

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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didn't say one way or the other. And I can read what the court win, piece of the courts direction. Then you'll get a sense of its thinking. I'm quoting from page 777 of the opinion. "On their face, these regulations do not conflict with Alaska's second subsistence law. That law expressly authorizes utilization of seasonal and bag limitations up on subsistence hunting. It is neither impossible or necessarily unlikely that the seasons or bag limits as presently constituted would fail to accommodate the customary and traditional uses of moose and caribou by Lime Village residents. Both in terms of the time in taking and the quantities of meat taken. If the required analyses were performed and with a supporting record, the season and bag limit regulations now enforced would survive plaintiffs challenge" The judge then goes on, and I think this is an important part -- equally important part of the opinion. "However, the court feels constrained as a result of its review of the transcripts of the Board of Game hearings which are part of the record, to observe that the Board of Game must in the future proceed with scrupulous care and caution in imposing seasons and bag limits on subsistence hunting. Bag limits and seasons are game management tools which have seen extensive use in Alaska and nationally. These restrictions have typically if not universally, been used to regulate sport hunting. In this case, bag limits and seasons are being applied to a very different type of game use. In its purest form the subsistence lifestyle is quite literally the gaining of one's sustenance off the land. Typically the sport hunter does not go hungry if the season ends without his taking any game or if he has taken and eaten his bag limit. The subsistence hunter who is without meat during a closed season or who has with his family consumed a fixed bag limit, will go hungry unless some other game or fish are available and in season. Hunger knows nothing of seasons nor is it satisfied for long after one's bag limit has been consumed".

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

Just following that. The conclusions that seems to come out of that -- concern out of that was that if you adopted a policy of least adverse impact that you essentially had to virtually eliminate any other use before you applied seasons or bag limits to subsistence.

MR. MITCHELL:

Well, I have an observation on that but then I think Mr. Smith has an observation as well. There is a lot of, I think, analytical confusion between the issue of having to eliminate other uses of a particular game population on the one hand. With respect to the authorization of Alaskans who engage in subsistence uses with that same population, the rules that they would be required to follow in terms of exercising their harvest opportunity. Now back to my -- game is easier than fish if you think about it. If you have one hundred moose that the biologist say are all the moose that you can take in the area safely, then if the people of Lime Village reasonably -- a reasonable person would say they need all hundred hunted moose then isn't that good safe policy as opposed to giving four of those moose to guides to give to trophy hunters from Texas. I mean, you can exercise your own judgement about whether that's a good or bad policy choice but that's the choice involved in cutting out other uses before you restrict Lime Village from those hundred moose. Now once you decide that the Lime Village people are entitled to those one hundred moose, whether or not those are the only moose available or whether or not there are other moose available for other user groups, then you're left with the question that I've just responded to. About what are the fair rules that the people of Lime Village should be asked to observe in terms of going about their harvest activities. And then the least adverse impact standard says that with respect to those particular rules applied to that group of Alaskans, let's look at what the situation is and if you can do

it within a biologically acceptable parameters, well, then let's give them a break. And that's basically the difference there. But I know that Mr. Smith had something to say about it.

SENATOR KERTTULA:

Please ...

MR. SMITH:

I'll be as brief as I can, Mr. Chairman.

SENATOR KERTTULA:

Okay.

MR. SMITH:

As part of some of the work I've done, I have travelled -- we had a project where we went to ten villages in ten different regions of the state and those ranged from Angoon in the Southeast to Koktovik in the north eastern corner of the state. And we held village meetings and asked the people in the villages how they would like to implement what we perceived to be the holding line village. And I can represent -- since I went to all ten of these meetings, I can represent to the committee that in each case the people there discussed with their elders what they felt to be their traditional seasons for example. And the defined times of the year when they do not hunt. They also defined times of the year or species that they felt were inappropriate to hunt for various reasons. Such as pregnant cows. So I think that while the Lime Village case is often called the no season, no bag limit case, in fact the people who are most directly involved with how it would be implemented don't view it that way. But they view it rather as a means to accommodate the way they live as I think the elders have tried to explain to you in these public hearings.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

Thank you, Mr. Chairman. Going on to some of the specific cases and the information that I have is several months old on some of these, but cases that Mr. Mitchell and Mr. Smith are

directly involved in -- the Peninsula Marketing case seems to be combined with the Elim case and I kind of like to know from your perspective because you're both involved in either one of the other of those, exactly what you're arguing there?

MR. SMITH:

The Peninsula Marketing case was brought -- is finished pretty much, Senator. The Elim case involves the issue of whether or not the taking of chum salmon bound for Norton Sound by commercial fisherman of the False Pass area is consistent with the sustained yield subsistence clauses in subsistence priority given the depressed stocks in the Norton Sound area. The case is ongoing. A principle issue on the merits is the significance of the take at False Pass and the extent to which, if that take is significant, the sustained yield clause or the subsistence priority constrained the ability of commercial fisherman to take chum salmon which are heading for Norton Sound. What generated the litigation was that subsistence users in the Nome area have been substantially restricted and in many cases eliminated.

SENATOR HALFORD:

Are you claiming that False Pass fishery for chums must be eliminated before restrictions can be allowed on chum fishing in Norton Sound?

MR. SMITH:

We requested a preliminary injunction that requested the court to halt the interception. However, the department felt it was required to do so. We recognized that that might have forced the department to close the fishery. I think for long term relief, our clients are looking for some way to eliminate the impact of that interception that protects their interests. The streams in Nome are currently in their second generation of decline. The chums have been low for eight years.

SENATOR HALFORD:

But you're asking the court to do ...

MR. SMITH:

We are asking the court -- well, I think ultimately what the relief -- the permanent relief would be a remand to the Board of fisheries to sort this one out, having first ordered to take the allegation to the plaintiff seriously. That there is a significant impact and that that impact has to be ameliorated.

MR. JOHN STARKEY, ATTORNEY FOR ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS:

Senator Halford, I would just like to respond a little bit in that case because I'm also involved in that litigation for a different party.

SENATOR KERTTULA:

First introduce yourself to them. Go through the chair

MR. STARKEY:

Excuse me.

SENATOR KERTTULA:

And three, I don't want four and five answers to a question hear because the timing. I'm going to allow you the privilege of answering, but let's have as limited response as possible because the time the senators is getting critical. I'm under a lot of pressure to get a piece of legislation going here. Please introduce yourself and respond.

MR. STARKEY:

Thank you, Mr. Chair. My name is John Starkey. I'm also an attorney who has litigated some of these issues. On the Elim case, I think it's real important to understand that the judge recently ruled and he, in his ruling said, that he did not believe the subsistence law was the significant issue here. Instead he identified the sustained yield clause in the constitution. And so I think that's just a policy call for the Legislature of course. How to define -- how to understand that term, but to wrap subsistence up in it totally without understanding sustained yield principle would be misunderstanding how that litigation has proceeded.

SENATOR HALFORD:

Just one other question for Mr. Mitchell. The Tanana fish

and game case on sale of subsistence roe. What kind of quantities are being dealt with there in terms of value? What are you claiming?

MR. MITCHELL:

I represent not AFN in that case, I represent the villages of Amonik and Alukinuk [ph] and those villages are not claiming anything. They are claiming that in fact customary trade as it was intended both by Congress and by the Alaska Legislature when it employed that term in it's state law did not include using subsistence caught roe and putting it into commerce [indisc.] quantities that the plaintiffs who are the Tanana Fish and Game Association have requested the state court, not the federal court, the state court to order the Board of Fisheries to allow them to do.

SENATOR HALFORD:

What kind of quantities are they talking about?

MR. MITCHELL:

Senator, without revisiting that record, it's tough for me to do that off the top of my head. I believe that in they were talking about what amounted to several thousands of dollars. Let's be conservative. Let's say \$1000 in way of commercial roe per fisherman. that when you aggregate that to the processor it comes up being a lot of money. And that is why I indicated this is obviously a very difficult issue. Certainly AFN has not taken any position on the merits with respect to what the correct approach is other than to say, I think, that we have identified it as a legitimate subject of discussion. But certainly in that particular lawsuit, my -- the clients that I represent I think are arguing for what I believe would be a definition of customary trade that you would be quite comfortable with.

SENATOR HALFORD:

Which would be consistent with the Governor's bill meaning non-commercial channels or something of this nature?

MR. MITCHELL:

Well, you're opening up, Senator Halford, an opportunity for another half an hour discussion about what Congress and the legislative history would indicate customary trade means. I think I will regretfully but hopefully decline the opportunity. Unless the committee really wants to hear the answer to that question.

SENATOR HALFORD:

No.

SENATOR KERTTULA:

We have some questions. After Senator Hoffman, we'll have a brief recess then come back to order for another quarter hour or so necessarily with AFN attorney's. Then we're going to have a look at the legislation as we left it yesterday evening. Please proceed, Senator Hoffman.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. I have three questions. First one in regard to the ABCP Cooperative management agreement with the federal -- with the feds under ANILCA. I wonder if someone might explain that agreement.

MR. STARKEY:

Mr. Chair, Senator Hoffman. Earlier today when Mr. Suberg was on the line, he spoke about a successful cooperative management agreement that had been fostered through ANILCA with a Native organization, that was ABCP. I guess one of the most disheartening things about this constant subsistence struggle is all the energy that it takes up to litigate issues and those kinds of things. This cooperative management effort that we've been involved in as a result of one of these cases that was brought -- basically what's happened, it was the Kilbuck [ph] caribou herd which was in a depressed state. Through the cooperative management agreement, ABCP has worked with the state biologist, the federal biologists and the villages to develop a cooperative management plan which allows subsistence needs to be met gradually on a permit basis and allows the herd to grow to appoint where all users should be able to bent. ABCP did some

of the cultural and anthropological data gathering and the state biologist and the federal biologist provided all the sustained yield and biological information necessary to ensure that the plan was good for the species and good for subsistence users. And all together it was a very successful effort which is ongoing and being funded currently by the federal government.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR HOFFMAN:

Second question is, what would the federal courts do in the navigable waters case?

MR. STARKEY:

Senator, I'm not sure -- Mr. Chair and Senator Hoffman, on that issue I've noticed that throughout this debate and I don't know if the senators have a copy of Judge Holland's from the bench ruling, the transcript. But I think that all the senators are certainly capable of drawing their own conclusions from that in that transcript. And I have copies for all the senators here which I'll ask the staff to distribute if they would. And I think a fair reading of the transcripts would indicate that there are certainly reasons for both sides to take heart in their arguments and what the success of those arguments might be.

SENATOR KERTTULA:

Thank you, very much.

SENATOR STURGELEWSKI:

So who's going to win?

MR. STARKEY:

Senator, I guess when you ask an attorney that, he always thinks his sides going to win. Or hopes that's the case.

MR. MITCHELL:

Mr. Chairman, I'd like to ...

SENATOR KERTTULA:

Never ask a question, he'll have the answer.

MR. MITCHELL:

Mr. Chairman, I'd like to take the debate just briefly on that.

SENATOR KERTTULA:

Yes.

MR. MITCHELL:

Senator Sturgelewski, I'll tell you exactly who's going to win the Katie John case. All of us sitting at this table, plus all of the lawyers who work for the Department of Law. If this is not settled whoever loses that case is taking it to the Ninth Circuit. Whoever loses there undoubtedly will file [indisc.] somebody's paying us. The people of Alaska are paying the Department of Law. It is this whole subject, to that extent we all have a conflict of interest. The worst thing that we could do for the bar interested in this matter is to not repair this problem.

SENATOR KERTTULA:

Very good. He made his point. You have the floor, Senator Hoffman.

SENATOR HOFFMAN:

Now that the Bobby case has been brought up, I wonder if we could have a comparison of the similarities of that case versus the state court cases?

MR. STARKEY:

Senator, on the -- Mr. Chair and Senator Hoffman. On that case, certainly I suppose the best place to look with the Bobby case is the decision itself. Again I've got some copies of the relevant section of that decision which goes into the standard that Judge Holland applied. It was a very deferential standard to the Board of Game. Actually the decision which followed that, the Morry case, was brought solely in state court. After McDowell ANILCA had absolutely nothing to do with the judge's ruling and the state court judge found that standards even stricter than ANILCA applied to the state law. So I think at least fair and reasonable to say that the forum state versus federal court, is not necessarily any guarantee of one outcome

or the other. Each cases turns on its merits in the law involved and certainly the Morry case is now under appeal at the Supreme Court. And we'll find out eventually what our Supreme Court thinks of that. But at the Superior Court level, the Morry case is more protected than the Bobby case.

SENATOR KERTTULA:

This young man would like to take the copies which I appreciate you're doing our work for us. Thank you. If you need to xerox some, please do.

MR. STARKEY:

Mr. Chairman, I've also got a copy of the Katie John decision. Would you like. And it also on page five talks about the deference that Judge Holland pays to the Board of Fish in recognizing their expertise. So I'd offer this to the Senators if I would.

SENATOR KERTTULA:

Be sure if you run out, just xerox more.

SENATOR HOFFMAN:

The final question, I guess, and I know that there is a lot of problems that we have with the Governor's legislation. But on page six, it talks about establishing the rebuttable presumptions. I was wondering if anyone would like to explain why the inclusion of this rebuttable presumptions is caused problems for many of the communities and individuals in Alaska?

MR. STARKEY:

The rebuttable presumption, as I understand your question, Mr. Chair and Senator Hoffman, would be applied to what we refer to as our regional centers, those populations between twenty-five hundred and seven thousand. I suspect there are several problems with how that presumption might work in the regional centers. Being a rebuttable presumption it could be challenged of course by any person at any time. The ways things work in the regional centers, people transfer in and out of the villages and from Anchorage and although their roots are in the villages in Bethel, at times they go out for either family matters or

employment matters, which may make it difficult for them to meet the criteria which are based on the prior twelve months in time. I think the other thing you'll find in the regional centers that I myself lived in Bethel for the past six years, is that often times the persons who are -- subsistence is a group and a family activity and people who are not directly involved in the gathering, so to speak, harvesting are intimately involved in other aspects of the harvest. And being that it's an individual permit system based on criteria relating to harvesting, et cetera, it may be difficult in family dynamics for another person to qualify as the gatherer. It just doesn't actively reflect how things actually work out there. I guess would be the short answer to that.

MR. MITCHELL:

At the risk of double answers, I would like to make one observation about that.

SENATOR KERTTULA:

Please do.

MR. MITCHELL:

At a policy level, the trouble with this whole rebuttable presumption situation is setting aside the fact of how -- what is the process through which it would be rebutted. Mr. Campbell indicated how there's was going to be Superior Court involved in this. Yet nothing in the text of the Governor's bill that talks about the Superior Court. But more importantly, from the very beginning of the whole ANILCA effort, the issue was not to use regulation to disrupt community village life. We've heard a lot of talk already this morning about how the administration wants to protect, quote, "real", close quote, subsistence users. And we've heard a lot of that kind of rhetoric in the last ten years. And the trouble, of course, is that "real" is in the eye of the beholder. And if all of the sudden you have this rebuttable business, you have people running around in the communities tattling to the state whoever that is. That is not defined in the Governor's bill, that they believe that their

neighbor is not a real subsistence person. You know, I mean, this is a very -- in terms of a policy approach. stands for everything that I know that the Alaska village community on policy grounds has opposed since I first got involved in this whole subject area in the late 70's. It's a very bad and divisive way to divide Alaskans within very small communities.

SENATOR KERTTULA:

If we recess for about five minutes, does anybody else wish to question [indisc.].

SENATOR STURGELEWSKI:

Mr. Chairman, after recess, I would have ...

SENATOR KERTTULA:

We'll take them up then. In about five or six minutes and then if you have amendments to the existing legislation that we went through with McKie Campbell yesterday afternoon, perhaps you ought to have those ready to present in writing.

RECESS

5:20 - 5:30 p.m.

SENATOR KERTTULA:

If there are further questions -- I saw Senator Taylor here. I know he had a question. I think Arliss had a question, Senator Sturgelewski. We are on record and because of the time of day and senators may take more time getting back up here it's going to ask that we proceed. It is being recorded and those members that are here will probably be as much a part of the decision making basis as any group. Senator Taylor, would you proceed. Direct your questions. Thank you very much.

SENATOR TAYLOR:

Thank you, Mr. Chairman. I guess I direct it to [indisc. and Eric. My dear friend, Joe Demmert and I were talking the other day -- twenty-five almost [indisc.] I guess, I know he lives the lifestyle of this subsistence in Ketchikan and I've been very concerned because people in Ketchikan under ANILCA are excluded. [indisc.] these federal regulations become permanent and that weighs heavily. I'm concerned with who is going to

manage fish and game in Alaska. And so I guess my only question really is who does AFN want to manage fish and game in Alaska?

MR. MCNEIL:

Mr. Chairman, I don't think there's any question that AFN would prefer to have the State of Alaska manage all of the fish and game resources in Alaska. We very clearly would like to see a subsistence preference, but there's no question that we want to have the state to be the manager, recognizing that there would still be some room for federal oversight for those standards.

MR. MITCHELL:

Senator, I would just say that, again, without going through the whole presentation all over again, that there is a major difference between what is the administrative agency that actually makes our regulatory decisions and what are the legal standards, of you know as an attorney, that that regulatory agency would use as the basis for making those decisions. I think it's always been the position of the [indisc.] that in the first instance, it is the State of Alaska and it's Boards of Fisheries and Boards of Game that are best equipped to make those decisions. But in terms of the legal standards that would be employed, it is not unreasonable both to have the kind of standards that were in the 1986 Alaska Subsistence statute and also the kinds of standards that Congress thought were in the national interest, with respect to exercising what everybody understands is a very important responsibility.

SENATOR KERTTULA:

Further questions? Arliss, Senator Sturgelewski, you have a questions as were recessing.

SENATOR STURGELEWSKI:

Yes, Mr. Chairman, just a simple question. As you and many people are aware, we're working very hard to try and find a way that we can get a real solution to this and not just part. At least certainly, that's my aim. Mr. Mitchell, you pointed out the section 814 which allows the Secretary to prescribe

regulations. My perusing of certain definitions and the possible amendment of ANILCA was to add some additional, say, direction on that, so that we would, perhaps lessen the number of cases that would go to the court. They're very upsetting in their use of both sides as to why we should do something or should not do something. And I have not seen in the new regulations that are being proposed just what may be added in there in terms of definitions of those.

But I guess, my direct -- and I would ask that staff would provide those to us. In other words, in the proposed Federal Register of the -- just what do we have in the way of definitions? And do they in turn conform with what's in the Governor's bill or what's in the proposed legislation by Senator Adams and others? But I guess my question is, is it not correct, we don't really have to amend ANILCA to get that? Do you think that that would be of some benefit to attempt to get the Secretary through the rulemaking power to work with the state in defining such things as "customary and traditional", "customary trade", et cetera? So do you think that would then lessen the potential for lawsuits?

MR. MITCHELL:

Part of the texture of Alaska, Senator, is Alaskans not taking guff when they think they've been mistreated and so unfortunately the idea that we're ever going to lessen lawsuits is probably a hopeless task for us all. With respect to those lawsuits prevailing, certainly the more certainty - the more clear direction that they can be given to the Board of Fisheries and to the Board of Game, the less likelihood that they're going to act in ways that are misdirected. So certainly the short answer to your question is, yes, I think the whole process could profit from such an exercise. And I would suggest that the whole history the regulation in this area beginning in the early 1980's was a combination of -- to put it bluntly, some members of the Board of Fisheries and the Board of Game who did not like the state law and federal law that they were given and purposely

chose not to obey those directions. That's a subject obviously that's serious. But on the other hand, there are also, I think to be fair, members of the Board of Game and members of the Board of Fisheries who really wanted to try and do the right job and it was a very confusing legal and regulatory situation for them. And they really didn't have a lot of information that they needed. So I think there were two kinds of folks struggling with this during that crucial era in our history of this whole statute. So certainly, if the Secretary of the Interior, after all of this was over, and the state complied with ANILCA and we're all back into rowing oars in the same direction, if he, with the cooperation of the state wanted to engage in rule making and Alaskans through the rule making process to send in their suggestions about these definitions, and really take a hard look at what Congress intended in some of these areas, that would be a very useful endeavor that could go a long way to ending a lot of these uncertainties.

SENATOR STURGELEWSKI:

Mr. Chairman, just very briefly. What would be the areas that have caused the lawsuits? We know that customary trade has. We know that customary and traditional has. What other issues have caused lawsuits? In terms of the definitions?

MR. MITCHELL:

I think that you have indicated the obvious ones. But I don't really think it profits this exercise at this time to try and really go through and look at all the different words in Title 8 that need to be -- that would profit from having some regulatory definitions. I think that's a very technical exercise and I think starting at page one and going all the way to the end and seeing what these phrases are that lawyers think both that causes problems in the past and also can be reasonably expected to give rise to some ambiguities in the future. And then flagging those words and then putting that out in a rule making and see what kind of public comment you get back about what people believe Congress intended specifically in this area.

Which would be very useful. But I'm not trying to duck your question, Senator. It's just that there may be some obvious words and phrases that have gotten a lot of press today but there may be some others in there that could give us the same kind of trouble five years from now and if we get to that right now we wouldn't have the problems that we have today with the ones we didn't address five years before this afternoon.

SENATOR STURGELEWSKI:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

Are there further questions. Senator Duncan, has -- excuse me, Senator, you have the floor.

SENATOR DUNCAN:

Mr. Chairman, just one question that I believe Mr. Mitchell to respond to. This morning there was quite a bit of discussion by the administration concerning the memo that Department of Law had written about the impact of a constitutional amendment giving a priority to subsistence, the impact [indisc.] ANILCA that that would cause. I was wondering if you could comment on that.

MR. MITCHELL:

Surely, Senator, just briefly. To date, before that memo was distributed -- at least all of the people that I'm in contact with we have always viewed that the priority for subsistence that would be in the text of the amendment that has been offered to you dealt exclusively with the issue of how you divide up the number of animals that are available. That it did not reach, and it was not intended by either Senator Hoffman or any of the other sponsors, to reach the issue of land use decisions regarding land the particular game populations might be on or particular fish populations might swim over. So we were really quite startled in a technical sense when these arguments first surfaced. If this is a problem, if people are uncomfortable, it is very simple technically -- this is your constitutional amendment, if in your policy judgement you choose

to pass it. It means what you indicate to the people of Alaska you intend it to mean. If you do not intend it to mean that it reaches land use decision making, it is very simple for you to say that. Both in this record, in letters of intent and in the statement that would go on the ballot that we describe the legal affect of this amendment for the voters. If this is a problem at all, it is a problem with a very simple technical [indisc.] in my legal judgement.

SENATOR KERTTULA:

Are there further questions of this distinguished group? You have the floor, Senator Halford.

SENATOR HALFORD:

Mr. Chairman, this is somewhat a management question, but I think they have also kind of thought about this one, too. But how are we going to avoid weak stock management under an absolute priority? The weakest stock is subject to maximum opportunity and minimum interference and that stock is mixed at the points of harvest. What do you do?

MR. SMITH:

Mr. Chairman, Senator Halford, that issue occupied, I would say conservatively, two full days of a four-day trial in Nome on the Elim case. It is a very complicated area. I guess the short answer to your question would begin by saying that at present, as I understand the managing practices at least on the Yukon River about which we received considerable testimony - they engage in weak stock management on that stream at this time. The supervising biologist there talked at length about how they structure the fishery openings and the way they distribute fishing efforts throughout the Yukon, all twelve hundred miles of it, through the six commercial sub-districts. In an effort to make sure that the exploitation rate on a particular weak stock does not get too high and that they try to distribute fishing efforts so as to avoid impacts on what they consider to be weak stocks. There was also testimony that on several of the index streams for the fall chum run this year -

if the run looks to be so weak that they are going to be closing commercial fisheries downstream -- and as Mr. Starkey pointed out, this is not a subsistence consideration, it is a sustained yield consideration that they are dealing with. So I guess, my answer, Senator Halford, without getting into all the details - and I'm not a fisheries biologist and I'm working more off what we learned in this litigation, there is a weak stock management policy now that seeks to minimize the impact on weak stocks in a mixed stock fisheries.

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

Just trying to figure it out [indisc.] response. The concerns that if you have an absolute priority and the priority is on the stock that is mixed and the weakest, that you don't end up having to destroy the commercial activity on all the stronger stocks because there's no way to harvest them other than mixed.

MR. MITCHELL:

Senator, at a policy level, the issue of mixed stock fishery management has been going on as a separate controversy independent of subsistence, again, as long as I have been working in this area. You may recall, that the Board of Fisheries had a policy that it never adopted as a regulation that said in its professional judgement as a general proposition, mixed stock fisheries are a very bad idea. For the very reason that many of the people we have been involved in representing believe it to be so. Which is that you have no idea what's going on inside a fishery with respect to those individual stocks. Whether it is a good idea or a bad idea is an issue that's got nothing to do with subsistence. I think it would be fair to say, just to test that theory, and again, I really don't want to cross pollinate that very emotional issue with this one. But if you think about some of the mixed stock fisheries that have attracted so much heat lately, if they did

not exist -- let's be up front and talk about False Pass. If False Pass fishery did not exist and someone thought up this great idea, they looked at the map and said, hey, you know, all the fish in western Alaska shoot through this funnel out there. Let's go to the Board of Fisheries and have a fishery. Now if that fishery doesn't exist and the proponents of that idea went to the Board of Fisheries just straight today, without that whole history of that fishery, and said, we think this is a really good idea. What would the biologists say of that proposition? They'd probably say, no, it's not a very good idea. We wouldn't know how to manage that fishery. We don't know what's going on. But the reality is that lot of those fisheries do exist. There are Alaskans that have grown to depend on those fisheries, and it creates a very difficult interaction between professional management on one hand and the legitimate needs of Alaskans on all sides of the issue on the other. But the reason I mention is that to attempt to deal with that one, in the middle of trying to deal with this one, is a truly heroic, and indeed in my view, professionally impossible task.

SENATOR HALFORD:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

I don't disagree with what Mr. Mitchell said. I'm afraid that we add, particularly the constitutional part -- you add another element that may make that more difficult.

MR. MITCHELL:

Senator, I would agree that because a number of these stocks are the subject of subsistence harvest at the end of the line ... [tape ends midspeech].

Tape 92-13

Side A

[Tape begins midspeech]

MR. MITCHELL:

... taken out of the hide of some Alaskans that don't have a lot of other places to go. So certainly, you are correct that to that extent the fact that subsistence is involved in terms of the ultimate harvest of some of these stocks [indisc.] streams, makes the mixed stock fishery problem that much more difficult. But it also, I would argue that an advocate indicates why originally before this [indisc.] issue got so politicized, the biologists told us that that was not a very good management approach to be in.

SENATOR KERTTULA:

No further questions. I thank you. I would ask -- yes, you have the floor, Senator -- excuse me - Senator Collins.

SENATOR COLLINS:

Thank you, Mr. Chairman. I do have a question [indisc.] I came in just as you were finishing up I believe with a question that one of the members and you indicated that at it was in your best interests in terms of the result that you might see [indisc. - cough] how Alaskans manage our fish and game. And I have a question. How does that conform, isn't there currently a lawsuit requesting the federal government to [indisc.] fish and game -- my question is how did that conform with the lawsuit that was currently ongoing? And secondly, how would the lawsuit impact the legislation that's been proposed by Senator Adams? [indisc.] that they all work together or they kind of different parts ...

MR. MITCHELL:

The answer to the second question first is that if, in fact, a constitutional amendment were enacted it would authorize you and the House to adopt Senator Adams' bill. That would moot the issue -- state regulation of all of our fisheries would return to state hands. That would moot as Mr. Suberg said Department of Interior, the question of what is the reach of federal jurisdiction. It wouldn't make any difference because the Alaska Board of Fisheries would be regulating the whole

thing. You wouldn't have to decide a lot of those questions that he didn't want to give answers to. So to that extent it would be very helpful.

In terms of the seeming inconsistency of on the one hand saying that it would be best to have the Board of Fisheries regulating our fisheries, and on the other hand getting involved in a lawsuit to take away that authority, the answer to that is, I think, what we said from the outset. That the Board of Fisheries is the best group to do that, if they use legal standards for exercising that important responsibility, that actually safeguard people out in the village at the end of the line. And that, with all due respect to the present members of the Board, that the past history of regulation was that when those standards were not in place, many people out in the villages just felt that they did not get a fair shake. And so if it's a question of the Board of Fisheries again being just given a blank check without the kind of legal direction that you gave to them in 1986 when you passed the Alaska Subsistence Statute, then I think that there are many people that think -- you know, it's a Hobson's [ph] choice, having those standards implemented by federal regulator until such time as the state can get back involved with those legal standards is the better of the two unpleasant results.

MR. SMITH:

Mr. Chairman, if I may add one thing. Senator Collins, another element of this is the all Alaskan policy problem. That the state management currently treats all Alaskans as eligible for subsistence fishing, which is not very protective of the villages. And the federal government, and as we all know too well, restricts the priority to rural people. And so through federal management, you reduce the pressure on the resource, that improves the opportunity for subsistence uses in the villages.

And I think that's another reason. There's just a general belief that the protections in the federal law are greater than

the status of the current state law, given the McDowell decision.

SENATOR KERTTULA:

Are there further questions? Thank you very much. We may ask if you participate in the days to come here, and I hope there aren't many -- more like hours to come. I would ask the Commissioner of Fish and Game, to maybe come forward now, along with Mr. Nelson and our two attorneys for legislative agencies. Thank you again.

MR. MITCHELL:

Thank you, Mr. Chairman. We appreciate the opportunity.
[simult. speech].

SENATOR KERTTULA:

We have the bill back before us and presuming there were some amendments that have been prepared, I've asked that to the maximum extent possible, that you hand those amendments in tonight and early tomorrow morning at the latest. I think that's fair to everybody so we can have them typed up and looked at. And if there are none, that indeed will be fortunate.

Are there questions about the bill? You've had the report yesterday as well as a sectional analysis and I also realize that you've been busy from morning to night -- all of us. So you probably haven't had much more time than I've had to restudy the issue. Senator, Mr. President.

SENATOR ELIASON:

Just one question. I'm a little concerned about the paperwork involved in this process. Once again, the question is do those people living in the communities of twenty five hundred or less, are they required to go through the paperwork scenario also?

MR. NELSON:

Senator Eliason, Mr. Chairman, the bill specifically provides that in communities under twenty five hundred that there is no paperwork. In fact, it explicitly states the Boards may not require a permit or [indisc.] from the state [indisc.]

person that meets the requirements. No additional paperwork of any kind.

SENATOR KERTTULA:

Are there questions -- can I go around the table? You have the floor.

SENATOR POURCHOT:

[Indisc.] basic question about whether this bill is constitutional and I think we heard from the Attorney General's office on why he felt it was constitutional and we've gone through some examples about -- it is permissible to let different residents have a different level of paperwork than other residents. I got to thinking about that later though and maybe in some of these cases, it's not just a matter of filling out form or not. And to follow up on the question by Senator Eliason. Even if you live in a community of less than twenty five hundred you still have to meet the requirements. You don't have to prove that you meet the requirements [indisc.] but you have to. And if you're an honest person, you would have to do it. Not only that it's [indisc. - cough] to go in and prove somebody has to.

So then it seems like you get into the situation like, let's take Palmer or Sutton versus Glenallen [ph] And you live on the outskirts of Palmer on Sutton -- I think Sutton is part of Mat-Su [indisc.] Let's say you're in Sutton and you call yourself a subsistence user. But you're under the road system seven thousand so you got to go through the seven point planner [indisc.] and score a certain score. Down the road in Glenallen a town that's actually maybe bigger than Sutton, on a road system but they're not considered part of the Mat-Su road system. They're less than twenty-five hundred. So the [indisc.] on district manager lives there and he makes about \$55,000 a year but he probably lives a rural subsistence kind of lifestyle or thinks he does. He doesn't have to take the test. Both these people -- if he were to take the test, he would score eighty-four. The guy in Sutton would score eighty-four too or

he has to make that so he does score eighty-four and he doesn't make enough points. So he's denied but the [indisc.] district manager were to take the test he'd score eighty-four, too. But he doesn't have to take the test and he is he is a subsistence user for purposes of enforcement -- for all practical purposes. So they're similarly situated on an objective basis, but one gets subsistence privileges and one doesn't. That seems to go further than just the people of differences [indisc.] and maybe how does that rationalize this constitution -- under the Supreme Court decision in McDowell?

MR. NELSON:

The current statute, the bill, the way it's written, it does contemplate that this will be over inclusiveness allowed at especially the village level, under twenty-five hundred. There will be people there who will be able to hunt and fish even though they're not qualified until the state goes and proves that they're not. And then that's -- assume there is going to be some leeway there, some over inclusiveness on that. The justification comes from the fact that the percentage in the communities that they live in, if there communities meet the criteria as required and it isn't just the population. It's also the community has to demonstrate a substantial actual dependence on subsistence. If that community is categorized that way there's a factually justified, I think, presumption based on -- assuming a higher percentage of qualified subsistence users in that area. And there will be some cases that it won't work out perfectly fair. It isn't a perfectly matched system. And so there will be cases like that. There won't be nearly as many as under any other bill that I've seen. But the council realized that there would be that. But I think some of the values we discussed today, the idea of not being over divisive in the smaller communities especially, those are the reasons -- it's more difficult for me as a state attorney to disqualify people through some kind of action.

SENATOR POURCHOT:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR POURCHOT:

What you've just answered, ironically, is the reason why ANILCA chose rural as [indisc.] definition. That's the same rationale. Part of it was not wanting to get into to small communities and choose between the people, not only from a mechanical paperwork standpoint, but also from a cultural social standpoint also. But ...

MR. NELSON:

Can I comment on that? ANILCA is a much, much, much rougher cut. It doesn't even come close really to even factually justify the presumptions of rural versus urban. In this case, you'll see a closer tailoring and the real problem that McDowell saw -- McDowell did focus on, I think, is not as much the over inclusiveness as the under inclusiveness. The fact that there are definitely people in the state who are living in urban areas who are just as dependent actually on fish and game for survival and for consumption and feeding their families as there are people in the village. Not as many. Obviously, we recognize that by the presumptions that we put in. Not nearly as many. But those people will be allowed to participate. Albeit through a more burdensome permitting system to be able to do it. But they will nevertheless be allowed to participate. That's one of the reasons I think this bill passed the state constitutional muster as well as being more fair than ANILCA -- than ANILCA was.

SENATOR KERTTULA:

You have the floor.

SENATOR POURCHOT:

So you're saying that your reading of McDowell as -- opinion as you read it was that it 's okay to deny the man in Sutton who didn't score enough points and allow someone with the same point total to participate. That's the less of a problem

under the constitutional provisions for equal access, equal protection, than to deny someone in Sutton who scored one hundred and ten or enough qualifying points that that is more [indisc.] to allow people who score high as subsistence users to not deny those people rather than allowing people who may not be, quote, "true subsistence users" or [indisc.].

MR. NELSON:

I did think that the Supreme Court of Alaska in McDowell and in other decisions vindicated it that they viewed that deprivation of someone whose equal to somebody who gets the opportunity and they both have clearly demonstrated reliance, is more serious than including someone who may not quite make it but he lives in a community with a very high percentage of people that do. And frankly, it would probably be an ideal world, it would be more fair to require the same exact per basis of everyone. But I think the council recognizes they flat don't have the resources to be able to do that. They realize what an administrative burden it would be if you were going to try and do that. And also in the considerations of the disruption to smaller communities and that was a concern. And that was the other reason they specified we try to do that through recent amendments to the bill to clarify that only the state would be in a position to challenge someone's qualifications. A private party will not be able to do that.

SENATOR POURCHOT:

Mr. Chair, I have one small ...

SENATOR KERTTULA:

Certainly.

SENATOR POURCHOT:

One small question. On poundage requirements under the point system and I -- when Mr. Campbell was talking about the history of one hundred and twenty-five pounds is some basis for that. How does the -- it says since the first person [indisc.] but yet it goes on and talks about sharing, sharing for other households. How does the poundage relate to numbers of people

sharing? That gets to be a lot of poundage if its really per person. [Indisc.] than I do, I know. That's still per year particularly if it were per person as opposed to per family and that seems like a very high threshold to me. To be so high as not to relate so much to subsistence as to relate how much meat a guy likes to eat.

SENATOR KERTTULA:

You have the floor.

MR. NELSON:

Mr. Chairman, Senator Pourchot, we do admit that a vegetarian does have a definite handicap under this. First off, this is consumption per person. This is entirely separate from sharing. But how much a person consumes is -- we specifically made it consumes versus how much a person took because while a typical anchorage hunter may go out and take a very large amount of meat because then he spreads it through the rest of his family [indisc.] it just worked out much better for qualified subsistence users to use consumption. In terms of how we actually arrived at one hundred and twenty-five pounds, we looked at several figures. The average man, woman and child in the western United States consumes two hundred and twenty-two pounds of meat, fish and fowl a year from all sources. The one hundred and fifty pounds of meat, fish and fowl per year will supply one hundred percent of your protein requirements. The average subsistence user, and I should use average very carefully because there's a big difference when you look around the state. But an average -- is down to the average subsistence user harvests three hundred and fifty pounds per person per year. Subsistence users tend to consume a higher quantity of meat, fish and fowl than non-subsistence users because in this average western United States diet that I talked about, a relatively high percentage of protein provided through milk products and other such substances.

SENATOR COTTEN:

Did you mean harvest or consumed three hundred and fifty?

MR. CAMPBELL:

Excuse me, the three hundred and fifty is harvest. We do not have actual consumption figures. But almost all of [indisc.] some form of harvest. So basically, what we looked at -- oh, I know where I was. The average subsistence user didn't actually consume a good deal -- higher pounds of meat fish and fowl because they are not just consuming generally to meet their protein needs, but also consuming it to meet caloric needs that the rest of us tend to meet through all kinds of other food sources that are available to us. I think everybody on the council agreed that the one hundred twenty-five pounds was actually a relatively low minimum figure when we're talking about subsistence use.

SENATOR POURCHOT:

Mr. Chairman.

SENATOR KERTTULA:

Questions around the table? Senator Zharoff.

SENATOR ZHAROFF:

I just have a question here. Kind of an interesting one. How does this deal with somebody, let's say, that has just moved -- I think the bill there probably just assumed everybody is going to stay where they are. But how does it deal with, say for example, somebody that moves from Anchorage out to a small community out there and they can't substantiate any type of a track record. Or if they move into an area where they have to document there that they have had some subsistence take.

MR. CAMPBELL:

Let me [indisc. - cough] both of those scenarios real quickly. If a person has lived in Anchorage and has not been a subsistence user in the past and then he moves up to Chufaluk [ph] at that point he is living in a town where he is presumed to be a subsistence user and he may legally go out and participate. That person may choose, if they wish to, if they're extremely scrupulous about this, to just go either -- if they don't want to go out and subsistence activities, they can

go out and they can harvest meat, fish or fowl on a general sports fishing or personal use fishing. This would be the circumstance say if the same person from Anchorage moves to Bethel, where they would be required to sign a form where it simply says, I meet the criteria to assert the presumption. In order for them to do that, if they do not have any prior history of use, they would need to harvest meat, fish or fowl, through sport use, commercial and general hunting. And one of the things we focused on and looked at very, very, carefully with the Department of Fish and Game is making certain that anywhere in the state you can meet all these requirements relatively easily through the sport, general hunt and personal use fishing standards. I think a similar question came up with Senator -- yesterday Senator Halford asked what if you lived in a national park? We acknowledged that might make it little more difficult but we feel you would still pretty easily meet it.

SENATOR KERTTULA:

Senator Adams was seeking the floor. Or are you ...

SENATOR ZHAROFF:

Just a quick clarification. So what you're saying then is that if you take an animal by sport hunting license, it's basically personal use that that poundage counts there towards your ...

MR. CAMPBELL:

Yes, sir. On page eight, starting on line one, subsection (k), it says, "The taking, processing and the use of fish and game to count toward qualification must have been legal non-commercial and characterized by efficiency and economy and effort, cost and transportation." I believe I talked a little bit the other day how certainly there are some types of sport use that would not qualify, if they are not efficient or economical. But you can -- under available regulations everybody would have the opportunity to engage in activities that would qualify them.

SENATOR KERTTULA:

Working through this bill and questions you have on this legislation. Senator Adams.

SENATOR ADAMS:

Thank you. I'm going to look at one of the sections -- section two on page five and you give me categories one, two and three. Tell me who does the application process? Is it each one of these in category one, which is an area less than twenty-five hundred in population? Category two twenty-five hundred to six thousand nine hundred and ninety-nine or category three, the urban areas? Who fills out this application? Is it each one of these categories?

MR. CAMPBELL:

Sir, the only people who fill out the application and this is I believe if you turn the page to page six and this is (h) one, two, and three it states in, one, people are simply presumed and there's no paperwork. In two, people may assert that they meet the criteria simply by signing a statement. At that point, there is a presumption that they qualify. And in the urban area, category three, that is the only place that a person fills out the application.

SENATOR ADAMS:

It's a small objection that I have to the Governor's bill, which creates what we call an unworkable paperwork system for applying for eligibility. Because an example of that particular difficulty has been people from the State of Alaska in each of our districts fill out the permanent fund that we fill out every year. I have problems - about four thousand problems in my Senate district on a yearly basis on just filling out a form. And it goes simply, are you in the military? And some people say they haven't been but they fill it out anyway. It is misunderstood. This occurs, Mr. Chairman, even in light of the statutory direction of the Department of Revenue who assist rural Alaskans. This form is misunderstood by not only the rural people but the Natives and non-Natives that live there.

If everyone would look at the application form that is in

your booklet with the Governor's bill, it's nine pages long with fifteen pages of explanation. So if you multiply the kinds of the problems that you have in your Senate district with a one page sheet, then you need to go back and look at that application they have. Can you tell me how you come to the conclusion that people will easily be able to meet the criteria in a bill. There are examples of one through nine pages. Listen to this. How many days do you spend engaging in taking fish or game in your subsistence area or spent processing that fish and game during the past month? Score one point per day, there's thirty days minimum. Another question. In how many different months did you hunt or fish during the last twelve months? Scoring one point per month, there's four months minimum. During the last twelve months, how many which were the taking or processing of fish and game was your principle work effort? One point per week. This particular procedure that you have created is going to be one of the unworkable systems, unenforceable ones and you need to look at the fiscal note and enforcement of something like this. And I know there is no fiscal note in force because that's going to be supplemental.

SENATOR KERTTULA:

You have the floor.

MR. CAMPBELL:

Mr. Chairman, Senator Adams ...

SENATOR KERTTULA:

My experience I might say, in permanent funds, student scholarship loans and senior citizen programs [indisc. - simult. speech] I'm sure I made a thousand new contacts a year. And I guess, thank you very much, because I start writing these people on these subjects.

MR. CAMPBELL:

Sir, if I may, in your district, continuing his example, no one in any of the villages would be required to fill out any forms or any paperwork or sign anything. The people who live in Kotzebue, that is the only place within your district where this

would be the case ...

SENATOR ADAMS:

Nome.

MR. CAMPBELL:

I should qualify that.

SENATOR ADAMS:

Bethel.

MR. CAMPBELL:

Depending on where your district is the folks in Barrow, Nome, and Kotzebue and Bethel, if you have it or wherever that is, would have to sign their names to a form. There is a back of a form that is for their own informational purposes only. It's not required to be turned in, filled out or anything else. It's strictly there for informational purposes. Not one person in your district would ever be required to fill out the large application that is in here for the urban resident.

SENATOR KERTTULA:

Well, when I'm governor ten years ago, you'll have part of district you have to fill out.

SENATOR ADAMS:

No further questions, Mr. Chair

SENATOR KERTTULA:

Senator Hoffman. Oh no, Senator Duncan -- Senator Cotten and then Senator -- I'm sorry, Senator Cotten. I keep looking to the right nowadays. Senator Cotten.

SENATOR COTTEN:

How do you envision this working if you get several thousands of these from Anchorage, Commissioner. What are you going to write -- I think it says here, "the commissioner shall provide recommendations to the Board on qualifications procedures." What kind of recommendations are you going to make? Are they going to be spot checks, affidavits? Maybe you got that in here. I haven't studied it that closely. But will it be similar to a permanent fund where you have to get people that will sign their name saying that they'll swear that you

actually spent four months in the field or whatever the deal is?
You got a witness.

COMMISSIONER ROSIER:

The point system [indisc.] and I think I make the recommendation to the Board. The Board adopts regulations which I have to make that determination under the bill.

SENATOR COTTEN:

Do you envision checking to see make sure that Virginia Collins or Sam Cotten isn't, you know, kind of fudging a little bit.

COMMISSIONER ROSIER:

I'm not sure [indisc. - simult. speech] it would be our intent to look at fairly closely. Certainly in the early stages, you would have to be [indisc.].

SENATOR COTTEN:

How do you look close? How do you check?

COMMISSIONER ROSIER:

I think within the book here, you've got the whole section dealing with the process on this kind of explains this.

MR. CAMPBELL:

There are provided for your information fiscal notes and in the fiscal notes there is a pretty detailed explanation exactly of how many people, what they'll be doing everything. Those are the booklet furnished to all members. Specifically, one needs to look at the fiscal note by the subsistence division.

SENATOR COTTEN:

I'll look at that Mr. Chairman. Thank you.

SENATOR KERTTULA:

Are you satisfied with that Senator Cotten?

SENATOR COTTEN:

Well, I am for the moment. I'll look at the fiscal note. I hadn't seen that.

SENATOR KERTTULA:

We'll move around the table to Senator Hoffman if he's here and then Senator Fisher, and then Senator Cotten, if he desires.

Senator Fisher, you had a question? Paul, do you have a question?

SENATOR FISHER:

I thought you were over that way. Yes, on page five, following up with Senator Adams. How do you define an urban area? And I guess, my concern is the people in Anilchik [ph] have called and they wonder how they fit in with an urban area. Do you take the whole borough and count it as an urban area as a whole? Or do you take each community within a borough?

MR. CAMPBELL:

Neither sir. This is one of the areas that we have left to some extent to the discretion of the Board to adopt regulation. But we are very definite that we do not envision an entire borough being an urban area. We have used the example a number of times, for instance Sitka, would be into the urban status according to population growth. But in terms of the urban area of Sitka, where you're not talking about the whole unified municipality. We are simply talking about that [indisc] roaded area fairly tightly drawn boundaries so the Board could adopt regulations for the definitions, for instance, specific example, you're talking about that the Board will hold hearings in their area. We've talked to the people and trying to examine how closely tied those communities are and make their determination.

SENATOR FISHER:

I guess staying with that example, it doesn't have twenty-five hundred people. So they would look at this and say, gee, we're in category one. Right?

MR. CAMPBELL:

If they are not included in an urban area.

SENATOR FISHER:

Well, that's

MR. NELSON:

That community also has to demonstrate dependence upon subsistence as a principle characteristic of the economy, culture and way of life. So there will be variable of these

communities under twenty-five hundred that aren't in category one.

SENATOR FISHER:

Okay.

MR. NELSON:

Military installations and communities surrounding military bases, for example.

MR. CAMPBELL:

Can you give me which community you were talking about?

SENATOR FISHER:

Oh, I was just picking Anilchik because I think -- even though they're in ANILCA, somehow, they're a little bit of an exception in the Kenai, aren't they? As a village?

MR. CAMPBELL:

[Indisc.] roughly what the population of Anilchik is?

SENATOR FISHER:

No, but it can't be twenty-five hundred.

UNIDENTIFIED SPEAKER:

Eight hundred, probably. One thousand.

MR. CAMPBELL:

We will apply -- one of the things that's also in this book is there are [indisc. - cough] about two hundred and fifty-six communities that we feel are in category one though the Boards will make the final determination. Seven communities that we feel are in category two and those are Bethel, Nome, Kotzebue, Barrow, Cordova, Petersburg and Unalaska. And then thirty communities that are in category three. And those are primarily, either communities of over seven thousand or communities that we would describe as industrial settlements or military bases or things like that. [indisc.].

SENATOR FISHER:

No, that's all right. Go ahead. Can you just slip the book to me a minute and continue.

SENATOR KERTTULA:

Senator Collins, Senator Zharoff.

SENATOR COLLINS:

Thank you, on that point [indisc.] twenty-five hundred [indisc.] I thought earlier in response to Senator Adams it said that no one [indisc. - others speaking] fill out a form. Yet you said to Senator Fisher that there might be some communities that have twenty-five hundred or less that would not fit in category one [indisc.] is that correct?

MR. CAMPBELL:

Senator Collins, thank you for bringing that up. What I was referring to Senator Adams I didn't think that all of the communities under twenty five hundred in the district do fit into category one. But there are -- I can read you off very quickly or you can look -- it's in Table 3, Appendix B, referring to a list of communities that are under 2500 and do not qualify. And they're like Amchitka [ph], Bedworse [ph] Alcan [ph] Circle had some reservations [indisc.] Prudhoe Bay. There is a list of little temporary logging camps in Southeastern. I'm talking not about towns that have been there for awhile but where you have a couple dorms on a barge and they're temporary logging. And then it progresses up. So there are towns where there is not a dependence on subsistence as a principle element of the economy, culture or way of life that are under twenty-five hundred where they will have to use the affidavit [indisc. - paper shuffling].

SENATOR KERTTULA:

Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. Now am I to assume the -- maybe I'm wrong on this. But didn't your category one and category two and your category three, where people have made application and they have met some of the criteria and they're eligible for subsistence, that they don't need a sport fishing or hunting license?

MR. CAMPBELL:

Mr. Chairman, Senator Zharoff, as I understand your

question correctly, if a person is participating in subsistence hunting activities and they also wanted to go out and sport fish, they would have to get a sport fishing license. Which is how it is now and how it always has been. It would be their option about whether they wanted to go out and sport fish or not. Hunting in Alaska has always required a hunting license. We have not changed that at all. Specifically, the bill says is, and let me read the language to you again. It says, "the Boards may not require a permit or filing of the statement affirming that the person meets their requirements for qualification." And that's what I was going to say. We're not talking about any additional paperwork whatsoever. This is does not however, get rid of the requirement that if a person wants to hunt, he has to have a hunting license.

SENATOR ZHAROFF:

Who makes the determination there -- have a state trooper up there, a fish and wildlife protection officer comes across somebody that just shot a deer for example and doesn't have a hunting license. He says, well, I live in Buzinki [ph]. There's only seven hundred people there. I'm subsistence hunting.

MR. CAMPBELL:

Sir, let me say again, whether you hunt in a subsistence hunt or a general hunt, it is always required to have a hunting license. That is something in a different section of the state statute that we don't have any affect on whatsoever. So if you're hunting, you are going to need a hunting license. We're not changing that. We're not increasing it. But we're not decreasing it either. But what we're saying is, you do not have to file any paperwork to gain the presumption that you can go out and participate in a subsistence hunt [indisc.] that community.

SENATOR KERTTULA:

You have the floor.

SENATOR ZHAROFF:

I guess I'm just still a little confused here. You still

have to have a hunting license in order to hunt. So why have a subsistence designation? I guess I'm trying to figure that out there. Because what you're doing is that you're trying to get - the resource is to the point when you can't take it commercially, you can't take it by the sports guidelines, taking it under subsistence and people meet subsistence criteria at any time because a certain stipulations in here. And you think that if they're in a subsistence situation, since some people in here went ahead and raised the license fees for sport hunting licenses and the whole reason for subsistence because you can't basically afford anything else or you have other resources that are limited to you.

MR. CAMPBELL:

Sir, if I may. The Board tried to deal with just the law we had to change to do this. And in 1986, this body debated the issue of whether or not to remove the requirement of having a hunting license for subsistence hunting or not. And that got rejected by this body. We do not then attempt to second guess you and say, okay, let's do it. So we just simply left that section of state law totally alone. If a person has -- if a person is of low income, they may obtain a low income license but I want to emphasize that though sometimes somebody referred to that as a subsistence license, that license has nothing whatsoever to do with a person's eligibility to hunt or not to hunt. It is totally -- the price you pay is totally based on your income.

SENATOR ZHAROFF:

Let me ask you another question, in relation ...

SENATOR KERTTULA:

You have the floor.

SENATOR ZHAROFF:

... in relationship to let's say, sport fishing of particular species, and I'll just say coho because you are, and correct me if I'm wrong Commissioner, [indisc.] you're only allowed to have two in your possession at one time or per day.

whatever it might be. But if you're subsistence fishing, you can have whatever the number is like 25. Now, if you're out there catching, I guess you'd catch with rod and reel now. [indisc.] federal guidelines or whatever the deal might be. And you're out there picking up ten silvers and you stop by a protection officer and he comes up there and says, I want to see your fishing license. You show it to me and he writes you a ticket because you got more inn your possession. But you are actually subsistence fishing out there because your limited in the time of availability being able to go out.

MR. CAMPBELL:

Sir, if I may. If you are subsistence fishing in some areas of this state, you are required to have a subsistence fishing permit. And again, [indisc. - paper shuffling] section of the law we do not [indisc. - cough] subsistence permit your certain limits. I think you mentioned twenty-five fish a day. Then if you want to go out and buy a sport fish license you get two additional fish a day through sport fishing. You can have a cumulative total if you wish. But in either case, I don't think you'll run into problems enforcing it.

UNIDENTIFIED SPEAKER:

You haven't been out.

UNIDENTIFIED SPEAKER:

[Indisc.]

SENATOR KERTTULA:

Are there questions around the table. Senator Adams.

SENATOR ADAMS:

Correct under the Governor's bill there's no rod and reel subsistence fishing. My question, we went over the criteria of the application form -- the Governor has allowed for presumed eligibility of residents of communities to be rebutted by the state. How is this going to be done? Is this going to be done by what entity? The Alaska fish and game? Department of Law? Department of Public Safety? The next question after you do that, who hears and decides the evidence of non eligibilities?

Is it the Commissioner of fish and Game? The Boards or the Courts?

MR. NELSON:

In those areas where presumption is going to be rebutted that presumption is going to be rebutted when the state through the Department of Law not simply public safety or fish and game, demonstrates to a court at the appropriate jurisdiction that that person is not qualified. The judge would have to reach a conclusion. And once that occurred, then that person would not be able to participate as a subsistence user until he qualified.

SENATOR ADAMS:

Who is going to do these? Who's going to do the eligibility in [indisc.] What state agencies?

MR. NELSON:

Initially, the person who would initiate -- it would probably be either a fish and wildlife protection officer or a fish and game biologist that sees what he thinks is a violation. He would then contact ... [tape ends midspeech].

Tape 92-12

Side B

[Tape begins midspeech]

MR. NELSON:

... right now I'm the only attorney in the state that does civil enforcement work for the state. And request that I file an action in court for declaratory judgement that this person was not qualified to subsistence hunt and fish. And it go through a review initially with that officer, then with me or the attorney that was going to decide whether or not to bring the case and then the judge would have to decide on the evidence presented by both sides.

SENATOR ADAMS:

In a recent study by Alaska fish and game, we can have presumed one hundred and ten thousand people eligible for this particular program. even though we don't have a fiscal note before us, have you done a cost -- how much it would cost if you

had to look at one hundred and ten people or ten thousand so that we could have some idea of what we're talking about for future cost of implementing this program?

MR. NELSON:

Senator Adams, if I can, I would refer you to the fiscal notes that are in the note which specifically do examine the issues of enforcement and compliance and the whole thing.

SENATOR ADAMS:

Okay. A final question, Mr. Chairman. If this bill passes, and in your view, will they be more or less people eligible to participate in subsistence once we do this? Ten years from now do you think this is not a means of slowly elimination of subsistence users for the future?

MR. CAMPBELL:

No, sir, but I'm very glad you asked. If I were a person who wanted to over time eliminate subsistence from this state, what I would adopt is a strict rural/urban criteria where anytime any community through growth bumped into the urban area, that's in everyone in that community would be totally out of subsistence. And over time, as our state grows I think that would result in a tremendous decrease in subsistence in our state. What we very specifically tried to do in this bill and discussed this a great deal on the council is develop a system where regardless of population growth, if people are living in a community through maybe nothing that has anything to do with them, that community around them grows up, but they are a person who is a subsistence user, they will be able to continue with that subsistence way of life regardless of the growth of the state or individual communities.

SENATOR KERTTULA:

Senator Pourchot and then I'll have something else

SENATOR POURCHOT:

Thank you, Mr. Chairman. I wanted to get back again to the constitutionality. And I apologize. I should have done this earlier. We've heard the Department of Law and I was in the

meantime, going back and reading Mr. Utermohle's memo to you on the constitutional issues with the Governor's bill and I -- it run a number of pages. It really does take issue I think with some of the conclusions by the Department of Law. I wonder if you could -- our division of legal service people [indisc.] haven't heard from them make sure they turn [indisc.] hear from Mr. Utermohle on that same copy that his [indisc.] constitutional aspect relate to the McDowell case on the Governor's bill

MR. UTERMOHLE:

Mr. Chair, Senator Pourchot ...

SENATOR KERTTULA:

You have the floor.

MR. UTERMOHLE:

For the record, my name is George Utermohle, Legislative counsel, Legislative Affairs agency. In [indisc.] regard to the community based presumptions issues -- questions [indisc.] Department of Law, the issue there is who will be entitled to presumptions that they're qualified to take subsistence and under what terms would they be eligible for those presumptions? It's quite possible that the issue will be analyzed in the courts under equal protection analysis under one of two provisions of the constitution. Either the equal protection clause of the constitution article one, section one. Or under the knowledge of uniform application section of the constitution which has been made famous by case subject McDowell.

In this instance, I tend to think that the community based presumptions in both the provisions of uniform application section -- in that uniform applications section is intended to have laws and regulations governing the use or disposal of natural resources that shall apply equally to all persons similarly situated with respect to the subject and the purpose of that legislation. In this case, the community based presumptions place different burdens on different people in the state depending on where they live. Under the equal protection

part of analysis that request under uniform application section, the courts will look at the importance of the state purpose behind the discrimination among residents, among persons. The importance of the interest of the state, and then balance those to see if the state's interest outweighs the individuals interests, and then determine whether or not the approach taken by the state is the least restrictive approach to solving that problem. In this case the individual interest of state care, is I think, more than the interest in equal paperwork. You've got persons here who, in the category one areas, are presumed to be able to engage in subsistence activities, whether or not they qualify. Persons not qualified to engage in subsistence activities under the criteria set up in the act, may go ahead and do so. Essentially, what [indisc.] is the bill essentially provides that they haven't [indisc.] gave them subsistence activities until they are denied under the presumptions [indisc.] Whereas a person in the category two area must sign a piece of appear saying that he satisfies these criteria and by signing that piece of paper, if he's not qualified and at the time he is aware of his lack of qualifications he has subjected himself to criminal prosecution for unsworn falsification.

And in the third case, we've got category three area residents who must complete a very substantial application, and be certified by the Commissioner of Fish and Game. These are very substantial requirements and the interest involved is much more than a uniform or equal paperwork. It's a matter of equal access to resources. And in reviewing these issues, the court will balance that interest against the individual interest against the state's interest be it administrative ease or relieving administrative burden on the state or whether it's rationing the state's enforcement resources because they don't have enough enforcement people to go out and check everyone in the state to see if they actually qualify. The court will balance those [indisc.] individual interest to see whether or not it outweighs the individual interest. Assuming that it

does, the court will then look to determine whether or not this is least restrictive mechanism available to the state to discriminate against residents -- individuals in this approach. It's my view that due to the much higher standard, the higher standard that the courts will apply in these situations, that it is less likely that the community based presumptions will withstand equal protection and analysis under the uniform application section, than it would under the equal protection clause in article one, section one. The standard being lower. And that being the case, there is a risk that the court may find that these presumptions are perhaps inappropriate and unconstitutional. That may have the affect of removing those presumptions or having the presumptions structure in law. It probably would not result in the revocation of the bill or the law.

SENATOR POURCHOT:

Mr. Chairman, if I may.

SENATOR KERTTULA:

You have the floor.

SENATOR POURCHOT:

When you say instructing the presumptions -- meaning striking the paperwork for the class three people or striking the automatic inclusion of the class one people? Category one.

MR. UTERMOHLE:

I hesitate to say how the court will assume to equalize the burdens. Those are all alternatives available.

SENATOR POURCHOT:

Mr. Chairman.

SENATOR KERTTULA:

Yes, sir.

SENATOR POURCHOT:

It seems like and I don't want to -- I'm certainly not arguing but it would be nice though if it were in the constitution. I think either way -- either of those outcomes are not public policy. I think on the one hand, one of the

quotes on page five of Mr.Utermohle's memo is that the category one two and three area concept is not the, quote, "classification scheme involving individual characteristics which the McDowell network proposed as being less evasive for the access value." If one of those -- if you were trying to rectify the constitutional problems of the bill, one of those is to make everybody have to go through the category three all drill which Senator Adams pointed out some of the obvious mechanical and [indisc.] problems in that. I don't think anybody wants to go that route. But that would presumably overcome some of these problems that a court down south [indisc.] reasonable enforcement, I guess. But the other way, gets us right back to the chaotic situation we're in now, presumably where everybody is presumed to be a subsistence user upon the basis of signing something that they are or just being presumed that they are. And I don't think that approach is obviously desirable either. That's why we're here. So Mr. Chairman, I guess, we obviously have [indisc. - paper shuffling] opinion here but the obvious answer is that we want [indisc. - paper shuffling] and always come back to a constitutional amendment. A constitutional amendment will allow you to employ those schemes that have a different way of presumption, I think. And in the absence of that, I think that in our own attorney's opinion, [indisc.]. It's just not one particular area. It's on several ...

SENATOR KERTTULA:

You could design the amendment that way it would be precisely that. State constitution.

SENATOR STURGELEWSKI:

Mr. Chair. I guess ...

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR STURGELEWSKI:

I guess just to pursue [indisc.] in conversation but there's certainly going to be tension between a constitutional

amendment which would make a scheme such as this appropriate and the wording that would be necessary to meet the federal requirements, I would think. Is that -- well, I don't want to [indisc.].

SENATOR KERTTULA:

Proceed.

SENATOR POURCHOT:

Mr. Chairman, again I think we need to be clear with this kind of [indisc.] a constitutional amendment per se is not in compliance with ANILCA.

SENATOR STURGELEWSKI:

Yes.

SENATOR POURCHOT:

[Indisc.] would be right. Law may be right. It may or may not. Obviously the Governor's bill from all the testimony does not [indisc.] compliance with ANILCA. A law that we might find different may not supply either [indisc.] but right now [indisc.] constitutional amendment [indisc.] ability to write any kind of law that has any kind of reasonable scheme even on just state land and state waters and you know, as you go down this road I think this is the central issue is we're just -- we want to avoid all these attorneys [indisc.] I think they would say, we'd all win. We attorneys all win, regardless of what the outcome of the state are. [indisc.] major court case. [indisc.] do something where we go in [indisc.] very shaky constitutional ground here.

SENATOR KERTTULA:

[Indisc.] design and select new that only you would remember in a couple of years. Excuse me. Mr. Utermohle, do you have a ...

MR. UTERMOHLE:

Mr. Chair, I would like to ask ...

SENATOR KERTTULA:

[Indisc.] because we're getting near the end of the day.

MR. UTERMOHLE:

Sorry to have taken so long. I must qualify in the sense that the cases we have in the uniform applications clause such as McDowell have dealt with cases of total exclusion of persons from the user group. This bill does not begin to exclude some one from subsistence. It just makes it more difficult for them to get there. As to how the courts will balance this is an unknown [indisc.] Supreme Court that's actually dealt with balancing the interests. It would just make it more difficult to get to the user group rather than excluding it. So it's still up in the air as to how the courts will come down as to the test to apply of such [indisc.].

SENATOR KERTTULA:

We're coming to the close of the day here. My understanding is and I think we should listen to one person from Bristol Bay a major of fish resource.

UNIDENTIFIED SPEAKER:

[Indisc.] question.

SENATOR KERTTULA:

Yes, I'll entertain them before we adjourn. However, I'd like to do that. Then also we have a nine o'clock session. The President of the Senate asked me to advise everybody And I hope that all amendments to this particular bill will be prepared and be available by ten a.m. So we go right back into the bill. We may call for caucus or something ahead of that. Let's have the amendments that you know of and I would ask that this group that is here today be available about ten a.m. tomorrow morning again. Now we'll continue for a while. Senator Collins, has the floor.

SENATOR COLLINS:

Thank you, Mr. Chairman. One of the concerns [indisc.] to the bill was the concern [indisc.] is that the Governor's bill were to pass it's my understanding that the concept in the bill would increase the number of subsistence users. And given the response you gave to Senator Adams that no one [indisc.] subsistence hunting and fishing. And you saw it almost as a

growth thing rather than a [indisc.] time. What assurance can you give us that [indisc.] were to pass, that there would not be a depletion of resources. That's the concern that I really I have as I see [indisc.]. And I'm wondering if possibly you could [indisc.] stringent enough [indisc.] protect the resources?

MR. CAMPBELL:

Thank you. Senator Collins, Mr. Chairman. I'm sorry I didn't have the benefit of hearing Mr. Mitchell talking about the depletion of the resource. But I have to confess I have a very hard time imagining what it is he was talking about. Everything in here being based on the sustained yield principle. The first time we feel we have a very good working definition for the sustained yield principle. And, in fact, for the first time anywhere in state law, we have a section and this is section (c) on page four, that instead of just arguing about how we slice the pie, actually talks about making the pie bigger. It says, that when there is [indisc.] of the resource to provide for subsistence and for other resources as well, that the department has to prepare a plan for enhancement, bringing back that resource and make recommendations to the Boards on how they're going to do that. This is the first time that we ever have a mandate that actually increase this.

I want to also make a second point if I could on my response to Senator Adams question about people being able to continue with subsistence. I do not see long term under this bill the number of subsistence users substantially increasing. But what I do see is that those people that choose to live a subsistence way of life will be permitted to do so. I think the vast majority of us, though we may care about hunting and fishing [indisc.] a great deal and actually and my example, very seldom [indisc.] but at the same time I don't want to be a subsistence user. I have certainly perfectly adequate access to the resources through sport hunting and general hunting or sport fishing. And I think that would be true for the vast majority

of urban residents. But if it is important to them that they have that option.

SENATOR ADAMS:

George, one of the qualifications we see on page seven, lines nine through twenty-nine, the first one, it says, the quantity of fish and game consumed by persons in the preceding twelve months of the mandatory minimum of one hundred twenty-five pounds consumed in that period. We talked about the eligibility criteria in the application form just a minute ago. What would happen if an Alaskan did not eat enough meat or fish but did sign the form. Would you consider that Alaskan to be a criminal and what class of punishment do you foresee for that Alaskan?

MR. UTERMOHLE:

Mr. Chair, the person who knowingly signs the required document knowing that he did not qualify is potentially subject to prosecution for unsworn falsification. It's a misdemeanor, probably a [indisc.] misdemeanor.

SENATOR ADAMS:

Pardon me.

MR. UTERMOHLE:

Probably a [indisc.] misdemeanor.

SENATOR ADAMS:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

I'm going to cut off the sport right now and I'm going to ask Mr. Tilden to come forward and speak if he could take, perhaps the Commissioner's spot. You wish to speak from Bristol Bay. Is that correct? Please come forward. We're going to hear you tonight. I know that you've come from an important resource producer. I hope again though that you will be brief. We all have other meetings and so on. And we'll all be here at ten a.m tomorrow and nine a.m. on session. Hope everybody will prepare their amendments by then. I think it's necessary for this bill. WE have to go on to other the legislation. You have

the floor. Please introduce yourself. Please proceed.

MR. THOMAS TILDEN, ALASKA FEDERATION OF NATIVES AND CITY OF DILLINGHAM:

My name is Thomas Tilden and I'm the Board member of AFN for village corporation, [indisc.] the Bristol Bay Native Association [indisc] and up until the last election, I was elected mayor of Dillingham. I want to thank you for allowing me to testify here. I am a subsistence fisherman. I am a commercial fisherman and since KC [ph] Company started a derby back home, I am also a sport fisherman.

Dillingham has a population of about twenty-three hundred people and of that population [indisc.- cough] percent of them are Native and four percent are non-Native. Our council is made up of six council members and the mayor. I am the only Alaska Native on that council. The reason why I point that out is because we had a resolution before us in regards to subsistence and a constitutional amendment. And I want to point out that that resolution passed unanimously. There was no opposition to it.

I am opposed to the Governor's bill as it stands. I feel that it does not give Alaska the management of the resources that we need. I feel it is a complex bill and I think that some of you also feel the same way by some of the questions that you have asked and some of the staff that you have had to march in here and ask and clarify some of the parts of the bill that you don't understand. It does not offer a final solution. I believe that it is going to be litigated. If it is litigated then we are going to be back here two more years from now doing this round one more time, at the cost of the residents of the state, capital projects and other needs. I think it's time to put this matter behind us. We have got to start looking forward. In my community this past year, we had an officer shot. We have got to start dealing with alcohol problems, suicide, economic problems. We have got to put the subsistence issue behind us once and for all. I believe that you can do it.

I'd like to go on record in support of the Bush Caucus bill because I believe that is what it's going to do. You see the newspapers and you see that three quarters of Alaskans want to vote on the issue. Let us put it to the Alaskans for a vote. Right now in some of the communities surrounding Dillingham we have seen a cut back of fishing. We have seen a cut back of hunting and we have seen a lot of idle [indisc.] put upon the hands of the village residents. Idle hands and nothing to look forward to means that you get into trouble. You turn to substance abuse, alcohol abuse and it only adds to the problem of the state. A few years ago in Dillingham, we were fortunate to have former commissioner Larry [indisc.] come up and address our tribal government conference. And during that government conference, he pointed out some of the things that happened out on the Pribilofs after the seal -- they were no longer to seal hunt out in that area. It was very sad. What he told me was a story about walking down the beach one morning and seeing three very young people trying to walk themselves into the cold Bering Sea. That has always stuck in my mind. We cannot take away from the village folks or the rural residents their lifestyle.

I cannot tell you what subsistence is. It is very difficult for me to tell you what subsistence is. I have lived it. I know it, but I cannot describe it to you. I equate it to if I was to walk down into the bay and smile -- up to my neck in water and smile at you and tell you that the water is warm. Come join me. You would not know until you came into the water with me up to my neck. I cannot describe subsistence to you. It is something that you cannot describe. It is very hard to put into words. I can tell you it's sharing. I can tell you its food. I can tell you its clothing. But it is something that you have to live, that you have to experience. It is something that I don't think you should be taking away from rural residents.

I read the constitution of the Alaska and I find it very ironic that in section eight of the constitution here, article

nine or section seven there is a special purpose site. The State of Alaska can preserve an object a mountain a tree, a building, something of cultural value, something of scenic value. But they cannot preserve the lifestyle and culture of the Alaska native. When I look down the road 20 years from now, we are not going to be dependent on oil. We are going to have to look at other resources. Tourism is one of our resources that we're going to have to look forward to. And tourism -- you think the tourists are going to come and watch Alaska Natives go into Safeway in cars and Costco. I think that they are going to want to look at the Alaska Natives in their natural setting, in their own culture, in their own lifestyle. I hope that you agree with some of the things that I have brought up. I hope that you oppose the Governor's bill and I hope that you let the voters decide in Alaska what is the right bill. Right now the Alaska Natives rural Alaskans' lifestyle is in your hands and I hope that you will let the people vote. Thank you very much.

SENATOR KERTTULA:

Thank you for your ... [indisc. applause]. You have the floor.

SENATOR COLLINS:

I did have a question, Mr. Chairman. The chairman of this committee [indisc] wanted to have [indisc.] amendments that are being drafted to the Governor's bill and I'm going to ask you and you haven't [indisc.] question, do you see any way that that bill can be amended [indisc.] preserve?

MR. TILDEN:

Are you referring to the Governor's bill?

SENATOR COLLINS:

Governor's bill.

MR. TILDEN:

Boy, I tell you I have looked at that bill and I think it would be -- really have -- I think I have a lot more questions than I have answers. Very difficult time.

SENATOR COLLINS:

Thank you.

SENATOR KERTTULA:

Thank you very much. We'll adjourn till 10 a.m. here.
Nine o'clock session.

ADJOURN

7:08 P.M.

SENATE COMMITTEE OF THE WHOLE
June 18, 1992
10:15 a.m.

(Meeting held in Senate Finance Committee Room)

MEMBERS PRESENT

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

COMMITTEE CALENDAR

SENATE BILL NO. 484

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

SENATE BILL NO. 485

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

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6/18/92

Tape 92-14
Side A

[Tape begins midspeech]

SENATOR KERTULLA:

... inform the senators, we're ready to roll and I hope legal counsel is here now. And the administration, of course. I suppose McKie is here. Carl, if you'll sit up front again.

[Tape breaks off for a moment]. We will proceed with legislation. I don't know if staff -- if any amendments to 484 has been brought forward. We don't have them. If they have been presented, please let me know [indisc.]. It is our intention that sometime later in the day we will have a brief period in which we will take testimony from a few more people across the area. As I said, we could have had sub-committee that could have met permanently taking testimony, recorded it, and brought it to us. But most of us wouldn't have had time to read it. So I felt we were better off taking a modest amount across the state if that's possible and hear the people directly on the subject. Again, I went to Congress five times and testified twice and went all the way back to D.C. So this does happen when you get too many people in too short of timeframe in which to deal with the testimony. We're trying to be fair and we'll attempt to be.

At this time, we're on the first page of the bill 484. We're on the bill. Are there amendments suggested or about to be suggested to the legislation? We do have legal counsel from our staff. We have McKie and the Commissioner and the Attorney General's staff. I'd ask -- Mr. Larson, would you please take that chair. But if we need more tables for you to work on we'll find them, or my office. And if there's questions around the table, or anything for the good of this order, please

There have been no suggested amendments. Are you prepared to -- first bill before us is 484. It is prepared to move the bill

out of committee as it is. Senator Adams has the floor.

SENATOR ADAMS:

Mr. Chairman, I did work up five amendments for this piece of legislation but when you have a terrible, unworkable bill that requires a constitutional amendment and which is not [indisc.] and it does not comply with ANILCA and gets you -- the state does not retain [indisc.] management there is no use for any of us to fix this. So I'm just basically not going to present any of my amendments today and just let it go, Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator Cotten.

SENATOR COTTEN:

Will you accept a motion to move the bill, Mr. Chairman?

SENATOR KERTTULA:

I will accept a motion.

SENATOR COTTEN:

So moved.

SENATOR KERTTULA:

There is a motion to move the bill and there is debate.

SENATOR ADAMS:

Object.

SENATOR KERTTULA:

Objections noted.

SENATOR ADAMS:

My objections, Mr. Chairman, for moving the bill at this particular time is that one of the things we didn't get down to the comparison between the Governor's bill and the Bush Caucus bill to show the difference between each one. But I would like some discussion on that because it shows that the Bush Caucus bill complies with ANILCA. It still requires a constitutional amendment and it retains state management. And I think that's the great issue here for all Alaskans.

SENATOR KERTTULA:

I have no argument in continuing the debate on this. I felt the charge was to take up this bill first and any other subsequent

bills that fit within the call, or to modify the call, if the body wanted to for any other purposes. But there is a motion and I have entertained a motion and -- Senator Collins.

SENATOR COLLINS:

Just a point of clarification, it would seem to me that if this bill [indisc.] committee that it does not preclude that the look and work with the bill, Senator Adams' bill and [indisc.] Is that correct?

SENATOR KERTTULA:

That's correct. I intend to bring that bill up subsequently.

SENATOR COLLINS:

So objectively and [indisc.] we couldn't move both bills out of committee and ...

SENATOR KERTTULA:

That is correct. That's so far as I know, unless I'm technically in error. Mr. President.

SENATOR ELIASON:

Mr. Chairman, I think that to save you a lot of [indisc.] a lot of people here were not present at our caucus, but it's my understanding what we'd be willing to do is any bill that comes out of this committee will be read across the Senate and refer to the Finance committee. And then from there to the rules and to the floor. So there's still opportunity to make amendments on the floor, or the Finance committee if you chose to do so. Is there any objections to that procedure? I think we discussed this and I think it was general consent [indisc.].

SENATOR STURGELEWSKI:

Mr. Chairman.

SENATOR KERTTULA:

Yes. Senator Sturgelewski and then Senator ...

SENATOR STURGELEWSKI:

Mr. Chairman, I have some concern about moving the bill at this time. We have not had the discussion on a constitutional amendment. If there is a constitutional amendment, which I support, it seems to me that might engender some changes in this

bill. And I found that the Committee of the Whole is an excellent vehicle for getting information and everybody hearing the same thing, and our bill would be to really explore and to call before us the kind of people that could give us objective information. By voting to bring this bill to the next step, of course, would be the Rules Committee and that doesn't automatically mean it's going to go to the floor and I realize that there's an opportunity -- it has to go through Finance and then to Rules and eventually to the floor. It just seems we have an excellent opportunity here to get all the information. I personally would have preferred to go through Senate Bill 485, to have a caucus to discuss the issue of a constitutional amendment and then address the pieces of legislation before us. But we can each have our druthers and those are my druthers. And I realize ...

SENATOR KERTTULA:

I am very interested in what the will of the body is in this regard. All the way around the table. Mr. President, were you ...

SENATOR ELIASON:

Mr. Chairman, I might [indisc.] decision one way or the other. Except I think that we need to [indisc.] this morning and then as a Senate we are going to go into caucus. The caucus is going to be specifically to talk about how we'd handle -- to bring this to a conclusion. And at that time I certainly suspect the constitutional amendment proposition will be discussed. And when the caucus makes that determination of course, then we'll know exactly ...

SENATOR KERTTULA:

It may be more appropriate to await decision of the motion by Senator Cotten until after the caucus. We can do that -- the other discussions before us. Senator Duncan then Senator Cotten.

SENATOR DUNCAN:

Thank you, Mr. Chairman. I suggest that's a better idea. also. I think there's still a lot to be discussed and decided here. I mean, quite honestly, my sitting through about twenty-

four hours of debate and discussion on the Governor's bill has led me only to one conclusion. That it doesn't work. It doesn't [indisc.] federal management of our resources. And that's what we're here about. And we should explore other alternatives that might work. One of those and I think it should be on the table even perhaps before we go [indisc.] for discussion and an understanding of what type of constitutional amendment would do that. I think a constitutional amendment is required. There maybe some options just as to the form of that constitutional amendment but one is required and that should be part of this discussion before we go to a caucus. And secondly, then what type of standing legislation that develops the criteria for rural subsistence users and urban subsistence users should accompany that constitutional amendment. I think that can be done as part of the discussion and then that's the package with all the possible alternatives before us and then decisions can be made. This [indisc. - cough] I can't support the moving of this piece of legislation at this time because I don't know -- it doesn't, in my mind, do anything [indisc.] the problem. So I would suggest that there's more to be discussed. The constitutional amendment and then what type of legislation should accompany that constitutional amendment to resolve the problems entirely.

SENATOR KERTTULA:

Senator Halford. Senator Cotten, you haven't spoken. Were you trying to say -- Senator Cotten.

SENATOR COTTEN:

Well, if people have additional questions or amendments that they'd like to offer to this bill or any other bill, I'll vote, yes, to move every piece of legislation that's before us to the floor, personally. So I'm not necessarily trying to deprive -- I'm certainly not trying to deprive people from an opportunity to discuss or I'm not trying to cut off debate. I'm not calling the previous questions. Any of those things. But I believe that we could spend several months here discussing this. We've been talking about this since 1978, when we wrote the first subsistence

law. And you know, if you got something else, let's put it up there and the only way we're going to get to a point where we make a decision is if we kind of force ourselves to that point. And that's the reason I made the motion. And we should have a caucus but it's the same thing as we're doing right here. What's the difference. Let's have our caucus right now.

SENATOR KERTTULA:

Senator Cotten, I am in agreement with you. I felt that maybe we had exhausted all the remedies to this bill with no amendments. The obvious thing was to move it out of the way and go on to the next measure which was the following bill, which I stated at the beginning of the committees that we would do. But it's fine to hold them all together if that's the will of the body. Who else? Senator Adams is next and please get my attention, because I think this is time to be -- Senator Hoffman I apologize. You may proceed.

SENATOR ADAMS:

I was happy that Senator Cotten had brought it up, but both bills -- both the Governor's bill and the Bush Caucus bill needs a constitutional amendment. I think basically what we need to do is to go back to the one we passed in the Senate in 1990 and each of you have that in your particular packet. And before we make that motion is basically vote up or down on the constitutional amendments. If there is fourteen votes and then basically string the page statutory language that follows that. If there is no fourteen votes for constitutional amendment in this particular body and then we're back to Senator Cotten's motion or up or down on a piece of legislation that we got before us.

SENATOR KERTTULA:

Are there other members that wish to participate at this time, around the table? You have the floor, Senator Hoffman. I apologize. I haven't written you off.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. I'd like to speak to Senator Cotten's motion about moving all of the bills to the floor. I

think that might be an admirable thing to do. The floor was here. We could have better dialogue here. We could talk about, bring up witnesses, and we can discuss them better here than we can on the floor. And we should decide here what we think is going to be the best for the state, best for the constituents. And I think it would be very difficult if we took all of the things that we have on the table here, and threw them on the floor.

Senator Sturgelewski stopped me this morning and talked about what's going to happen with federal management. That whole issue is something that we just pass over. That is going to be reality here shortly. And the people of the state will have to live with federal management. They're going to come in here and it's my guess that the people of the state are going to be very, very dissatisfied by federal management. And they can only point to one group, the people, for federal management. That's the Alaska Legislature. We are the ones that are responsible for allowing the federal people to come into the state. And we're going to have to live with that if we're not willing to try to even address a constitutional amendment.

SENATOR KERTTULA:

I don't think anybody is trying to stop addressing anything. At least I wasn't. I'm just trying to represent the will of the body.

SENATOR HOFFMAN:

I'm talking to the motion.

SENATOR KERTTULA:

Sure.

SENATOR HOFFMAN:

And before us to bring those to the floor. This is the forum for that discussion.

SENATOR KERTTULA:

Yes, it is.

SENATOR HOFFMAN:

Not the floor.

SENATOR KERTTULA:

Senator Eliason. You were trying to seek the floor?

SENATOR ELIASON:

Mr. Chairman. I'm not speaking for or against the constitutional amendment. I personally don't share Senator Adams views when he says the Governor's bill requires a constitutional amendment. I don't share that idea. I don't think that's -- we have the ability here to do the safe and sure, yes or no. I think, as we all know, if we were to legislate according to what our attorney's recommend one way or the other, we would never ever get out of the session because we would have arguments on both sides of every issue we bring before us. Those issues are decided in a court of law. So I don't exactly say that this bill does or does not -- Mark, Attorney General, says that it will pass muster. Our own attorneys question that. We had the same situation, I believe, on one of the fish and game bills during the session. Our attorney was very skeptical that they needed the bill. He said, in effect, we didn't particularly need that bill giving the authority to the Boards and the attorney for the Boards said yes, we did need it because he wasn't sure they had that authority. That type of argument is always here. We can always debate from this time until next session. So I think we're going to have to move one way or the other and make our own decision of whether or not this bill or any other bill is constitutional. That was the issue before we had told quite firmly here a number of years ago we did address this issue that what we had done was constitutional. The Justice Department signed -- the Interior Department signed off on it, and everything was fine until we went to the Supreme Court and they said, no. So I guess we're never will -- that decision will never be finalized until the courts look at. It's like they are right now across the street on reapportionment.

SENATOR KERTULLA:

Senator Sturgelewski.

SENATOR ELIASON:

I didn't -- Mr. Chairman, I ...

SENATOR KERTTULA:

Excuse me, you have the floor.

SENATOR ELIASON:

I certainly agree that we should discuss this and that's the purpose of the caucus. I don't care if we move the bill out of here now or later or when we do it. But I think all these things have to be discussed and I think they're -- we had decided for sure that if, in fact, we're arguing to the deal with the constitutional amendment, we're going to do it in a manner which is avoids litigation. It's my understanding that the caucus that we will adjourn this one sine die and call ourselves back in and address that specific question. But we can't do that until we have a caucus to determine that there's enough -- there's two thirds of the Senate who wants to do that. And of course there's always the other body.

SENATOR KERTTULA:

Senator Sturgelewski is seeking the floor. And please let me know if anybody wants to comment.

SENATOR STURGELEWSKI:

Mr. Chairman ...

SENATOR KERTTULA:

It's a broad reaching thing and I think you can speak to any corner of the motion or any other thing that has to do with this session.

SENATOR STURGELEWSKI:

Mr. Chairman, on the question I think is more in my opinion one of timing. It's been very interesting debate. We've had a lot of concern on the part of the administration and others about bringing state and private lands under federal courts. That has been a big issue about the problems that would ensue from that. And obviously we have seen a number of issues go to federal courts appealing that they are amenable to the interests and can better get on the part of the plaintiffs. But it seems to me and perhaps I'm remiss in not having brought it up when we had the Department of Interior, but it seems to me that that is only a part of it.

And in a sense, it pales, when we talk about the process that will follow if we simply adopt the Governor's bill.

And by the way, I find much of merit in that bill. I just had some brief discussions about what's going to happen with the federal government take over and that's exactly what it is. They will set up an interagency Board. It's going to have agriculture, BIA, Forest Service, Department of Interior, et cetera. They will not utilize, and it states that very clearly, the sustained principle of management, which is just a hallmark of state management. They will set the seasons and bag limits. They will set up regional councils, a new structure. So we'll have new equities being put into the law. They will utilize a lead agency proposal. Something that has been often talked about in our state and the management of our resources but has been summarily rejected by every Governor that I've seen, including this Governor. So that means that the Forest Service, in certain cases, is going to be the deciding honcho or BIA or whatever, Interior. All the different agencies that are there and then we have a system there and a state system and they'll be a new legislative body having to come in with a whole new set of circumstances and make a decision. Because we were not able to say, we're at a point in time and we're going to do something and know what follows. We have had no plan from the administration except the most vague utterances about what comes next.

This is the first step. The point is the first step sets into effect a whole chain of actions and we don't know what they are. But the new decisions will have to be made on that, I can assure you. We may say that our Attorney General is correct and I've got great respect for Charlie Cole. I really do. He may have every reason to believe this is a constitutional bill. Maybe it is. I don't know. The point of it is, there's going to be a lawsuit to test that. Let's not be naive about it. So we do have an opportunity, even it is imperfect to try to address the multiplicity of issues out there. I think this question of dual management is so critical that we do not carry out our

responsibility merely by acting on this small little part that we can get a hold of. And maybe there are votes for it. I may be willing to support it. I am not willing to support it if we don't at least make a valiant effort to address that question of dual management. I personally am scared to death about what is going to happen to fishing in this state. We have certain lawsuits but we already see the handwriting on the wall, where they want to control the water within the national enclaves and in certain areas to go off shore. What does that mean in the Gulf of Alaska to have the water adjacent to the Kenai Fjords under federal management? I think we have to consider those things and that we're just closing our eyes to a much larger problem by taking this step at this time. I would like to at least have a caucus before we make a decision.

SENATOR KERTTULA:

Well, it's -- you have a well reasoned, well stated position. I appreciate that.

SENATOR STURGELEWSKI:

Thank you.

SENATOR KERTTULA:

I appreciate being in the body if we can get this. Senator Fisher.

SENATOR FISHER:

Thank you, Mr. Chairman. Yesterday you gave us the charge that if we had any amendments or any changes suggested that they be in by ten o'clock. Are there any here at all?

SENATOR KERTTULA:

I've received none that I know and staff tells me I've not.

SENATOR FISHER:

Okay, so then the motion before us is for the Governor's bill. Then the question comes up on the constitutional amendment and I have no problem if a motion would even be in order to move that we consider a constitutional amendment. And if there's not fourteen votes here, then it's over. Then let's go back to the Governor's bill. I mean if it's okay, I have no problem doing

that. I think we've been here for four days ...

SENATOR KERTTULA:

Let's discuss around the table every option.

SENATOR FISHER:

Yes, we've been here four days and I think it depends many times on which attorneys you're going to believe, and I for one was convinced that the Attorney General Cole and his folks did a good job. I think we all pretty much in our own minds know yea or nay what we're going to do or how we feel with the constitutional amendment and I just hate to keep prolonging it and give people all kinds of expectations and hopes when we do have the answer. I think we all know the answer now.

SENATOR KERTTULA:

Senator Pourchot.

SENATOR POURCHOT:

Thank you, Mr. Chairman. This kind of goes back to the conversation we had a year or two ago on what I thought was an important point on the constitutional amendment and how that related to not only the Governor's bill but any [indisc.] legislation and I agree with Senator Fisher on one thing that we could have that kind of conversation. On the other hand, I think it's a little more complicated than just ...

SENATOR KERTTULA:

We need some hearing process if we're going to bring it up.

SENATOR POURCHOT:

... [indisc.] constitutional amendments, general wording and there be people, I don't know, but there may be people who support the Governor's bill that might also support some kind of constitutional amendment that makes them feel that the Governor's bill is constitutional even though it doesn't regain federal management. Even though it still -- it may only leave us with the sound management system or a better management system on the state lands alone. And there's several different aspects and I think it's more than just a straight up or down vote. There may also be people, I don't know -- there may be people who would be willing

to put forward a constitutional amendment to the voters who may not themselves support a constitutional amendment. So that's the kind of discussion that we really need to have.

SENATOR KERTTULA:

Thank you, you make a good point. Around the table? I frankly feel that and I think that the motion was before us but I do think that if we're going to go into a constitutional amendment or other items we need to give them fair hearing before we come to a conclusion on those items. That's with the constitutional amendments. We do need to give fair hearing before we say this bill and a constitutional amendment will go out. We have to do that. We have to put the time in. Senator Duncan then Senator Hoffman.

SENATOR DUNCAN:

Mr. Chairman, [indisc.] constitutional amendment, I have [indisc.] resolve the problem. I don't believe [indisc.] right now up or down. I think we should spend some time discussing how to [indisc.] the alternative language and how that would fit in. Along with [indisc.] legislation to solve the problem. [Indisc.] constitutional requires it. It's premature just to say let's vote up or down right now without definite preliminary discussion.

SENATOR KERTTULA:

Which one? What one?

SENATOR DUNCAN:

[Indisc.] different ideas. Senator Adams had one drafted that looks [indisc], somebody else had one drafted and we should discuss those and [indisc.].

SENATOR KERTTULA:

I do know that part of the constitutional amendment, however, is the question of the call. That goes back to presiding officers responsibilities and if that states he would be managing and negotiating both. Senator Halford, then Senator Hoffman. You haven't spoken yet.

SENATOR HALFORD:

Thank you, Mr. Chairman. I think you touched on what I was

going to say. There are not the votes here to consider adjourning and calling ourselves back into a special session on a constitutional amendment question. The debate is somewhat moot and I think we've probably been here long enough that we probably should take up that question and deal with it. If there are not the votes to

SENATOR KERTTULA:

[Indisc.] that would be the first thing.

SENATOR HALFORD:

That's right. And if we're going to stop the consideration of the Governor's bill until we've dealt with the consideration of even taking up the constitutional amendment, then let's do that. But I think the Senator Cotten is right. We need a process to go forward.

SENATOR ADAMS:

I have a response.

SENATOR KERTTULA:

Senator Hoffman was seeking the floor and then Senator Adams. Senator Adams.

SENATOR ADAMS:

I agree with my colleague from Eagle River because I want to make sure if we do this particular process if its a constitutional amendment, I want to do it legally right and I agree with my colleague from Eagle River.

SENATOR KERTTULA:

Senator Hoffman.

SENATOR HOFFMAN:

I would say that there has to be some discussion and I would agree with Senator Duncan that there has to be some discussion on what type of constitutional amendment we're talking about before we just vote it up or vote it down. There has to be some basis because I think Senator Pourchot hit on several aspects of different options that could be considered.

And regarding the Governor's bill I might point out that the Department of Interior yesterday in their testimony stated the

Governor's bill was not a first step. They did not consider that a first step and I think that is a major point to be considered when we're looking at that bill. They don't consider it a first step, then for the federal government. Then where are we going to go after that action on the first step?

SENATOR KERTTULA:

Mr. President, then Senator Cotten.

SENATOR ELIASON:

I think we all understand that if there is two thirds of the Senate who wishes to address the issue that doesn't necessarily mean that we have the ability to do that because there is another body that is debating that probably at the present time in caucus. However, and I also understand that if we do call ourselves into special session to address a constitutional amendment, it does not necessarily mean that the vehicle we vote on is going to get the two thirds vote because that's sort of all over the ball park. And I don't know if it's -- I guess it's a political decision now whether or not we want to stretch ourselves out and decide whether we want to go into special session for that issue, not knowing what the house does. I, in my own political instincts, tell me that House is probably not going to address this issue and I would like them to make it quite clear to us whether they are or whether they are not going to before we move forward on that issue. But I'm certain that we can discuss it in a caucus. I would like them to finalize what they're going to do. My own personal druthers, I would like to press it. I would support that. However, it doesn't necessarily mean that I'm going to support what the final vehicle is. But before we reach that point, I would like to know what the House is going to do. We have had no communications with its leadership. Maybe we should discuss this with them and find out exactly what their plans are.

SENATOR KERTTULA:

I think I'm going to call for a recess -- still puts the motion in place. I'm going to call for a recess for communication with the House to see if there's anything that could be

appropriately be brought before the body so far as an extension. And so far as an extension of a call goes. Senator Duncan.

SENATOR DUNCAN:

Mr. Chairman, I understand it takes two bodies to work this process. I guess I don't necessarily concur with the Senate President if we even find out what the House is going to do before we can tell them what we're going to do. It seems to me us telling them what we've got to support or consider a constitutional amendment, they shake their finger and may help them to support to do the same. So I'm not sure -- just your leadership talking to their leadership, you don't even know our sense I'm not sure what that does. It seems to me that maybe this body should take a leadership and say we want to do it right and we hope you, the House, will concur with that.

SENATOR KERTTULA:

Mr. President.

SENATOR ELIASON:

May I respond to it? That was what we agreed on at the first caucus. We're going to do this. We're going to do it right and do it according to the book. And the book says that we cannot deal with this constitutional amendment until we get into a special session for that specific subject. So we're in a sort of Catch-22. How do we resolve it? I don't know, but I think we can discuss it. [indisc.- cough] actually do anything, addressing it in a legal manner. We can't until the House and Senate makes that decision. So we're sort of Catch-22.

SENATOR KERTTULA:

Senator Menard has not spoken. Senator Menard.

SENATOR MENARD:

Thank you, Mr. Chairman. I think one of the things we talked about procedure and what we were called back for and how we were going to handle it and I think regardless of the other body's position, I think soon or now or what it would be incumbent upon us to see if there is fourteen votes to call us back to deal with the constitutional amendment. And if there are, we can go

forward. If there's not then we're dealing within our own body, and that's the way I feel. And I think we should move forward in that direction.

SENATOR KERTTULA:

Senator Zharoff. Senator Zharoff, I guess, hasn't spoken. Senator Zharoff, and then Senator Cotten.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. I've been sitting here listening to all the debate and it's sort of like, this issue is very big statewide. It's kind of like having twenty blind people trying to describe an elephant. We're all right in our own little position regarding this particular issue. And I think there are a couple of things that we can probably all agree upon. One, I don't think we can agree upon whether the Governor's bill is constitutional or not. We've heard both sides of that issue. One thing we can agree on there is it does not meet ANILCA. Certainly, if the bill is passed there is going to be litigation. Senator Sturgelewski is absolutely correct. And I think the question then comes, if we're really intent -- our intention is to work out the federal management and create a dual management system within the state, in my mind, my little piece of this elephant here tells me there that if we're going to do that, we need something that is going to at least indicate to the federal government that we are going to resolve this problem. Because I don't want them at this point here to change ANILCA. I'm afraid of what could happen [indisc. - cough] at that point. But what can we do here to make our statutes comply with our constitution which the courts say that at this point, there the laws we have on the books do not. And I don't think whatever books there that we start -- or any laws that we put on the books now that will at least [indisc.] preferential or different treatment of people in the state is going to fall under the guidelines of our constitution. The only thing that we can do, I think at this point, is to try to at least consider some constitutional amendment to go along with this. And I don't think anybody in here disagrees that subsistence is the highest priority

of use. It's just, how do we get to that point.

SENATOR KERTTULA:

Senator Cotten then Senator Halford.

SENATOR COTTEN:

Well, again, I think most people here are familiar with the issue and if we all close our eyes and there's fourteen toes of that elephant out there that are willing to consider a constitutional amendment, I think that will tell us something. And perhaps we need to take a break and really search our souls and decide for ourselves whether we should consider that. But I think most people probably know right now whether they are willing to consider a constitutional amendment. And if there are 14 people, then I think that answers the question. So I would be willing to withdraw my motion on one condition. And that being that another motion be placed on the table that we consider a constitutional amendment.

SENATOR KERTTULA:

We'll accept the withdraw because I'm certain that that will

...

SENATOR COTTEN:

If that's the other motion, otherwise I won't withdraw.

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Of course, I suppose Senator Cotten could substitute the motion, but I wanted to go back to the whole question of dual management. We sit here and talk about dual management and there's been a number of things said and [indisc. - cough] have opinions on these things. We don't have to go back over all the disagreements, but I think because it hasn't been [indisc.] -- dual management was created in 1980. The question that we dealt with had been -- if the dual management implemented at the state's expense on all lands in Alaska by the federal courts or is it dual management implemented by the federal government now on federal lands only, while they go to court and argue about other places to

expand. But we don't get out of dual management if you count opening closing the seasons, bag limits and all the changes the courts have done. In anything that we do, in anything that we have in our capacity within the State of Alaska, the dual management question was decided at the federal level in 1980 Against the votes of our delegation.

SENATOR KERTTULA:

Around the table for comments. Senator Sturgelewski.

SENATOR STURGELEWSKI:

Yes, just a brief one. Back to Senator Eliason's concern about how we bring up the issue of a constitutional amendment before us. As we've heard comments that the Governor does not support a constitutional amendment but have we gone to the Governor to explore whether or not he might consider after discussion the potential of expansion of the call. I mean, is that a dead goose and we just forget about it or not?

SENATOR KERTTULA:

We spoke to him this morning -- Senator Eliason.

SENATOR ELIASON:

Mr. Chairman, the Governor -- I don't propose to speak for the Governor ...

SENATOR STURGELEWSKI:

I understand.

SENATOR ELIASON:

The Attorney General is here and he can correct me if I'm wrong but the Governor did tell us this morning he does not object to a constitutional amendment tied to changing ANILCA.

SENATOR STURGELEWSKI:

To explore that just very briefly.

SENATOR ELIASON:

I don't know ...

SENATOR STURGELEWSKI:

You don't know what those changes would be?

SENATOR ELIASON:

I think their proposal has been on the table before and I

think it's been rejected by AFN.

SENATOR KERTTULA:

There seems to be quite a few people chattering, but that is what I thought the Governor said too. Others may have -- I wouldn't speak for the Governor. But part of my suggested recess and there is merit with what Senator Duncan has to say but that could be the second time you go to seek House, even though it might be a good timing. I think part of the merit of this is not only talking to the House briefly, but also talking to the Governor before we make a decision on the suggestion of Senator Cotten that we might withdraw from this amendment and proceed with the other.

Again, however, I would like to see progress. I'll be here, so it's not me speaking, but there are others that would like to see progress on the whole broad framework on whether we're going to decide. Whether it's going to be just this bill before us at the moment or the constitutional amendment. They're wanting to see progress and wanting us to move. So I'm going to push hard by the end of the day sometime tonight to get this bill and anything else on the floor so we can get moving. Senator Adams, are you seeking the floor?

SENATOR ADAMS:

Yes.

SENATOR KERTTULA:

You have the floor.

SENATOR ADAMS:

Yes, Mr. Chairman. I think a motion is in order to explore in here the difference of constitutional amendment to each one of us in this particular body was either on the other side or here that heard Committee Substitute for Senate Joint Resolution number 86 Resources amended. Or bring out another piece that has language that I understand Senator Pourchot has submitted to the Chief Clerk, to at least have that discussion and a vote taken once we explore these. And I think a motion is in order. And then if we fail to get fourteen votes, then we accept Senator

Cotten's motion.

SENATOR KERTTULA:

Senator Cotten, I'll recognize you place your motion at any time there's a little bit of -- if you'll withdraw your motion, we'll go through this other. You have the floor.

SENATOR COTTEN:

I won't withdraw the motion but I will allow someone else to make a substitute motion and that motion would be to consider a constitutional amendment. And if there aren't fourteen votes at this table to even consider a constitutional amendment we should know that and not waste our time.

SENATOR KERTTULA:

Is it the advice of the body to proceed immediately after that decision without any further communication or talking or any little private meeting. Senator Sturgelewski. You have floor.

SENATOR STURGELEWSKI:

Just so I understand, what you're saying is you immediately want us to take a vote before we talk about it in depth?

SENATOR COTTEN:

You can have a recess. That's always a motion that has precedence over any motion made by a member here. I'm sure you're aware of that. So you can call a recess anytime you like.

SENATOR KERTTULA:

But I wanted the will of the body because all twenty people say let's vote up or down right at this moment.

SENATOR COTTEN:

I'll let the chair and the president make the call on whether we need a recess first. But I think that -- I'm just trying to get it to a point where we are forced to make a decision. As the president said, it points out we don't have to agree on a constitutional amendment. We don't even have to by voting yes, say we're going to vote for one. But if there aren't fourteen people who are willing to consider one, we should know that.

SENATOR KERTTULA:

I -- yes, you have the floor.

SENATOR ELIASON:

I don't know if this particular proper form at this place. It might be better that we go into -- back into session and if we have fourteen votes then go on and record that and also communication with the House saying we are going to pursue it, we will ask that they come back into session. That's one way. I don't know if that's acceptable to the chairman here.

SENATOR KERTTULA:

I'll think I'll adjourn this meeting to call the chair and you bring us back to session and proceed the way you're suggesting. We'll come back into meeting on this subject and others.

SENATOR ELIASON:

Mr. Chairman, I think, Mr. Chairman we should be very careful how we do this because we're going to be litigated in either case. I think we should do this very deliberate and with proper and have everything recorded so [indisc.- cough] matter of court record someday I'm sure.

SENATOR KERTTULA:

You have the floor, Senator Taylor.

SENATOR TAYLOR:

[Indisc.] motion [indisc.] Senator Halford, probably [indisc.].

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Procedurally, this will be a multi-step process because it will entail a motion to adjourn this session and a motion to reconvene a session called by the Legislature which will be ineffective until that motion is also accepted by the other body. And that ...

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR HALFORD:

I think you could get a sense of [indisc.].

SENATOR KERTTULA:

Senator Drue Pearce and then Senator [indisc.].

SENATOR PEARCE:

Well, procedurally, I'm trying to figure out where this is headed. I'm not willing to vote sine die and bring ourselves back in specific to constitutional amendment and not have an opportunity [indisc.] this bill out of committee. I would like to see it go to the floor. I think that that's going a roundabout way to just constitutional amendment [indisc.] Governor's bill and I certainly don't support that. I hope there's certain [indisc.] I don't want to be asked right now do I want sine die because that answer is no.

SENATOR ELIASON:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Mr. President.

SENATOR ELIASON:

There are certain steps that Senator Halford mentioned. If we do wish to call ourselves back in, number one, we're going to have to pass a concurrent resolution to the House which says in effect that the business we're carrying on out will carry over into the next special session. Then we won't have to go through this process again. So be certain. We'll have to make sure that the steps we take before we adjourn sine die if we do that, are in order to keep everything alive that we have before us now.

SENATOR KERTTULA:

Senator Pearce wishes to respond.

SENATOR PEARCE:

Thank you, Mr. Chairman. Unfortunately there's another issue that knowing we were going to go to caucus, I was going to go before the caucus and that concerns another topic altogether which the House has dealt with in a positive manner in [indisc.] majority. I don't know whether the motion is in order to call for a recess for the specific purposes of a caucus to talk it out. It's a separate issue [indisc.] administrators. I don't think it

gets in this quorum [indisc.] we do need to discuss but certainly before we got to the floor, to talk about sine die [indisc.].

SENATOR KERTTULA:

Senator Collins [indisc.- cough] then Senator Duncan.

SENATOR COLLINS:

Thank you. I think that to agree I would like to make further comment on Senator Pearce's statement. If we, in fact, are going to come back to do a constitutional amendment, we are going to have to finish the work of this special session and the work of this special session was to consider the Governor's bill. And I think until we consider the Governor's bill we really -- it would be very inappropriate for us to discontinue this session and call ourselves back into session to deal with the constitutional amendment. Because, in fact, until this is off the table we really have to deal with it and we can't go on with the consideration of a constitutional amendment. So I think it's a great error if we put off making a decision on this piece of legislation and looking at this legislation because that is the work of this special session. That is the reason that we are here to consider the Governor's bill and to vote it up or to vote it down. And based on what happens when we close that session, then we'll have a direction as to whether we will go forward and deal with the constitutional amendment or send ourselves home. But I think that we simply cannot call ourselves back into session for a constitutional amendment issue until we have dealt with the piece of legislation that we've been brought here to deal with. And whether we vote it up or down, we need to consider it and we need to deal with it.

SENATOR KERTTULA:

Thank you. Senator Duncan.

SENATOR DUNCAN:

Mr. Chairman, Mr. President. Of course I need to take the Senate president's suggestion as being that it go to the floor as sine die motion. I took the suggestion meaning that there's two ways to get a sense of the body. That's really ...

SENATOR KERTULLA:

That's what I get too.

SENATOR DUNCAN:

... sense of the body. We need to get a sense of the body here ... [tape ends midspeech].

Tape 92-14

Side B

[Tape begins midspeech]

SENATOR DUNCAN:

... on whether we should consider a constitutional amendment or not. Before we go to the floor, take a formal roll call vote in a sense of the motion before the body as we've done on other occasions. Is it the sense of the body that we should consider the constitutional amendment and resolve the subsistence issue. And have that as [indisc.] public vote. There's two ways of doing that. Then once that's done and there's fourteen votes, you then go to the Governor and you go to the House and you say, we have two thirds who want to consider a constitutional amendment. We don't sine die till you get an agreement out of the other body that they're willing to go along with that. Or maybe even at that point the Governor says, I'll add it to the bill. So I think someone up here was trying to rush us into a sine die motion no one was talking about. We're talking about trying to get a sense of the body as to how we want to adequately address the subsistence question. Mr. President, that's how I interpreted what you were saying.

SENATOR ELIASON:

That's exactly correct.

SENATOR KERTTULA:

That's the way I interpreted it, too, and Senator Pourchot.

SENATOR POURCHOT:

Thank you. Along the same thing as Senator Duncan said that this is the first step it need not lead us to [indisc.] I think there are ways to [indisc.] adding something like this does not mean that necessarily but with two or three more days, I think

there are ways of taking care of that.

Just on Senator Collins, one point though about dealing with one topic before moving to the other topic, unfortunately I think for some people they're linked. There may be votes for the Governor's bill and for constitutional amendment. And if one without the other is not the same vote or the same [indisc.] or the same goal that people want to achieve. So I think there are more intertwined than that and frankly, can still be dealt with in an efficient way.

SENATOR KERTTULA:

You have the floor, Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. I hope the people don't get the impression that the constitutional amendment is the only answer. We're still going to have to have some statute -- statutory change or some statute in place there to do whatever needs to be done and meet whatever criteria that subsistence can be established under. It may very well be the Governor's bill. It may very well be the AFN bill or it may very well be some combination thereof. I think what I am trying to do is - what I'm trying to avoid is passing great pieces of legislation now and then still putting us in the situation for not in compliance with ANILCA and we do end up with dual management and at some point down the road, it could be another fifteen days from now, or thirty days from now, the Governor throws his hands up and says, hey, we need a constitutional amendment if we're going to get the feds off our back. Let's do it all at one time. Or at least look at the option of doing it all at one time.

SENATOR KERTTULA:

Are there arguments around the table? Is there anything more to contribute? I'm going to give you a 10 minute recess to come back. We'll recess for 10 minutes.

RECESS

11:10 - 11:35 a.m.

SENATOR KERTTULA:

Could the Senate Committee of the Whole please come back to order? We'll try to await the arrival of most all the senators. Hopefully, all of them. [Simult. speech]. The Committee of the whole has come to order. Senator Cotten.

SENATOR COTTEN:

Yeah, it's -- Mr. Chairman, as I mentioned I'd be happy to withdraw my motion in favor of -- and yield the floor to Senator Pourchot.

SENATOR KERTTULA:

Motion is withdrawn. Senator Pourchot, you do have the floor. We don't yield, but I do recognize you.

SENATOR COTTEN:

Thank you, sir.

SENATOR POURCHOT:

Thank you, Mr. Chairman. As we talked about prior to recess, I would move or put forth to question to be voted on by the committee of the whole that basically be the question, "Shall the Senate consider the ...

SENATOR KERTTULA:

I have an emergency phone call from my daughter. Can this be held for just a moment?

[Off Record]

[On Record]

SENATOR KERTTULA:

... order and you have the floor. Thank you very much.

SENATOR POURCHOT:

Thank you, Mr. Chairman. If the question I would propose to go before the body would be, "Shall the Senate consider the question of a constitutional amendment?" If I might, Mr. Chairman, what the question is obviously open and it does not address itself to the -- would not include an action on the bill before the committee or before the session. The item we have before us really would not speak to specific language of a constitutional amendment. There are several different versions that have been discussed in the past and during this session

informally. It would not speak to how our [indisc. - cough] vis-a-vis the Governor or vis-a-vis the House. And vote that it would be presuming [indisc.] use to them approach the House or approach the Governor or ways that that question might be promulgated. Or that it speak to several possible courses of action or alternatives on how that question voted on favorably would be formally [indisc.] would be put forth. But it would be kind of a base starting point if we were to take any additional action along the lines of considering a constitutional amendment.

SENATOR KERTTULA:

What about time frame to get pretty much knowledge of whether something can proceed and two thirds, the Governor's call, if in fact there is a constitutional amendment proposed. We need to have a feeling for the body that we will move along with the times before us. If in fact nothing can be [indisc.]. So I think that timing [indisc. - cough]. We move around by tomorrow at this time with the motion before if nothing can be done. Is that a fair and understandable -- no negotiations and so on, take place. I'm just kind of broken here. I hate to do that as chairman. But I think just get a feeling to the body that we're going to move ahead one way or another with either the bill before us or the bill and added subjects. Yes, Senator Shultz.

SENATOR SHULTZ:

I would think that we could, you know, with all the input that we have and all the knowledge that we have, as long as the issue has been around, and as long as we've debated constitutional amendments and we haven't really seen any light at this particular time -- but I would think that we could make a decision today. And I would like to ...

SENATOR KERTTULA:

Just stay in session until this happens.

SENATOR SHULTZ:

..., and then maybe take a vote at three o'clock or four o'clock this afternoon whether or not we're willing to adjourn and call ourselves back into special session or other purposes take up

a constitutional amendment. But I think that we would want to listen to the debate and I don't think we should deny the people a right to debate this issue. But I think we should do it [indisc] and we vote on this and then [indisc.- cough] we'd either go forward or [indisc.].

SENATOR KERTTULA:

I set a more liberal time frame but I get a consensus of moving along with the subject, that's what I want everybody to feel that I don't want to delay an extra moment beyond what the will of the body would be in this. You have the floor, Senator.

SENATOR POURCHOT:

Mr. Chairman, I would be all I have to say is I think it goes without saying I think the threshold here is fourteen votes. It will take fourteen votes to call us back into session, and fourteen votes to go to the Governor or go to the House [indisc.].

SENATOR KERTTULA:

Senator Duncan then Senator Shultz.

SENATOR DUNCAN:

Mr. Chairman, of course, I believe [indisc.] a sense of the body to consider a constitutional amendment. I see nothing wrong with a certain timeframe of when we're going to make a final decision. We need some time to hear out both sides [indisc.]. I don't see any reason why we couldn't do that by early evening or late afternoon and spend several hours here doing that.

SENATOR KERTTULA:

We'll make very effort to do it by five o'clock. At the outside.

SENATOR STURGELEWSKI:

Yeah.

SENATOR KERTTULA:

You have the floor, Senator Shultz.

SENATOR SHULTZ:

But I don't believe that it takes fourteen votes at this point in time. Because all we're talking about is allowing the discussion to take place on the constitutional amendment. We're

not talking about voting on a constitutional amendment because we haven't seen anything. So all we're talking about is the majority of the people of this body to agree with that we allow the debate to take place on the constitutional amendment [indisc.].

SENATOR KERTTULA:

Well, I think at this state, you're technically correct. You have the floor, Senator Collins and then ...

SENATOR COLLINS:

At this point, why do we need to take a vote on it if we, in fact have been discussing to a degree [indisc.] of the constitutional amendment. I think the chair has done an excellent job of moderating here today, but in fact we have discussed the constitutional amendment. If that's all you want us to do, I don't believe that we need to vote to discuss the constitutional amendment because the fact that we have been doing for the last four days.

SENATOR KERTTULA:

Well, is there objection to the motion? [indisc.].

UNIDENTIFIED SPEAKER:

I object.

SENATOR KERTTULA:

You object. State your objections and then the President of the Senate wishes to speak.

SENATOR HALFORD:

The question wasn't do we discuss a constitutional amendment as we have been doing for the last three or four days. The question to reach any real consideration of a constitutional amendment is do we go through the process which is required to call ourselves back under our own special session to consider the various versions, types, proposals and constitutional amendment ideas. I think there's a significant difference. We have been discussing without a majority vote or any other kind of vote constitutional amendments as part of any kind of package or solution that people have been advocating back and forth. But we don't have fourteen votes to go into our own special session to