The state has to prevail. Certainly, that's how we're proceeding here at the present time.

SENATOR COTTEN:

Aren't the suits filed against the federal government? I think it's ...

COMMISSIONER ROSIER:

No. The Kluti-kaah is at state court.

SENATOR COTTEN:

What about Katie John?

COMMISSIONER ROSIER:

Katie John is in federal court.

SENATOR COTTEN:

So we don't have a back-up plan. And if suddenly, if the state loses jurisdiction over commercial fisheries, we would just have to start over from there, is that what you're saying?

COMMISSIONER ROSIER:

The initial step has been the filing of our suit, of course, against the federal government that's related to this navigable waters issue.

SENATOR KERTTULA:

In our planning, if you wish, administration's legal counsel, Attorney General's office or others to be questioned about specifics, probably better let the whole committee know so we can immediately request them to appear at some timeframe. I'm just speaking to the whole committee when I say that. Or any other expert witness you might have. The Commissioner might not have the details. You have the floor, Senator Cotten.

SENATOR COTTEN:

That's all I had. Just while I've got the floor, I guess I could give you a quick summary of what the subcommittee appointed.

SENATOR KERTTULA:

Please do. I've heard and maybe I should have asked you that.

SENATOR COTTEN:

I spoke with Vern Wiggins a few minutes ago and he's going to ask the Secretary if he's willing to either make comments or appear before the committee for questions. He says it's not likely. But he and -- who's this other fellow? Marty Suberg, who's with the Department of Interior, would be willing to hook up with us on the phone. Kurt McVee and J.P. Tangent are here in Alaska and they would show up in front of the committee if you wanted them to. And that was one of the questions that I thought

was most important. These lawsuits that have been filed that are trying to get the federal government to assume control. So, if you want somebody from the Department of Interior, we should -- he will be available later today for your call. As to whether or not the Secretary would be available. And otherwise, the other people that I mentioned would be available.

SENATOR KERTTULA:

I suppose upon recess, we ought to make contact for them [indisc.] your committee setting up a system and setting up times that we will respond to since [indisc.] differences. To talk to whomever is available on given portions of this legislation.

SENATOR COTTEN:

All right, well I'll put together a memo for you. I talked to Senator Stevens and John Katz and a few others as well.

SENATOR KERTTULA:

A five-hour differential makes almost everything, more or less today. We haven't set that today. Even though we'll probably be working on the bill. We will be working on the bill by that time. Thank you, very much. Yes, Senator Halford, then Senator Duncan, unless somebody else hasn't spoken.

SENATOR HALFORD:

Just on the information, we [indisc.] session have a number of pieces of information from the Attorney General's office that were current on those dates with regards to ongoing lawsuits and the summary of all the cases that are out there. What's been consolidated and so forth? And I would ask that we get an update of that, dated right now, so that we know what happened in some of those cases. Essentially, I've got the one from April 15, that I had from the Judiciary Committee. But some of these things changed and I'd like to have us all to have in front of us a copy of all the lawsuits that are out there that are related to subsistence -- subsistence user resources, and all the back and forth. Which ones have been consolidated? Because I don't know who to ask sometimes and I don't think any one person knows all those cases.

SENATOR KERTTULA:

Is Virginia here working for Mr. Gruening? Perhaps she could pick up -- she knows her way around. Perhaps she could go to the Attorney General's and Fish and Game. Pick up that consolidation. Do that right now. I think it's something that should be done. The Senator will tell her specifically, if she hasn't heard what he wants. Is there -- do you wish the floor, Senator Halford?

SENATOR HALFORD:

No.

SENATOR KERTTULA:

Senator Duncan.

SENATOR DUNCAN:

Thank you, Mr. Chairman. Just one more time here, Commissioner, on this concern with commercial fisheries. I don't think [indisc.] I just want to be sure I understand it. Let's take a look at U.S./ Canada treaty for example which involves the allocation of salmon that enables the U.S. and the [indisc.]. This kind of treaty doesn't take subsistence into consideration, to my understanding. It doesn't take that allocation into consideration, because it's been insignificant. Subsistence use has been insignificant. So therefore, it's not part of the consideration. And the Board of Fish and Game have allowed king salmon, subsistence fishery Board for a number of years. Even under present law, for instance, statutes in the present regulations customary and traditional uses as a basis for allowing subsistence use. I'm trying to understand how all of the sudden we don't pass this piece of legislation there's a great increase in the allocation in Southeast king salmon fishery for subsistence when it hasn't been allowed in the past. It's not considered in the U.S./Canada treatate because it's insignificant. And it has nto been addressed under traditional use. I guess I don't follow that. I think that the tactics they're using is to raise [indisc. - coughing] that just isn't going to happen.

COMMISSIONER ROSIER:

Well, Mr. Chairman, if I might on this. Senator Duncan is

correct. The treaty does not deal with allocations among users. The treaty deals with guidelines of total harvest as related to interceptions on a coast wide basis. The internal allocation of those resources is entirely up to the Board of Fisheries. So they make the decisions on that, that was a decision, for instance, made here recently, in terms of the allocation of chinooks between the commercial and the recreational interests on this. My statement, I believe, indicates that should we be challenged on the subsistence priority in Southeastern Alaska, as far as chinooks are concerned, I believe that we are vulnerable to that particular area. Because it's been an important species in Southeastern Alaska for many, many years. At this time, the Board has not found customary and traditional use on that particular species here in Southeastern. But on the other hand, if they, in fact, do as a result of public involvement on this. And there's every chance that the Board would, under then present state law, have to, in fact, accommodate that use.

SENATOR DUNCAN:

Mr. Chairman, I think ...

SENATOR KERTTULA:

You have the floor.

SENATOR DUNCAN:

I think the significant part of the Commissioner's statements was, should there be a challenge. There is no challenge. Is that correct?

COMMISSIONER ROSIER:

I said there was no challenge at the present time.

SENATOR DUNCAN:

If there's no challenge, your letter, of course, implies that that's imminent. It's going to happen and we're going to need [indisc.] I guess I don't buy that argument. If you haven't missed it yet because it's not been a customary and traditional use. It hasn't been allowed in the past. I don't see that happening July 1 all of the sudden. I think that we're perhaps incorrectly and wrongly bringing in some problems that really

aren't going to occur in doing that in trying to justify or support for the Governor's legislation.

COMMISSIONER ROSIER:

Mr. Chairman, if I might. In regards to the letter, one, I don't believe that we speak specifically to the chinooks in Southeastern Alaska on this. I think that we've got to utilize an example of the potential on this Cook Inlet is a real thing at the present time.

SENATOR KERTTULA:

Further questions for the Commissioner? There are no questions, Commissioner. We're going to ask that those people gathering legal materials - other materials that are appropriate and necessary for working out these bills, amendments, back-up - please figure that by three today that they have their house in order so that we can have those materials. That would be the deadline I've set so we can get some materials so we can start working on the bills. We're going to have a three to four minute recess then we'll come back and we'll meet with the [indisc.] the next organizations and then we'll go to individuals. They'll have ...

RECESS

10:47 - 11:05 a.m.

SENATOR KERTTULA:

We've got these organizations. I'm going to have to absolutely limit testimony because both witnesses and ourselves have to get down to work. The public generally expects us to get done before we come to order. We'll do what we can.

At this time, it's going to be my intention to have three different groups that have long requested. I'm going to have Mr. Don Harris, former member of Fish and Game Board, former legislator, members of the UFA and members of the Outdoor Council. There's all kinds of people that need a five minute conclusion here. Now, I might interrupt briefly for occasional person to be able to testify, but otherwise, it's going to be this afternoon for individuals to testify. I tried to meet with the

organizations this week broadly for a lot of people. UFA for one group. Outdoor Council for a group. AFN for another group. And we did have a meeting of some of the elders yesterday evening where they testified. But I'll do the best I can. I know I'm going to act pretty arrogantly, I suppose, in dealing with some people. But that's just the way it goes. I'll try to let you participate to the broadest extent possible. Mr. Harris, would you come forward and identify yourself.

UNIDENTIFIED SPEAKER:

Mr. Chairman, I think that we should probably have [indisc.]

MR. DON HARRIS:

My name is Don Harris.

SENATOR KERTTULA:

Would pages go out and get the members before Representative Harris starts? Just those that are in the hall, so they know ... [tape abruptly breaks off then begins again] ... but we must move along. Representative Harris, you have the floor.

REPRESENTATIVE HARRIS:

Thank you, Mr. Chairman. I'm Don Harris and my home is McGrath Alaska. I've been a resident of rural Alaska for forty years.

SENATOR KERTTULA:

Can we turn up the mikes? Is it possible. I guess you'll have to turn up your mike, Don, the best you can.

REPRESENTATIVE HARRIS:

I've been a resident of rural Alaska for forty years, served on the Fish and Game and Guide Board for about four and a half years and on the state Board for four years. And my experience on Fish and Game Board, I, of course, representing the area I did, I always -- I tried to look for complaints from the people of the rural areas of the state and pay attention to their requests and demands. I was always amazed at the proposals that came before the Board. Very, very seldom any proposals that had to do with subsistence taking. So I always felt that the needs were being met at the regulations in the law that was made and in the

regulations that were being made at the time. I've checked from time to time with the Department. There's just no history of people being deprived because of the state management. There's no history at all of that. So, in 1978 I was shocked. I was here in Juneau working at another job and very much involved in that and I was shocked one day when I read there'd been a bill passed that dealt with that subject. And a few days later I was in the Governor's office. I didn't know that the Governor was the prime sponsor of that legislation, I brought it up and he sort of passed it off. And I told him that I thought that probably set the management system that the state had instituted back thirty years. And left his office. I think that as a result that that legislation being taken back to Washington, used as a tool to get the legislation in ANILCA, the State of Alaska has been set back in its management program, in as much we'd ever had a problem. I've never seen the problem. I never had the problem brought up. At times I think in one meeting we had, four subsistence proposals out of hundreds that we dealt with. And we dealt with those in the same manner that all the other proposals that came before us. So I never, in my time in dealing very directly with it, I never saw that we had a problem. But we know, many of us know that in the battle for statehood, the battle cry was to get rid of the fish traps. The reason for that was primarily that the packers controlled most of the fish traps in the State of Alaska. The Bureau of Commercial Fisheries working with their people would make regulations for the taking of an annual harvest and then if a packer or packers didn't like that, they went back to Washington D.C. and got it changed more to their liking. And it ended up that when we came into statehood and at the time we took over the fish and game resources of the State of Alaska, we had a fishery that was in terrible shape. The federal management had managed to destroy the Karluk [ph] the largest red salmon fishery in the world. Now, after thirty years of work the state beginning to bring it back. But the state has done a tremendous job. The state management has done a tremendous job of bringing our

fisheries back - very low resource. The feds did a better job on game management, in my opinion, from what I observed through the years and work on the Board. But I believe ...

SENATOR KERTTULA:

Better job than what, Don?

REPRESENTATIVE HARRIS:

They did a better job than they did with the fisheries.

SENATOR KERTTULA:

Yeah, that's what I thought.

REPRESENTATIVE HARRIS:

Yes, much better job than they did with the fisheries. At least the resource at the time of statehood was in much better shape than the fisheries were. I don't think we should have a constitutional amendment to the state's constitution to accommodate ANILCA. I think that it could very well open the door more than it already is to the federal intervention. I would be very much opposed to that. Their management at no time, in my opinion, has ever exceeded -- been a better management program than the state's management program. And I think that no amount of legislation will change the number of fish in the water or game animals in the field which we need to do if we are to live off the wild stocks of this state -- or many people are going to live off the wild stocks of this state, and enjoy the benefit of that resource. We need to work very diligently to increase all of those stocks. I think that the division in the management could be the worst thing that could happen, between the federal government and the state. The people that decided to move for that kind of legislation have imposed a terrible burden on the fish and the game and the people that depend on it. That's all I have, Mr. Chairman.

SENATOR KERTTULA:

Are there questions of Mr. Harris? Senator Adams.

SENATOR ADAMS:

Thank you, Mr. Chairman, Mr. Harris, since the Governor's bill does not retain federal management. And have you read the

Alaska Federations of Native's and the Bush Caucus's bill?

REPRESENTATIVE HARRIS:

I have not, no.

SENATOR ADAMS:

Well, it contains federal management. Which one would you support, sir?

REPRESENTATIVE HARRIS:

Which bill?

SENATOR ADAMS:

Yes.

REPRESENTATIVE HARRIS:

You say the AFN bill would do away with federal management?

SENATOR ADAMS:

No. It would retain it. The Governor's bill does not retain federal management, Mr. Harris.

REPRESENTATIVE HARRIS:

I would get rid of federal management. It's the worst management we've ever seen in this state.

SENATOR ADAMS:

Then you would support the Bush Caucus's bill, by your testimony then?

SENATOR KERTTULA:

You probably haven't read the Bush Caucus's bill.

REPRESENTATIVE HARRIS:

I haven't read the bill. Do you get rid of federal management?

SENATOR ADAMS:

Yes, sir.

REPRESENTATIVE HARRIS:

I'd have to look at that very carefully. It sounds good.

SENATOR KERTTULA:

Mr. President.

SENATOR ELIASON:

Mr. Chairman. Don, there was some testimony yesterday, the elders were talking about their frustration of season opening and

their about ready to go out and subsistence hunt is what it amounted to. And about that time -- three days, I think, before the season open this plane come in and snowmobiles come in and all this heavy equipment to pursue the game and by the time the season is open, the game was forty miles away. And I can understand that frustration. I've experienced that on the ocean fishing for halibut. There's a thousand boats in square mile. However, it seems to me as a member of the Board of Fish and Game or a member of the Game Board, how did you deal with that without -- it seems to me that would be a ways and means problem rather than a subsistence problem.

REPRESENTATIVE HARRIS:

I know that there was -- during the time that I was on the Board, the snowmachine became a very popular item. And we were continually looking at that and the impacts that it would have. But it was also a very useful tool for the rural resident. You had to weigh all the factors that were involved there as to how to deal with it. As long as it wasn't seen as an abusive item, well, we tended to go along with it because it was a wonderful useful tool. But we also saw severe instances of abuse by the use of airplanes at times and snowmachines, and so on. In the case of the northwest arctic caribou herd, I think in the department records, that they found fifteen hundred -- they counted fifteen hundred caribou still in the feed rotting after. It's fair to assume that most of those -- because they were so far afield that they were probably -- the snowmachine was a vehicle of that abuse. But the fact just had to be weighed in every decision as far as the use of the equipment in the field with. It was our understanding on the Board that the Board always had the power to set priorities among uses. The state constitution states that priorities among the uses can be set. The law and the legislation enabling act allowed the Board to do that. We knew that we could set priorities if there was a demand to do so. What we did -- we essentially did that by the allocations and the management between commercial uses and sport uses. We didn't experience complaint

from the people in the State of Alaska because of the management system that was in place.

SENATOR KERTTULA:

You have the floor, Mr. President.

SENATOR ELIASON:

The point was that these type of activities, even today, are within the jurisdiction of the Board of Game and they can, in fact, say they can restrict the use of snowmachines. They can restrict the use of airplanes. They can cut down on that type of harassment of fish and game if the Board chooses to do so. I submit that that probably falls within a power of the Board of Game now. They can do that. Which would relieve some of those issues out in the bush. I can understand what they are.

REPRESENTATIVE HARRIS:

They can establish special use in areas that restrict the -- and then restrict access by various means within those areas. It's within their power. They've had the power -- I don't think that power has ever been challenged when its been used.

SENATOR KERTTULA:

Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. Mr. Harris, I'm just trying to maybe clarify [indisc.] in my mind here from a statement that you made. Maybe you're more aware of the impact of the constitutional amendment than I am at this point. You said something, that we don't need a constitutional amendment to accommodate ANILCA. At this point, I don't think that a constitutional amendment would necessarily accommodate ANILCA, but the reason we would need constitutional amendment for subsistence would be to accommodate any state statutes that we would have pertaining to rural use of subsistence.

REPRESENTATIVE HARRIS:

I don't think we should have a constitutional amendment. If anything needs amending, I believe it's ANILCA that needs amending.

SENATOR ZHAROFF:

But at the present time, I guess, we're sort of caught ...

REPRESENTATIVE HARRIS:

I know what you're dealing with here is the considerations of everybody in the state. But I don't think that the state should in any way -- the Legislature should in any way accommodate ANILCA.

SENATOR ZHAROFF:

I guess ...

REPRESENTATIVE HARRIS:

I think ANILCA is a terrible imposition on the State of Alaska.

SENATOR ZHAROFF:

Mr. Chairman, my understanding there is that it achieves what we were trying to secure on the beginning with use of subsistence and federal lands and also taking into account state lands and that was rural preference on the resource when you reached a critical stage. And at this point, we're reaching a point where we can't deal with the problems in ANILCA because we can't change ANILCA. That's up to the federal government. We can't deal with passing legislation because the course of determining our constitution prohibits us from doing that.

REPRESENTATIVE HARRIS:

Well, I think ..

SENATOR ZHAROFF:

So it seems to me, the only answer that we have at this point there is to try and deal with a constitutional amendment.

REPRESENTATIVE HARRIS:

Well, then I'd recommend that you send a resolution to the Governor and ask him to -- for the state to join in the lawsuit against the federal government on ANILCA.

SENATOR ZHAROFF:

About the problem we raised -- and I don't want to get into a debate here ...

REPRESENTATIVE HARRIS:

Resolve that question first. Resolve the lawsuit with ANILCA first.

SENATOR ZHAROFF:

But the problem we face here is that it's difficult for us to do that. It's difficult for the Governor to do that unless there is consensus within the state. And there is not the consensus within the state to do that.

REPRESENTATIVE HARRIS:

Well, you have the power to do it. You have the vote to do it and you have the power to send the Governor a resolution to put him on the spot. Then it's something that he indicated in his campaign that he would do. You have the power to put him on the spot and say, do it.

SENATOR ZHAROFF:

I would feel more comfortable in doing that if we had a Governor that was looking out for all the people of the state rather than special interest groups.

SENATOR KERTTULA:

Senator Duncan.

SENATOR DUNCAN:

Thank you, Mr. Chairman. Of course we could also put the Governor on the spot by saying a constitutional amendment that goes toward the people of the state that brings us into compliance. Let me ask you just briefly, Mr. Harris -- I was going to ask you a question about your statement that we won't need a constitutional amendment. You suggested that we amend ANILCA instead. ANILCA, as I understand it, is a rural preference for subsistence use. Do you support subsistence use for rural residents in the State?

REPRESENTATIVE HARRIS:

Yes. Where it's needed. You know at some point, all of our lives we have to subsist. That's the bottom line in all of our lives. And those people that are faced with it every day, provision needs to be made for them. My point is that it always has under state management, been made for them. I know of no

instance where people were deprived because of state management. And then I would be happy to acknowledge anyone that could show me where -- if people that would come forward and display that they were deprived because of state management.

SENATOR DUNCAN:

Mr. Chairman, therefore -- I don't have all the information -- maybe just this is an example where that may have happened [indisc.] really have the state subsistence law. The only question I have is that western arctic caribou herd in 1975 is located -- the Board of Game tried to give up permits to hunt to the villages. The Tanana Valley Sportmens Association opposed this four to one. At that time, [indisc.] the opposition to subsistence hunting of the caribou herd that really led to the state subsistence law we now have which is the state subsistence law. It seems to me that we need to be sure that protection is there continuously. And the constitutional amendment would do that. I'm wondering --

REPRESENTATIVE HARRIS:

I didn't hear all of it. But ...

SENATOR DUNCAN:

I think this is a legitimate concern. We need to be sure we protect subsistence rights for rural Alaskans. And I think there's been a case here in '75 where that was challenged and the courts ruled against that right and that's why we have a state subsistence law.

REPRESENTATIVE HARRIS:

Well, I don't think that the subsistence rights include the right to waste, was my point in bringing up the tally of animals they found actually counted in the northwest arctic herd. There were complaints coming in that it had disappeared or in a large part, it had really been taken down. When they began to look at that question, they found that there was a lot of waste. It had nothing to do with subsistence. It was pure unadulterated waste. Because animals were killed and left in the field. They weren't harvested. They were just killed. And when those things happen,

it has nothing to do with subsistence. It's just a killer instinct, I guess, that takes over. I can only [indisc. - coughing] because I've hunted all my life and I've tried to stay within the laws of the territory of Alaska and the state laws.

SENATOR KERTTULA:

Senator Hoffman, you have the floor.

SENATOR HOFFMAN:

So you stated that you support subsistence for urban hunters and you also stated that you wanted to see Title 8 of ANILCA changed. But Title 8 of ANILCA is exactly that, allowing subsistence for rural residents. So why do you say that you support subsistence for rural residents? Do you want -- how would you change ANILCA? If that's exactly what it says?

REPRESENTATIVE HARRIS:

I think until some animal population is down to the point where it will only provide for subsistence -- as long as you have good healthy animal populations, I think that anyone should be able to harvest them. At the point in time when you don't, then I believe that subsistence should come into play, which the Board has the power to do. And limit it to those people in a given area where you have an animal population - wild stock population that will only support the people of the area.

SENATOR HOFFMAN:

That's what ANILCA does. That's what ANILCA does the way that you're describing it. That's what we have to get back to, to retain state management.

REPRESENTATIVE HARRIS:

Well, ANILCA does ...

SENATOR HOFFMAN:

And the way to get back to it is to change the constitution to allow for us to give that rural preference. And then we will be in compliance. And then we will get back the management that you talked about to the State of Alaska.

REPRESENTATIVE HARRIS:

Well, Senator, Mr. Chairman, ANILCA proposes to divide the

management of wild stocks in the State of Alaska. It's going to do that and I think that's unnecessary. I think we'll have a better management program -- we've had a better -- the state's history in management has been better than the federal government's history in Alaska in wild stock management, in my opinion.

SENATOR HOFFMAN:

Well, prior to McDowell, do you feel that the state's management was working? Prior to McDowell.

REPRESENTATIVE HARRIS:

Yes.

SENATOR HOFFMAN:

Okay, then if prior -- if you say the answer is yes to that question, then we need to get back to the position before McDowell which allowed rural residents. And the way we do that is to make a little change in the constitution and then we will be back to prior to McDowell.

REPRESENTATIVE HARRIS:

I think that the state constitution already meets the provisions setting priorities. Anything else is unnecessary.

SENATOR KERTTULA:

If there's no further questions -- you have the floor Senator.

SENATOR HALFORD:

Thank you, Mr. Chairman. I think we're reading two different things into both the federal law and the McDowell decision. The McDowell decision overruled the rural preference. It did not overrule a local preference. In fact, the tier two preference is that our local preferences are still applied even after McDowell. And that's, I think, what you're saying and that's the kind of preference that really applies to people in the area who need the resource. Not the general rural preference.

REPRESENTATIVE HARRIS:

I know, I don't think we should be guided by a general rural preference. We should be guided by the wildlife stocks that are

available. And that's the way it should be managed. I don't know how else you can manage and do a good job of management.

SENATOR KERTTULA:

Are there further questions? Thank you, Representative Harris. I'm going to vary slightly from the script, because a man is leaving here and he may have a different point of view from a previous witness. I think in all fairness -- but we're generally to go to organizations. But Mr. Willie Goodwin, tells me he has to leave here and he's come from afar. He's here, I hope to the extent possible he will encapsulate his testimony because we have to get on with the major organizations that have been waiting and then we'll go back to the individual witnesses.

You have the floor, Mr. Goodwin. Please introduce yourself. Can page help him distribute? Just automatically, somebody ought to be up there helping.

MR. WILLIAM GOODWIN, JR., KIKIKTAGRUK INUPIAT:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

You have the floor, sir.

MR. GOODWIN:

Members of the committee, my name is Willie Goodwin, Jr. I am from Kotzebue and represent Kikiktagruk [ph] Corporation, a native village for-profit corporation. This corporation represents one thousand, eight hundred and fifty-two shareholders, most of whom are residents of northwest Alaska. I have three points I would like to impress upon the committee. First, our corporation considers subsistence it's highest priority. Second, we do not desire continued federal management of fish and game on state matters. Third, we view the need to achieve those goals through a constitutional amendment and not through the Governor proposed legislation. Our corporation conducts itself with the understanding that the protection of subsistence is our first order of business. This may seem to conflict with the usual corporate directive of profit making, but we involve the bottom line on our property and loss statements, means absolutely nothing

to our shareholders if they're not allowed to continue the lifestyle that's held our people intact for thousands of years. Kikiktagruk [ph] Corporation is a major landowner. As a line, it's policy to support the taking of fish and wildlife for subsistence uses. It drove our original land selection process and it drives how we currently set policies for land use. We have been an accommodating landlord, Mr. Chairman. Because of our cultural heritage of sharing resources, we have not enforced a policy to prohibit non-shareholders from hunting on our lands. However, there may come a ... [tape ends midspeech].

Tape 92-5

Side A

[Tape begins midspeech]

MR. GOODWIN:

... federal government has been a friend to us in many respects. We do not see it anyone's best interests for the federal government to manage federal land. It is not good for us. It is not good for the state. And it's not good for the feds. In our view the federal government is heavily influenced by interest groups whose ideals are diametrically opposed to ours. By this, I mean, the well intended, yet shortsighted objective of certain environmental groups. We see their fingerprints on how the federal government currently deals with four national parks and two national wildlife refuge systems used in this area for subsistence. If we are going to retain state management, it only makes sense to find a solution that truly gets us where we want to go. The Governor's bill does not satisfy ANILCA. Your own attorney's have advised you of this. Worse yet, the Governor's office has expressed its own doubts. Enough time has been wasted. Let the people of this state decide. Disregard the Governor's proposal which gets us nowhere and allow a constitutional amendment to come forward so that we can all solve this problem. Thank you.

Mr. Chairman, I'd like to also make one other additional comment. And that's regarding waste. When we had state management on marine mammals, I remember for a long time, the [indisc.] good friend over at Senator Halford, a guide, that only skins came back. Now tell me that that's not waste under state management. Thank you.

SENATOR KERTTULA:

Are there questions of Mr. Goodwin? Willie, we'd like to thank you very much. I'm going to allow one other elder [indisc. - sneeze] contain himself, before we go on to business. But Mr. Jensen has told me that he has just about a four or five minute at max. presentation. I guess we've got two of these. Marcus, and if there's another Jensen, I guess we will see him. Then we're going on our way.

MR. MARCUS JENSEN:

Thank you, Mr. Chairman. It's been a long time since I've been before your committee. I have hunted in Alaska every year for over sixty years and I think I understand the animals. I would like this body here, just forget the word subsistence for a minute and let's look at what we need. In my opinion, anything that can prove putting meat on your table is what we should be looking a little bit at. For fifty-five years, the state and the territory regulated by season, bag limit and restrictive travel. And during that fifty-five years, there was harmony. People were getting their meat and it was a good program. When this whole word subsistence started, I was amazed at what we were accomplishing. We're not putting more meat on the table by passing a bill. I think that's the important thing.

From the records I can get and the people I can talk to in the bush, they figure about twenty-five to thirty percent of the meat that should go on the table is taken by predators. The next thing is that most of the season where the village areas along the big rivers take their moose is when the snow is on the ground, probably in November. When the impact of urban people would be a little strong, they just stopped airplane travel. They were

taking care of your needs. But they weren't dividing people. They were all in harmony with one another. It wasn't that somebody had something better than somebody else. And I think that's important. That relates to the way our constitution was set up. It was set up treating everybody equally. All the social programs, all the benefit programs, they're equal. And I think if you start dividing on this issue when you can do it another way, then I think it's wrong.

I'm against the present bill. I'm for doing anything to get the federal government out of Alaska. They shouldn't be here. Because we fought fifty years for statehood for one thing. For the state to manage it's own resources. And they just moved in on us through ANILCA. And now they say, you can't amend ANILCA. The word that I got, I think, is very true, it's been amended twenty-one times. So don't say it can't be amended.

Now, what I would like to see is for you people to keep understanding that the bottom line is to better your condition and not keep relating to this word "subsistence". It's kind of a fantasy in my opinion. And I think that if you get down to the root of the thing, in the regulation, improving moose habitat. I've been in the field and seen what results happen when you have a big burn. A few years later you got moose all over the place for one reason. It's just like the birds or anything else. That want that choice willow. The choice willow. They have proven that you've taken the muskeg areas along the rivers when the frost is on the ground, you can take D8 CAT and wind-row that and smooth it out, plant willows there or they'll come up by themselves. But you have that choice feed right in front of your house. And those are things that I think that you should have help with and it'll put more meat in your hat. You should have some regulation allowing the village areas to take predators anyway, anytime because their taking meat off that table. There's plenty of wolves or whatever you call predators up in the Arctic following the big caribou herd. But down there you can get testimony from a lot of people that are just watching it happen. They take the

young. They take the old when the winters are heavy. That's about all I can say at this time. Thank you.

SENATOR KERTTULA:

Are there's no questions? Thank you very much, Marcus. There's one other, Mr. Jensen, who wanted to come forth. Come forward quickly, too, sir. And then we have to get on with the organized testimony. Please introduce yourself. Thank you for coming.

MR. ALFRED WELLS, NANA REGION:

Thank you, Mr. Senator. Senators, ladies and gentlemen, I can't talk that fast. [indisc. - laughter] but I can't. Do you know, I'm a subsistence. Ever since I was a kid my father died when I was only nine years old. Life was real hard for my mother and my youngest sister. And I had to try to find and work when I was about nine or ten years old and make fifty cents or one dollar at that time. While I'm from a Board of Senior Citizen Council of Alaska AFN in Anchorage. I'm one of those council members and I'm also a council member for our NANA regional members, Kotzebue area. On fishing, what we do in springtime - we have late spring and right after the ice go out and the water start moves on is when we start putting our nets out. My wife did when I came down again. Because we have grandchildren that we got to feed and we still have eight children ourselves. But they're all scattered all over in Alaska. And I'm quite a ways away from home now to try to give you some of the things we had been doing on our subsistence way of life. And if we do thing right, there's enough fish and game for everyone of us in Alaska. Eskimos and white people alike. I'm sure that many years ago, your parents or your grandparents find an opportunity -- heard about an opportunity. Come to Alaska to our big land here in Alaska to make some money, to improve life so they can go fishing and so they can go hunting also. And the last two years. It has been different. Things are really changing. I watch every time your meeting comes on T.V. and I see people talking and I've seen some of these people on T.V. a lot of time and see them talking.

We have two bills Governor's bills and let's say my bill. I'm an Eskimo. Okay. And when I go hunting or fishing, I don't weigh how much I'm going to eat in a year, just like that other big bill. And that bill is not for me because it's wrong. When I have a lot of grandchildren - I have about thirty grandchildren already and about six great-grandchildren. And I have to show them how they can get food from the land or sea. And for coming down here -- I came down here to oppose the Governor's bill. Now, I think some of you know Mike Scott [ph] who works with Ferguson when Ferguson was Senator here. Mike Scott is my son-in-law and you know he started to learn to live with us when he got up in our area. And when we go to Kotzebue from the villages like we live and we see some young men and young ladies start to move up into that area, they must be your sons or maybe your daughters and they start to go live with us. And they get married to Eskimo ladies, young ladies or young white ladies get married to Eskimo young men and we have to learn how to -- we used to work together. Now its starting to come apart, it seems like. And we have to be united. That's one of the reasons why I came down here is to oppose that bill because it's not right for me. I live in a village up north. When I was about nine or ten years old, after my dad died anyway, my mother bought be a .22 single shot and I started to learn how to use that to get muskrats or rabbits or ptarmigan. I'm down here at this time to shoot at that big bill that's opposing us. I want to kill that bill. Now, another thing I want to do is when I get home, Aladdins [ph] is my nephew. I'm going to ask him voting for or against our bill. Because like I said a while ago, I'm one of the Board of Senior Citizen Council and we have to make our agenda before the elder's conference in Anchorage this fall. And I have to try and get something into that agenda which will be a help to our people. And if it comes to a vote on that constitutional amendment, I'm going to do all I can to spread the word to elders of Alaska. I know who to send the letter to or who I can call because I have a list of those elders in twelve regions. Their phone numbers are also there. I'm going to ask

them to help us so life can be easier for our people. You know sometimes, it's real tough for us. A lot of times we run out [indisc.] and those we have to eat maybe fish or caribou or moose. We all know that Mr. Bush said, "Read my lips." Everybody knows that. He said, "No taxes." But now, read my lips, "I need your help to vote for my bill." Thank you.

SENATOR KERTTULA:

We're going to start off -- what we'll do is we'll have this witness and then we will adjourn for one hour. We have Senator Stevens, calling among others. Then we're going to start with UFA at that time. And then we'll have the Outdoor Council. You may introduce yourself and please proceed.

MS. MINNIE MORRIS, NANA REGION:

Mr. Chairman, members of the committee, for the record my name is Minnie Morris from Noorvik and I'm the chairperson of the NANA Region Elders Conference. I thank you for this opportunity to speak to your committee on this very important matter that concerns all Alaskans, Natives and non-Natives alike. We have travelled over twelve hundred miles from the north during a very important time in our area. It is now that we are fishing and hunting to meet our needs after a long winter. We, however, realize that what is happening in Juneau is more important since the laws are being considered that will have an impact on the way we live. So we have taken the time to be here to participate in finding a solution to the important subsistence issue. Native and non-Native people of Alaska are concerned with the direction of the politics which affects the way we live in village Alaska. First, the Governor's bill does not resolve the issue of dual management. Secondly, an Alaskan constitutional amendment is needed to fix the current problem. This fact is supported by a majority of the citizens of Alaska. We are also afraid that if a deal is made without adequate time for serious discussion by ourselves, we may wind up with a solution that maybe nobody wants. We urge the legislative committee to seriously consider the Governor's bill and not pass it. We also urge the legislators to

consider the bill introduced by the Bush Caucus and work towards a constitutional amendment by giving the people of the state their chance to fix the problem by voting on an amendment to the Alaska Constitution. I thank you for listening and comments. Since tells us that, let the people decide this issue. It is more than ever that Natives and non-Natives alike have to work together because we live together. God Bless you all. [indisc. -native tongue]

SENATOR KERTTULA:

We'll recess until ten minutes after one sharp.

RECESS

11:50 - 1:17 p.m

SENATOR KERTTULA:

We'll come to order. Materials are recorded. I see a senator or two in the front door here. We're going to have Dale Matthews [ph] of UFA next and the UFA group in order. Kind of move along -- Outdoor Council and then there's Eric Forrer, John Burns wish to -- we're going to move right along so that within three hours we'll get down to acting actually on the legislation. Staff's here. We have a quorum. Please proceed.

MR. GREG SEIDER, EXECUTIVE DIRECTOR, UNITED FISHERMAN OF ALASKA:

Thank you, Mr. Chairman. For the record, my name is Greg Seider. I'm the executive director of United Fisherman of Alaska. I'd like to start with a very brief opening statement and then move on to Ms. Kate Troll who is the vice chair of our subsistence committee and on to Mr. Theo Matthews our past president and a member who has been very active in this issue. UFA represents twenty-one commercial fishing groups from throughout the state as well as individual members. These members and member groups are representative of commercial fishermen and commercial fisherwomen throughout the state. UFA, if you will, represents the catcher portion of the industry which includes commercial fishermen who are also subsistence users. UFA has long been concerned with this issue. Even prior to the McDowell decision, the UFA Board believed that the lack of definitions within ANILCA created a very

difficult if not potentially disruptive threats to the commercial fishing industry. Since McDowell the situation has become even more difficult with the inability of the Board of Fish to deal with the allocative issues involving all Alaskans. UFA, through its members and member groups, has observed and participated in the Board process and seen first hand the problems that the McDowell decision has created, not only for commercial fishing industry, but for all user groups within the state. UFA and its members and member groups have participated in the Board process since 1989 and have actively sought to find a solution to this problem. Most recently, our Board has evaluated the proposal that is the result of the Governor's Subsistence Advisory Council. Although the bill that is the result of the Advisory Council, provides for a priority subsistence use over commercial fishing, we find that that priority is acceptable. UFA does not believe that this is a perfect bill. We do believe that it represents a reasonable solution for all of Alaska. United Fishermen of Alaska urge you to pass Senate Bill 484. This legislation represents a compromise, that in our opinion, equitably resolves the major problems facing all users of the Alaskan fishery resources.

SENATOR KERTTULA:

Do you have questions?

SENATOR HALFORD:

Well, my question, I guess is, would the position be the same if the federal government took over the management of resources as they are on federal lands? Would your position be the same? Because this does not resolve the question of the [indisc.] was found in favor -- not in favor [indisc.] federal government and took it's place. What would the position of UFA be then?

MR. SEIDER:

We believe, Senator, that this is the starting point in resolving those problems.

SENATOR HALFORD:

Wouldn't it be better to go ahead and resolve the problem by jumping forward and making a determination known that the state is

going to manage it? That can be the clearest step that you could take it seems to me and resolve and take that question off the table.

MR. SEIDER:

I'm sorry, Senator. I don't quite understand your question. Maybe perhaps one of the folks that's here with me could do better on that.

SENATOR HALFORD:

Well, the question is would it be more -- would it be better for the state and for the fisheries to go ahead and let the state take the management issue out of the hands of the federal people and make the decision that we will give a rural preference and get the management back. Let the state continue to manage the resources.

MR. SIEDER:

I think I'd like to defer to either Theo or Kate on that, if ..

SENATOR KERTTULA:

If you wish to answer this specific question, anybody from UFA may do so. I don't want to play musical chairs, you understand.

MS. KATE TROLL, UNITED FISHERMAN OF ALASKA AND SOUTHEAST ALASKA SEINERS:

I'll answer that and then go into my testimony then. Yes, we very much would like to solve the question of the dual management. We prefer state management. We don't want federal management. We're very concerned about the efforts that we see on behalf of the federal government to move into fisheries. With a rural constitutional amendment, however, you would still be out of compliance with ANILCA because ANILCA does not accept the state's definition of rural. We'd be right back into the Kenaitze decision. And we passed around some of our previous position papers on subsistence, and we felt that we'd like to have a total solution. And the total solution includes definitions of "rural", of "customary trade", of "customary and traditional", of

"reasonable opportunity". And then we need those, our definitions, definitions made by Alaskans, inserted into ANILCA. Technical amendments into ANILCA. That's what solves it for us all and assures us that we will have state management and perpetuity.

SENATOR STURGELEWSKI:

Mr. Chairman?

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR STURGELEWSKI:

Kate, before you ...

SENATOR KERTTULA:

Then Senator Halford is ...

SENATOR STURGELEWSKI:

Oh, I'm sorry ...

SENATOR KERTTULA:

Senator Halford was the one that -- and then ...

SENATOR HALFORD:

I'll wait. I think she just answered the question. She didn't get a chance to give her testimony yet.

SENATOR KERTTULA:

No, I realize ...

SENATOR HALFORD:

[Indisc.]

SENATOR KERTTULA:

Do you wish to ask ...

SENATOR STURGELEWSKI:

Mr. Chairman, just very specifically. The items you mentioned are ANILCA definitions that would meet the state's -- the state would define and then ANILCA would accept "reasonable opportunity", "customary trade"; what else?

MS. TROLL:

"Customary and traditional". We have to also define "subsistence users".

UNIDENTIFIED SPEAKER:

Barter.

MS. TROLL:

Barter.

SENATOR STURGELEWSKI:

Well, barter is defined but you do not feel it's adequate?

MS. TROLL:

Barter is defined. The real hangup that we have is definition of customary trade because there is no definition.

SENATOR STURGELEWSKI:

"Customary trade" seems to be the one that comes again and again. Are the others legitimate?

MS. TROLL:

The definition of "reasonable opportunity" is very legitimate.

SENATOR STURGELEWSKI:

And what else?

MS. TROLL:

"Customary and traditional".

SENATOR STURGELEWSKI:

All right. "Customary and traditional", "reasonable opportunity". Those are the two?

MS. TROLL:

And "customary trade".

SENATOR STURGELEWSKI:

Well, customary ...

MS. TROLL:

"Customary and traditional" because that's how we classify our stocks and that definition which is now in the Advisory Council's definition needs to be part of ANILCA. Customary trade, reasonable opportunity.

SENATOR STURGELEWSKI:

Okay. Thank you, Mr. Chairman.

SENATOR KERTTULA:

Are there questions based on the previous brief introduction? If not, if you wish to identify yourself, proceed. I realize

represents separate sections of varying fishery groups, trollers, et cetera. But..

MS. TROLL:

We're here to talk ...

SENATOR KERTTULA:

Prefer to have a major spokesman for each area because we have to get on with the bill. Very shortly I'm going to close testimony.

MS. TROLL:

Yes, we intend to do that ...

SENATOR KERTTULA:

But you have the right to speak.

MS. TROLL:

... to testify -- I'm also the vice chair of UFA subsistence committee as well as the executive director of Southeast Seiners. So I tend to make my testimony broader. Just in the rally, there was a sign outside that said Commercial Fisherman Support Subsistence. We were very glad to see that sign because that's absolutely true. Our whole dilemma is in trying to continue coexistence. Pre-McDowell, there was no problem with coexistence between subsistence and commercial fishermen. Many commercial fishermen obtain subsistence fish during the commercial activities. The two are very much linked. The best example I know of to give you about the linkage, is the past president of the seiners comes from a subsistence village, Angoon. Once a cold storage closed down in Angoon, he realized that he is the primary employer of that village, because he's such an avid fishermen and hires all his crew locally. So we see the two needs as very much linked. And unfortunately the opportunity to coexist is becoming more and more difficult and more and more challenging. Particularly, with the all Alaskans qualified as subsistence users on all stocks. We have to kind of just look around for a few examples of why the challenge has surprised us. Who would have guessed herring roe on kelp to Japan at the \$9000 was customary trade. Who would have guessed that rod and reel was going to be

subsistence gear. And that's what's going to come out in the federal regulation for subsistence. We never would have thought that yachts pulling up into Basket Bay and cleaning out the sockeyes was part of subsistence. Glacier Bay is another case where things have gone awry. We have the Hoonah and Sitka fleet now denied historical their subsistence in commercial fishing grounds. All these developments make what seem as farfetched scenarios somewhat more possible. Lots of questions came up earlier today about king salmon in Southeast. The Board of Fish in 1991 here dealt with the question of rod and reel being subsistence gear. They voted for that. And they went on to come up with proposals to make coho and king salmon customary and traditional. They were going down that path that would have closed down all of Southeast Alaska because of incidental chinook salmon and coho catch for all Alaskans. That's when the Board of Fish threw their hands up and said, we can no longer act on subsistence. They stopped their activities right there and then. We were going down that path of some very disturbing scenarios that Commissioner Rosier alluded to earlier. And they actually came forward and expressed their concerns before the Senate Fisheries Committee. Unfortunately, you got all wrapped up in hatchery issues. But the concerns are there about how if we don't get good definitions in place and get things back on track, it's the legal arguments that have us more concerned, to where we could end up having the subsistence stock become like an endangered species stock and close down every mixed stock fishery that has an incidental take of a subsistence stock. And prematurely close down a lot of fisheries. Fisheries that people in the villages come to have their economic mainstay on. It is because of these types of incidents, that subsistence is more than jsut a social and cultural issue. Subsistence as just subsistence may be seen as, rightly so, as a Native issue. But subsistence as a priority, with the definitions gone awry, becomes an economic resource management issue. That's where we've concentrated our efforts in trying to resolve that while being sensitive to the cultural and

social aspects. Every time we've addressed this issue, in the Board of Fish into special sessions, we always come back to definitions. And we have to have consistent definitions between state and federal statutes. And so we feel it's very important to start with making those definitions by Alaskans that fit here and that's what we see present in the Advisory's Council legislation.

There's been some talk about amending ANILCA. Can it be done? At one time the question of rural came up with the Kenaitze decision. And there was going to be a short and sweet amendment to ANILCA to allow for the state's definition of "rural". We had Senator George Miller, we had everybody on line. We were not opening up ANILCA for everybody to push their own agenda. It was about to happen until the Native leaders stopped that process. We've enclosed a letter from Senator Stevens that showed that that was what was indeed happening. For technical amendments, for definitions, we think it's important that we look at that option of amending ANILCA, because we want to resolve this completely. We don't want to just fix it for McDowell and be out of compliance for Kenaitze. And so we try to concentrate on looking at a complete solution.

And I just would like to close in saying we recognize that commercial fishing is the economic mainstay of many of the coastal communities and villages where subsistence is vital. So UFA felt we had an obligation to seek a reasonable and fair resolution to this issue. One of the questions we asked ourselves in committee, at great length, was does this legislation preclude legitimate subsistence users? And we asked that of several people very knowledgeable on this issue. Legitimate subsistence users -- where are they precluded from exercising their opportunities? And we didn't see where they were precluded. So that raised our comfort factor in -- when we were discussing this legislation in our committee work and it came before our Board and was voted on unanimously by all members present.

SENATOR KERTTULA:

How does this bill -- do you support this legislation as it

is?

MS. TROLL:

We support the Governor's Advisory Council legislation.

SENATOR KERTTULA:

And how do you again feel that it is of value?

MS. TROLL:

Because it defines terms that have been left undefined for many years. The Board of Fish could not grapple with resolving this issue because customary and traditional was not defined. Customary trade was not defined. Reasonable opportunity was not defined. They are there and Mr. Theo Matthews who is involved in drafting this legislation could probably be more specific on this than I can, if I could ...

SENATOR KERTTULA:

That's the major value, you see?

MS. TROLL:

And we see it as the first step in getting a complete solution. Once we as Alaskans understand and come to agreement on definitions, then we obviously to assure federal -- to maintain state management, we still see the need to make technical amendments to ANILCA. We'd like to avoid doing that but we do not see how we can get around doing that because the federal -- these terms are not defined. And we'd rather define it ourselves than have some federal court do it. The only way we can do it is by making these technical amendments to ANILCA.

SENATOR KERTTULA:

Are there questions of this witness? Senator Hoffman.

SENATOR HOFFMAN:

[Indisc.] Board of Fish can make those determinations. They are going to be making the determination this winter on customary trade and I don't see where making this -- they're prohibited from making the other determinations on the other definitions. And I for one feel that trying to resolve -- we have our congressional delegation saying that it is going to be virtually impossible to go back and change Title 8 of ANILCA, thereby leaving the problem

in front of us for years and years and we're going to get even further in a tangled web if we proceed along the method that your supporting. It seems to me that we should go ahead and let the people decide. Why are we afraid of letting the people vote on whether or not they want to change our constitution? The fisherman of this state will have the opportunity to vote on it, along with everyone else in this state. If you say that you support subsistence let's see if the rest of the state supports subsistence. And then if we get back to pre-McDowell, then we can deal with some of these other definitions that the Board of Fish does not want to do. That seems to me to be the quickest and the easiest solution. If we do not do that, in my opinion, we're going to end up in a web that we'll never be able to get out of.

MS. TROLL:

You raised two points there. One, the definition of "customary trade". It's my understanding that in the federal courts when they made their ruling to allow this herring roe on kelp to stand that part of that ruling was the absence of definition in state statute. Not the absence of definition in regulation. Therefore, I think we need it addressed in state statute. The other point dealing with to just vote on a constitutional amendment - UFA's position before in this special session and we've discussed it again, is we are very much open to a constitutional amendment as long as it's tied into ANILCA. Because if we don't make these definitional changes and insert them into ANILCA, we're going to be right back at the same place we are two years from now. And so there was at one time looked at having an effective date tied into -- that the constitutional amendment would be effective once these changes are made into ANILCA. And that was something we discussed two years ago when this question came up. And we've not changed from that position. We've only become stronger as we've learned more and more about the issue.

SENATOR HOFFMAN:

Well, I just wanted to point out that there is no regulation on customary trade. That is going to be taken up by the Board

this winter.

MS. TROLL:

Right, but what I'm saying from my brief reading of the judge's ruling, he quoted the absence of the definition of "customary trade" in the statute as to why he had to let this herring roe sell to Japan stand as customary trade. That's just putting a definition in regulation was not going to be good enough.

SENATOR KERTTULA:

President Eliason.

SENATOR ELIASON:

Thank you, Mr. Chairman. Obviously, of course, this session is not taking up the process of amending [indisc.] prohibits from discussing that. But it seems to me that a constitutional amendment takes many forms and shapes. We found out the last special session. So just to say that the people are going to support a constitutional amendment doesn't necessarily mean that's so. It depends totally upon what is written in that amendment. You alluded a minute ago.

MS. TROLL:

Yes.

SENATOR ELIASON:

And the question I have is that, of course, we know the AFN is also part of the suite for the feds to take over the state fisheries [indisc.] at present time and we don't know if that's ever going to go away. We don't have any guarantees if we do something now, or don't do anything now that that's not going to disappear. But the question that, of course, has UFA ever discussed specifically and have any suggestions relative to a constitutional amendment would pass muster with your particular group and might be in support of other groups in the state? Has this been discussed? You haven't out of hand discarded a constitutional amendment is my understanding?

MS. TROLL:

Right, we've not out of hand discarded it and informally

there's been some discussion about what form might be best. I'd actually would prefer if Theo, who has worked a little closer on that, could answer that question, Senator.

SENATOR ELIASON:

Under discussion of course, is relative to what the bills are before us today, but my impression of what you just said is that your organization is not opposed to a constitutional amendment of that section until they know exactly what it says.

MS. TROLL:

Right. We want to know what it says. But we also feel that the second part of it where the effective date is tied into ANILCA. We want a complete solution. And we don't see how we could get to that without making technical definitional changes to ANILCA. So we've always -- we've put the two together when we discussed this issue two years ago and we still see the two as linked now.

SENATOR ELIASON:

Well, it's very difficult to discuss a constitutional amendment unless you're found out about specifically what it says. So, it's in the eyes of the beholder.

MS. TROLL:

Right.

SENATOR ELIASON:

So, you can't say that anyone's opposed to it. You can't say that anyone supports it until they see what it says.

MS. TROLL:

Absolutely.

SENATOR ELIASON:

Of course, we're not in that arena yet, but you have an open mind on that question.

MS. TROLL:

Yes. Yes, Senator, we definitely have an open mind on that question.

SENATOR KERTTULA:

Senator Duncan. No. Yes, Senator Duncan.

SENATOR DUNCAN:

Thank you, Mr. Chairman. Just a couple questions -- an Alaskan problem an [indisc.] Board who are not Alaskans. How many permit holders are there in Southeast [indisc.] seiners?

MS. TROLL:

There are about four hundred and ten Southeast seine permits. Before the prices dropped at twelve cents, which I think is more a statement of membership, there were about one hundred and ninety skippers that were members of Southeast Alaska Seiners.

SENATOR DUNCAN:

How many of those -- what percentage of the permit holders were out-of-state residents?

MS. TROLL:

In Southeast Alaska, we have a historical relationship with Seattle. So we do have a lot of out-of-state Southeast seine permit holders. It's approximately fifty percent.

SENATOR DUNCAN:

About how many?

MS. TROLL:

Approximately fifty percent.

SENATOR DUNCAN:

Fifty percent? I would have guessed around sixty. Fifty percent. All right so, half of them out-of-state. How many of the Alaskan permit holders who are members of your organization are actually from rural Alaska including Juneau, Ketchikan and Sitka?

MS. TROLL:

Senator, I've not done an actual count of how many of my members come from all the rural areas. I do have active membership from Sitka, Angoon, Petersburg, Wrangell, Craig, Ketchikan, Saxman.

SENATOR DUNCAN:

I was just curious, Mr. Chairman. I was just curious. This is a problem of Alaskans [indisc.] wondering what type of influence under the seiners might have been made by out-of-state

users? At least 50 percent of the permit holders were out-of-state then probably a very small percentage of the permit holders are really from rural Alaska.

MS. TROLL:

I can be very honest about your question, that, yes, I do have a lot of out-of-state membership in my association. All the discussion on subsistence that's happened on our Board has taken - the leadership on there has been taken by Alaskans. Our past president came from Angoon. He is the one who initiated our interest and made it a priority concern for us. When it comes to this issue, all the non-Alaskan Board members that I have have been given way and let the Alaskan Board members have the say on this issue. And it's ...

SENATOR KERTTULA:

[Indisc.] Senator Sturgelewski.

SENATOR STURGELEWSKI:

Yes, Mr. Chairman, Kate, if you could take us back and refresh our memories or we could perhaps know enough to ask what we need from staff. What happens with the amendment proposed to ANILCA -- well I know what happened to it. But what was the proposal to change it and that was the support was withdrawn for that? There was an agreement to "fix" ANILCA?

MS. TROLL:

Yeah, it was generally a generic constitutional amendment that said the state's constitution can provide for subsistence. Then the ANILCA language just inserted "Alaska Session Law " blah, blah, blah.

SENATOR STURGELEWSKI:

I see. And that was the one that was actually proposed and withdrawn pretty much at the behest of Congressman Young? Are we talking about the same one?

MS. TROLL:

Oh, okay. No, I'm talking about recently when there were informal discussions.

SENATOR STURGELEWSKI:

Oh, I see.

MS. TROLL:

Back there with Congressman Young, all that was was to allow the state's definition of "rural", would be inserted into ANILCA.

SENATOR STURGELEWSKI:

So you were talking about subsequent discussions?

MS. TROLL:

Yes.

SENATOR STURGELEWSKI:

Mr. Chairman, just as an observation and perhaps Mr. Matthews can comment on this or Kate. We've had a number of speakers and it seems to me there's been a lot saying we need to do this and it starts then to get us into the next things we have to do. And we've got a number of suggestions for the next things that need to be done, such as the amendment of ANILCA for reasonable opportunity ... [tape ends midspeech]

Tape 92-5

Side B

[Tape begins midspeech]

SENATOR STURGELEWSKI:

... "customary and traditional" and "customary trade" being the ones. Constitutional amendment. And I guess, it's an interesting question, but why hasn't say, UFA, that is faced with a Federal Register with some very -- things that could take over a great deal of the control over commercial fishing in certain areas - why haven't you taken that next step? To say, okay, we need this type of law and you're suggesting the administration's law. Then we need a constitutional amendment. Then we need changes to ANILCA. Why hasn't anybody come forward with that approach? Because obviously, you've got a lot of concerns about what's going to happen or may potentially happen as a result of court cases and federal management, et cetera.

MS. TROLL:

[Indisc.]

SENATOR KERTTULA:

Quickly and most responsive as you can be.

MS. TROLL:

I just wanted Theo just to answer that.

SENATOR KERTTULA:

We've got to move along. After you respond, I intend to have Ms. McBurney up next. I don't care, what [indisc.] would you respond to this question.

MR. THEO MATTHEWS, UNITED FISHERMAN OF ALASKA AND UNITED COOK INLET DRIFT ASSOCIATION:

Theo Matthews, from Kasilof, Alaska. The process we engaged in at UFA was we made a thorough commitment to try and draft subsistence legislation with all the various interest groups and the Governor's committee. UFA, as a group, endorsed the results of that effort just in legislation. It included all the major concerns that Kate has enumerated in terms of definitions, identifying users, identifying the areas. The next step frankly, was discussions primarily between administration and the AFN on the bigger broader package. They simply broke down, is our understanding. We have no objections to a properly worded constitutional amendment that does not systematically jeopardize all other uses down the road, that's tied to technical changes in ANILCA that will limit the ability of the federal courts to define what subsistence means for the State of Alaska. In the past, specifically, the last special session, UFA endorsed a rural preference constitutional amendment.

SENATOR STURGELEWSKI:

Do you recall ...

MR. MATTHEWS:

Simply not on the table.

SENATOR STURGELEWSKI:

Do you recall, Theo, and I can certainly make that available to you, whether or not you had endorsed the actual proposal that passed the Senate? We passed it in the House weakened

considerably. Seems to me you did. I wonder if you could check your records.

MR. MATTHEWS:

Towards the end of the special session, based on some, we thought, fairly firm commitments ...

SENATOR STURGELEWSKI:

Uh-huh.

MR. MATTHEWS:

... AFN and Senator Stevens to work on ANILCA, we did change our position. It was rather risky. The full Board did not have time to ...

SENATOR STURGELEWSKI:

Yeah, it was a little -- that's right. Now it comes back.

MR. MATTHEWS:

We felt the attempts were genuine, but it fell through.

SENATOR STURGELEWSKI:

Okay, thank you. Thank you, Mr. Chairman.,

SENATOR KERTTULA:

Ms. McBurney, do you want to come forward and make your statements so that we have a cross-section here.

UNIDENTIFIED SPEAKER:

I think he had one question [indisc.]

SENATOR KERTTULA:

I know he does, but I want her and then I'll have him. I want a cross-section here before we lose our attention span.

MS. MARY MCBURNEY, UNITED FISHERMAN OF ALASKA AND CORDOVA DISTRICT FISHERMAN UNITED:

Thank you, I'll be very brief. My name is Mary McBurney. I'm executive director for Cordova District Fisherman United. I'm also personally a member of UFA and I'm here today to lend support to UFA's position on SB 484. And rather than taking the committee's time, the other members of our contingent can much better address your questions than I can at this moment.

SENATOR KERTTULA:

All right. Thank you, very much.

MS. MCBURNEY:

Thank you.

SENATOR KERTTULA:

Please come back if you'd like. I just want to get a geographic background.

MR. MATTHEWS:

Mr. Chairman, members of the Senate. My name is Theo Matthews. I reside in Kasilof, Alaska, Cook Inlet salmon drift permit holder. I've also fished in Prince William Sound, Cordova, Lower Cook Inlet, Togiak and Kodiak. I've been fishing in Cook Inlet since 1981 as a drifter. I'm appearing today and I'll speak -- Kate has admirably presented the UFA position. Her statements voiced the consensus of UFA not the trollers. She's been very active and we've communicated among the groups constantly on this issue. So I won't dwell too much more on that.

I'd like to stress that I really appreciate the effort of the Governor calling together a task force composed of disparate interest groups. It's clear to me that his goal at least is to try and with that group draft legislation that there larger groups would support as a whole and all of them together, then go back to Congress with an agreed bill. Something that's agreed. Simply take care of what needs to be done in ANILCA and it's over. That's really all that needed to be done and I think that's what the Governor had in mind. Unfortunately, we did not come out of that with the full agreement of all the interest groups. I must remind you that [indisc. - coughing] there were two subsistence advisory councils. The first council terminated its activities with a list of sixteen consensus points but no legislation whatsoever. The Governor then called, I think at the request of AFN, together the council again and appointed three new members. One was myself. I was nominated as an individual. Not to represent the UFA's position but to try and develop a position as an individual for UFA Byron Mallot [ph] was nominated by AFN and Dick Bishop nominated by Outdoor Council. I support the product of that session, personally. I think its a genuine attempt. I

think it solves a lot of problems. It certainly does not solve all the problems. I would like to note that this specially session is a little bit different than the last one where you were essentially dealing with the very divisive issue of a constitutional amendment, per se, the issue of a total fractured statute sort of got lost on the wayside. That is clearly before you. We do have, and I agree with Commissioner Rosier, we have a statute that is bound for chaos. It's not just that all Alaskans are now considered subsistence users. The requirement for McDowell that the customary and traditional criteria be amended, deleting references to rural area community, significant economic impacts. All these deletions seems to leave us with a bill that says that any consumptive use short of commercial use is going to be a subsistence use subject to use by all Alaskans under the current status of the state statutes. That simply cannot be allowed to stand. What happens in my opinion, as I have learned of this issue, that people tend to forget that subsistence, both at the federal level and the state level is a legal preference. Therefore no matter what the state law or the federal law says, the ultimate arbiter of the dispute is the courts. What the federal government and essentially what the state government did in good faith, is it created the law that demanded a rural preference, customary and traditional, subsistence users and for customary trade and did not define one of those terms. Further the federal law permits the appeal of each and every state statute and state regulation to the state courts up to the federal district court and up on the Ninth Circuit court. If we are in compliance with ANILCA this fact, this section 807-A, essentially means that we are managed by the federal court all the time. Every decision is made by the federal courts. And they are interpreting not the state statutes and not the state regulations but the state law. Federal law, excuse me. We saw this in the case of the Kenaitze rule definition. The state tried to make up for the federal government and defined rural. We were found to be holding a definition that was not satisfactory to the federal