

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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government in San Francisco. So if we're in compliance with ANILCA, federal courts decide the ultimate decision, will look at the federal law, not the state law. If there is ambiguity in the federal law, federal courts will make the call for you. Now, for example, the lack of a definition for the very, very, important term that deals with subsistence, customary and traditional is used in several ways. But that lack a definition leads to claims for no season, no bag limits, no reporting requirements. That's my custom. That's my tradition. The lack of definition of customary trade as Kate has alluded to has led the federal court to say, \$9000 for the subsistence roe on kelp is not a significant commercial enterprise. It's a lot more than I made last year [indisc.]. The lack of a standard of reasonable opportunity and a definition for that standard is also leading to many court challenges. People just simply say, well, I don't think I had a reasonable opportunity. There's no definition for that. So my opinion of the lack of definition whether it's state or federal law, it simply leads to lawyers trying to find the meaning of these terms as they would have it. Now clearly, they win some. They lose some. And clearly what we've seen is they keep trying. It's a large issue.

So I would like to stress to this body that in my opinion, the best you can do, whether you're a state legislator or a federal legislator is to try to be very precise in your intents. Define as many important terms as possible and then in that way at least, you are helping Alaskans define what subsistence is and how the courts should deal with it.

I'd like to relate a little bit of a council experience. It was an honor to serve with these gentlemen. Certainly, everyone there made a genuine effort. I have not the slightest doubt, as individuals. The first thing that impressed me, as I said I was not on the first council. In the early discussions, everything seemed to revolve around game issues. And probably rightfully so, given the makeup of the first council. I think they simply were not that involved with fishing issues. And it seemed to lead most

discussions lead to the fact that we can solve the problems here too, i.e. we can limit users. And probably to their chagrin, I continually tried to remind them that tier two is a catastrophe in the fisheries. What it means is every other use of that resource has to be eliminated. That could include your own other use. For example, a mix economy of subsistence fisherman on the Yukon. I mean it may be more important to him that he make \$6000 commercial fishing than a lot of people who come in and subsistence fish. The point is, it's not -- you're limiting your own potential uses by having to go to tier two in the fisheries. And, of course, with fisheries, as opposed to game, we're talking about economics, both for the subsistence users, commercial fishermen, guides, tourism. So therefore, I sort of maintained throughout the council, that for this reason, subsistence is not just a Native issue -- the subsistence rights. When the priorities kicks in, it actually limits the opportunities the Native subsistence user has.

And I didn't only try to basically advance two goals. One was for the UFA standard position that the subsistence preference should be meaningful for those who qualify. But the statute should not be so construed that it systematically challenges other user groups. And also with the goal, as I've stressed several times and probably too much, define the important terms. To clearly define eligibility so that Alaskans can define this preference and not the courts. Our current statutes simply do not tell us who's the subsistence user, what stocks are subsistence stocks, where there subsistence are? There are no definitions. The rules of the game are not even defined. We don't know what customary trade means. We don't know what customary and traditional means.

And I'll conclude with the main reason that I think the Governor's Council bill goes a long way to solving the problems. First of all, the federal bill is evolutionary. It recognizes that Alaska can, has and must continue to evolve economically. And that there are areas of the state, the urban areas of the state where the cash economy is fully developed. The resources

are fully allocated. And there are major alternative sources of food and income if any particular harvest is not successful. It defines the terms. It tells us who. In terms of this bill, who is basically Alaskans who have an actual substantial ongoing dependence on fish and game resources. I'm just sort of paraphrasing. I'm not sure of the actual. It tells us where. It tells us in areas of the state where dependence on the use of fish and game is a principle part of the economy, way of life and culture. It tells us the rules of the game. It defines the key terms that I've mentioned. Customary and traditional. It limits customary trade and writes the definitions. Reasonable opportunity is defined. And one issue that I will raise for you, one of the members asked me about, it also defines sustained yield. I was very nervous about doing that, personally, because it was clear that the definition of "sustained yield" in this statute of subsistence will affect all Title 16. We went over and over and over it again, just to try to eliminate any allocative implications. Any concerns of the environmentalists. I think we got there, but I'm just flagging the issue for you. That's my comments, Mr. Chairman. Thank you.

SENATOR KERTTULA:

Questions? Senator Adams, then Senator Hoffman. And I'm not [indisc.] but let's try to keep our -- we're starting to get on the seventh hour of testimony. Keep our questions directed to the point of testimony, if possible. As I'm going to start moderating after Outdoor Council time of testimony. You have the floor, Senator Adams.

SENATOR ADAMS:

Thank you, Mr. Chairman. Subsistence is not just for Natives. Do you realize that over fifty percent are non-Natives that are subsistence users? I would like to ask you, if I can have the names and the home address of your membership because I truly believe that the majority of your membership are non-Alaskans. But have you had the opportunity to also look at the Bush Caucus bill which shows that the Hickel Bill is

unconstitutional. It does not bring federal management back. To see if it corrects and helps define some of your concerns.

MR. MATTHEWS:

The first question was my membership.

SENATOR ADAMS:

I just wanted to see if I could get it.

MR. MATTHEWS:

Your first statement, sir, was on do I understand that there are many non-Native subsistence users. I certainly do. The point was made by the many of the Native council members over and over again. And AFN itself said subsistence was a "Native issue". And that's what I was responding to. I certainly realize that others qualify. With respect to my membership. It's all on computer. We have about twenty-four percent outside membership. There are five hundred and eighty-five Cook Inlet drift permit holders. Our organization has been up to four hundred. We're sort of like seiners. We're down to about three hundred and twenty-five with the depression in the fishes. Statements about unconstitutionality of the Governor's bill, in my opinion, are that. I conferred to lawyers I fully respect. I have my own personal opinion. I don't think it is. I've heard Mr. Utermohle's brief, if I understood what he said, it was unconstitutional, but there are three areas that could be challenged, not that they would be defeated.

The other thing that I would mention on that. The areas that seem to perhaps be challengeable, just if someone wanted to challenge it, can be fixed very easily, once they are identified by the courts. The courts won't throw out your definitions you choose for Alaska. It won't throw out the subsistence priority for those as you defined it. So, and your final question I believe was ...

SENATOR ADAMS:

Just basically that you look up the Bush Caucus's bill.

MR. MATTHEWS:

Yes, I have and I wholeheartedly oppose it. I find it

presents a systematic threat to all other uses of the resources. It does not define any of the terms that I have mentioned. On top of that, it replaces some of them with legal terms like, "least adverse impact", that requires the subsistence uses must be satisfied. And we are talking a legal nightmare for the other users. So, I have looked at it though.

SENATOR KERTTULA:

Senator Hoffman.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. Seventy-four percent of Alaskans want to [indisc.- cough] on a constitutional amendment. Do you or does your organization oppose the people voting on that question?

MR. MATTHEWS:

I guess the answer is, were the seventy-four percent of the people [indisc. - sneeze] exactly what it was going to say and what it was going to mean? As Mr. Eliason pointed out, the wording of that is critical. If they were just asked, do you support regaining state management through a constitutional amendment? I would think there would be hundred percent.

SENATOR HOFFMAN:

Do you or does your organization support ...

MR. MATTHEWS:

We supported the UFA position in the past that a constitutional amendment for rural preference tied to the identified changes in ANILCA was acceptable to my organization.

SENATOR HOFFMAN:

Do you or does your organization oppose the people voting on this question? The constitutional question?

MR. MATTHEWS:

As I say, it depends on the wording of the constitutional amendment. If it is going to lead through misinformation, in our opinion, to systematic jeopardizing of other users, we would not support it.

SENATOR HOFFMAN:

Thanks for not answering that.

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

Thank you, Mr. Chairman. Theo, I was trying to think here. On the Governor's Council on Subsistence, there were nine members?

MR. MATTHEWS:

Yes, sir.

UNIDENTIFIED SPEAKER:

Including the Governor?

MR. MATTHEWS:

No, I believe there were nine other members. I believe it was nine.

UNIDENTIFIED SPEAKER:

Nine, including the Governor?

MR. MATTHEWS:

You mean Governor Hammond?

UNIDENTIFIED SPEAKER:

Governor Hickel.

MR. MATTHEWS:

No, there were nine members including Governor Hammond.

UNIDENTIFIED SPEAKER:

Well, four of the members on there voted or opposed the recommendation agreed to by the Council.

MR. MATTHEWS:

When?

UNIDENTIFIED SPEAKER:

Well, how did you reach a consensus then that we've been hearing about ...

MR. MATTHEWS:

The message ...

UNIDENTIFIED SPEAKER:

... from all the administration there that says, well, there's all this work that's been labored over the last year is a consensus of everybody when you have a group of nine people and four of them don't agree with the results. How does that result

in a consensus?

MR. MATTHEWS:

Well, a consensus process that we embarked upon was first of all we agreed we weren't going to be taking votes. We realized that would be very divisive and we'd not get very far down the road. Then essentially what consensus meant was we discussed an issue and put it off and came back to it and put it off until either no one insisted on continuing or it was absolutely had to be taken off the table or someone was going home. At some point, we just moved on to the next issue. If you wanted to get up and walk out, consensus was dead. And that never happened. It was very difficult. I bit my lip on each and every page, and I'm sure most of the other members did for one reason or another. That's how it was arrived at. People just simply agreed not to disagree anymore and move on. Or agreed to agree.

UNIDENTIFIED SPEAKER:

Mr. Chairman, I don't know how the Legislature would operate there, if they operate it under a form of consensus or to reach a consensus under that scenario. But I'm looking -- you have what, twenty-four members in your member association? Isn't that ...

MR. MATTHEWS:

I believe there is twenty-one and three at large.

UNIDENTIFIED SPEAKER:

Was there any -- do you have resolutions from each group supporting the Governor's Council's or Governor Hickel's bill?

MR. MATTHEWS:

No, as usual we took a vote at the annual meeting.

UNIDENTIFIED SPEAKER:

Did you have all members there?

MR. MATTHEWS:

To my recollection, two of the Aquaculture associations were not there. I believe WACMA [ph] Kate Jackson their representative was in the office and I believe Bering Sea was not there. the rest were there.

UNIDENTIFIED SPEAKER:

Everybody else voted for it?

MR. MATTHEWS:

Unanimous vote of those present.

UNIDENTIFIED SPEAKER:

Of every organization that was there?

MR. MATTHEWS:

[indisc] Yes, sir.

UNIDENTIFIED SPEAKER:

Could I have a list? Is that information available?

MR. MATTHEWS:

Assuming its in the minutes.

SENATOR KERTTULA:

Are there further questions? Does legal counsel have the section analyses of this bills? It's my intention in about one hour -- are there copies available for everybody? They should be passed out at this time, just because it tends to sometimes [indisc.] go long. If there's no questions of this witness, I'm going to bring a member of the Outdoor Council. I think the four members of the fishing group wish to testify that we listed, have testified.

I intend to continue on sometime into the -- please have a seat, Dick. About one more hour of testimony and then we will carry on for some errors and oversights either late tonight or tomorrow. But we'll pick up -- we'll have a brief recess and then we'll pick up the bill and have a good look at the first -- at the administration's bill first. And have an explanation of it and go to work. Again, we'll invite testimony as we can, but we're going to have gone through eight or nine hours here now and we have to move on. We have a three or four day deadline. Senator Fisher, you had a statement.

SENATOR FISHER:

A statement, Mr. Chairman. I don't if this would be possible but, could we somehow or somebody draft a comparison column for column, so you can look and see, in this area, this bill does this, this does this. Instead of having -- I mean, it's good to

go through them all separately, but somewhere we need a compilation to see a comparison and say section for section, or something. If that's at all possible, I would ...

SENATOR KERTTULA:

The President says he thinks there is something that ...

UNIDENTIFIED SPEAKER:

Mr. Chairman, I think I've seen a comparison between the AFN bill and the Governor's bill somewhere in the papers -- sectional analysis.

SENATOR FISHER:

Okay.

SENATOR KERTTULA:

We'll pick up the [indisc.] section analysis. Obviously, if this is desired, it will happen. I don't know if it will happen in a timeframe to be available for the introduction of the first bill and its study. You may introduce yourself and please proceed.

MR. DICK BISHOP, ALASKA OUTDOOR COUNCIL:

Thank you, Mr. Chairman, members of the Senate. My name is Dick Bishop. I'm with the Alaska Outdoor Council testifying on their behalf today. The Council is a statewide coalition of outdoor user groups and conservation groups. About fifty groups, somewhere around ten thousand members and growing, especially after the court announcements about seasons in the Nelchina yesterday. I've had a long term involvement in the outdoor use of subsistence and related matters that I would briefly like to mention.

One of the reasons I'm in Alaska is that as a young person in northern Minnesota, I was strongly attracted to the subsistence lifestyle as I was aware of it either in that part of the country or in Alaska. And I resolved to move as soon as I could get away from home, to Alaska to pursue that lifestyle. I got here and found out that there were easier ways to make a living and decided maybe I'd better go to school and learn something else too, just in case. So I kind of got sidetracked for quite awhile and didn't

get around to it. And I wound up being in the wildlife management profession for over twenty years with the State of Alaska and as a researcher with the University. I did finally get around to the subsistence lifestyle for a couple of years when I resigned from the Department in 1975 and took my family to a remote part of the interior. We lived on a subsistence basis. At that area for a couple of years and finally moved back to Fairbanks when it became apparent that the trapline that we were using there, we hunted, might very well go into McKinley Park and we might be without means of livelihood. I was very concerned with the elimination of subsistence uses by ANILCA. That was a dire threat the park service and the supporters of park establishment had no perception of the importance of it or the existence of it in some areas, including the north side of Denali National Park. And I did do a study on that to document that so that there was at least a reason to have included. So I've had some experience. I've worked in various parts of the state as a biologist. I was an area biologist in McGrath. I've worked over most of the northern two thirds of the state in rural and urban areas on various kinds of wildlife work. I give you that background simply to let you know that the issue -- or I'm no stranger to the issue.

With regard to the Outdoor Council, the Outdoor Council supports the Governor's bill and the Outdoor Council opposes any constitutional amendment. Before I get into to some of the details, let me give you a little background on that and then address some related questions. The Alaska Outdoor Council's policy for years has been that they support a subsistence lifestyle, but that a subsistence priority law is unnecessary to accommodate subsistence uses. However, if in recognition of the times, we believe that a priority is virtually certain. That being the case, it should be based on individual criteria that are related to resource dependencies. That is a subsistence lifestyle that must be consistent with the Alaska Constitution. So that's the Outdoor Council's policy and within that, we find that we can and should support the Governor's bill on subsistence.

There are several sort of general issues that you've addressed here today that I'd like to comment on. First of all, I think there's a feeling of urgency that perhaps you would like to find a quick fix, an easy solution, to the subject. There is no quick fix. There is no single piece of legislative action that you can take that is going to resolve the various problems related to subsistence. That's one phantom I guess.

A myth that has been perpetuated by advertisements in the public by members of this committee, by members of the Legislature, by people who have testified to you is that by passing a constitutional amendment to conform to ANILCA, the state can regain state management. That is an absolute myth. It is not possible, for a couple reasons. A technical reason the feds would have to agree with it. And second, if the state conforms to ANILCA, we do not regain state management. You get hired cheap to implement and carry out of federal law. If you don't do it right, the federal courts will make you do it right. What you get is federal delegation of their authority to carry out fish and game management within all of the state according to federal rules. Not just on federal lands like it is now. But on federal lands, all state lands, all navigable waters and all private lands. All of those lands will be included under the jurisdiction of the terms of ANILCA and the federal court oversight. So a myth that you can change state constitution to conform to ANILCA and get state management back is exactly that. It's a myth. Furthermore, I think that it's a myth to assume that that's what seventy-four percent of the people in Alaska fought and meant when they said, yeah, we'd better do something. That question says, do you favor or oppose a state constitutional amendment transferring federal control over subsistence to the State of Alaska? And I guess it's a fair question to the Senate if you think that by passing a constitutional amendment you have the authority to transfer federal control over subsistence to the State of Alaska? If the answer to that is yes, I stand corrected.

Subsistence is an extremely, extremely, important value for

the people of Alaska. That was verified in the McDowell case by the Supreme Court. They said it was too valuable, too important to either overinclude people in receiving that value or underinclude them. In my opinion, this is my personal opinion, not the opinion of the Alaska Outdoor Council. But I think it may be close. As important as that value is the other value that you're dealing with in discussing a constitutional amendment is even more valuable. And that's the basic civil rights of each and every one of us. We are talking about -- if you're talking about a rural amendment, you are talking about -- or some other amendments. Either the actual or the potential infringement on equal rights, equal protection and common use of fish and game of every Alaskan. Those are basic civil rights guaranteed by the constitution. If you abridge those or infringe upon them by amending the constitution to change the wording of it, then you're not dealing with simply a subsistence -- or rather a fish and game management allocation issue. You're dealing with a concept that relates to everyone's basic civil rights. For that reason, the Alaska Outdoor Council and related reasons, is very opposed to a constitutional amendment. We do not see, at this time, any alternatives that have been proposed that can accommodate a guarantee of some sort or the continuation of a subsistence priority without potential of infringing on those even more important basic civil rights. If there is such -- and there may be, such a proposed amendment. There perhaps could be devised such an amendment to the constitution. We haven't seen it yet. If we saw one that did not compromise equal rights, equal protection of common use, we would be very interested in looking at it. But we have not seen one yet.

Another myth, that I think has been perpetuated and exploited is that it's absolutely taboo to mess with ANILCA. To attempt to amend ANILCA. And frankly, I think that's bologna. ANILCA has been amended at least 10 or 12 times. I don't believe that there's any more opportunity for anti-hunting or animal protection groups to seize on an opening over a subsistence related question

in ANILCA changes related to that than there is any other excuse. There is no reason for environmental groups to be at all reluctant about proposing changes to ANILCA at any time. And they have. And so have other people as need be. So that's another myth that's used to discourage people from trying to undertake positive action.

The Outdoor Council believes that it is possible to have a subsistence priority and that it is possible to have it within the constitutional domain of Alaska's constitution. We believe this bill does it. We do not believe -- we do believe that it's unconstitutional and we recognize there are differences of opinion on that. And we have two comments on that. One, is it may be constitutional. The other is that if it is not or if the Legislature is uncomfortable with the assurances relating to the constitutionality, there are very easy technical amendments that can be made that move most of the problems related to that. We support a priority that is intended to do what everybody's bottom line is. And that is insure that people who depend on the resources -- personal use of the resource for their livelihood will receive the priority. In other words, a subsistence lifestyle based on need for the resource. And the Governor's bill is written that way. And we believe, although we have reservations about it, we support it. It's right in principle. It can and will work. We support that idea that those who live that lifestyle can continue to do so. That the resources will be protected and their use of it will be protected. And that's another point. Is that -- another very strong thing of importance to the Outdoor Council, is good resource management. Good, sound, scientific resource management to make sure there's resources there for people to use. And this bill has helped greatly in terms of state law with regard to resource management. It's plugged a number of holes. It's provided definitions where they are needed and it precludes a lot of the potential abuses that exist in existing state law that are basically inherited from ANILCA. That's where they came from.

Theo Matthews talked a lot about the Subsistence Advisory Council. I'll just comment on that very briefly. I really agree that I think everyone did their very best to develop a good scheme for accommodating subsistence and making sure that resources were well managed and that other uses were not unduly harmed. I believe it is a consensus bill in this sense. That every member of that committee agreed to work on that bill and come up with the best possible bill we could agree would be a workable bill. No one was compelled to agree with as an individual or certainly not with regard to their group of which they were from or area of interest. But all of them -- we all were in a position of saying, yes, that's the best bill that we can come up with, period. And when it was over, then I might not agree with it or someone else on the committee might not agree with it, but the consensus was that was the best possible treatment we could come up with under the circumstances. And the circumstances were that we were asked to come up with the best possible bill to accommodate subsistence and take their resource management, regardless of state or federal law existing at the time. As it turned out, there was very strong interest in the Council to insure that the bill we came up with stuck within the bounds of the Alaska State Constitution. And I think it did. It does define terms. One of the biggest difficulties with federal and existing state law is the lack of definition of terms. It provides for the identification of stocks and populations subject to subsistence uses. Instead of all of them, potentially at any time, priority does not necessarily exist at all times. And the significant change from existing state law and ANILCA is that in this law which is in the fish and game law, it only relates to fish and game resources. Title 16 right now says, all wild renewable resources. And strictly speaking, it's going to say that. The issue of criteria for qualifying for subsistence priority was a tough one. We wanted to do two things. We wanted to make sure people who were dependant on that lifestyle and who either chose it or were obligated to follow it by their circumstances would be able to meet those criteria. In the course

of the discussion it became apparent that there was concern for not only the very clear cases where people had very few or no alternatives to people who lived in small towns, who might have a steady job, a steady income and had the ability to provide the equipment and so on to help their neighbors, and friends and relatives do some hunting and fishing and gather their subsistence resources. Those people virtually everyone felt they should not be excluded. Similarly, we definitely did not want to exclude the people who pursued a similar lifestyle that lived elsewhere like urban areas. And so in order to make sure that all those people were caught and frankly, large at the urging of representatives of AFN and others, those criteria to qualify were made very modest. My comment when we got done with it, was I think they will include people who can and do themselves consider themselves subsistence users. Or would be by most people. In fact, they are so modest that I can qualify for them at my present lifestyle. And that's a fact. I did a self test and I would qualify. Which maybe means that it's over inclusive. I don't know. But the idea was that it certainly does not preclude people who have a commitment and a connection to that if they show a strong use and investment in time.

I think, Mr. Chairman, I'll leave it at that. I have had a chance to look at AFN's bill. I agree with Theo. I wholeheartedly oppose it or don't support it. It would return us to all the pitfalls of ANILCA plus some new ones, that somebody thought up. So it does not do a good job of resource management. It does not do a good job of subsistence allocation, but I think it would do something. I think it would enhance the new vocation that somebody mentioned here, I think yesterday, of subsistence lawyers. It definitely gives benefit to that profession. Mr. Chairman, with that I'll stop and let you ask questions.

SENATOR KERTTULA:

There are questions. Have ... [tape ends midspeech]

Tape 92-6

Side A

[Tape begins midsentence]

SENATOR ADAMS:

... still friends. But I just have a few quick questions. Do you, after having a chance to review the different legal opinions, in your mind, do you think that the Governor's bill is constitutionally fit?

MR. BISHOP:

Well, Mr. Chairman, Senator Adams, as near as we've been able to tell, it is. I recognize there are opposing opinions to that. As I mentioned, I think our view is, that although we are persuaded that it is constitutional, if the Legislature is uncomfortable with the verification of that, there are technical changes that can be made in the bill to virtually make it certain that is constitutional.

SENATOR ADAMS:

In your mind does the Governor's bill return federal management to Alaskans, sixty percent of the federal lands or two hundred and twenty million acres?

MR. BISHOP:

Mr. Chairman, I don't think -- I guess I should ask you about what you mean by that question.

SENATOR ADAMS:

Does the Governor's bill retain federal management? State management over federal lands?

MR. BISHOP:

Okay, that's what I was wondering. I don't think we want federal management, I guess, is what I was worried about. The Governor's bill does not ...

SENATOR ADAMS:

Pardon me.

MR. BISHOP:

The Governor's bill does not provide a way for enabling state management on federal lands at the present time. Now, the reason

I'm saying that is that there obviously is no way that state legislation can regain state management because you would have to comply, number one, with the federal law before there is consideration of that. And depending on the terms of the federal law, you might not get it anyway. And that's what I was saying before. If the state complies with ANILCA as it presently is written, then the state will not get state management back. You can amend the constitution. You can comply with ANILCA. You can stoop and bow and meet the terms of ANILCA and they will say thank you for signing up to manage Alaska's resource, not just on federal lands, but on federal lands, state lands, navigable waters, private lands, according to federal mandates. And make sure you don't screw up or we'll have you in federal court at our first opportunity. That's what you will get by conforming to ANILCA.

SENATOR ADAMS:

Mr. President, Mr. Chairman, then perhaps this piece of legislation does not get state management again, what would happen if restrictive federal management is maintained on sixty percent or two hundred and twenty million acres of land plus the possibility - now, it just says the possibility of Native or private lands of forty million acres of land being closed to the public. Wouldn't this place a tremendous burden on hunting and fishing pressures on state land?

MR. BISHOP:

Mr. Chairman.

SENATOR ADAMS:

What in your sense would be the potential impact in areas that if I represent Anchorage or Fairbanks?

MR. BISHOP:

Mr. Chairman, if all that transpired, it would certainly reduce hunting opportunity a great deal. While all that was going on, however, the greatest quantity of Alaska's resources could still be taken under state regulation because they come from the waters - state navigable waters.

SENATOR ADAMS:

The final question I would put to you ...

MR. BISHOP:

Which includes commercial, sport, subsistence, personal use fishing and that's where the bulk of the wild renewable resources taken by Alaskan's comes from. And as the Governor's Office indicated and others have indicated, the Department of Fish and Game, that is under state management, state navigable waters and presently they are in court to make darn sure it stays that way.

SENATOR ADAMS:

You brought up the three subjects of commercial, subsistence and sports. What percentage of our fish resource does each of these uses use? You and I know the answer of that.

MR. BISHOP:

Well, Mr. Chairman, I don't know the answer to that. I know that ...

SENATOR ADAMS:

Ninety-five percent for commercial, four percent for subsistence, one percent for sports fisherman. And if the Outdoor Council believes in equal treatment, why don't we divide these resources to a third, third, third between the three groups. Would you support something like that?

MR. BISHOP:

Well, you know, Senator Adams, and Mr. Chairman. Mark Twain said, "There's lies, damn lies and there's statistics." You just used some statistics about the breakdown of the catch of resources for the various kinds of uses. And they may very well be right. I don't remember. I've seen them before and there are different ways to figure what the proportions are. But one thing I would say, is that there's no question but what the bulk of the fisheries resources come from commercial fisheries. And there's no question what the minority of them come from, I mean, are used by sport fisheries. But I guess one of the things that has bothered me since I've heard this set of statistics being thrown around lately, is I wonder how much of that is fisheries that may

not have been subject to either sport or subsistence fisheries. I'm thinking off-shore fisheries, and so on, that really aren't subject to commercial. I have since learned the proportion of the take of salmon for subsistence purposes, at least to the extent that it's identified, has been fairly small also. So, the point is, yeah, commercial does take the majority, but that's understandable. I guess the other part of that is there's a heck of a lot of commercial fishermen that use a part of their commercial catch for their own use, which essentially is their subsistence use. Lots of fisherman do.

SENATOR ADAMS:

You mentioned ANILCA. Do you believe that ANILCA will be changed over the objections of the Native communities and your thoughts on the congressional delegations thoughts on this?

MR. BISHOP:

I guess, right now, I don't think it would be. I guess, I would agree that unless the Native community was, at least not in opposition to a change, it would probably have a very difficult time in Congress. As far as what the Congressional delegation is thinking about, that's always been a little hard for me to figure out. It may be a little clearer in an election year than other times.

SENATOR ADAMS:

Then if that's the case, that you would not change ANILCA, then we should -- by your statements, we cannot get where you want to go -- we cannot do that. But would the Outdoor Council be available or to consider to give the people a vote on a constitutional amendment? It basically says, would you vote for a constitutional amendment, yes or no? If you said yes, go to page number two and the constitutional amendment can have the Outdoor Council or the Governor's language. The second one would be the Bush Caucus language. And would you give that opportunity to the people to vote on an option?

MR. BISHOP:

Well, let's see. Let me answer that somewhat indirectly, and

I don't do that to try to dodge the issues. But just because I can't think of a real direct way to answer it. I'd like to go back and repeat what I said earlier with regard to what's in the constitution. It's very, very difficult to imagine wording of the constitution that could be any better in terms of protecting the most basic civil rights of each and every Alaskan than what we have presently. So right off, it's a little hard to imagine that it could be changed without compromising that to some degree. I guess if it came down to, is there an amendment that could be voted on that if the question were that did not and was certain that it did not compromise equal rights and protection of common use, then I think that would be a fair question. And I'd say, yes if it did, then that was certain. But it's very difficult to be certain about that. We are certain about the present content of the constitution.

SENATOR ADAMS:

Thank you, Mr. Bishop. Mr. Chairman, I just threw that proposal out for food for thought for a later discussion.

SENATOR KERTTULA:

Yeah, I saw you got two for one, there Senator. Sometimes sells a dead horse a couple of times, too. That's very good. Senator Duncan. Thank you.

Then Senator Hoffman.

SENATOR DUNCAN:

Thank you, Mr. Chairman. Mr. Bishop, I just had one question for you. You, of course have read the Governor's bill. You were involved, I'm sure in putting that together. As I've been reading the sustained yield definitions, [indisc.] the sustained yield definition in the Governor's Bill it seems that definition always requires the Boards to give priority to hunting and fishing for non-consumptive use of fish and game. Some of those non-consumptive uses, for example, might be [indisc.] It seems to me that this sustained yield definition always give that priority and therefore might prohibit the Board from setting aside certain stocks for non-consumptive uses. Do you think the Board should be

able to set aside certain stocks for non-consumptive uses?

MR. BISHOP:

Well, Mr. Chairman, Senator Duncan, yes, I do. In fact, the Board does. And, as far as I know, there has never been any dispute that that is consistent with the principle of sustained yield. The populations are managed to provide for ongoing benefits, generally regarded in consumptive terms. That does not preclude within that framework allocation of parts of those resources for non-consumptive uses. And that seems to have worked pretty well.

SENATOR DUNCAN:

Have you read the definitions of sustained yield in the Governor's bill?

MR. BISHOP:

No, I haven't read it for a couple of weeks or something like that Mr. Chairman. I have read it.

SENATOR DUNCAN:

As I read it, I think maybe it does cause some difficulty. I don't -- I'm sure from your position on several items on those non-consumptive uses [indisc.] how you support that. This provision in the Governor's bill might prohibit the Board from being able to set aside certain stocks for non-consumptive uses, contrary to your Council's position. I'm just wondering if everybody has looked at all perspectives of the Governor's bill to [indisc. - cough] support it.

MR. BISHOP:

Mr. Chairman, the concept of sustained yield is in the constitution and I don't think that the definition certainly was not intended to be inconsistent with the idea behind that. Nor with general practice, as far as wildlife management. I guess, it completely escapes me what point in our policy or review maybe you're referring to you. I don't understand your question in that regard. May be you could clarify.

SENATOR DUNCAN:

Well, I just on the paper handed out to me where you support

[indisc.] bill for one and you support the need to make [indisc.] subsistence in other uses should be provided for in [indisc.] recovered, et cetera. The absence of support [indisc.]

MR. BISHOP:

Oh, absolutely.

SENATOR DUNCAN:

Yes.

MR. BISHOP:

Yes, all the time.

SENATOR DUNCAN:

Yes, you do. And I guess my concern was the sustained yield, just to make you aware of that. You might want to look at that. The definition of sustained yield in the Governor's bill may prohibit the Board from setting aside certain stocks for non-consumptive uses and that may not be what you want to support. I just wanted to be sure you're clearly supporting what you want to support.

MR. BISHOP:

Mr. Chairman, Senator Duncan, I really appreciate your concern. I think it is consistent with our policy. I think it is consistent with the definition of "sustained yield". I do not think that there will be a problem there. Thanks for bringing it to my attention.

SENATOR KERTTULA:

Senator Hoffman, then Senator Eliason.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. How would you describe Governor Hammonds' input to the task force?

MR. BISHOP:

I'm sorry. I couldn't hear the first part of that?

SENATOR HOFFMAN:

How would you describe Governor Hammonds' input to the task force on [indisc. - cough] legislation that you described?

MR. BISHOP:

I think, Mr. Chairman, Senator Hoffman, I think Governor

Hammond was very constructive.

SENATOR HOFFMAN:

Given that, did you get the opportunity to read Governor Hammonds' article in May thirt- first Sunday paper?

MR. BISHOP:

Mr. Chairman, this past Sunday?

SENATOR HOFFMAN:

May thirty- first. On subsistence and the special session.

MR. BISHOP:

Mr. Chairman, Senator Hoffman, I don't believe I did.

SENATOR HOFFMAN:

Let me read something out of that to you that he had stated. He states, "Three things must be done if this special session is not to self destruct. First, to satisfy the Native concerns, a constitutional amendment to grant the highest priority to subsistence use must be placed on the ballot." That's the first one. The second one he says, "Amend the Governor's bill to eliminate the non-rebuttal presumption qualified of all those communities of two thousand or less for subsistence" And the third one, he states, "That the establishment of a subsistence Board is proposed by AFN". Those are the three things that Governor Hammond said must be done. And I wonder if you agree with those three.

MR. BISHOP:

Well, Mr. Chairman, Senator Hoffman, I guess my first reaction is I'm sure glad he waited until after we finished meeting before he brought those up, or we'd still be there. My second comment is, no, I do not agree with those. I do not think that those are either necessary. I don't think any of them are necessary. And I certainly do not think that the constitutional amendment, I think you said rural priority, nor the subsistence bill are desirable.

SENATOR HOFFMAN:

No further questions.

SENATOR KERTTULA:

Senator Eliason.

SENATOR ELIASON:

Thank you, Mr. Chairman. Senator Hoffman alluded to one of the questions I had as to what took place at these meetings. I don't know if the article said two thousand people. I think the plateau was twenty-five hundred. But it's my understanding that there has to be some type of criteria set for each one of these population factors in order to give some type of constitutional strength to the bill. That's my understanding. You just couldn't say any community with three thousand or less people is automatically into subsistence lifestyle, period. Somewhere in that legislation has to be some type of criteria set, even though it is very minimal. The question I have is in relationship to those communities with less than twemnty-five hundrend -- of course, yesterday we had an impression -- at least I had an impression from many people, elders from different remote ares of Alaska came to testify against this bill in favor of the AFN bill. But what puzzles me is why, in fact, they would be -- they came from those areas which really are affected minimally. The Governor's bill is in my estimation doesn't affect them whatsoever if they continue on what they've always done and on into the future. So I guess, the question would be that with twenty-five hundrend or less, they are presumed to meet the requirements. Which is sort of a blanket presumption. However, there has to be some type of criteria in order to just get out of the problem we had with rural. So it goes on to say, "The state has to -- can be rebutted only by the state, by the clear and convincing evidence". What degree of evidence is that? It seems to me quite [indisc. - cough] that they have to be in effect, really not subsistence users. So what -- there's different categories of evidence. How high would that be?

MR. BISHOP:

Mr. Chairman, Senator Eliason, I really don't know, because I don't know the legal terms. My understanding is that that's -- if it isn't the highest, it's close to the highest level of

standard approved for whatever it's called that the state has to use and, if for example, they were to rebut somebody's eligibility. And that's all I know about it. Supposedly, that's the highest or close to the highest standard approved.

SENATOR ELIASON:

I assume that rebuttal would take place only because of a complaint filed by others in that area saying this particular person is certainly not eligible for subsistence. They would have to build a case, with convincing evidence that he wasn't before he'd be disqualified. Is that right?

MR. BISHOP:

Mr. Chairman, Senator Eliason, when we discussed that I think that was really a point of discussion of how much difficulty that would cause among friends, neighbors, folks in the same community and so on. Basically, what was intended was that, if necessary, the state could challenge somebody's priority right. If for example, for whatever the reason, there was a high probability that that person really didn't meet the individual criteria which are the guts of the bill. Everybody, no matter where they are or where they live, are supposed to meet the same individual criteria. If the person in this rural area didn't meet them or didn't appear to meet them, the state could say, this doesn't look quite right. And proceed to develop some evidence as to whether the person met them. If they met them, there would be no problem. If they didn't meet them, then they could withdraw that priority privilege. The state.

SENATOR ELIASON:

Mr. Chairman, I believe I have the answer here. There's three levels. One is three levels. One is beyond reasonable doubt. Lowest level [indisc.] clear and convincing and the high plateau is preponderance of evidence which is very difficult in most cases to reach. So I would presume that under that criteria that these people testified yesterday who live in these small remote areas, would have no concern whatsoever. They'd all be entitled to subsistence under the Governor's bill. Can you tell

me any different?

MR. BISHOP:

Mr. Chairman, Senator Eliason, that's exactly right. In those areas, under the Governor's bill, all of the people in those areas would be assumed to meet the individual criteria at the outset.

SENATOR KERTTULA:

Further questions. If there's no -- Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. Just one, Dick, in your view, have we lost basically management of our game resources or will we lose management of our game resources after July 1 on federal lands?

MR. BISHOP:

Mr. Chairman, let me restate it in case I didn't hear you correctly. I think the question is will we lose after July 1 the management of our game resources on federal lands. Is that correct?

SENATOR ZHAROFF:

[indisc.]

MR. BISHOP:

I think there's -- yes for sure in part and that relates to subsistence management and subsistence allocation and it's probably with regard to other aspects of management. There really is still a legal question of whether the feds have the authority to do anything more than manage subsistence allocations. It may vary -- there is an argument made for the state still having authority for other aspects of management and allocation of wildlife game on federal lands. I don't think there is an answer to that yet. So the first part is, yes, we'll lose it with regard to subsistence allocation. The second part is, I think, probably or maybe with regard to management and allocation of other uses of game.

SENATOR ZHAROFF:

You think then, that the Governor's bill is going to thwart that action?

MR. BISHOP:

Mr. Chairman, Senator Zharoff, no, it will not thwart that action. In fact, there's nothing this Legislature can do before July 1 that will thwart that action, in my opinion. That's set by the procedure the feds are going by. They're going to complete that procedure one way or another. There's nothing in the purview of the state to interrupt it.

SENATOR ZHAROFF:

Do you think than ...

MR. BISHOP:

... other possibly ..

SENATOR ZHAROFF:

Do you think possibly then if the Legislature during this special session were to adopt the constitutional amendment which would go the people that there could be an argument made to the Department of Interior to hold off and see whether the state does adopt it or not?

MR. BISHOP:

Mr. Chairman, Senator Zharoff, that argument could certainly be made. I guess I'm dubious that it would have any effect.

SENATOR ZHAROFF:

Do you think that there would have more of an effect there than passing a bill that we haven't determined whether its constitutional now or not?

MR. BISHOP:

Mr. Chairman, Senator Zharoff, I think it would about a wash.

SENATOR ZHAROFF:

[indisc.] Thank you.

SENATOR KERTTULA:

If there's no questions. The intent of the chair recess for ten minutes, but subsequent to that we'll cross the face of the state have three to five minute testimony from the people for about one hour. Then tomorrow we'll continue testimony and give them time. But we'll start with Sam Demientieff, probably go to Eric Forrer. But I'm going to go across the face of the state

geography for brief testimony. And in about one hour after we come back to order we will bring the bill up. So I ask the staff, attorney's and so on, and the administration have their materials ready to start explaining the first bill before us which is 484. We'll go right on into it.

RECESS

2:55 - 3:32 P.M

SENATOR KERTTULA:

Well, now that we only have rural legislators here, we'll start bringing in the rural group. Come back to order. And it's our intention to have relatively brief testimony by individuals. Some of you will be representing organizations. And we'll do that for about an hour today. Then we'll go into the body of the bill and we'll take testimony again tomorrow. At 1:15 tomorrow, Vern Wiggins, Marty Suberg, Department of Interior will be on teleconference we have set up here. And Lance Nelson will be available in the morning to update the committee with subsistence litigation about 9:30 at the beginning of our meeting. We want to put in an hour of initiating ourselves to the administration's bill this late afternoon on concluding this part of the testimony. I'm going to hopefully be half fair, and that is I'm going to try to bring people from across the state into testify on the face of it. At this time, Sam Demientieff is here. I'll ask him to come forward and -- those people who will be showing up, you are recorded. Others will be here shortly. I distressed that more aren't here at the moment. But I think we probably have at least a reasonable cross-section of people and attitudes on legislation. Sam, please introduce yourself and get started.

MR. SAM DEMIENTIEFF, EXECUTIVE DIRECTOR, FAIRBANKS NATIVE ASSOCIATION:

Yes, My name is Sam Demientieff. I am the executive director of the Fairbanks Native Association. I'm a member of the Tanana Chiefs conference subsistence task force. I'm also a member of the [indisc.] Board of directors. I'm opposed to the Governor's bill. I support the Bush Caucus bill. I was [indisc.] on Sunday

afternoon on business and I talked to five people up there. Red [indisc.] Wilson Sam, who is the chief of the village, Franklin Simon, Bill Derendorf [ph] and Cue Byfelt [ph]. Our discussions were around subsistence and what is going on down here in Juneau. They expressed to me a real concern that this subsistence question is being brought up now without any real input from the people in the rural areas that are affected by that subsistence question because it is their life. I told them that there's a reason for this special session and that the Governor called this special session, which really has disrupted a lot of our lives, a lot of our schedules. He thinks in his mind that he can get this question answered. I told them that I'll tell you that of their concerns. That they don't have a chance except for the people that are down here now. But the true subsistence users, there are lot of them here, the elders. Some of those people are not going to be able to testify before you. I just wanted to let you know that. We have an elder in the Tanana Chief Conference area. His name is Peter John. And he's the traditional chief there.

SENATOR KERTTULA:

I know Peter.

MR. DEMIENTIEFF:

Peter John, I think would say, along with the elders, what is subsistence? What is subsistence? He would say, what is subsistence to you? I think that he would say subsistence is the use of Alaska, its natural resources, earth, air and water by its people. Well, how would you include the air and water to use for subsistence? The air is used for -- it supports life. It produces the water cycle where you can see and read the weather. The elders use that to predict how to hunt and where to fish. The water supports life, the animals, the plant, fish to spawn in, to drink and the earth supports everything else. I think he would explain it that way.

Where is subsistence located? In the Governor's bill, according to the Attorney General, he says that its need. No, it's not need. It is where the subsistence is. Where is the fish

and game? Where is the natural resource? Is it around the cities and villages? No, it's out in the rural areas. Rural preference, natural, something that is out there. That's where the people will get it. Who knows about subsistence?

Who knows about subsistence? Is it you? Is it me? Is it people here that are not born here? Is it anyone of the news media or is those elders? It's those elders there. They live it. They explain it as life. It is life. Subsistence is life. They are the ones who know about it.

The Outdoor Council, they changed their name from Alaska Sportsmen to the Outdoor Council. There's a connotation there. They were sportsmen people in the beginning but now they're saying the Outdoor Council. There's a misperception right there. United Fishermen of Alaska. What is that? The elders or anybody would say that's a commercial fishing operation. That's a commercial fishing interest. The true subsistence users are the elders. And if anyone needs any guidance on subsistence including this committee and the rest of us who live here, we get that guidance from the elders. You ask, Will or anyone here, how do we treat the elders? We treat them with respect. We all should treat them with respect. If anyone knows about subsistence, and is a true subsistence user, it is the elders. They are right there. Just look at them. They are right there. I think they're are the ones that should be guiding this. They're the ones that should have been the experts in the testimony before this committee in the beginning. The Attorney General says put it in second gear, let it ride for two years. No, the subsistence question is a life question. McKie Campbell says, I'm not really a true subsistence user. He isn't. What is he doing? There's the elders. Ask them what about subsistence is? They'll tell you. My dad is the boat operator, and if hires the people that works on that boat, anybody -- he hires the people that knows about boat operation. He tick them guys right off. Ask a pilot about piloting. They ask other pilots. Ask subsistence about subsistence and who was questioned? Who was asked? Who gives guidance? It should be those elders.

Definitions on subsistence could be use and occupancy. What is use and occupancy? Use of the resources. Occupancy of the land. That's the way that should be defined. Things can happen. Things are happening all over the world now, in this state, because of the economic conditions, the oil revenue declines. People are going to start losing their jobs, and when they do, if they already aren't doing it now, they're going to start wondering, where am I going to support myself? That includes anybody here, especially in the urban areas. Where are they going to go? They're going to start looking to subsistence. The real dollars are going to be of value. The dollar that we deal with today. The dollar the greenback - it's not going to have value in a time like that. The value is subsistence because it supports life. Where would we be right now? Where would Bishop, the other fellows here or Harris -- fifty-five years telling us how long they've been here. Where would they be if it wasn't for Native elders teaching them about subsistence? And that's life. That's survival. That's survival of people. And it isn't just Native people. It's all Alaska's people. And that's what the Bush Caucus bill does. I support the Bush Caucus. And I believe that the State of Alaska's people would like to vote on that. Would they support -- who would they support? They would support themselves. They believe in survival. They're supporting themselves and they'd vote to give themselves a chance to vote on this issue. And I believe they should be given a chance on it -- to vote on this issue.

SENATOR KERTTULA:

Are there questions?

MR. DEMIENTIEFF:

I'm not done yet.

SENATOR KERTTULA:

You just hesitated so I thought you were.

MR. DEMIENTIEFF:

I know. There's a reason why the Native people believe in the Bush Caucus bill. Because it's a way of life in sharing

things with people. They are not saying, save this for the Native people. The elders are saying its for all people. The Bush Caucus bill says that and I support that. I'm done.

SENATOR KERTTULA:

Questions? Thanks, Eric. I recognize that some whho wish to provide greater testimony, I ask Eric to go, but I ask that you condense any amount you can. Proceed.

MR. ERIC FORRER, GOVERNOR'S SUBSISTENCE ADVISORY COUNCIL:

My name is Eric Forrer. I live in Juneau. I was on the Governor's Subsistence Task Force. As I understood the structure of the force, there were six public members who did not represent anything other than their own experience in the state of which I was one. Subsequently three more members were appointed who did represent groups. It was a very healthy structure in the end, because the representatives of the groups could speak clearly from their groups position and the individuals could speak -- align themselves as the arguments persuaded them. I have a written statement which I have chopped down to some extent in the interest of time. So if something doesn't quite connect, it's because there's been a page that's been thrown out.

SENATOR KERTTULA:

Please use the necessary time, Eric.

MR. FORRER:

Thank you. In the beginning was the land, then came the fish, the game and the intricate biosphere. Then came the aboriginal inhabitants who have been in Alaska so long that their tribal memories do not record their arrival. Then from the west came Russians and from the east, Europeans. Then came technologies which broke the age old relationship between human population and locally available energy and prey species and then with the rising population came the social pressures with which we are wrestling today.

One reason for controversy is the practical problem of allocation. Who gets to harvest and who doesn't is the business of regulation. And this must be worked out because this state

constitution requires management of renewable resources for sustained yield. The available harvest levels of fish and game in the state are not close to the quantities that would be necessary to feed the population in the precontext sense of one hundred percent dependency upon the land. Available harvest levels cannot support even the Native population alone. It is a squeeze between the available harvest of wild stocks and an increasing human population that heats up the controversy. Attempts to structure the regulation of fish and game lead directly to the thorny tangle of defining groups who might be awarded or denied special rights. One is then lead further to the definition of the beneficial uses themselves, to definitions for many terms used in the history of the subsistence management and to a definition for subsistence. There are few clear uncontested definitions in this entire enterprise, although some are less troubled than others.

In order to understand the subsistence issue, it is helpful to take a look at the uses of fish and game as arguments made by competitors for the resources tend to be classified along the lines of the type of use in which they participate. Individuals, of course, most often participate in more than one type of use and not infrequently in all types. There are four generally recognized camps or groups in contention over the human use of other species. Three of these are known by the names by which they are regulated and they are commercial, sport and subsistence. These three are called beneficial uses, from a term that occurs in the Alaska State Constitution. The fourth group is the general public or national interest.

The national interest is a surreal conglomerate which includes all three beneficial uses as well as preservationists, conservationists, developers and others. Consequently, in terms of a definition, it is a shifting target. As different and even contradictory values are proposed to be in the national interest. The inability to know or predict what sensibilities will be in the ascendancy of the camp called national interest, makes spokesman for the three beneficial uses in Alaska uneasy about federal

regulation. Different arms of the federal government show no tendency toward mutually consistent policy. For instance, Alaska is faced with federal takeover of fish and game management on nearly half the state, in order to protect the subsistence rights of rural residents. However, federal law also prevents the taking of fish or game in the national parks. Thus, one of the first consequences of federal protection of subsistence rights is the prevention of subsistence and commercial harvest in Glacier Bay. Because of the growing strength of preservationist philosophy, I am among those who fear that the parks prohibition may eventually be extended to include all federal land. Thus what starts as a protection for subsistence may become a blanket prohibition.

McDowell versus the State was argued on the basis of equal rights and equal access to public resources. And I agree that we should not be dragged back from this constitutional position, for only this position will enable us to make progress toward equality. However, this argument does not imply that there is currently a level playing field. A source of frustration for Native subsistence users and others is that arguments for the equality of all are used without regard to the current state of spiritual annihilation and deep inequality that presently exists between the dominant cultural of European origin and American aboriginal inhabitants. One cultures defining activities, in effect, a religious structure, are another cultures' avocation. And the gulf between these two meanings for the same term is at the core of the difficulty. If those who make the most shrill arguments for equality in the subsistence debate were ever heard to make the same arguments when it was not directly in their interest to do so, considerable distance between a protagonist might be closed. On the other hand, I believe that those Native leaders know honor to argue for special rights based on racial grouping and that it does not Native population no favor to grant such rights in law. Special rights are inconsistent with the ideal of equality and they are a source of trouble because they set the enabled group aside and encourage harassment, non-

cooperation, and alienation between peoples who must ultimately go down the same road. I do believe that it is possible to establish regulation within which Native cultures can practice those sicklic [ph] rituals of harvest that define their lives in the past which we know as subsistence use. This must be a regulation under which all users can operate without resorting to overt and clumsy reliance on racial or residence criteria. I believe that the Governor's proposed legislation satisfies these conditions. Although it was quite unpopular and has resulted in turmoil for fish and game management for the interim, I think that the McDowell decision making rural resident criteria unconstitutional was a correct decision. The term rural is and will remain beyond the reach of the usable definition. That stage of development to which it refers in the contiguous forty-eight states is nearly non-existent in Alaska. Urban and rural are not the only two possible alternatives on the path of development. In Alaska there is also wilderness. Villages set in the middle of wilderness are not rural. This is made clear when it turns out that those communities known as the regional hubs, many of whom inhabitants are people with deep ties to the bush and to subsistence, do not fall within the federal definition of rural. Residents of Bethel, for instance, would be probably denied subsistence rights under the language and definitions of ANILCA. Conversely, a resident of a smaller town, that could be anybody from a high line fisherman to a bank president, might be eligible for subsistence rights. Native citizens of the largest Native community in the state, namely Anchorage, would not be eligible. School superintendents and air taxi operators based in villages would be. Reliance on the concept of rural versus urban is hopelessly flawed and this understanding helps clarify the problem the state faces in any attempt to comply the letter of the law of ANILCA and simultaneously provide a regulatory scheme that is a fair one.

Mr. McDowell is an urban sportsman. The McDowell decision is associated with the beneficial use called sport. Sport is a troubled designation. The spectrum of use and behavior to be

found under the umbrella of field sports, ranges from the barbaric to the uplifting. Possible because of the barbaric end of the scale, sportsmen groups tend toward a defensive tone when making arguments in their behalf to the public. On the face of it, they have a difficult argument to make in defending sport, read entertainment against ... [tape ends midspeech].

Tape 92-6

Side B

[Tape begins midspeech]

MR. FORRER:

... subsistence, read livelihood and food for the family. The age of the sportsmen challenging subsistence criteria is that of the fully engaged middle or upper class caucasian residing in an urban center throwing his, definitely his, weight against less advantaged Native citizens. It is equal treatment under the law on which legal challenge has been based, and the image of the powerful making this argument against people suffering considerable cultural stress, is the reason that the call for equal treatment has been so poorly received.

The popularity of sport uses and the reason so many are drawn to them is that they make an elemental connection to the land or a building block in the sense of identity of the participants. On one end of the scale, as the activity of sport use has become further removed from its direct connection to a food source, the motivations and forms for sport activities have become confused. The lore of urban sportsmen is no longer connected in the main to the realities of the field. If their publications are to be believed, they entertain themselves with all sorts of sensationalism in promoting trade and equipment and weapons of all sorts in order to protect themselves if they ever get to the wilderness. Meanwhile, out in that same wilderness, all kinds of activities occur, including the activities of older Native ladies who move about unarmed in the pursuit of various grasses and fish.

At the other end of the scale there are many individuals who have never killed anything for sport, yet hold sport licenses. Philosophically and spiritually, they are essentially subsistence users and if they do their harvesting under the designation of sport, it is a matter of circumstance. Sport licensing being the only regulatory form provided. This essential connection between subsistence and sport is one of the arguments made against the regulatory elimination of sport use in order to continue to allow a subsistence harvest on diminishing resources. It is a good argument and illustrates the difficulty of thinking and regulating in the absence of clarifying definitions. The connection between sport use and subsistence and sustenance or protein for the home freezer is a nearly universal one for resident Alaskans. But Alaskans who harvest under any rule are up against a growing strength of numbers of people opposed to hunting and fishing on moral and ecological grounds. Numbers of bird watchers are beginning to challenge the tradition of bird hunters. I think that sportsmen, subsistence users, and game management personnel nearly all agree that bird hunting is more directly connected to bird conservation than is bird watching. There is an apparent irony here and this is a difficult argument to make against urban residents who have no cultural or personal knowledge of the act of harvesting proteins for their own dinner.

There are a few clues about the kind of thinking that is beginning to be in the majority and will have increasing influence on national policy. One such clue is a question that is occasionally asked by tourists of the park service personnel at Denali National Park. The question is, what do you do with the animals in the winter time? A startling number of bird watchers and their ecologically sensitive urban brethren of all stripes are in fact, entirely removed from substantive knowledge of fish and game. That this question is not atypical is a reflection that federal policy is driven, at least in part, by citizens who have lost all real connections to the land. The notion that the world is some sort of zoo and that unnamed government agencies do

something with all the animals out there in the winter time is so far removed from reality that it is quite frightening to realize that this thinking is driving the creation of federal management policy.

While subsistence use came first in some sense, commercial use followed immediately as part and parcel of human contact. Commerce between individuals and groups is as old as man's tread upon the continent. Once Soviets and Europeans showed up in Alaska, they came as commercial users, sea mammal or the fur traders. An argument is made by subsistence users that customary barter and trade, a recognized part of subsistence practice, shades imperceptibly into commercial use. This argument is used to defend the practice of selling part of the subsistence caught fish and game. This may include non-edible parts such as bone and fur which are used in crafts. And edibles such as salmon roe. The whole picture of commercial fishing in Alaska is complex and has nationwide and worldwide aspects. Commercial fisheries, issues and manipulation by outside interests were one of the main considerations in the fight for statehood. Over capitalization, offshore draggers with company headquarters in Louisiana, factory trawlers harvesting tens of millions of pounds, a king crab fleet presiding over a decimated species, heavy foreign investment, this is alienation within the very ranks of commercial use. But these monster fisheries have not run afoul of conflict with subsistence regulation. It is the locally based skiff and small boat fisheries harvested by Alaskans that are threatened by the state's inability to fight a mechanism for the management of subsistence.

For village residents, commercial fishing in their local rivers is a major or sole source for cash income and the subsistence priority of which they are the beneficiaries works against their own interests in the economy. This situation has resulted in Native groups being pitted against each other in allocation fights. And once again we are drawn back to the pressure of population levels in a finite world. In spite of the

complexities, commercial fisheries help provide local populations all over the state with their sense of identity, their economic base and indeed their sustenance. This last begins to sound like a description of subsistence use to which I have finally drawn.

In 1963 and 1964 it was my privilege to be the only caucasian fishing commercially on the Lower Yukon river. I was able to succeed because two Eskimo fishermen acted as my guardians and made it their business to see me through to the ends of the seasons. They and their contemporaries taught me about fishing and about the big river. This way of life close to the water and the country provide me with the spiritual framework from which I have drawn strength ever since. I call this framework a sense of place and on various occasions I have argued for the importance of a sense of place to the health of individuals and the strength and diversity of the national spirit. Mr. Chairman, it is the erosion of the physical relationships of a place and the dilution and loss of knowledge about methods of sustaining life that constitute the main ingredients of culture shock. Certainly, with that generation of Native subsistence users that show up at public meetings in order to testify as they do with forthright eloquence subsistence is not something in which they engage occasionally nor is it a structure to be found in state fish and game regulations. Subsistence is who and what they were for all the generations of the past. The power of subsistence over the identity of the practitioners is the power of symbolism. The physical realities of twentieth century life and the structure of the symbol of subsistence do not coincide. It is a symptom of the relentless tide of technologies and events that sweeps down upon us all. I come to this argument from the roots of my youth. I am forced to a bitter conclusion. All ready for some years and as far into the future as we can see, subsistence as it exists in the memories of those eloquent elders is no more. For subsistence to work, an elementary and ruthless biological balance is necessary. There is no such balance. In biology this is known as [indisc.] When our very species is so reduced as to be unable to support a predator

species. The predators have three alternatives. They can move. They can seek other prey. Or they can starve to the point that their own numbers can be supported by the diminished prey. Now and for many years past, there is a fourth alternative. This is the delivery of alternative energy by modern transport. This has already changed the form of life for all the former subsistence cultures from a nomadic existence balanced on a knife edge of available resources to a network of permanent villages which are recipients of imported energies from cash to [indisc.] crackers. Worldwide, nationwide and statewide, the powers of science and civilization have eliminated the balance in human development. At the top of this complex situation is human population. By numbers alone, the Alaskan land and wild species cannot sustain the Native population much less the total population. In spite of devastation by introduced diseases in the last century, modern medicine and outside food supplies have enabled populations to survive many times then to double and double again. Even special privileges will not solve the problem of excessive pressure on hunted species. The starving time has been eliminated from the cycle of subsistence. A hunter carrying a weapon made of tool, steel wearing rubber boots, driving and outboard powered plywood skiff and wearing sunglasses may well be a subsistence hunter in spirit, but his effectiveness is that of a technological man and his responsibility to regulate himself must reflect this reality.

In the beginning was the land. At the very core of the subsistence issue, at the core of the beneficial uses when all else is stripped away is the question of the meaning of life. Life in terms of food, in terms of connections, in terms of an activity involving time and knowledge about other forms of life. One of the mental tools for wrestling with this essentially un noble mystery is a sense of place. For myself and others, a crucial part of this sense is involvement with sport, commercial and subsistence use on grounds we know well. Alaskan fishermen return year after year to their customary grounds and the reason they do is not to be found in the harvest poundage or mindless

habit. If you doubt this, look at the emotional response of the fishermen in Prince William Sound to the loss of their grounds after the big spill. Rock hard toughies were seen sobbing on national television. It is my opinion that the depth of their emotion was a surprise even to themselves. Their tears did not fall because of lost money. It was the loss of their own identities and the loss of the possibility of that identity for their children. Losing rights to commercial harvest inside national parks or on federal lands, losing subsistence rights to national [indisc. - cough] sensibilities. These are steps down the road of alienation. In years to come when sociologists are standing around scratching their heads about high alcohol consumption and social violence, we will be lucky indeed if they even remember those activities that used to provide a spiritual framework but which has ceased to exist.

In order to survive we must evolve mentally or nature will impose upon us the fate of evolving physically. It falls that compromise and adaption to our technologies and population levels is necessary. This is a painful process and so challenging that far more species than currently exist have failed this ultimate test of a face off with changing conditions. Rapidly changing conditions are what subsistence users and everybody else are up against. So the subsistence controversy is far more than an allocation battle or a clarification of constitutional principle. It is in fact a struggle about paths which the human race may take and it is part of the century old search for the meaning of life.

Mr. Chairman, of all the purposes, pursuits and issues contained within the subsistence controversy, there is one overriding item at the top of the list and that is the loss of the state's right to manage the harvest. The activities associated with the beneficial uses are part and parcel of our identity. And we have the right and responsibility to be our own management. The idea that there is a lasting federal commitment to protect subsistence rights is a kimera [ph] The feds manage the fur seal harvest and there is no more harvest. The feds offer to protect

subsistence and this protection includes a blanket prohibition against all harvest in Glacier Bay and the other parks. Including harvest activities on the outside coast. The Governor's legislation that is before you was drafted at a table at which all major pieces of the puzzle were ably represented. To the surprise of the members of the council, they left the process with a new understanding and respect for the size of the question against which they were historically aligned. We worked on this legislation word by word. It has a good sense of balance and fairness and it protects the beneficial use called subsistence. I urge you to adopt the Governor's proposal. It is a substantial piece of the structure needed to rescue dearly held rights to fish and game use. The Governor's legislation is fair and workable and it will stand us in good stead as the future brings changing conditions to us all. Thank you very much for hearing me out.

SENATOR KERTTULA:

Any questions? Senator Adams.

SENATOR ADAMS:

Eric, McKie Campbell said during Council meetings that Colonel Jordan of the Fish and Wildlife Protection office had told him that the bill [indisc.] work if it is supported and agreed to by the greater majority of residents. What do you think about that statement at this particular time, sir?

MR. FORRER:

Well, I think that the issue is so complex and I think that because subsistence forms a nearly religious structure, that arguments based on logical sequences have a tendency to fail. I think that the legislation does need the majority of broad support. And I think that when it is understood, if it is given a chance to work, that it will get that support.

SENATOR ADAMS:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

If there are no further questions, I'd ask Donnie Fleagle [ph] to come up.

SENATOR COTTEN:

Mr. Chairman.

SENATOR KERTTULA:

Is there a question?

SENATOR COTTEN:

No, I would just like to ask if you could make those comments available to committee members.

SENATOR KERTTULA:

Yes. Can that be xeroxed?

MR. FORRER:

Yes, probably McKie Campbell's office could make copies available.

SENATOR KERTTULA:

Okay, that's fine. Now, if we will...

MR. FORRER:

Thank you.

SENATOR KERTTULA:

I'm trying to go across the state to McGrath, Ms. Fleagle. Then we're going to go with the central area.

MS. DONNIE FLEAGLE:

Thank you for the opportunity to testify today. My name is Donnie Fleagle and I live in McGrath. My father testified earlier. I represent four villages in rural Alaska located in the upper Kuskokwim River area within the Tyonek Tananushe [ph] region. I sit on the village corporation Board and a tribal government council. The Governor's legislation in many people's opinions will not return fish and game management on federal lands to the State of Alaska should it become law. I think it was Senator Eliason that asked what the people from rural areas -- what are they worried about? It's federal management. We already understand state regulation? It's a little more difficult when you have two systems operating. At least we can come to Juneau. We can find people. We can get answers. Washington, D.C. is a long ways away. In my area, its already proving to be both confusing and frustrating because the rules are not the same. For

rural Alaskans, and more particularly Alaskan Natives, use and dependence on the renewable resources is a given and so integrated that we find it hard to deal as a separate from our way of life. However, it is one of the major issues that is polarizing the state and its people. It's probably more to the point in my family. I fully support a resolution to the matter. By insuring that subsistence rights are protected, thereby bringing the state into compliance with ANILCA and returning fish and game management on federal lands to the State. We all have to live in the state, and I'd like us all to get along and share those renewable resources. In the McGrath area, we're seeing more and more people from outside, from the Lower river areas coming up to hunt on the lands that we're used to using. I expect that we'll probably see more of that as lands are closed to certain hunts. If the state Legislature and Governor cannot pass a bill perhaps our state's governing body can envision a solution that will include putting this issue before the great people of the State of Alaska at the November election in the form of a constitutional amendment. Perhaps, only then can a direction be truly forthcoming. Thank you, Mr. Chairman.

SENATOR KERTTULA:

Are there questions of Ms. Fleagle? Thank you for appearing. It's good to see. Is Clare Swan in?

MS. CLARE SWAN, KENAITZE INDIAN TRIBE:

Mr. Chairman, members of the committee and ladies and gentlemen, my name is Clare Swan and I'm here today to testify in my capacity as chairperson of the Kenaitze Indian tribe on the Kenai Peninsula. I like most of the members of the tribe live on the Kenai Peninsula. So most of our history we have relied upon the bounty of the sea and the land for our continued physical and cultural well being. Yet, since the late 1970's we have been forced to fight to preserve our cultural right to hunt and fish. We have made proposal after proposal to the various Boards of fishery. We have lobbied our legislators. And as a last resort, we have sued the state in both the state and federal courts. We

don't relish this continual struggle. We like virtually all other Native groups in Alaska, long for [indisc. - cough] a solution that will allow us to continue to engage in subsistence uses and the guarantee our long term survival as a people. Unfortunately, the Governor's bill does not provide that solution. And for that reason, I urge you to reject it. If enacted, the Governor's bill would with or without a constitutional amendment prohibit those of us who live on the Kenai Peninsula from full participation. Although the Governor has stated that his bill will allow all Alaska residents who rely on subsistence, whether by choice, necessity or heritage to continue to do so, the structure of his bill makes that impossible for people who live on the Kenai Peninsula. And this is because the Governor's bill exempts every fish stock and game population found on the Kenai Peninsula from subsistence uses, yet those are the very fish stocks and game populations that we have customarily and traditionally used for centuries. It is quite clear that the Governor's bill was designed to exempt the Kenai Peninsula from the reach of the subsistence priority. Not because there are no customary and traditional subsistence uses taking place on the Peninsula, but because other user groups compete for the same resources. Rather than draft legislation that would protect legitimate subsistence users on the Kenai Peninsula, the state has elected to once again, favor sport and commercial interests over legitimate subsistence users. It should be painfully obvious to all of us that the state cannot and will not solve the subsistence problems as long as it continues to favor commercial and sport interests over the needs of subsistence users in places like the Peninsula. After all, refusal to deal fairly with legitimate subsistence users led to the Madison decision. It also caused the federal courts to invalidate state's definition and rural in the Kenaitze case and it led to the invalidation of the state's 1986 subsistence law in McDowell. Every one of those cases arose as a result of the state's policy decision to exclude subsistence users who live on the Kenai Peninsula from eligibility for the priority. Our Supreme

Court has said that all Alaskans who are eligible by lifestyle for the subsistence preference must be treated equally, no matter how hard that may be for the state's management. The Governor's proposed bill ignores that advice and continues the same failed policy. It makes it difficult if not impossible for legitimate subsistence users on the Kenai Peninsula to qualify for the subsistence priority.

Now, I know that proponents of the Governor's bill have loudly proclaimed that the bill guarantees the right to subsistence hunt and fish to all Alaska residents who are legitimate subsistence users. According to the Governor, all we have to do is meet detailed individual criteria. But I fail to see how we will qualify, the Kenaitze [indisc.] subsistence priority under those criteria, because one is eligible for the subsistence preference only if he or she meets certain standards measured on the cumulative point system. You receive points only if during the preceding twelve months you demonstrate that you consumed a minimum of one hundred twenty-five pounds of a mandatory minimum of species of fish and game, taken from a given subsistence use area. You must prove that you engaged in the taking of that fish and game in a give subsistence use area over a minimum of thirty days and those days must have occurred in a minimum of four months. Now since the Kenaitze have customarily and traditionally harvested, processed and shared fish and game located near their homes on the eastern coast of Cook Inlet and not in one of the Governor's subsistence use areas, they are not going to be able to meet these individual criteria. Subsistence remains an absolute necessity for the cultural survival of the Kenaitze people. It is part of who we are and without it we are lost. The Governor's bill ignores our needs and continues a policy choice in favor of sport and commercial users over subsistence users by once again excluding residents of the Kenai Peninsula from eligibility for the subsistence priority. The irony of this policy is that historically, the Cook Inlet subsistence salmon harvest have consisted of less than one half of

one percent of the total average annual Kenai Peninsula harvest of over four million salmon. There is simply no reason to exclude legitimate subsistence uses of fish and game found on the Kenai Peninsula. You have the opportunity to resolve this controversy fairly, once and for all and you can do that by rejecting the Governor's bill and giving the people of the state the right to vote on a constitutional amendment that will allow the Legislature to enact a fair and balanced subsistence statute. One that treats all subsistence users fairly, including those who live on the Kenai Peninsula. Thank you.

SENATOR KERTTULA:

Are there questions? You have the floor, Senator Cotten.

SENATOR COTTEN:

For quite a while I thought some friends of mine were getting subsistence permits to set nets out around Homer to catch silvers. I think you could get twenty-five for the head of household and an additional ten for each other member of the family. I found out later, after I paid a little closer attention, that they weren't subsistence fishing after all. It was personal use. And they were -- we were allowed to harvest fish in that fashion. And so if a family was allowed -- say a family of five was allowed something like fifty fish or something like that, how would that differ in the amount of fish you would take as a subsistence user on the Kenai Peninsula? Is it close?

MS. SWAN:

Well, ...

SENATOR COTTEN:

You seem to have left personal use out when you talked about opportunities on the Kenai Peninsula.

MS. SWAN:

Well, because everybody here has talked about there's so many labels we have, so I just not sticking that in there. But personal use is called by many people who use it on the Peninsula as subsistence. It's subsistence but it really is very confusing because at this time, you can get five kings and twenty-five

sockeye in a subsistence net for personal use fishing. The sport people are allowed to keep king salmon that are fifty-two inches in length or over. You probably know that Kenaitze has an educational net. We have a sixty foot educational net with a permit. We are not able to fish because we have to put the king salmon back and we don't what in the world we do with a drowned king salmon so we just don't put our net out. I can't tell you what people use at home or how many fish they would, because I don't live there and because subsistence fishing -- the uses are very personal. Right at the moment I would not need nearly that much.

SENATOR COTTEN:

So could you -- again, I'm trying to get an understanding of the difference between personal use fishing on the Kenai Peninsula and what you would like to do as a subsistence fisherman on the Kenai Peninsula.

MS. SWAN:

What I would like to do?

SENATOR COTTEN:

Uh-huh.

MS. SWAN:

Well, okay, there used to be a time when there wasn't a problem and people and just went after the seasons and fished for what they needed, put them up and went home. And then nobody yelled about it because everybody was done fishing. The escapement had presumably been taken care of and everything was healthy. And everybody just took their fish and went home. But wasn't that much fun. Subsistence fishing is just to take what you need and put it away for the winter and for you and your family to go home. And the sooner you can do it without -- with the least fuss, the better.

SENATOR KERTTULA:

Question. Thank you. Mr. Jonathan Solomon.

MR. JONATHAN SOLOMON, TANANA CHIEFS CONFERENCE:

Thank you, Mr. Chairman, members of the Senate. My name is

Jonathan Solomon and I come from the Yukon Flats. I'm an Athabascan Kuchin [ph] and I'm a member of the Kuchin Steering committee that was created in 1988 to defend the subsistence rights of the Kuchin people in the Yukon Flats and parts of Canada. I'll make two statements. One is the Kuchin people of Yukon flats and [indisc.] was in the Yukon flats oppose the Governor's bill. The second is that we support a constitutional amendment. The record will show the Kuchin people of the Yukon Flat are one hundred percent true subsistence users. When I came, the first thirty years of my life - I'm sixty years old, the first thirty years of my life living with my uncles and my dad without interference from nobody in the harmony with the animals and the land. Then some types of legislators who were in territorial government come to rural Alaska and have a campaign in 1958 by types of people like Coghill and Peratovich [ph] them type of people and lie to the rural Alaskan people telling us that if we go to statehood that we would be voting to elect a president. What they failed to inform us that the State of Alaska only has three or some vote to elect a president. We no chance to elect a president. They didn't tell us that the State of Alaska would regulate us on the subsistence issues of fish and game. In 1958, my father and I when we trap and hunt and fish -- when we fish for our subsistence rights we fish for two weeks out of each year for our meat for the coming winter. Alaska became a state in 59' or so. In 1960, we had to fish one month. Somebody said that we were managing the fish more better than the federal government. To me it's not true. Because today, last year my family had to fish over ninety days to get their meat for the winter.

We are a subsistence users in the Yukon Flat Kuchin people. Even when the commercial license were issued we qualified for limited entry on the Yukon River. The Kuchin people met and decided that we were not going to be commercial users. We're subsistence users as our forefathers were. But there was only limited entry fishing licenses issued in Fort Yukon, that's in Yukon Flats, at the request of the elders. That was only reason

that we wanted to be law abiding citizens that when the elders can't fish that this limited entry fishing permit would sell them their fish. That was the only reason that that one limited entry permit was issued in the Yukon Flats.

We in the Yukon Flats, Kuchin people, enjoy the federal oversight right now. I grew up under federal government's jurisdiction, in the territorial government, and we lived our life without interference from nobody. Right now, with the [indisc.] coming around, with the fish and the ducks and the geese and the caribou and the moose, the tribal government within the nine villages meet with the fish and wildlife people and decide how we're going to handle this coming season on hunting and fishing. Tribal government is finally back in power. They're meeting right now in [indisc.] Alaska where I should be enjoying my culture and talking about what's going on. At the request of the elders, I'm here because this is very important to us. We don't need any amendments. We don't need any law, because we have federal jurisdiction because we live in the Yukon Flat. It's all federal land. Where we can talk to the federal agency on a one to one basis. We know [indisc.] of fellow Alaskans are not in that same fix. Therefore, the Kuchin people send me down here to say we're willing to give it up if we can get a constitutional amendment to deal with the issues of subsistence. Tomorrow when I call them, and we need to know before -- not very long, what the Senate and House is going to do. Because before July 1 of this year, we have what was known as Public Law 93638 [ph]. Kuchin People of Yukon Flats their tribal government is going to put before the Secretary about contracting the fish and game -- fish and wildlife enforcement in the Yukon Flats. But we are giving -- if we can come up with a constitutional amendment, we will not do that. We would go with what the people of the State of Alaska say to do. We need to hear from the people of the State of Alaska on this issue. Hear each individual voter from this great state. Thank you.

SENATOR STURGELEWSKI:

Mr. Chairman.

MR. SOLOMON:

If there's any question, I'm willing to answer.

SENATOR KERTTULA:

Senator Sturgelewski has the floor.

SENATOR STURGELEWSKI:

Mr. Chairman, Jonathan, that's a Public Law #93 ...

MR. SOLOMON:

93638, which says that any tribe can contract with the federal government on all programs that they serve to the Native group.

SENATOR STURGELEWSKI:

Do you -- is it very broad and it's not limited to health and education or so on?

MR. SOLOMON:

No.

SENATOR STURGELEWSKI:

Has there ever been any definition or court cases to determine what that would include?

MR. SOLOMON:

No.

SENATOR KERTTULA:

Are there questions? Thank you. Mr. David O. David.

SENATOR STURGELEWSKI:

Thank you, Jonathan.

SENATOR KERTTULA:

Next on the list is Mr. David O. David. You have the floor.

MR. DAVID O. DAVID, AVCP, INC.:

Mr. Chairman, good afternoon.

SENATOR KERTTULA:

Hello.

MR. DAVID:

My name is David O. David from Kwigillingok and I represent my village and I had a meeting just before I left with our elders, which told me to pass the message on to the Governor and I was

disappointed when I found out that it was Finance Committee that I was going to testify to. But ...

SENATOR KERTTULA:

This is the whole Senate.

MR. DAVID:

I feel a little better now since I already had time with the Governor and I gave him the message that was sent from our elders. And if you need to know -- want to know what the message was, you might -- since you're working on the subsistence, you might as well hear the message to. The message was from my elders, we don't want to be bothered in your subsistence way of -- whatever subsistence is. We don't want anyone to tell them how to live their life and how to get their food and how not and to limit them in getting their food because they say that they are living in their land, our land. Especially from the people, they don't want to be told how to live their life. Especially from the people who moved into their land and tell them how to live their life and how to get resources from the land. That was the message from my elders back in the village. But you might as well know, too, that I am one poor Eskimo to be here in representing my people and talk for them, for their benefit and me my family and my grandchildren and my great-children and beyond that to come. We want to live our lives using the laws of our land, using the laws of the sea where we get our meat. We don't get caribou where I live. We use sea mammals for food as well as water. We don't want to be limited in getting [indisc.] but I know that you are trying to make things better for people that live here because you are -- you have been voted to work and you're work is your -- as far as I'm concerned is your subsistence. My subsistence is my rifle, shotgun, boat, net. That's my subsistence. I don't work -- I don't have a job. That's how come I told you I am one poor Eskimo. I don't have money to my name and I don't have money to leave my family, after I'm gone. But I hope you have enough money to buy coffin when I die. Since I said that I don't have money, I have to ask McKie Campbell to donate some money to me to pay for my

room at the hotel. But he's so damn tight that he wouldn't do it. The only thing he said was that he offered to have me move to his daughters' bedroom. And I'm not in the move [indisc.] for daughter's bedroom. cause I already have a room in the hotel. And I'm satisfied with what sleep I'm getting there. Another thing that if I move into McKie's room, he may keep awake til the night -- late night asking me questions of what subsistence -- how I subsist. And get me in the morning before I want to. Okay.

I have said that we live by the laws of our land. We don't get more than we need but if we do, by any chance, get more than we need we share it with our people in the village who aren't able to go out for themselves. And another thing I'd like you to know -- I am an independent Eskimo and I don't -- Upik Eskimo and I don't depend on handouts since food stamps. That's because when I was a kid, there were older people that used to tell me, you poor thing when you grow up and get married, you're going to starve your wife to death because you're so darn lazy and won't be able to -- you're not going to be able to support your wife. We've been married thirty-some years and my wife's still alive. So in that case, I'd like to urge you Senate committee to do your best in making our life in the village as best you can as well as the people in cities like Juneau who -- McKie there to tell me that those ...

UNIDENTIFIED SPEAKER:

He's not here right at the moment.

MR. DAVID:

Okay. Anchorage. But those people that are living in -- those areas are people. They're indigenous people. They're god-made people. Like you. They have red blood. They have may darker skin than you. And black hair but their still human beings. And we can think -- we Natives, we may be Natives, but we are indigenous people of Alaska and we can make decisions. We should be able to make decisions for ourselves and think for ourselves. If we can't do that, Al Adams wouldn't be sitting over there who learned how to live your way life. If he can do it, I

can do it too but I'm so damn lazy to be cooped up in a house and not do nothing. I look at the papers. I'd like to be out free to do anything and not have anybody tell me what to do and hunt food for my family and for my grandchildren -- great grandchildren. But my grandkids. I have a big family and I do my best to hunt in feeding them. And whatever little money I get, I use the money to buy things that I could go out hunting with, such as gas, ammunition, and those things. But I will not -- I don't intend to ask the state for food stamps. I don't like that. Because I am - some people said that I was too independent to depend on somebody, and I guess I am. But I'd like to again, urge you Senate committee to do your best and look at Governor's bill, and pass it if you have to. But whatever constitutional amendment is ... [tape ends midspeech]

Tape 92-7

Tape A

SENATOR KERTTULA:

You have the floor, Paul.

MR. PAUL THEODORE, KWIK AIC:

I'm going to try and be brief and cover a few things, I hope I can get. What I see happening in Knik [ph] where I live, sportsmen take over, fishing all over the country. They destroyed some of my cultural sites, along the creeks and streams, of my past ancestors peoples. And they take off and they put picnic grounds, recreation grounds on my people's old harvesting place. And I worry they're going to start digging them up and selling them for artifacts and stuff. They opened up Ship Creek in Anchorage to sport fishing. They opened up the mouth of Fish Creek to sport fishing. I put in request for fifteen years trying to get subsistence fishing for one family. I support probably ten to fifteen elders when I go fishing. I get commercial fishing license and I go with my nephew way out to sea. Go halibut fishing, bring them back fish. I try to get moose in the mountains. All the sport hunters chase the game away so far, I

can't get them. I can't get caribou. I can't get moose no more. I can't even -- traditional foods that my people have used for generations and have survived -- my people built the first road from Anchorage to Eklutna [ph] in the 1920's. They built the Alaska railroad. They work thirty years on railroad up in this state. Our people made the state's economy through the fishery. And then the state came and took it away. They said they would take care of us. They took care of us all right. They're trying to starve us out of our land. I talked to my friend Chief Isaac [ph] before he died. What do you think about subsistence? He say, it's like the white man [indisc.] to us Native people. We pray for game to come to us and they take care of us. The furs we get for our clothes. The meat we use we eat to feed our people. The fish we put up to get through the winter. And we don't have those to enjoy no more. We started out -- there's twenty-eight of us left. There's twenty-four of us original people. Slowly we're getting grandchildren back up to ffity-eight. I'm worried about their future. Is the state going to take care of them the way they take care of our past people? I don't know. There laws have tied us up, extinguished our culture. I am the grandson of two chiefs, Chief Stupan [ph] Chief Raslik [ph] - the town named after. I don't know which way you guys decision going to go. But you got the laws that you made. Country's close the door when too many people come in. You guys are bringing too many tourists to use our resources up. You're bringing too many factory ships into our seas to harvest our food so that we don't get nothing. You got to change them to help the people rather than be killing us. Jobs. The Department of Labor has not said nothing here. Why are you just sitting or what? Us people in this state need jobs. They're given to outsiders, brought in from the United States to build the roads, to build the construction sites. We don't get nothing. You put us to work at minimum wage, \$3 an hour to be your slaves. We're not treated equal. Those kinds of things need to be changed. Maybe it should come into this factor. Too much airplanes, pollution, disease. I've seen permits to commercial

fisherman from outsiders coming into the state. I got regulated out of our ancestral fishing grounds. We no longer have that. I'm here to just say that maybe you people know how to change the law to help people. Maybe you don't. People in twons are starving. They should have a right whether they be one. A lot of them people are older and can't do for themselves. Including the village next to me is having a hard time too. That was my great-grandfather's brother. They tell me stories before white man comes, before everybody come, the Russian [indisc.] -- and the last chief tells me all the things about the interior people. His story [indisc.] -- the late chief, he tell me his sad story. And the last living history from that area that's been passed down from all the elders to me. I've been listening to you people. You all sound like you're good. And everybody agrees with each other. But I don't know if you're going to agree on what to do about that. Some kind of ways, countries, overseas I hear news. The Taiwanese [ph], the [indisc.] they start making boundaries around their countries. No other countries can fish there. I don't see why it can't be used for protection for Native people's resources.

I think that's all I've got to say. I hope I got my words to the right people that make the laws to make it better. I know some kind of ways other people they move out to country. They got to make a living. Even white people because they're out there with no jobs, too. Everybody knows this country is seasonal on work. Everybody knows you ain't going to be able to sustain so might as well start cutting back where it needs to be to help the people the most. I know we've been here. I don't think we ever planned to leave this country since we've been in this country. And I sure don't believe in no land bridge. I always tell them I crawled out from under a rock. Thank you.

SENATOR KERTTULA:

We're going to have two more today and then we'll check with the committee from the Arctic, because I understand he has to leave tomorrow. A lot of the northern people want to testify at

this time. Elder Joe Kokochuruk [ph]. Please come forward.

ELDER JOE KOKOCHURUK:

Mr. Chairman, and the members of the Legislature and those listening. It is an honor for me to be in your presence. My name is Joe Kokochuruk. I am here on behalf of the Setinsof [ph] Advisory Committee in Nome. Setinsof is a Native village profit corporation for the community of Nome. Our elders wanted me to speak on behalf of their subsistence issue.

In time past, we have a great joy that the Alaska Native Claims Settlement Act had passed in Washington D. C., in a conference in part that combined the act in states and I quote, "Conference committee expects the Secretary and the State to take an action necessary to protect the subsistence of the Natives." This resulted in the passage of ANILCA in 1980. ANILCA is a good federal law that needs to be followed. For I know the one that prepared the documents in his old age and had often talked with me in order that the issues that he was writing of would be for the benefit after he died. He died already. And he stated that he had worked hard, putting long hours to really make sure that our descendants will be protected from the agreement with the government.

President Lincoln, in the last paragraph of the Gettysburg Address, stated, "That a government by the people, and for the people, ..." I believe they have established the foundation on which the legislators and senators and many authorities should follow as their guidelines in resolving the subsistence issue. When you were voted into office we put -- we believed your promises, that you will obey us once you sit here in Juneau. Just recently a poll was conducted here in Alaska by Juneau -- pardon. Just recently a poll was conducted here in Alaska by policy analysts which showed that fully seventy-four percent of those polled wanted the opportunity to vote on the constitutional amendment on the subsistence. A constitutional amendment would result in the State of Alaska regaining fish and game management over federal lands in Alaska. Governor Hickel's bill does not

resolve in a single management system.

Therefore, I am sorry to state, I do not support that management system that he have arranged. Thank you very much for giving me attention, and I hope you will think on these issues as you talk among yourselves. Remember, when we voted you remember to use that foundation whereby President Lincoln has stated, "... a government by the people and for the people..." We feel, we the Eskimos, are the people.

SENATOR KERTTULA:

Cecilia Kunz. Is she -- I think she's at the door. Is she here? She wishes to testify.

CECILIA KUNZ:

[Indisc. - native language] I'm an FBI, a full blooded Indian. Only just really upsets me what's going on. Ever since - - like what the school children said when they were asked if they know about Columbus. One Indian boy said -- he raised his hand and he said, the Indians found Columbus on the beach. And ever since they found Columbus on the beach, things been happening to us Indian people. He even called us Indians when he was looking for India and we're stuck with that name. Name of [indisc.] supposed to call Tlingit. Our culture. I was one of the victims of the [indisc.]. Every time I say Indian word, they tie my hair with a white rag so you can see I've been talking Tlingit. My mother took me out of that school. She didn't like it. I got my little bit of education right here, in Juneau. Then after that, you know, I wonder about the constitution and freedom of speech and freedom of religion. They overlook us Indians. There are so many things they try to change us then they start having signs on the window on the Juneau general stores beauty shop [indisc.] took the Alaska Native Brotherhood to fight the racial discrimination right here. I came to the meetings to just like what I'm doing. Moral support. And now, what we eat -- [indisc.] us Indian people. Everything is -- they're making everything so difficult. I've grown up on Indian food. My mother - I didn't grow up on a milk bottle. My mother's milk. She gave me her food. Therefore,

I have it in my blood too. The time depression, some of you will remember that. Us Indian people didn't know there was a depression. We live off the fat of the land. We were wondering why the government were passing our moose meat around and a sack of flour. Well, if he's going to [indisc.] to the people, we'll take some too. Time we live off the fat of the land. We can go down to the beach pick cockles, plants and go into the woods get meat, deer meat, pure meat. They don't get shots like the cows get today. I'm just wondering about all the things that are going on. Pretty soon they'll be charging us for breathing the air. If it comes to that, well I'll have lots of bills to pay.

I think everybody said what has to be said, and I sure would like to remind the lawmakers -- think on both sides. Think of Native people too. Don't make cain all the time. Be your brother's keeper. Read the Bible. That's what it says in the good book. Be your brother's keeper. Don't think about yourself too much. That's all, before I say something I shouldn't. Thank you for listening.

SENATOR KERTTULA:

Yes, thank you, Cecilia. We're going to have a quick recess for three or four minutes. Then we're going to bring staff in and look at this legislation so at least we get a cursory introduction to it this late afternoon or evening. We will adjourn not later than seven. Lance Nelson will be in the morning to update the committee on subsistence litigation about 9:30. Vern Wiggins and the Department of Interior will be on teleconference at 1:15. We will have some testimony from as many individuals as we have time for starting about 10:30 for about an hour tomorrow. But we will come back as soon as the President of the Senate calls us to order tomorrow morning. What time would you suggest?

SENATOR ELIASON:

Nine o'clock.

SENATOR KERTTULA:

Nine o'clock. We'll be here about 9:15, not later than 9:30 tomorrow morning.

SENATOR ADAMS:

Which ...

SENATOR KERTTULA:

Excuse me?

SENATOR ADAMS:

May I ask a question?

SENATOR KERTTULA:

Yes.

SENATOR ADAMS:

If the Department of Interior is going to testify, will have they have both bills before them to testify on [indisc.] of state management over federal lands, the Governor's bill questions, the Bush Caucus bill before us. Will they testify on both?

SENATOR KERTTULA:

I'll have to get response from the Chairman subcommittee.

SENATOR COTTEN:

Mr. Chairman, I asked the Department of Interior what their preference was and they offered that they had no testimony. That they would make themselves available for question and answer only.

SENATOR KERTTULA:

So be it would be specifics.

SENATOR STURGELEWSKI:

Well, Mr. Chairman ...

SENATOR KERTTULA:

You have the floor.

SENATOR STURGELEWSKI:

We still should see their fax copies of the bill.

SENATOR KERTTULA:

Yes. Probably ask them to do that.

SENATOR STURGELEWSKI:

They probably have them.

RECESS

5:00 - 5:42 p.m.

SENATOR KERTTULA:

Various comparisons have been put out. I think by [indisc.]

office, one by the Governor's office and then one on specifically on 484, we have a sectional summary. I ask that all suggested amendments to 484, and then we'll go on to the subsequent legislation and we'll probably spend less than hour tonight getting this. I ask all amendments to be submitted in written form. Then we will produce them and hand them back as quickly as is feasible. So any suggested amendments come out, I'll announce to those who are not here when they show up or in the morning. That's a suggested way to me, the presiding officer, suggested that and I think he's right. Others just have also. In any event, I thought we could go quickly over the sectional chapter and verse of 484. McKie Campbell has gone through this exercise. Bill drafters and counsel is here to answer any technical questions, et cetera. Arliss, you have the floor.

SENATOR STURGELEWSKI:

Yeah, Mr. Chairman, I'm wondering. I think it's important for us -- I wish we had more people here. But I think it's important to go through this in some detail. And I wonder if we go through, if it might -- it would be very useful to me if we could know when a section would not comply with ANILCA. Which are those ones that ...

SENATOR KERTTULA:

Those three areas they're talking about.

SENATOR STURGELEWSKI:

Well, we've talked about a number of things, the terms, of language and so on. But I think that would be useful if McKie could do that.

SENATOR KERTTULA:

I would -- please get my attention ...

SENATOR STURGELEWSKI:

Or your, you know, our legal or whatever.

UNIDENTIFIED SPEAKER:

Do you have this document, Senator?

SENATOR STURGELEWSKI:

Pardon me?

UNIDENTIFIED SPEAKER:

Do you have this document, here?

SENATOR STURGELEWSKI:

I probably do, but they've been slipping so many things in I didn't know it.

SENATOR COTTEN:

It's in the front. The very front.

UNIDENTIFIED SPEAKER:

Well, it does -- Mr. Chairman?

SENATOR KERTTULA:

Yes. [indisc.] you have the floor.

UNIDENTIFIED SPEAKER:

It does say ...

SENATOR STURGELEWSKI:

Thank you very much.

SENATOR KERTTULA:

Except for a bit of order, if there's anything for the information of these senators for making their job a hair easier, please get our attention as quickly as possible so you can chime in and we don't have to go back and forth and back and forth. Just bring it up as we go along. McKie, why don't you start out and just start through the very beginning and give us a running blow by blow and then we'll take over from there.

UNIDENTIFIED SPEAKER:

Sir, are you going to go through just an explanation first or you going to entertain questions?

SENATOR KERTTULA:

Well, I think we ought to go through complete explanation then we'll go back into it one time for suggested amendments and so on. Today and tonight, I think it's just the introduction to the bill gone through it. Any questions, though, you have, please bring up. I think we can go back and prepare amendments. I, for one, have some thoughts but I don't have even a location or idea where to place it. So, I think we'll just go through this and mark it off where suggested amendments could go along. If that's

all rights. Consensus. This doesn't have to go through Rules. It's okay. [indisc. - simult. speech] I don't know. You have the floor.

MR. CAMPBELL:

Thank you, Mr. Chairman and senators. for the record I'm McKie Campbell, serving as Special Assistant to the Governor and we're doing the issue of subsistence. I will attempt to go through the bill as quickly as I can. And what I will attempt to do is talk about (a) what the bills says, how it would work and in some instances that are not self evident, why we put that particular language in. If there are going to -- and I certainly, will be happy to answer any and all questions about the workings of the bill. And I will make a shot at most legal questions. But if there may be some legal or drafting questions that come up that we may have to pull in our counsel who currently in the House, but we can get him at any time.

SENATOR KERTTULA:

Yes, we have people that can do sectionals and can help us over it, too. Please proceed.

MR. CAMPBELL:

Thank you very much. The first thing I would like to start off with is what this bill is trying to do. Because there's been a lot of talk in this committee and everywhere else. And I've participated in about does this bill or does it not comply with ANILCA or will it restore federal management? The parameters that the Governor gave the Subsistence Advisory Council when he asked them to do this, is he said, don't worry about whether the bill does nor does not comply with the constitution. And don't worry about whether the bill does or does not comply with ANILCA. Just simply work to create the best possible system for protecting subsistence and managing the fish and game. Because subsistence and the management of all other fish and game is inevitably interwoven. You cannot separate just the one use or the other. So the Council did that. And in our discussion, talking real briefly now about ...

SENATOR KERTTULA:

Commissioner of Fish and Game too, would you grab a chair at this table here or either where you are. Because we're going to want you at our fingertips. Excuse me for interrupting. And to the extent possible, we want you to relate to the technical and not too much to the background.

MR. CAMPBELL:

Yes, sir.

SENATOR KERTTULA:

Just because of the time of day.

MR. CAMPBELL:

Just briefly, the reason the findings section is in here, is the Council felt -- many members of the Council felt a frustration in that then while we were trying to deal with statutory and mechanical terms of who is a subsistence user and who isn't and how you do allocations, they felt that subsistence was a spiritual issue and it was very difficult to put spiritual values into a statutory language. And so we've tried to layout -- and I won't read them for you. But I really would urge you to read the findings and the purpose and the intent. And in the purpose section, we lay out some of the legal background in terms of why certain presumptions are reasonable. Why we have the factual data to support the use of some presumptions. Because without this data that would not be available. All of that data is included in the books that we've given to every legislator. And those books were given to the Senate Secretary and the House clerk when we introduced it. It's mentioned in the journal so they will be part of the legislative record. Let me go -- again, I won't go any more into the findings and purpose unless there's a particular wish.

I would like to mention real quickly just the brief purposes of the bill. One is the -- it's the intent of the Legislature that one, that subsistence uses of Alaska fish and game resources are given the highest preference in order to accommodate and perpetuate those uses. Two, to clarify the statutory protection

for actual substantial dependence on fish and game for subsistence. And three, that this act not result in significant reallocations of fish and game in Alaska. And just briefly on what that -- on why we were talking about that on the last one. We're in a situation where some of the alternate proposals or other variations that have been discussed certainly would have resulted or would result in very significant reallocation of fish and game. And if we do nothing - if we continue with the status quo, we are going to see a very significant reallocation of fish and game.

Section two is the start of the actual statutory language of the amendment. And this parallels -- AS 16.05.268, parallels fairly closely with AS.16.05.258, the existing subsistence statute. And one of the hallmarks -- or one of the things we've tried to do throughout in drafting this is if there was existing language that was working pretty well, even if maybe we thought we had some better ideas. If there hadn't been a problem, that the Boards were used to it and knew how it was working, we tried to keep that basic language.

So 268(a), starting on line seven of page three, very closely parallels the existing language of the statute. It requires the Boards of Fish and Game to identify the fish stocks and game populations or portions that are customarily and traditionally taken for subsistence in the areas of the state identified under (f)(1) and (f)(2). And those are areas where -- (f)(1) is areas where all the communities are under twenty-five hundred and (f)(2) is an area or community between twenty-five hundred and seven thousand. This in effect, very very closely parallels the result that stocks and populations in urban areas are not available for subsistence. And I will get down in just a little later when we get into the bill, about where an urban user gets their subsistence stocks and populations.

On page three, subsection (b), line 14, we did require the appropriate Board to determine whether a portion of a stock or population maybe that is identified under it can be harvested

consistence with sustained yield. And the only change there from existing law is we changed, it used to say, "what portion." And some judges have interpreted that as meaning, you got to tell us exactly how many moose can be harvested consistent with sustained yield. I think Commissioner Rosier confirmed that is a very difficult, if not impossible, task again. So we simply changed it, the Board has to determine whether it can be harvested consistent with sustained yield.

Then subsection (1) on line 16, is what some folks refer to as pure [indisc.] This is the situation of such game abundance that there is enough for everybody without any question. It says, "If the harvestable portion is sufficient to provide for all consumptive uses." Let me give an example of what I'm talking about here. The northwest Arctic caribou herd - the limit for that herd is five caribou a day, three hundred, sixty-five days a year. I think most people, though I've had some people tell me that's not enough. I think most people would say, that's more than enough caribou for anybody. There's not a need at that point to provide a separate hunt for subsistence and a separate reduced hunt for sport or general hunting. So we say in that situation that, (a) the Board shall adopt regulations to provide a reasonable opportunity to participate in subsistence uses of the stocks and populations. They have to provide for subsistence first before they do anything else.

Then (b), they adopt regulations to provide for the other consumptive uses, subject to preferences among the beneficiaries. Subsistence has the preference over that second allocation. And then (c) may, but is not required, adopt regulations to differentiate among consumptive uses. You can have, say a different season for sport and subsistence if you know, it would be helpful to the subsistence users, but at that level, you're not required to.

The next case, number two, starting on line twenty-three, is tier one. And that is the situation that most of the hunts in the state generally tend to exist in. This is the situation where the

harvested portion is sufficient to provide for subsistence uses and some, but not all, of other consumptive uses. Let me give two quick examples of the extremes. Here in Southeast, deer are fairly plentiful. But you do have to reduce the deer very slightly from the harvest because you want to make sure that everybody's subsistence is taken care of. So then I think, we all get six deer. And if you didn't have to have a separate subsistence allocation, maybe we'd all get seven or eight. But really six is plenty for most everybody. But in some other places, once you take care of -- first they're required to provide for subsistence up front. Then there may be only a very small number of animals left. And maybe you have to do a lot of redrawing and maybe only ten general hunters get to hunt animals. But that range includes the tier one hunt. You take care of subsistence first, and provide for it. And then whatever is left over is harvestable, you provide for the other uses. In this we require, again in (a) that you shall adopt regs that provide reasonable opportunity, (b) on line twenty-seven, the Boards may adopt regs to provide for other uses. And tier one, the Board's are not required to provide for anything but subsistence. They may. But if they do (c) on line twenty-nine, they are required to provide regulations which differentiate among the uses and provide an additional preference for subsistence through regulations.

Let me give you an example of what we're talking about here. For instance, talking about subsistence having three distinct preferences. One, you always take care of the subsistence allocation first. Two, if there's not enough, you restrict the other uses. Excuse me. Here (c) at this level, you are required to provide additional, whether it be bag limit, seasons, method and means, whatever, additional preferences for subsistence. Let me give an example. It may be that there are a fair number of moose. And you take care of subsistence pretty readily and you can also provide pretty much enough for the sports hunters. But if you let the sports hunters and the subsistence hunters all hunt at the same time, and everybody runs up and down the river in

their boats, well, there's plenty of moose, they go back away from the river and they're very hard to hunt and it hurts the subsistence hunters. And so there, you would say, okay, let's figure out when the subsistence hunt needs the season and provide it. And then provide a separate sport season and time that doesn't conflict or interfere. Then you let additional preference that's provided for subsistence is if that there's not enough for anything but subsistence. And I'm now turning to the top of page four, number three. You eliminate all other consumptive uses and you still provide for all subsistence users. All tier one. Everybody that's involved is subsistence users. Then you're dealing with a situation where there's even still less game or less fish. And there's not even enough fish or game to provide for the people who are subsistence users. Then at that stage, the Boards go into tier two and differentiate among subsistence users and say who is most qualified, Who is going to get the hunt or get the fish and who is not. And we made -- I would say this whole regime so far is very, very similar -- it's basically what the Boards were required to do under 258. However, under 258, which I think was a good bill in itself, but it was not laid out step by step. There were a lot of times that when the Boards' went through the process and the Boards, more than anybody else have asked for this additional guidance. That they didn't go through step by step. And they wound up perhaps not following the process or not providing the amount that really was a reasonable opportunity for the game or not providing -- taking care of it. So we've laid this out very, very carefully, step by step by step, where the Boards have to follow the process.

In tier two, we've made three slight changes here. Again, you distinguish among subsistence users based on, and I am on line ten, page four, customary and direct dependence of the fish stock and game populations by the subsistence users for ..." and we inserted the word "human" consumption as the mainstay of life. The reason we did that, we wanted to make it very clear that if you're in a tier two level, sorting out one subsistence user

against another, you're making sure you're actually -- what is needed for human life. And this was engendered by a lot of conversation about a law case, called the Coy case where a couple who moved up here in 1984 from Montana. They homesteaded out on the Kantishna River and they were on a big dog lot out there and I think a lot of Toklat chums that swim up the Yukon and up the Kantishna and up the Toklat that's a weak stock. And they get those chums for their dogs and they've gone to Alaska Legal Services and said we want you to help us restrict those small downstream uses on the Yukon because they're taking our subsistence fish. Even though those downstream users are much more subsistence users, in my opinion anyway, than the folks up the stream taking fish for their dogs. So anyway, we've inserted "human" there.

Next in number two, on line twelve, it used to say, "local residents". That has always been basically administered by the Department of Fish and Game as how far do you live from the resources, so we just said that very specifically. "Proximity of the domicile of the subsistence user to the stock and population."

The next in three, line fourteen, this used to say, "availability of alternative resources." And this was not changed because of a court case. It was actually changed because of a newspaper column. The outdoor columnist for the Anchorage Daily news wrote a column last fall sort of explaining or bragging, or whatever, how he qualified for a tier two caribou hunt and he said that no under no available alternative resources, that he didn't have anyplace else he could get a caribou, so he scored himself one hundred percent on that category and qualified. And I don't think clearly that's what anybody meant. So here we made it very plain. We're measuring -- and this is the time where you really getting down to it -- really have to deal between subsistence users. [Indisc.] the worst if they don't get it. It says, "the ability of the subsistence user to obtain food and subsistence use is restricted or eliminated" And I think there had been a question that it wasn't plain whether that meant obtained food for

other subsistence uses or obtained food through any other source. And it means both. It means obtaining food any way you can get it. Because when it really comes down to the bare nubbin, whoever needs food to survive, should have it.

Next on subsection (c) line 16, everybody said we always talk about how you slice up the pie. And we never talk about how to make the pie any bigger. And everybody on the Council agreed we need to do more of that. So what we talked about here is we said, if the harvestable portion is not enough to provide for subsistence and other consumptive uses, the Department needs to prepare a plan and make recommendation to the Board of Fish or the Board of Game for how we can build that stock or that population back up. So eventually we can have enough for everybody.

The next line, actually, if I could. What I'd like to do is talk about the next line - I'll come back to it when I get to the definition of "sustained yield". Because it ties in directly to that and I think it would be better explained at that point.

I would then go down to subsections (d) and (e) and that says "the subsistence use area for the stock or population is the subunit of a game management unit in which you live and the contiguous units." If I can, I think these are my maps over here. Let me grab a map real quickly. One of the things that the rural residents who are members of the Council were very concerned about is they said, if you're going to have a provision that some people in urban Alaska may qualify as subsistence users, we're worried about all of them descending out here on us and competing with us for our resource. They said we want some way to limit that. So the state right now is divided up already into existing game management units and subunits. And so we said, let's qualify folks by game management unit or sub unit and we avoid the problem of being one foot over the line that we have with rural/urban. You know if you're one foot over the line don't hunt or do hunt. By using subsistence use area and all the areas around it. And if you're one foot over the line, it's just all the other areas that are around it. And we would do that [indisc.] subsistence fishing

and that pretty well takes in -- those are big areas. That pretty well takes in anywhere anybody goes for harvest. But there may be an exception. There may be that we've cut somebody off from a fish camp or places they harvest caribou or whatever. So we put in subsection (e) that said each Board shall consider the subsistence use boundaries and if they find that they've cut somebody off from a traditional apttern of harvest, they have to, they are required to draw a different boundary for that particular stock or species to make sure that they're taken care of. We also said that they may, this is not an option, but they may reduce the size of an area if they find it does not interfere with a traditional pattern of harvest. For instance, folks from St. Michaels ... [tape ends midspeech].

Tape 92-7

Side B

[Tape begins midspeech]

MR. CAMPBELL:

... or I think [indisc.] never normally go down beyond plat number or whatever [tape stops] I'm not an attorney so I won't debate the constitutionality of the issue but this is an issue that has been raised as a potential constitutional problem. Whatever you want, we'll have the attorney's to discuss why we think it is entirely constitutional to do that. But what I would say is in the worst case scenario, if we're wrong, and that particular provision gets struck down, the law still works pretty darn well. In fact of the three issues, there maybe some potential question on, just strike all three of them, it would still be about two hundred percent better than the existing law that we have right now.

SENATOR STURGELEWSKI:

And that's section (e)?

MR. CAMPBELL:

That's section (d) and (e). Both. Actually just (d) is the constitutional question. (e) I don't think is related.

Next on page five, I'll go basically to all of page five. And this is where we divide the state up into areas. And let me talk about this if I can for just a moment. The Council agreed fairly early on that what we wanted to do is sort of define what is a subsistence way of life. One of the things that ANILCA talks about, and again we were not trying to be consistent with ANILCA. We're not making that claim. But in ANILCA it says the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so. And actually the purpose of our bill was to provide the opportunity for any Alaska resident engaged in a subsistence way of life to continue to do so. And to do that, we looked around and we said, okay, the Supreme Court one thing they said we can clearly do, we can do it by individual criteria. But folks on the Council, some folks pointed out and I totally agree with them, is that the individual criteria and the application process and stuff may work well in the city. It doesn't work out in the village. People are not used to coping with those forms. This is something that they believe is an inherent right. You're not going to have people doing it. And so what we did is we decided to apply the individual criteria with three levels of presumption. And I'm on the following page. I'm going to come back -- with the three levels of presumption. We say in the villages, in a community, and this is line seven through nine, page five, subsection one, "in a community or an area where the human population of each community is less than twenty-five hundred and is not part of an urban area and where dependence upon subsistence is the principle characteristic of the economy and cultural way of life." And I should mention right now in existing law, the definition of "rural" is "rural is where subsistence is the principle element of the economy." That was the definition that was proposed by AFN in 1986. It was the definition that the Kenaitze court in the Ninth Circuit in Kenaitze found was not consistent is that that's not rural. We know what rural -- but anyway. We wanted to keep some element of that - principle element of the economy. People said

subsistence is in part an economical thing. But they also said it's just not economy. It's also culture. It's also way of life. And so we've put that in there to determine so any community under twenty-five hundred that has this dependence qualifies for a presumption that if you are living in that community, we're going to presume that you meet the criteria. Because we have very substantial statistical documentation and lot of [indisc.] reports that we can say when you go up in a community like that, we have a very, very, high percentage of people who are going to meet the criteria who live there. And therefore it makes sense instead of going in and requiring every single person to prove by individual application. It simply to makes sense to use the states resources in a manner that says, we're going to presume you qualify. I'll continue on with presumption, but what I'm doing right now is going just a little bit back and forth, because we described size of community and presumptions here and here.

Next, we deal with the category two communities, twenty-five hundred to seven thousand and then we set out category three communities, the urban areas for single communities where at seven thousand or greater or where dependence on subsistence is not a principle characteristic of the economy, culture and way of life. And in category three, in the books we've handed out to you, there are lists where the Boards will make the actual determinations where we have lists of the two hundred, fifty-six communities that we feel would be in category one. The seven communities we feel would be in category two and the --no, it looks like about twenty that would be in category three. In category three, again, we have the urban areas, we have the communities over seven thousand and then we also have those little places under that don't have any dependence on subsistence. Prudhoe Bay, for instance, we don't have the presumption the people there that are subsistence users. Shimya [ph] Galena [ph] Air Base and those places you don't get the presumption you're a subsistence user.

UNIDENTIFIED SPEAKER:

Kotzebue.

MR. CAMPBELL:

Kotzebue we have in level two, sir. Well, we're working on it. We also put a set of criteria here for determining how do you determine whether a subsistence is a principle element of the economy, culture and way of life? And the ancestor of this list though it's gone through a good bit of modification was I think thirteen criteria that are in regulation by the Boards of Fish and Game for determining what was and was not rural. But we tried to make we feel, improve the list a little bit.

Let me go now and talk a little bit more about the presumptions. And I'm now on page six, starting on line eleven. Here we say, "Participate in limited to people who meet the requirements for qualification with the following presumptions." If you live in the level one community we're going to presume you qualify. We put it in very specifically. The state may not require any paperwork from you. No additional permits. No anything else. There are some existing already requirements, like hunting license. We don't affect that one way or the other. But nothing additional for this requirement. We also put in that the state has the right to rebut this presumption. And we purposely built in a fairly difficult and awkward procedure for rebuttal. This is not something we envision going around doing wholesale rebuttals. But the Attorney General felt that it was important, because certainly the facts don't show that one hundred percent of people in these communities are subsistence users. That the state should retain that. Basically have a good legal underpinning for the presumptions. And so, what we require, is if the state wants to prove somebody is not a subsistence user in a community, the state has to go into state Superior Court, file an action in that court and then prove by clear and convincing evidence -- and that is a higher than normal standard of proof -- that the person doesn't meet the criteria. If we manage to prove that, what happens is the court simply says, you're not a subsistence user. And then as long as they don't go out and continue to engage in subsistence activities. That's the end of it. If they do, then

they're liable to criminal prosecution. I would also note for the record that the state only has one attorney who deals with these particular type of matters - civil enforcement of fish and game issues. Lance Nelson, who's been involved with us on this. His time is pretty fully taken doing things like seizing factory trawlers off the offshore of the Gulf or other places. He's up there on a case right now where if he wins the state is going to get sixteen million dollars. So in general, we're going to think things like that are a lot better use of his time than going out and trying to prove folks aren't subsistence users in the villages.

Next is in the level of the midsize communities, twenty-five hundred to seven thousand. An actually, there's only seven communities in this size. And they are: Bethel, Nome, Kotzebue, Barrow, Cordova, Petersburg and Unalaska. In those seven communities, we can show, through a lot of information, that the majority of those communities are subsistence users. But not the vast majority. And so what we require them to do is simply sign a piece of paper, a statement asserting that they meet the criteria. When they make that signature, then there is a presumption that they qualify. Again the state has the ability to go in and rebut through court -- at this time, it just requires the normal preponderance of the evidence.

And then the urban areas. One of the things, again, our research shows is that its actually only a very small percentage of the urban residents who would qualify for subsistence use. So there, and because we're dealing with enforcement problem and how do you sort through all those people, we put the burden of proof on the applicants. And they can apply through an application process through the Department of Fish and Game. The department will review it and they'll either accept it or reject it. If it looks like simply the person needs some help, they'll give them the help. but then and if they

SENATOR KERTTULA:

Or from the IRS, if they want help.

MR. CAMPBELL:

That's right, sir. But and then they get to make that distinction. We feel that a fairly small percentage of urban residents would choose to live their life in a way that would qualify them. But they would have that. And here, let me mention just a couple things about the population breaks that we use. We very purposely and intentionally used the same population breaks that the federal government has used. The federal government says under twenty-five hundred they presume to be rural. Twenty-five hundred to seven thousand they make no presumption about and over seven thousand they presume to be urban. So we used those same breaks. And we use them a little bit different way. But we were trying not to be too far away. We're not saying that complies or matches, we're just trying to be as consistent as possible.

We also, through this use of the application process and allowing urban residents to qualify, when we deal with the issue that we discussed here a little bit yesterday. Where for instance, under the federal system, Sitka or Kodiak or others moving to out of rural status into urban status under the federal system, no one in those communities would then be eligible for the same [indisc.] that our group of people who are subsistence users.

Next, let's see. We come to the criteria. And these actually start pretty much on the top of page seven. The Council probably wrestled with the criteria more than any other section of this bill. And the problem we were trying to face with these criteria was getting a set of criteria that describe subsistence users throughout the state. That we're not going to exclude somebody but at the same time aren't going to qualify half of Anchorage. And we wrestled around a lot with what things can you say about subsistence users? What things could we think are hallmarks of a person who actually engages in subsistence use? And I'll just run down through them real quickly. And the first four of these I would mention, each have a mandatory minimum. Because the Council agreed there's a minimum figure. If you're not exceeding this figure, you're not a subsistence user. So if you

miss any one mandatory minimum, you're out. But if all you do is hit the four mandatory minimums, we specifically say that the scoring system has to be that if all you do is hit the four mandatory minimums, you're not going to qualify. It requires more than that. I should mention, we finally settled on a point scoring system in combination with criteria and we require the Boards to set up the points scoring system. But we give them at least a very detailed thing of something we think works well on a one hundred point scoring system. And again, here in your book, are a lot of case studies on actual people on how this would work and would apply. It's Appendix E. And what we then did after we set all this up was the scoring system, is the Council sat around the table and we ran just about everybody -- all the extremes we could think of through this system. The health aid in Tanana. The people in Bethel. Folks in Anchorage and Sitka, and all over the state. And what we found is it tended to sort folks out. Not tended. Actually, almost without exception did the folks who we were saying, yes, they should be subsistence users were qualifying. And the folks we were all very intuitively know that a person should not be a subsistence user were not.

So again, I'll just run through the criteria quickly. You get points for the number of pounds -- page seven -- the quantity of fish and game consumed by the person and the preceding twelve months with a mandatory minimum of one hundred and twenty-five pounds. Next you would get points for the number of species or groups of species of fish and game from the use area which you used in the last twelve months with the mandatory minimum -- here we told the Board to set the mandatory minimum. Set it by regulation based by region by species diversity. Because we were in a situation where we tried three and we tried six and we tried a whole bunch of stuff. But the problem was down here in Southeast or in Southcentral and the marine coast, there's a tremendous abundance of species. When you get up in the Arctic and Interior and there are many fewer species available. So we said the Boards to set the minimum number by region. And then we

also instructed them -- we thought it would be useful in setting that to group species. And we suggested a grouping of species that would run along the lines of all saltwater fish except salmon. All freshwater fish except salmon. All upland birds, all water fowl, all small game, all fur bearers, each individual big game species, each individual marine mammal species, and each one of those would count. And we realized and we talked about the fact that by including marine mammals, that you'd be able to get points for each individual marine mammals, that that does provide some inherent advantages for Alaska Natives because they can hunt marine mammals where as non-Natives can't. And I think the whole Council felt good about that. Felt that that was okay.

Next is the issue of the number of days in which you've spent either taking or processing in the subsistence use area. And to qualify here, we're talk about this in detail in the section, don't have to spend eight hours or the whole day, you just have to spend a portion of that day and we came down to that you have a mandatory minimum of thirt days that you can get extra points for as many days. And we said, you know, somebody hasn't spent at least a portion of thirty days harvesting or processing or whatever we didn't think that they were probably engaged in a subsistence way of life.

And the next, number four, we said subsistence tends to occur not just somebody who goes out and does it for a month. But it's something that's year long and it has a seasonal cycle, and availability of resources. So to try to attempt to get at that, we gave points for how many months was your activity spread over. And we require a mandatory minimum of four months.

And then the next was the issue of -- those who -- by the way, that's the end of the ones with the mandatory minimums. Next you can score points for, but if you don't get any points in, you're still okay. The number of weeks in the preceding twelve months during which the taking or processing of fish and game was your principle work effort, with a maximum consideration of twenty-six weeks. The number of weeks that that was the main

thing that you did. You did that more than you did anything else. And there's a lot of talk in the Council, and we all agreed, that subsistence has value as a economic system. That it has worth. There was a lot of talk that went round and round about economic need or sort of subsistence as welfare. The Council rejected that notion. But they said they do want to give credit that if somebody's put in the time and spending time on subsistence more than anything else, they ought to get credit for it. So we included points for that. The maximum of twenty-six weeks is simply that if we allowed more than that we get overpowered in the point system and throw it out of whack.

Next, item six, line twenty-five, is the number of households other than yours with which you share or which share with you. Because we al' talked about the fact that one of the hallmarks of subsistence is sharing. Sharing between households. And we also -- this helps us -- it's not just not how many households you give resources to but how many households give resources to you. So if we have, you know, an older man or woman who no longer gets out and actively hunts and fishes but a number of families help, give them a little as often happens. That helps them qualify for a subsistence users.

And then the last one, number seven, was whether the persons taking of fish and game occurred solely in the subsistence use area. And again, this isn't a mandatory requirement. You can have fished and hunted all over the state, and still qualify. But you can get points if all of your fishing and hunting occurred right there in your area. Because again, one of the hallmarks that members, particularly rural members, talked about was that subsistence is something you're doing as efficiently and effectively as you can. It's not flying all over the map for the thrill of it. Just going only as far as you need to to harvest. So we give some minimum points for that.

Next in (j) on the bottom of page seven, we say if you don't meet all the mandatory minimums, you don't qualify. On (k) on top of line eight -- I mean on page eight, we specify that you qualify

for this. That you're taking, processing and use must have been legal. You don't qualify by, yes, I got it, but I got it through poaching. It would have had to have been non-commercial. It would have to been characterized by efficiency and economy of effort cost and transportation. Let me speak to that just real quickly. We talked about, should we put on limits about you can or you can't use airplanes. Or you can or can't do this. And the application that an urban resident will fill out and again, there's a sample of that in your book as well. Ask questions about was this taken with a plane or not. But we didn't make it an outright prohibition because if you have an old Taylor [ph] craft and you park it in your yard and you fly it on regular gas and you take off and land on the highway in front of your road, that's a pretty darn efficient way to get around. But if you're chartering all over the map it is certainly not. So we asked that kind of questions. Same thing with fishing. Fishing with rod and reel, say I'm out fishing halibut or whatever, can be pretty efficient. I also fly fish. But at least my fly fishing is neither efficient nor economical. And so what we're saying is you can qualify if you've been doing stuff through subsistence you can qualify under that. Anybody anywhere in the state wherever they are located can qualify by harvesting what's available to them under sport fishing, personal use fishing or general hunting regulations. So this is very definitely not a closed class. Anybody who suddenly decides I really want to live the subsistence way of life and is willing to live their way of life can do so. I just think that's important, that under this bill there will not be a single person in this state who wants to live a subsistence way of life, who is denied that right or opportunity.

Next ...

SENATOR KERTTULA:

He wishes to ...

UNIDENTIFIED SPEAKER:

What about the people that are in the park preserve?

MR. CAMPBELL:

Sir, we actually looked at that and if you happen to live in a national park, they will make it more difficult for you without a doubt. But still the resources that will be available to you we think you can qualify if you apply yourself without any that problem.

Next just on line five, we simply included a provision that if a person has say, been in the hospital or been in military service or has been at full time attendance at an educational institution outside the subsistence use area, that does not qualify them. They can go back to whatever twelve months was immediately preceding that terms. We wanted a situation where a young man grows up in a village, Bethel, or wherever and decides to join the Navy and see the world, does that for a couple of years, comes back and moves into his community, that there's no question that he can return to the subsistence way of life. Same thing if a person is in the hospital or goes to college. Mr. Demientieff uses the example of daughter. He has a very lovely, bright daughter. And to get the program she needs she's going to school outside of the state. But I think she is a subsistence user by anybody's definition. So when she returns, she continues to be eligible.

Next, page eight, line nine, subsection (1) the commissioner has to provide for expedited review procedures for people that the department says don't meet the qualifications. The department reviews somebody's qualifications and says, we're sorry, you don't qualify. There's a review procedures where ultimately Carl winds up saying, yes or no. And then, if that person still is not satisfied, they can appeal that to the court system.

Going down to (m) line twelve, fish stocks and game populations or portions of fish stock and game populations not identified under (a) may be taken only under non-subsistence regulations. This has two effects or two impacts. One is if a fish stock or game population has not been identified as being customarily and traditionally used for subsistence, then it's exempt from subsistence. Let me give at least some specific

examples. Bison in this state has been an introduced species that have never been used for subsistence. They would continue to be available under general hunting but the subsistence preference would not apply to them. So anybody who wants to hunt bison under the general hunt but subsistence wouldn't come in and have a preference.

The other effect that this has is under old rural urban the stocks and populations in the urban areas were not subject to subsistence. And we provided that people in urban areas can be a subsistence user. But we've also -- we talked about it a great deal and the Council finally said, but if we have a situation where people are going down and putting subsistence nets in the Kenai, we are not going to meet what was -- actually it was the state goal of the AFN but it was one that every single member agreed with totally, and that is that we need to achieve long term political and traditional stability in whatever we do. And we said if we wind up with subsistence nets in the Kenai, that is not going to give us either long term political or traditional stability. So we excluded the stocks and populations in the urban areas. So then folks say, wait a minute, then. It's a hoax. If an urban resident qualified for subsistence with the stocks and populations that are there, you can't get them. I would like to just use an example. Since we're sitting here in Juneau, let me use an example of Juneau. [indisc.] The urban area that's closed -- I don't know if you all can see from there, this tiny little pink dot right around Juneau. For those who can't see it, that's a dot that's prescribed as roughly [indsic - cough] south of Point Bishop, west of about Point Retreat and north to about Echo Cove. Just a little bigger than the Juneau road system. But a person who is a subsistence user in Juneau who is qualified, the subsistence area they are qualified to participate, they can go this far north, almost all the way to Yakutat. They can go all the way west to the outer coast. They can far south almost all the way to Ketchikan. Anywhere in that area. They don't have to travel that far. They can just go right around here to Taku River

and particiapte in a [indisc.] harvest. Those are places easily reachable where they can participate in subsistence activity. But what they cannot do is go out and stretch a subsistence net out here by the DIPAC hatchery. Unless Senator Duncan wants to offer an amendment to make that possible.

Then going back -- now the next section is subsection (n), line fourteen, and this simply states that fish and game taken under subsistence is subject to these various things, open and closed seasons, limitations on methods and means, marking and identification requirements. The list that is here is exactly the list that is the list of regulatory measures that the Board of Fish and Game have at their disposal. So we said, yes, you could use those measures to regulation subsistence was appropriate.

Then we go in -- we are starting to get into the definition section here. Some of the definitions are actually integral to the bill, some are contained in 268 and some are back in 940. But the next definition -- the first definition is the issue of "reasonable opportunity". And this is one we also spent a great deal of time on. In 1986 this Legislature debated at great length the issue of subsistence. You passed the subsistence statute. And one of the things that this Legislature did was adopt the standard of "reasonable opportunity" and provide for subsistence. Because there was -- how much do you have to provide? You have to provide everything that anybody wants? Do the Boards have the power not to to provide enough. So they adopted the standard. And in most cases in the state, it's worked well. But there have been a lot -- a number of cases, too many, where it hasn't worked too well. In general, the problem is it hasn't been a good -- there hasn't been any definition of what "reasonable opportunity" is. And the Board of Fish and Game, as much or more than anyone else, said we want better guidelines. We want better guidelines of what you're talking about. So what we've laid out is we've said, reasonable opportunity is an opportunity determined by the Board allowing the subsistence user to participate in the hunt or fishery that provides a normally diligent participant. And the

Council put that in because they said we don't folks saying I have to have the opportunity that I can sit in my yard until a goose comes by [indisc.] season opens and a goose walks through my yard. But we said, "a normally diligent participant with a reasonable expectation of success of taking of fish and game." But then we also talked about what reasonable opportunity is not. We said it's not a guarantee of the taking of fish and game. It's not a guarantee of the hunt or the conditions of the hunt or fishery. It's not a guarantee that you will get everything that you may want or need. Because fishing and hunting you cannot provide that kind of guarantee though I've run into some folks who would like to try to have the courts mandate where that kind of guarantee is provided. But we also said there have been a number of problems caused and a number of suits and things caused by the Board provided under the guise of reasonable opportunity provided what was actually substantially less than a reasonable opportunity. They really didn't provide an adequate opportunity to go out and get what they needed. And in general we felt that that was because the Board had not looked at the proper things. And so what we've put in here is a list of things that each one of the Board must consider and make findings on. They must consider and make findings on resource population and management objectives, on the estimated harvest per unit effort by the participants. They must make findings on the record on the patterns and the levels of customary and traditional taking and use of the fish, stock or game population. On the migratory patterns and availability of fish and game. We don't give a curve for the seasons or the time the caribou weren't there. On the competition for fish and game from other subsistence and non-subsistence users. And I should mention, originally, we just had that they should consider, you know, here what we're providing reasonable opportunity for subsistence. We just had that you should consider competition from non-subsistence users. But actually it was the rural members of our panel who said wait a minute. We also have big problems with competition from other subsistence users. We have problems

with people up river who are very mad folks from down river because they're coming up and taking all the moose. And so we told the Board you got to factor that into your decision when you provide reasonable opportunity. And then we allowed the Board to also consider other relevant factors. We are almost through this. I apologize for being so long, but I've been trying to go as fast as I can.

The next sections three and four are just straight conforming sections moving numbers around. I'd be glad to go into them if anybody has any question. Otherwise I would go to section five which is the definition of "subsistence fishing". And here we set out that it has to be by a qualified resident. Because in the past it has been just by a resident. One of the things if you're not qualified, it's not subsistence fishing. We make sure that it has to be in accordance with the regulations that are set out for the subsistence fishery. And we also specify on the tail end of this on line twenty-eight, "except for rod and reel". Let me talk about that for just a minute as to why the Council did that.

Since time of statehood, rod and reel, though it's used by many, many of us to catch fish for consumption, has never been legally permitted by regulation as a means for taking subsistence fish. In 1986 when this Legislature debated this subsistence bill there was a great debate about specifically including rod and reel as a subsistence method. In fact, here is a gentleman named Tom Brown, I think, he went by the name of Tom Zebco [ph] Brown who spent a tremendous amount of time during the time of that debate talking to people. And his answer for subsistence [indsics. - cough] was to make everybody a subsistence user, make rod and reel a subsistence and then just let it go. And the commercial fishermen were very, very active in this because they said we have a tremendous problem with that. Because then every single person in the state who fishes with a rod and reel is going to have a clear and outright preference over any commercial fishing. And our enforcement people have also had a substantial preference - excuse me, difference with that because they said right now and