

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2166 SCOMM 81: . SPECIAL SESSION (SUBSISTENCE), June 1992/HB 601 184

MR. MITCHELL:

Right.

SENATOR COLLINS:

... and that, in fact, that would be [indisc.] to Congress [indisc.].

MR. MITCHELL:

I think it would be a reasonable -- it would not be unreasonable to theorize that that kind of an anti-amendment vote would strengthen the belief of those members of Congress who believe that but for Congress to deciding that there was a national interest involved and how people out in the villages, most of whom are Native, are treated that the people of Alaska speaking through their electoral majority would not give folks a fair shake. It would be reasonable to assume. I wasn't trying to duck your question to begin with ...

SENATOR COLLINS:

And at that point, obviously then our chances to get [indisc.] to ANILCA obviously would be [indisc.].

MR. MITCHELL:

That's obviously a political judgement. I would say my personal opinion if you would have proved Congress this point and the likelihood of Congress being favorably disposed to arguments from the state trust us, we really love all those people living out in the villages would probably be very, very small.

SENATOR KERTTULA:

Senator Cotten.

SENATOR COTTEN:

I'm just compelled to go back and remember about 1980 when I sat and watched you testify in front of Congress telling them that the only reason we passed the subsistence law in 1978 was because we were afraid they were going to do it for us. And that wasn't the reason we passed it in 1978 and maybe that's why Congress thinks the way they do.

MR. MITCHELL:

Mr. Chairman, if I could respond to that.

SENATOR KERTTULA:

He's a good advocate.

MR. MITCHELL:

No, Senator Cotten, I've gone around on this for many, many years and I think that it is time that I gave a public apology to Senator Cotten for my testimony in 1980 in front of the House Merchant Marine Committee. However, having done that I'd like to offer a brief defense. And that is ...

SENATOR COTTEN:

You can quit right there.

MR. MITCHELL:

That is that in terms of the blind man leading the elephant, I can guarantee to you that with respect as representative of the State of Alaska in the venues in which I was operating which included certain prominent but here unnamed members of the Alaska Department of Fish and Game and others that the motivation that they communicated to me with respect to motivation of the Legislature and others in terms of its fondness to that act, I think were accurately reflected in my testimony. Since, that time, not only have I been instructed over the years by those of you who were actually on the scene -- I was in Washington, D.C. obviously during that session. But I've also aspired [indisc.] a very good question I also recently was doing some legal research that led me to start at the very beginning and look at every scrap of appear that had ever been generated by this body with respect to that original statute starting way before Representative Anderson had a special House committee on subsistence. And I was very much persuaded -- I remember coming out of the library really last month being reminded of our exchanges of views on this very subject and saying, oh my God, Senator Cotten actually was correct. That there was a lot of study and work that went in to a Legislature on the generic subject of subsistence that led to that statute that was going on at the same time that the ANILCA process and the other representatives of the state that I was dealing were involved in their actions. So if that's eating crow,

I've just swallowed it.

SENATOR KERTTULA:

Senator Cotten, I'm truly becoming a bit frightened. He's been so effective as being an s.o.b. for years, now he's switching the other way. If he's equally effective for the next [indisc.] I had a little chat too, I'm really afraid what's going to happen.

MR. MITCHELL:

If you'd like me to go back to being a jerk at all times.

SENATOR KERTTULA:

Please don't.

MR. MITCHELL:

I'd be happy -- whatever the will of the committee might be.

SENATOR KERTTULA:

Are there questions to the constitutional issues that proposed -- yes. Apparently Ms. Kitka does have something she'd like to state.

MS. KITKA:

[Indisc.] political side of this, Representative Collins question as far as what would happen if a constitutional amendment lived, I think that we would be in a period of time where we would be in dual management in the state for a period of time. But I don't believe that the dual management could continue forever. It's an irrational system and fish and game managed on two different management systems in which -- they don't respect boundaries on that -- I don't think that the State of Alaska on the health of the resources that could continue indefinitely. But I do think there would be a period of dual management for a period of time until there was some major consensus in the state as to how to resolve this. I just wanted to point that out [indisc. - cough].

SENATOR KERTTULA:

In our commitment jointly we would come to decisions in these matters at about five. We've reached that time. I welcome any wrap-up question or statement, but I think then we'll proceed to

those motions that were before us and any others. If there is no wrap-up, I guess I can ...

SENATOR MENARD:

Mr. Chairman.

SENATOR KERTTULA:

Senator, you have the floor, Senator Menard. You haven't asked any questions here.

SENATOR MENARD:

Thank you, Mr. Chairman. I'm sorry I was out of the room, but I missed your answer on the question on the federal oversight issue. And that being tied to the constitutional amendment. If you are willing to have that in a constitutional amendment that would remove the -- that would amend ANILCA.

SENATOR KERTTULA:

Could you just brief him on your answer. Please proceed.

MS. KITKA:

Our position on that, Senator, I only had few minutes to take a look at that [indisc.] is I don't think we can support that approach for a couple of reasons. One, it requires a lot of trust of what statute comes out of the Legislature and having that enshrined federal standard in ANILCA, I don't think we can support it. I also think it's bad public policy to make a constitutional amendment dependent upon Congress doing anything. I think a constitutional amendment if the Legislature wants to put one out to the people to decide, the will of the people of the State of Alaska ought to be the final voice on that. It shouldn't be dependent on the [indisc.] back in Congress. And I also truly believe that putting that back, with the state having the ability to regain some kind of management back on the table as far as the Congress is going to open up a lot of special interests trying to lever our delegation in the State of Alaska on a whole lot of other issues that are of national importance and not just Alaska so much on that. I think we could risk too much. I think that if the Legislature wants to put a constitutional amendment out and let the people decide, it ought to stand on it's own. If the

Legislature wants to request by resolution amendment to ANILCA, it ought to stand on its own. [indisc.] two together. I think the people of Alaska deserve better than that.

SENATOR KERTTULA:

Senator Pearce, you seem to wish the floor. You have the floor.

SENATOR PEARCE:

Thank you. Ms. Kitka, you said that you think it's bad public policy for us to tie a constitutional amendment to changes [indisc.] ANILCA. Do you think that it's good public policy for us to be forced to do a constitutional amendment based on congressional action?

MS. KITKA:

I think that -- Mr. Chair.

SENATOR KERTTULA:

You have the floor.

MS. KITKA:

Senator Pearce, I think that you have to look at what the intent of Congress was in Title eight of ANILCA. The intent of Title eight of ANILCA was to protect the people who live upon subsistence and that way of life as a very important national public policy issue that there's a national interest in protecting that way of life. Affording additional protections in the state is willing to [indisc.] and I think that that is something that is good. I don't think that that's something bad. I think the Congress in drafting a provision in Title eight of ANILCA which allowed the State of Alaska some management of federal public lands if they had a standard that met their standard, there is nothing wrong with that. The choice is still the state's. If they don't want to manage on federal public lands, they don't have to have a statute. But the federal government and Congress allowed that opportunity. I don't say the federal law is perfect. We are willing to talk about changes to ANILCA at some point in time. But I think linking a constitutional amendment and the effect would be that the constitutional amendment does a people of

Alaska a disservice. they should be allowed to vote on a constitutional amendment with finality, their voice on the constitutional amendment, change the constitution if it's desired, the Legislature change [indisc.] as far as ANILCA, express that in a resolution and do that. You shouldn't -- in my view, I think that is mistake to do that. We have never said that we would never amend ANILCA we said that we are willing to talk to the state and willing to talk to the administration. We don't think that that is something that is easy to resolve but we are not unwilling to talk. Our people see changes that would be but we also listen to the advice of the Congressional delegation in the last two years when the state said there are other national interests that would weight in if this would be opened up in the Congress. We believe them when they say that the Wilderness Society and the environmental community want an additional fourteen million acres of wilderness in the state. And we do believe them when they tell us that if this becomes a hot potato back in the Congress, that other interests will weight in and extract a pound of flesh out of the State of Alaska in order to get the amendment through. We ourselves would be very leery on amending ANILCA, even if it was something that we wanted. Because of the risk of other national interests being involved in the decision making.

SENATOR PEARCE:

Can I follow up?

SENATOR KERTTULA:

You have the floor.

SENATOR PEARCE:

How many times has ANILCA been amended?

MR. MITCHELL:

I don't know the answer to that. I can't say that ANILCA has certainly ...

SENATOR PEARCE:

[Indisc.].

MR. MITCHELL:

I don't know. I'd say that ANILCA -- the point is has ANILCA been amended since 1980.

SENATOR PEARCE:

[Indisc.]

MR. MITCHELL:

I don't know the answer to that.

SENATOR PEARCE:

[Indisc.].

MR. MITCHELL:

No. I means in terms of technical, no, I don't. Sorry.

SENATOR PEARCE:

Julie, I don't disagree with the point you're making [indisc.] do you think it's good public policy for us to change our constitution on a law [indisc.].

MS. KITKA:

Mr. Chairman.

SENATOR KERTTULA:

You may respond.

MS. KITKA:

I think if you pass a constitutional amendment and let the people of the State of Alaska vote you ought to be passing that constitutional amendment and the first thing is, one, on belief that the voters of Alaska should have the opportunity to be involved in the subsistence issue and should be allowed to express their views. Whether or not you support it or you don't support it, Alaskan people can be trusted to make that decision.

Secondly, I think that the Legislature ought to put a constitutional amendment on the ballot because I believe it is good public policy for the State of Alaska to recognize that it's something unique in this state. The subsistence way of life is a unique way of life as far as the rest of this country is concerned. If you went state by state on the other states in the rest of the United States, I don't think you would see very many states that could even compare to what we have in this state here. One, they don't have large tracts of land and the fish and game

resources. But it is very unique. That's a part of why Congress has this Title eight of ANILCA is to recognize the uniqueness of the state. I believe the Alaskan people can be trusted to make those type of decisions. And I think it is not good public policy on such a potentially divisive emotional issue on that to just not put that out to the people if there's a desire to let the people resolve this and get on with the state. I think it would be more divisive to the state to not solve this problem. If there is a way out of this whole situation that involves bringing this to the voters on that, that's a very legitimate, in my view, constructive measure for this Legislature to take. If the voters vote it down. If the people of Alaska have changed their policy direction on that, we can all live with the results. I don't believe that the people vote it down, that the state would completely lost management [indisc.] because I think what you'd be left with would be a dual management system which would be irrational. It's irrational now. It will continue to be irrational. The people that were looking out for the well being for the fish and the game and the management would have to get together with the state and the federal governments and the people that depend upon that and resolve that. Because it doesn't make any sense to have management based upon land ownership patterns. So like I said. I don't see why people would be afraid to let the people vote. The very worst case you exactly where you're at today and we would have incentive to try and get together and negotiate and get it resolved. I don't see the down side.

MR. MITCHELL:

Mr. Chairman.

SENATOR KERTTULA:

Mr. Mitchell.

MR. MITCHELL:

Yes, I was wondering if I could just briefly respond to that. I think I understand, I think, the direction of the question and it was something that I alluded to yesterday and that is that I think the real public policy choice that I think Senator Pearce is

describing is that it is very upsetting in an institutional way to all states and the Legislatures that represent them that Congress asserts the national interest from time to time, with respect to saying what national policy should be, with respect to areas that states historically have regulated. Fish and game and I reviewed briefly yesterday was one. I'm not an expert on clean air and clean water, but as I understand it it's very similar to subsistence. Congress has said that we believe it's in the national interest for all states to have clean air and we're going to tell you how to do it. And State of Wyoming and State of Alaska and State of California, here are the national standards and if you want to be in this game you will implement the standards that Congress has determined are in the national interest. There are many Legislatures on those issues that say they disagree with those national standards. And those are legitimate policy disagreements between Legislatures and the Congress. But at some point, whether it's clean air or whether it's subsistence, policy choices - Congress has the ability to exercise it's judgement in the area, does the state think it's a good public policy and in the state's best interests to participate in assisting Congress in executing those policy decisions because the state doing it is more closer to the ground and the people that are affected by the implementation of those policies. And that's the choice here.

SENATOR PEARCE:

[indisc.] would be unconstitutional under Alaska state constitution [indisc.]

SENATOR KERTTULA:

I think we are in the position of pretty well wrapping up the questions. I learned a great deal this afternoon about three areas of the constitutional issues. I know there is counsel and so on that fully understood and the other members did. We're back now to the position we were approximately at noon.

MR. MITCHELL:

Excuse me, Mr. Chairman. Can we be excused. Is that ...

SENATOR KERTTULA:

Oh, sure, Thank you. Thank you very, very much for your time. Thank you for testifying and participating. It was meaningful and important and I do thank the administration for providing the Attorney General and his staff and the commissioner at all times available, still available

We had -- we don't have motions yet. But we had a situation of a motion from Senator Cotten to pass out the bill that was before us introduced by the Governor -- I think its 484. Senator Adams is still [indisc.] he'd like to see the bill introduced by himself and others also passed out. Is there anything else here before us or about to come before us? You have the floor Senator Adams.

SENATOR ADAMS:

Thank you. It's my understanding that if both bills passed out of committee they would go to Senate Finance where they would be both open to be moved out of that committee into Rules. And basically, Mr. Chairman, we can entertain a motion after that also to take up the constitutional amendment to get a sense of this committee that was introduced by Senator Pourchot.

SENATOR KERTTULA:

Sure I would. But I would ask though, that if there is a motion to bring out Senator Adams' bill, that there be some hearing and discussion on that bill in this committee which is totally appropriate before adoption of that motion of that bill. And that would be the way to proceed. If you wish to place the motion again, Senator Cotten, I will entertain that motion at this time. If not, then somebody else will entertain it. Senator Cotten. Oh, excuse me. I wasn't sure you heard me. That was all.

SENATOR COTTEN:

I thought there was another motion on the floor.

SENATOR STURGELEWSKI:

Is there one ...

SENATOR COTTEN:

I guess not.

SENATOR KERTTULA:

There's no motion. You went through the motion ...

SENATOR COTTEN:

Yes, that's right. Yours got adopted by unanimous [indisc.] Well, I yield to the Chair. If you want that motion, fine, eventually, I think that -- that's fine. I'd like to see any bill that's in this committee that people want out to get it out. So if you want to subsequently hold hearings now and have discussion on Senator Adams bill, maybe you would prefer to wait until then to move this bill out.

SENATOR KERTTULA:

Fine with me.

SENATOR COTTEN:

It's up to -- I'll look to your guidance, Mr. Chairman.

SENATOR KERTTULA:

If you're more comfortable, then I will say that Senate Bill 485 is before us for discussion and debate. Since you introduced it it's always in character for us to ask the prime sponsor to make a statement. And Senator Adams, I would [indisc.] at this time.

SENATOR ADAMS:

Thank you, Mr. Chairman. The piece of legislation that you have in your particular packets is a two page bill analysis on it and just to go -- the difference between this particular bill -- a quick comparison. This bill would allow Alaskan people to vote for a constitutional amendment. This piece of legislation also complies with federal law. This bill will also return management of subsistence programs back to Alaskan control. This bill would also put an end to useless court battles out and I think this bill complies constitutionally and if you would like, Mr. Chairman, I would also call a legal AFN attorneys. My thing is to if you want to onto the process here, it would be my understanding that the Governor's bill along with the Adams bill would go out also tonight so you have both bills into discussion that would go to

Senate Finance and move out of that committee and be available on Rules. Right.

SENATOR KERTTULA:

I think we need a briefing for an hour or so on this legislation. I think we have the time and we should take it here. We're all twenty participating and I think this is the arena that was intended for this type of discussion. I think it's the Barnes bill sectional analysis is identical, isn't it?

UNIDENTIFIED SPEAKER:

Where is it?

SENATOR KERTTULA:

I am wrong.

SENATOR ADAMS:

It's in your packet there. It's under Senate bill 485. Mr. Chairman, did you want me to give a presentation.

SENATOR KERTTULA:

If you wish to go through it. If you wish Mr. Mitchell to come forward. If we can bring Mr. Mitchell forward again, I'd ask the Attorney General to be available for questions. And Lance, if he's here.

SENATOR STURGELEWSKI:

Mr. Chairman, is there a sectional? I did not see the section.

SENATOR KERTTULA:

They tell me in your book it's in the very back.

SENATOR COTTEN:

Back as far as 485.

SENATOR ADAMS:

Mr. Chairman.

SENATOR KERTTULA:

Yeah. After you've got your section we'll come back to order. We'll use Senator Adams to introduce. We're going to use the staff members or legal counsel on the other side to comment and explain. Senator Adams, you have the floor.

SENATOR ADAMS:

The purpose that I introduce Senate Bill number 485 is to be develop subsistence legislation that is consistent with ANILCA and which provides for subsistence use by residents who do not reside in rural Alaska. This legislation accomplished this purpose by retaining the subsistence priority for rural Alaskans as mandated in ANILCA, for rural residents and then providing a secondary priority for persons who reside outside of rural Alaska. Those are such for urban residents.

Section one is a section on the findings. The bill contains four findings sections. The findings identify the importance of subsistence to rural and urban residence. We go on to recognize that fish and wildlife resources are not plentiful enough to meet the needs of all users and therefore it is necessary to provide a preference for subsistence uses over other consumptive uses. They conclude that a determination that there will be greater nutritional and economic alternatives in urban Alaska than in rural Alaska.

Section six through seven has to do with the subsistence Board. That portion is debatable. If there are members of this body that do not like section six and seven, the sponsor is willing to look at a compromise. Sections two, three, four, five, eight, nine, eleven, thirteen, fourteen, fifteen, sixteen, twenty-three through thirty is a conforming sections. These sections conform to existing statutes within the subsistence changes made in legislation. And there is no substantial impact in these particular sections that I have listed. Section number ten happens to deal with the subsistence allocations. Together with section seven, this section provides the substantive provisions for allocating fish and game for rural and urban subsistence uses. The subsistence Board which I said can be compromised together with the existing Board of Fisheries and Game are to determine what the harvestable surplus is of each fish stock and game population used for subsistence. The Board then develops subsistence regulations. This section uses the same method for allocation to rural subsistence use as is contained in the

existing state law and satisfies the requirement of ANILCA regarding the priority of subsistence uses in rural residents. In addition, however this section provides for allocations for urban subsistence uses and then gives those uses a secondary priority after rural subsistence uses and before other consumptive uses. Once again, both rural and urban subsistence uses have been satisfied for those stocks and populations subject to subsistence uses. Other consumptive uses are authorized.

Sections eleven and twelve have to do with reasonable counsel. This section amends the matter in which advisory committees are [indisc.] by giving the subsistence Board authority to act in conjunction with the Board of Fisheries and the fish and game. This section then creates a regional council system in statute which currently existing on in regulations. The regional councils are to have significant authority in how their recommendations to the subsistence Board on subsistence determined and regulations are to be considered. The three-part text contained in ANILCA is adopted in this particular section.

Section seventeen through twenty-two is a section on definitions. These sections contains new definitions for a "Board", "rural area", "urban area", "urban subsistence fishing", "urban subsistence hunting", and "urban subsistence uses". The existing definition of "subsistence uses" is maintained for rural subsistence uses thereby satisfying the third and final requirement of ANILCA. The definition of "urban subsistence uses" is similar to the definition of "subsistence use" - rural. Urban subsistence use is generally equivalent to a personal use of fish and game by state residents. Though the personal use categories are maintained because there is some fishing activity, such as dip netting fishery to harvest a return of hatchery fish which could not be considered as subsistence uses.

The last section of the bill is section forty-one through forty-three has to do with effective dates. The effective date of the bill is the date on which the constitution amendment authorizing rural and urban subsistence uses is approved by the

voters. I do have with me, Mr. Chairman, Mr. Cohen and Don to respond to questions from members.

SENATOR KERTTULA:

Thank you for a good once over. Are there questions at this time about this legislation? We will again in a fairly orderly way say each person exhausted a question but then others around the table will have full opportunity before you can ask a second time. Senator Cotten asked a question.

SENATOR COTTEN:

Yes. Senator Adams,

SENATOR KERTTULA:

Senator Cotten, Senator Adams.

SENATOR COTTEN:

Yeah, I wanted to explore this idea of the compromise on the subsistence Board. It sound like that was such an integral part of the plan that I didn't understand how you could get away from it. It sounded like the game Board, for instance, would decide how many animals could be harvested and the subsistence Board would decide how many were required for subsistence uses. So if you get rid of the subsistence Board, how does -- I don't understand how the plan would work.

SENATOR ADAMS:

The plan would go back to the fish Board.

SENATOR COTTEN:

So the fish Board would decide then how many were required for subsistence uses.

SENATOR ADAMS:

There are some members of the Senate who disagree with the subsistence Board and that's why I brought it right out in front that that could be taken out.

SENATOR KERTTULA:

Questions? Senator Menard.

SENATOR MENARD:

Thank you, Mr. Chairman. Senator Adams, did you say that this legislation was contingent on a constitutional amendment? Or

you said something about a constitutional amendment and I wasn't clear on it.

SENATOR ADAMS:

One of the things that people need to understand is both the Governor's bill and this particular bill require a constitutional amendment.

SENATOR KERTTULA;

Are there other questions? Questions on this particular measure? Senator Shultz.

SENATOR SHULTZ:

I just have a question Senator Adams. On page six of your analysis, section twenty three [indisc.] what is the status of hunting right now in state parks and in critical habitat areas?

SENATOR ADAMS:

Normal.

SENATOR SHULTZ:

Chilkat bald eagle reserves.

MR. NORMAN COHEN:

Mr. Chairman, this bill is just a conforming bill to allow the same the exact same things that are going on now in these areas to continue. In state game refuges hunting is allowed, in critical habitat areas hunting is allowed, in the sanctuaries hunting is not allowed.

SENATOR ADAMS:

They are with the conformance that we presently have there is no changes as I mentioned in section two, three, four, five, eight, nine, eleven, thirteen, fourteen, fifteen, sixteen, twenty-three through forty of the subsistence statute.

SENATOR SHULTZ:

Presently hunting and things go on in those areas at the present time without changing. We're just providing for a subsistence priority, is that correct?

MR. COHEN:

The only change here is that these are conforming changes to make this bill -- to make the provisions of this bill fit within

the existing statutes.

SENATOR SHULTZ:

Maybe I should pull this question, but what would happen on sustained yield basis? The stocks are down. Let's just say it's in the Chilkat bald eagle reserve. If they were down and the recommendation was no hunting, what would happen?

MR. COHEN:

If the recommendations was no hunting based upon the record there would be no hunting.

SENATOR SHULTZ:

For subsistence or anything else?

MR. COHEN:

Correct.

SENATOR KERTTULA:

Further questions? Mr. President.

SENATOR ELIASON:

Mr. Chairman, I was wondering, it does look like you set criteria for different levels of population. I guess getting back to the question I had on the other bill, [indisc.] people that live in these areas have to on a yearly basis fill out some type of form to get -- or do they go before the Board to get approval or how are they identified as subsistence users by the Board?

SENATOR ADAMS:

Would you respond to the eligibility of the Alaskans for subsistence preference, Don, that's where he's coming from.

MR. MITCHELL:

Actually Mr. Cohen as a former official of ADF&G may want to comment. But generally speaking right now, under the old system, it depends on what is being fished for or hunted for but generally speaking under the old system, all Alaskans who lived in certain areas for example, say in the Kuskokwim or in the Yukon go subsistence fishing just because if you live there, you can go subsistence fishing pursuant to the rules for engaging in that activity. You didn't have to go get a permit from anybody you just went out and did it. With respect to other activities, there

have been permitting requirements in order to keep track of who is doing what. and so it depends. But you would not have to in and of itself, just because this bill go in and like a driver's license and get yourself renewed every year.

SENATOR ELIASON:

Are you saying that everyone ...

MR. MITCHELL:

With respect to rural people.

SENATOR ELIASON:

Are you saying that everyone that lives in a community of a population less than twenty-five hundred, a hundred percent of those people are qualified for subsistence uses?

MR. COHEN:

Mr. Chairman, Mr. President. Under this bill all people who live in communities under seven thousand that where subsistence is a principal characteristic of the community would qualify similar to the state 1986 law. In communities over seven thousand where subsistence is not a principal characteristic, they would have to be applications to participate in subsistence and the Boards would be left with the responsibility to figure out how that system would work. It's not laid out specifically in the bill.

SENATOR ELIASON:

Are you suggesting then that a banker in a community of less than seven thousand who has never participated is automatically eligible to do that?

MR. COHEN:

Mr. Chairman, Mr. President. The bill is similar to existing state law to the McDowell case where it specifies that subsistence in small or medium sized communities was a community activity as opposed to an individual activity. The community should be looked at on a community-wide basis because otherwise it would create conflict in communities and that's not how the community works and that was the reason why that is how the system has worked since 1986 and people in those communities will qualify based on upon their residency.

SENATOR ELIASON:

The question being, the answer is yes, then. The banker would be qualified even though he's never done it before in his life. As long as he is as a resident.

MR. COHEN:

Yes.

SENATOR KERTTULA:

Senator Sturgelewski, do you seek the floor?

SENATOR STURGELEWSKI:

Yes, through the chair, Mr. Cohen, what you're saying is are you not, that in the urban area then, could a plan such as the Governor's in terms of a lengthy form that would be in this legislation I assume determined by the subsistence Board or the Board of fish be required? And that would be appropriate.

MR. COHEN:

It would be up to the Boards but they could have an eligibility system similar to the Governor's if that's what they determine ...

SENATOR STURGELEWSKI:

So we get then into the ideal of we go from community to another level of subsistence which would be based on an individual right. So you are mixing in this legislation but in a different way what the Governor is doing in his. Which is both a community standard so it complies with ANILCA and then an individual standard to broaden the definition of subsistence. Is that correct essentially?

MR. COHEN:

Essentially, that's correct. The Board difference is that in the Governor's bill if you individually qualify you can't go and hunt fish around where you live. You have to go somewhere else to be able to participate in it. So if you hunt and fish say -- I don't know what would be a good example, maybe Kenai Peninsula somewhere, you may qualify because you hunted and fish on the Kenai Peninsula. That maybe enough to qualify under the statute criteria that is set out in the Governor's bill. But then you

can't go and hunt and fish there for subsistence, but you can go somewhere else like to Tyonek where you have never hunted and fish but you qualify over there because you're in the same subsistence area. And so this bill if you have qualified in an urban area and then you're able to participate in that area.

SENATOR STURGELEWSKI:

You can down to Sheep Creek.

MR. MITCHELL:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

MR. MITCHELL:

I think this is really, Senator Sturgelewski, the heart of the matter that this particular bill takes care of people that live out in rural Alaska in the villages in the way that ANILCA requires and in the way that you required in the 1986 subsistence statutes. Then, in addition to that, and that of course is not a goal that the Governor's bill achieves. Then in addition to that as a separate policy consideration there have been a number of Alaskans that have expressed legitimate policy concern that there would be an opportunity for Alaskans who do not live in the villages but who have reasonable subsistence activities as part of their activities to be able to participate in the subsistence system. And so this bill would then provide an opportunity that we believe is more rational and workable to achieve that policy goal than the way that the Governor would attempt to achieve the same type of goal, basically.

So this bill has the benefit of both complying with ANILCA which is for the rural people, which the Governor's bill obviously does not nor does it intend to, but then in addition, like the Governor's bill it then provides an opportunity for other Alaskans to participate and to do so in a way that is I guess Senator Adams and the other proponents of the bill, believe is a better approach than the approach in the Governor's bill.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

Mr. Chairman, we listened to the Department of the Interior yesterday. The question was on the Governor's bill does it retain state management? They said no. They replied does this bill? This one does. This is the bill that we should be looking at. But as I said earlier, I'm willing to have both bills go out of committee, out of finance and then we have that proper debate on the Senate floor.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

But this bill does requires a constitutional amendment?

SENATOR ADAMS:

That is correct. It's just like the Governor's bill, Mr. Halford.

SENATOR HALFORD:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

Mr. Chairman, we have considerable testimony that suggests the Governor's bill does not require a constitutional amendment I would say that this bill requires a constitutional amendment unless there are the votes to pass a constitutional amendment which we precipitous pass out of committee without a constitutional amendment.

SENATOR ADAMS:

Yes, that's the same thing on the Governor's bill. Why pass the Governor's bill if you're not going to pass a constitution amendment?

SENATOR HALFORD:

Because the Governor's bill, in the opinion many, is constitutional.

SENATOR ADAMS:

It is an unconstitutional bill that we're going to pass out of committee.

SENATOR KERTTULA:

Are there questions now to the legislation that's before us, Senate bill 485? Counsel is here. The Attorney General is here. Department of Fish and Game. The proponents. Perhaps even the opponents. You have the floor, Mr. President.

SENATOR ELIASON:

Just one more question. I fully realize that we have to do something to get Southeastern Alaska out of the dilemma we're in as far as federal lands go. However, I do have a concern for those people who live in communities of more than seven thousand who are not classified as rural or classified as urban. How do we accommodate those people, specifically, if you don't fill out a form, how do you deal with those people in this community and my community who have a subsistence lifestyle? How do they get the permits or the recognition of that lifestyle so they can do it? What hoops do they have to jump through? I guess that's the question.

MR. COHEN:

Mr. Chairman, Mr. President. In this bill, the hoops are not laid out. There is direction to the Board to develop a system that would say how people would qualify. But there are -- it is not laid out. In this bill though, you could still be a community over seven thousand and still be within ... [tape ends midspeech].

Tape 92-17

Side A

[Tape begins midspeech]

MR. COHEN:

... probably would, at that point the Board would come up with a system to determine how to people in those communities would be eligible.

SENATOR ELIASON:

To pursue this further, how do you go before a Board that does not exist? If as the Senator says, that subsistence Board is

optional. Evidently, it's not as important [indisc.] Board. Who do they go to then?

MR. COHEN:

All the authorities of the bill would fall to the Board of Fish and the Board of Game if an amendment is made to take out the subsistence Board.

MR. MITCHELL:

Mr. President or Mr. Chairman.

SENATOR KERTTULA:

[Indisc.]

MR. MITCHELL:

I think the other thing that's supporting about evaluating this as a policy approach is that with respect to Alaskans that do not live in the villages, obviously there is going to have to be a way to identify those Alaskans that will be participating in this activity. One of the reasons that it is not spelled out as a policy choice in the bill, in terms of the details of that is that the Governor's bill takes a try at that activity in the text of its statute and there are a number of people that the kind of the criteria in the Governor's bill figuring all this out are both unenforceable and have a lot of practical difficulties and it illustrates that this is a very complicated subject. Therefore if the Legislature would give that responsibility to the Boards and then through the public hearing process and the rest of the way that the Board does it's business, then a broad swath of Alaskans who wouldn't be the people who would be participating in that urban activity would be able to advise the Board on what the criteria should be. Rather than having that done sort of in a vacuum. It's such an important point, we thought it would be better to give the authorization and allow a broad public policy for figuring that out than to bite off the task that the Governor attempted to bite off in his approach that illustrated how difficult it is to do in isolation.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

We have the comparisons between the two bills. I'd like one of you to respond to me about the management philosophy on the difference between the Governor's bill and the Bush Caucus bill that I have introduced. About what this bill creates, doesn't it -- what the Governor's bill is creating a drastic change in the management philosophy of fish and game resources. Norman, would you like to respond to that?

SENATOR KERTTULA:

And if the Commissioner of Fish and Game wishes to respond or the Attorney General, to this, subsequently I would suggest they do so.

MR. COHEN:

Mr. Chairman, Senator Adams. I believe that you turn to -- just a second here. To the definitions of "sustained yield" and it's -- oh. It's not in this bill. It's in the Governor's bill. Excuse me. The Governor's definition of "sustained yield" on page ten of SB484, "sustained yield" is not defined in statutes for purposes of fish and game. I believe it is defined for other purposes, timber or something in state statutes, but not for fish and game. And it is a constitutional standard. The standard says, "sustained yield means the management principal of utilization, development and maintenance applied to naturally current fish and game resources that provides beneficial consumptive uses and perpetuity subject to preferences among such uses and cease to provide for a desired population, increasing and prevent desired declines for the purposes of maintaining healthy self perpetuating stocks and populations" I guess I would just refer you to line twenty-eight, where it says, "it provides beneficial consumptive uses in perpetuity". Basically, as I read this language and as I understand what was intended by this bill, the purpose of sustained yield management, that is the constitutional standard, is going to be by this bill defined by the Legislature to mean that you are to provide -- that the Boards are to provide for in the management of each fish stock and game

populations for the beneficial consumptive uses in perpetuity subject to preferences among such uses. Now at least what I understand that to mean is that the Boards decide if they would like to manage the fish stock or game population for a non-consumptive use. I could take an example of a Pack Creek bears. Prior to the time that the Board -- the Legislature adopted the sanctuary there, the Boards decided that there wouldn't be any hunting. of that bear population because they felt that the highest and best use of that population was for viewing and for non-consumptive uses. This bill takes that and will say that the Legislature tells the Boards you can't do that anymore. For each fish stock and game population you've got to be providing for beneficial consumptive uses. Not just beneficial uses. And that you're only subject is to preferences among those uses, among consumptive uses. Now that is my reading of this bill and that is what I understood the word "consumptive" was intended to do when put in line twenty-eight and that is a major management change from the way fish and game is managed in the state and the authority that is given to the Boards.

COMMISSIONER ROSIER:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor. And I'd like you to comment on that point also. Because that would be something that -- please proceed.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. I believe that the Senators received yesterday during testimony from the Attorney General a reading on this particular point. And I believe the point was the Boards would not preclude [indisc.] for the managing for non-consumptive uses. There was a lengthy discussion about that on the record yesterday.

SENATOR KERTTULA:

What did you just say? I was distracted.

COMMISSIONER ROSIER:

I was saying that you were advised yesterday by the Attorney General's office during the discussion on this particular point, the Boards were not precluded from, in fact, managing for non-consumptive uses under this definition.

SENATOR KERTTULA:

Yes, that is very important.

COMMISSIONER ROSIER:

Yes.

SENATOR KERTTULA:

You have the floor.

SENATOR ADAMS:

So Commissioner, with the language that we have termed on page 10 on "sustained yield" in that paragraph, are you saying that this management philosophy does not change with this language you have in your present bill?

COMMISSIONER ROSIER:

That's correct. Mr. Chairman.

SENATOR ADAMS:

Norman, would you respond to that.

MR. COHEN:

Mr. Chairman, I was not here yesterday to hear the Attorney General's explanation of that.

SENATOR KERTTULA:

I'm going to recognize Senator Hoffman.

SENATOR HOFFMAN:

Well, I'd like to ask the Commissioner then if it does not change the management [indisc.] why do we need that language then, your language change?

SENATOR KERTTULA:

You have the floor, Mr. Attorney General.

ATTORNEY GENERAL COLE:

I may be able to respond to that. As I recall, and certainly this isn't an area where I have been familiar of the practices, but as I recall at one of the Subsistence Council meetings, it was brought out that sustained yield is the term used in the Alaska

Constitution. And that there is no statutory definition of sustained yield. And that this language was developed in the course of Subsistence Advisory Council meetings to provide a statutory definition of that term. And that's why it's in there to get something embodied in statute as to what sustained yield means. Because presently, if I recall correctly what transpired at that meeting, that nothing in statute which defines sustained yield. And it was therefore incorporated into this bill to provide guidance by the Legislature to the Boards of Fish and Game on the sustained yield.

SENATOR HOFFMAN:

I'm going to follow up here. Mr. Cole can respond to that -- Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

MR. COHEN:

I did not hear the discussion yesterday. I will stand by my opinion that what this language does is to change the way fish and game would be managed in the state. I would say that the original language that the Subsistence Advisory Council had before it did not place the word "consumptive" between "beneficial" and "uses" on line twenty-eight. It was added and it was added for a purpose because the council discussed and as I recall -- and I was sitting there during that time, as I recall they discussed that aren't we really talking about consumptive uses when we're talking about sustained yield. Isn't that what it's all about? And it's my reading of this language as written that the Legislature would be tying the Boards hands in terms of managing for non-consumptive uses.

SENATOR KERTTULA:

I thought there was testimony that there weren't terms involved. [indisc.]. Thank you very much. You have the floor, Senator Hoffman.

SENATOR HOFFMAN:

Well, I have a memo that was dated back in March 27, 1992

that was written to me on this very subject from George Utermohle and basically it states that it is not necessary that the Senate Bill contain the definition of "sustained yield" and I think he's in the audience and I wonder if he could come up and explain.

SENATOR KERTTULA:

He can if George is here and wishes to, even if he doesn't wish to. George, I think there's a spot for you to sit down even here. Senator Hoffman, if he hasn't heard, can you question him again.

SENATOR HOFFMAN:

Well, I wonder if you might briefly capsulize the memo that you sent me on sustained yield back in March 27, of this year. And basically, saying that the definition is not needed primarily because the resource managers well understand what the definition or what sustained yield means.

MR. UTERMOHLE:

Mr. Chairman, Senator Hoffman. In my memo I do mention that it is not essential and necessary that the bill contain a definition of "sustained yield". As a sustained yield required in the constitution, we've been managing our resources according to that requirement since statehood and we may continue to do so. There's ample knowledge on the part of our resource administrators and the courts were legally interpret the Alaska Constitution to understand what the constitutional amendment meant by sustained yield. In that regard there is no need to address -- prepare a definition of sustained yield in this piece of legislation.

SENATOR HOFFMAN:

Thank you.

MR. MITCHELL:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, and I apologize.

MR. MITCHELL:

I just had a brief comment about this. There's been a lot of talk about this whole sustained yield problem. First is that it

is true that the Alaska Constitution requires our resources to be managed for sustained yield. However, if we assume that the proceedings of the constitutional convention are an accurate guide of what that standard is, which is a presumption I'm prepared to make -- the history of that section in our constitution indicates that the delegates intended this to be a sort of broad concept which they did not intend it as a strict legal standard the way that a lot of these terms are defined, particularly in federal law, like where sustained yield, optimum sustainable population, - - these are all legal standards that trigger certain requirements. I would suggest that I express no policy view as to whether it would be appropriate to have a statutory definition of sustained yield. I would say that I have been involved in litigation over the years in terms of federal wildlife law with respect to optimum sustainable population and other of these kinds of terms and I can represent, based on that experience, that if you are going to have one that it is a very complicated intermix between law and biology and should be done with some care. And obviously, whether Mr. Cohen or the Attorney General is right or wrong about the intent of the effect of this language, obvious their honest dispute indicates that there is some ambiguity as to the actual standard that is being created here in this particular text. And if that's true and if the policy is to have the statutory definition, it certainly is something that I would think as a technician would required considerable more attention.

SENATOR KERTTULA:

I'll ask the Attorney General to respond and then Senator Adams.

ATTORNEY GENERAL COLE:

Well, I would like to say that I know from personal involvement that this definition of sustained yield had a lot more care and attention than the discussion involving it than some of the constitutional amendments which are being discussed here today have had, number one. Number two is that one would think that the Legislature would want to exercise its prerogative and lay out a

definition of sustained yield for the guidance of those who are managing fish and game in this state. If it does not want to do that if they simply allow the present, I regard, ill defined basis of sustained yield management to continue as it is, it's certainly not an essential ingredient of the advisory council proposed legislation.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

George, under the definition of "sustained yield" and we use "beneficial consumptive uses", does the word "consumptive" in your mind does this change the policy or the management style of the state?

MR. UTERMOHLE:

Mr. Chairman, Senator Adams, I would have to say that there is grounds for concern for the issue that requires sustained yield be done in terms of consumptive uses. There is sufficient grounds for concern there.

SENATOR KERTTULA:

Excuse me. I don't want to interject, I do want to just now, state what the legislation proposed. That's what we're speaking to. We've heard extensively on the other bill. Let's go to the Adams bill. You have the floor, Senator Adams.

SENATOR ADAMS:

Mr. Chairman, the reason I brought this up is I wish to show the management style of the difference between the Governor's bill and this bill because maybe on the Senate we'll be debating these issues.

SENATOR KERTTULA:

I think it was a good exercise. I do think we do need to get back to moving along on the legislation before us. That's all

SENATOR ADAMS:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

Thank you. Are there other questions? Senator Menard.

SENATOR MENARD:

Thank you, Mr. Chairman. Senator Adams, I may be missing something. Is your bill defining sustained yield? Or does it leave it to the constitutional amendment? Is that correct? Or would the constitutional ...

MR. MITCHELL:

The Adams bill does not define the term "sustained yield" which is the present State of Alaska law which allows the Board of Fisheries and the Board of Game basically figure that out as part of their regulatory process. Which is the present state of the law at the time.

SENATOR MENARD:

But does the Adams bill state that they will manage it for "consumptive uses"?

MR. MITCHELL:

No. It does not fix a problem that is not [indisc.].

SENATOR STURGELEWSKI:

Yet.

MR. MITCHELL:

Yet.

SENATOR KERTTULA:

Are there questions? Is there a statement about the legislation? Is it understood?

SENATOR STURGELEWSKI:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

SENATOR STURGELEWSKI:

I would just say I'm not prepared to make that amendment but I certainly don't support the part that has a subsistence Board. I think that's one that sets up an unnecessary and duplicative management [indisc. - cough].

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR ADAMS:

The sponsor of the legislation would honor amendments from the Senator from Anchorage if that is the wish the legislation could go.

SENATOR STURGELEWSKI:

When our bill was the bill before us I will make that.

SENATOR KERTTULA:

You have the floor, Senator Hoffman.

SENATOR HOFFMAN:

On that point, I think that the language does deserve merit and I think that the Board and Fish and Game presently have a lot of responsibilities [indisc.] particularly the Board of Fish is meeting extensively and for them to come in and now be added weight he responsibility of deciding who can participate and who can't, that is going to take additional time. We already have people that are volunteers and many people declined to participate or be appointed because of the amount of time that they are presently spending on the Board of Fish. And I think if we continue to add responsibility to the Board of Fish, the pool that we can select from is going to get smaller, and smaller and smaller and that is going to cause further problems. Besides I think that it would better for the people that know the issue to be deciding on who and what subsistence is. To say that the Board of Fish is that body I would have to say that it is] You look at the composition - the present composition of the Board of fish, how many of them are subsistence users? Many are commercial users. Many are sports users. And I would say that the issue deserves more discussion than just an up and down vote.

SENATOR KERTTULA:

At this stage, do wish to question? You have the floor.

SENATOR COLLINS:

Thank you, Mr. Chairman. Senator Adams, indicated [indisc.] constitutional amendment and I've been looking through my packet here and I don't see an amendment. Do we have a copy of the amendment that goes along with Senator Adams bill?

SENATOR ADAMS:

Either one.

SENATOR KERTTULA:

You have the floor, Don.

MR. MITCHELL:

There have been several texts of constitutional amendments that have been presented to me this afternoon because I've been here in the bull pen or whatever in this area of the room. Both of the texts that I have seen would authorize enactment of a statue like this. In my judgement, one it was a copy of a constitutional amendment that the Senate passed in 1990 and another is a text that was based primarily on that draft but slightly different, with the same legal effect, I think, that had Senator Pourchot's name on it. Either one of those, I think, would accomplish that result.

SENATOR KERTTULA:

If there are no further question ...

SENATOR COLLINS:

[Indisc.].

SENATOR KERTTULA:

You have the floor.

SENATOR COLLINS:

Those amendments are not on the floor, is that correct?

SENATOR KERTTULA:

That's correct. We just brought the bill up for discussion purposes to be understood so that the twenty members have the opportunity to debate and to reflect and ask legal counsel, ask the Attorney General. At this time I'm going to move for a three minute recess and then we'll come back with the constitutional amendment discussion. And with that we will hopefully vote on legislation to go out of this committee.

RECESS

5:58 - 6:05 p.m.

SENATOR KERTTULA:

Yes, Senator Adams.

SENATOR ADAMS:

It's funny, but I have another bill here, sponsor substitute bill that would -- it's a bill without the subsistence Board which I think a majority of the senators -- it would be similar to the Governor's bill. The bill would maintain the existing Board system placing subsistence use in competition with other use and with that, Mr. Chairman, if it's okay with you, I'd like to pass out a committee substitute.

SENATOR KERTTULA:

Yes. Please do.

SENATOR ADAMS:

Its's just basically without the subsistence Board.

SENATOR STURGELEWSKI:

I think that's wonderful how you do that.

UNIDENTIFIED SPEAKER:

Does that lack the constitutional amendment, also?

SENATOR KERTTULA:

[Indisc.] If and when a motion came up on this it would probably be this work draft bill here.

SENATOR ADAMS:

That's correct.

[simult. speech]

SENATOR KERTTULA:

If people feel comfortable then Senator Eliason will move on 484. If you feel uncomfortable at this stage, we'll wait for everybody to arrive.

SENATOR ELIASON:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator Eliason.

SENATOR ELIASON:

I intend to move -- I don't think there's any problem in moving both these [indisc.] However I think the second motion will be committee [indisc.] whether we want to begin the process of calling ourselves back into special session.

SENATOR KERTTULA:

That will be the third distinct motion.

SENATOR ELIASON:

So at that time, begin the process doesn't necessarily mean we'll ever get through that process, but we have to have some indication of what we're going to do [indisc.] I think that's true.

SENATOR KERTTULA:

Senator Eliason, I'll recognize you for the motion. There may be some debate.

SENATOR ELIASON:

Mr. Chairman, I would move and ask unanimous consent that Senate bill 484 be moved from committee.

SENATOR KERTTULA:

Without objection? So ordered.

SENATOR ELIASON:

Mr. Chairman, I move and ask unanimous consent that Committee Substitute for Senate Bill 485 as presented before us be adopted and moved [indisc.].

SENATOR KERTTULA:

Objection.

SENATOR ELIASON:

The main changes being made ...

UNIDENTIFIED SPEAKER:

That's correct.

SENATOR ELIASON:

... is subsistence Board has been eliminated and I move, Mr. Chairman, and ask unanimous consent that Committee Substitute for Senate Bill 485 be moved on to Committee.

SENATOR KERTTULA:

Objection.

SENATOR HALFORD:

Mr. Chairman, I object. [Indisc.]

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

Mr. President, as the second bill requires a constitutional amendment according to it's sponsor, I would hope that motion to move that bill is contingent upon the passing of consideration of a constitutional amendment. If we do not consider a constitutional amendment, by it's sponsor, that bill is not available to us. because he has said it requires a constitutional amendment to be able to pass it.

SENATOR KERTTULA:

Still I think it can leave this committee. There's other committees [indisc.] you have the floor, Senator Adams.

SENATOR ADAMS:

Mr. Chairman, the argument here is both bills need a constitutional amendment. The Governor's bill that we just moved out and my bill needs a constitutional amendment. I'm not going to hide behind it any thing on this and I think it's one that would be the third motion or the fourth motion is do we have sufficient votes here to vote on a constitutional amendment to take ourselves back.

SENATOR KERTTULA:

You have the floor, senator Halford,

SENATOR HALFORD:

Mr. Chairman, I will withdraw my objection and just point out that I do not believe [indisc.] have passed out requires a constitutional amendment. The Attorney General testified that it doesn't. I believe that that bill was constitutional without amendment. But this bill, the sponsor himself said, yes, this one does require a constitutional amendment. I think it's a different question. Whether it's going to be handled further down the process [indisc.] I'll withdraw my objection and move [indisc.].

SENATOR KERTTULA;

If there is no further objection -- comment.

SENATOR HOFFMAN:

Our legal counsel has said -- has told us to testify that both bills need constitutional amendment. Our legal counsel has stated that.

SENATOR KERTTULA:

If there's no further objections, motions passed. 485 is out of committee. If the [indisc.] will be taken around the tables, Sue or Carol or whomever is, for signature of both bills, I'd appreciate it. Start with Senator Eliason and go right around. And soon as the senator has signed this one, I believe we'll then take in motion any other considerations before the body here which has to do with the constitution.

SENATOR ELIASON:

Mr. Chairman, I believe we're all present.

SENATOR KERTTULA:

I do believe so.

SENATOR ELIASON:

I'd like to make a motion relative to how we're going to proceed from this point. The motion will be to the effect that shall we or shall we not proceed. A motion will be proceed -- to commence the process of calling ourselves back into a special session to address the constitutional amendment. However, I think we should also note that it's going to take, I assume fourteen votes to do that. And it doesn't necessarily mean it's going to happen because we have other forces at work on the other side who might not entertain that question.

I think that it's a question that we might [indisc.]. I think the wise thing to do would be to wait for the House to act, but I think that we're probably a little more mature and we can make that one step. Once we make that step and decide we're not going to of course they're going to blame us because we didn't do it. And if we do agree to that, they probably won't anyway. That's my [indisc. - laughter]. But I always [indisc.] body was probably more of a better position, especially those of us who are not returning [indisc. - laughter]. I'll make a motion.

SENATOR KERTTULA:

The motion is shall we call ourselves into special session

...

SENATOR ELIASON:

The motion, Mr. Chairman, is shall we begin the process to call ourselves back into special session to address specifically the constitutional amendment.

SENATOR KERTTULA:

Shall we begin the process -- Senator Pourchot to that motion.

SENATOR POURCHOT:

Thank you, Mr. Chairman. I just wanted to [indisc.] point [indisc.] at all but I guess I would I am assuming that we're really looking for -- would you entertain voting for a constitutional amendment. There may be a mechanical way we can do that. For example, taking fourteen votes to the Governor as saying would you add this to the call [indisc.] obviously [indisc.] come back in. [Indisc.].

SENATOR KERTTULA:

You have the floor, Senator Eliason.

SENATOR ELIASON:

That's exactly what I had in mind. We have to communicate, of course, with an approach the House. Obviously the House has two thirds and we have two thirds. We don't need the Governor's support in this issue, however, it would be beneficial if he would do that because he would [indisc.] the call of that specific item. I want you all to understand that if we call ourselves back into special session we can talk about anything. We can introduce any bills. We can do what we want to do and we might be here for thirty days.

SENATOR KERTTULA:

Senator Pearce.

SENATOR PEARCE:

I have a question about the motion. Which constitutional amendment are we talking bout? Is that ...

SENATOR ELIASON:

Just the process.

SENATOR PEARCE:

This is just a process to call ourselves back for a special

session [indisc.] open call. [simult. speech]

SENATOR KERTTULA:

[Indisc. - simult. speech]. Assuming some discipline.
Senator Halford.

SENATOR HALFORD:

Thank you, Mr. Chair. I know we went through a lot of legislation in Rules Committee and between the bodies everything from [indisc.] to a major fisheries facility in Anchorage under [indisc.] and a lot of other things that they never like to consider in a thirty-day special session. But I certainly don't want to do that. I think we've had a lot of time to consider this in regular session. This whole issue moved through the Resources Committee, moved through the Judiciary Committee [indisc.- cough] all the parts of it ended up in the Finance Committee and we didn't pass it out. Now we're back here. We're here four days before we get to this point. If we're going to look at constitutional amendment it would have to be introduced today. It can't be introduced today because we're not under the call to introduce it.

So I think Senator Eliason's point that it's at least a three-day period if the Senate decided and we got the House to decide today to go forward. It's at least a three-day addition to the session. And we know from the advocates of at least one form of constitutional amendment that they're opposed to adding any kind of a trigger back to ANILCA. And I think if you lose that side and you can't maintain the other side, you don't get there that way either. You don't get there through UFA's approach. You don't get there through AFN's approach. You don't get there through the position of the Outdoor Council. So I think we're essentially wasting our time to consider a constitutional amendment at this point. I would vote that we do not vote to extend ourselves in session to consider a constitutional amendment and take all the risks, all the other things that are out there maybe under consideration.

SENATOR KERTTULA:

Senator Zharoff.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. I was trying to think, I've gone through a couple of special sessions and I don't recall any of them going thirty days.

UNIDENTIFIED SPEAKER:

Two weeks. [simult . speech]

SENATOR ZHAROFF:

This could go as quickly as three days. Let's put the other end of that spectrum out there as well as the other. You can't scare [indisc.] most of us are dealing here with subject of subsistence. There may be a technical problem there that we've had. I think somebody has alluded to that today. So we can limit ourselves. We don't have to automatically deal with one hundred new pieces of legislation. There's sincerity in the body here to deal with subsistence, or whatever needs to be taken care of, let's do that. I think there's a spirit within the group here to do it as quickly as possible. Scare tactics just shouldn't work. We're fooling ourselves. We're trying to fool the public out there. We're trying to fool the administration.

SENATOR KERTTULA:

Senator Sturzelewski, then Senator Uehling.

SENATOR STURGELEWSKI:

Mr. Chairman. I just say that I would concur with Senator Zharoff's remark. Somehow, I don't think the public is going to judge us on three days. They're going to judge us by what we do. I think the great body Alaskans want to see a resolution. It may not certainly all agree with what we do, but I think for us to forestall that for some fear that we're going to bring out all of the failures or our own personal disappointments of the last session is simply not accurate.

SENATOR KERTTULA:

Senator Uehling.

SENATOR UEHLING:

Thank you, Mr. Chairman. I guess, some of the concerns on --

[indisc.] we've already gone through on special session here where there was some difficulty [indisc.] keep the agenda down and I would hope -- I do think that there should be some kind of resolution of this. At least we should take a look at the constitutional amendment. However, I do think it needs to be just limited to that, if possible. And I think in the discussion before us, regarding this motion, that we could [indisc. - cough].

SENATOR KERTTULA:

You have the floor, Senator Eliason.

SENATOR ELIASON:

Like you mentioned, we tried this before [indisc.] however, I would suggest that probably at the present make the committee assignments, I would be sure that any bill coming across my desk would be certain to have numerous committee referrals. So that's where I'm coming from.

SENATOR KERTTULA:

Senator Shultz.

SENATOR SHULTZ:

Just that I'm not afraid as some people are. I'm tired. And I call for question.

SENATOR KERTTULA:

Called for question. Roll call. Lorraine you call the roll - fourteen votes.

CLERK:

Senator Adams.

SENATOR ADAMS:

Yes.

CLERK:

Senator Collins.

SENATOR COLLINS:

No.

CLERK:

Senator Cotten.

SENATOR COTTEN:

Yes.

CLERK:

Senator [indisc.].

SENATOR :

Yes.

CLERK:

Senator Duncan.

SENATOR DUNCAN:

Yes.

CLERK:

Senator Eliason.

SENATOR ELIASON:

Yes.

CLERK:

Senator Fisher.

SENATOR FISHER:

No.

CLERK:

Senator Frank.

SENATOR FRANK:

No.

CLERK:

Senator Halford.

SENATOR HALFORD:

No.

CLERK:

Senator Hoffman.

SENATOR HOFFMAN:

Yes.

CLERK:

Senator Menard.

SENATOR MENARD:

No.

CLERK:

Senator Pearce.

SENATOR PEARCE:

No.

CLERK:

Senator Pourchot.

SENATOR POURCHOT:

Yes.

CLERK:

Senator Rodey.

SENATOR RODEY:

Yes.

CLERK:

Senator Shultz.

SENATOR SHULTZ:

Yes.

CLERK:

Senator Sturgelewski.

SENATOR STURGELEWSKI:

Yes.

CLERK:

Senator Taylor.

SENATOR TAYLOR:

No.

CLERK:

Senator Uehling.

SENATOR UEHLING:

Yes.

CLERK:

Senator Zharoff.

SENATOR ZHAROFF:

Yes.

CLERK:

Senator Kerttula.

SENATOR KERTTULA:

No.

UNIDENTIFIED SPEAKER:

Would you give us the results of the [indisc.].

SENATOR KERTTULA:

Please read the total.

CLERK:

The roll shows; twelve yeas; eight nays.

SENATOR KERTTULA:

At this time we can adjourn. [Simult. speech]. We're
adjourned until subsequent call.

ADJOURN

6:35 p.m.

SENATE COMMITTEE OF THE WHOLE

June 19, 1992

11:27 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

CS FOR HOUSE BILL NO. 601 (JUDICIARY) am (efd fld)
"An Act relating to the taking of fish and game."

WITNESS REGISTER

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6/19/92

Tape 1

Side A

[Tape begins midspeech]

SENATOR KERTTULA:

... Senate can be brought forward and we will proceed. I believe that Senator Davidson's legal staff is here. I don't know if we're expecting [indisc.] for questions. I wonder if you could come forward, Ms. Otto, in the front. I think we will want to ask you a few questions about section one. I'm going to presume you're the resident expert on that subject. McKie, I expect you'll want to come forward also.

MR. CAMPBELL:

I can come forward [indisc.]

SENATOR KERTTULA:

Yes, whoever brings you [indisc.]. Choose the best seat, Ms. Otto. I see Don Mitchell upstaging everybody yesterday. He's tall anyway, so he sat about a foot higher and more comfortably than anybody else up there. He's no fool. Very bright guy. Put him on retainer, quick. I think we can start in with those that are here, although I regret that some very interested members aren't here. But if there are questions about this bill, rather than having an explanation, as soon as those that are walking in now sit down, why, we can proceed.

SENATOR KERTTULA:

It would be that's why I was kind of hoping enough people would be here so we won't waste their time. They're coming in now. But I thought if they weren't here, there might be a question. Writ of order, you may proceed. Would you give us a briefing. We don't have the analysis breakdown. So if you give us a briefing of this bill, if you can, I would appreciate it, Ms. Otto.

MS. OTTO:

Thank you, Mr. Chairman. My name is Laurie Otto, and I'm

staff counsel to House Judiciary Committee. The Committee Substitute to House Bill 601 has a very modest goal. It accomplishes very modest goals. During the course of the presentation at least in the House, I guess I was in the Senate a little bit and heard some of the same remarks being made. Some of the issues that seem to be driving apart the subsistence debate before the Legislature and issues about which there seems to be a great deal of consensus, were the problems on the Kenai Peninsula and the lack of a definition for "customary trade." On other issues, there didn't seem to be consensus and at least in the House, people were not able to come to a meeting of the minds on how to deal with the problems that I think Mr. Campbell has ably presented during the remarks that he's made both to the committees where I've been present and to the Senate. But everybody did agree that being able to sell, for example, herring roe in commercial channels to the Japanese after having taken the herring roe for subsistence purposes was not appropriate. Everybody agreed that the effect of the all Alaskans policy on the Kenai Peninsula created unacceptable pressures on the resource. So rather than have those problems go unattended, the Legislature would say unable to come to a meeting of the minds over all on the subsistence issue, House Bill 601 is intended only to deal with those two very minor problems. I think I've heard Mr. Campbell describe it as putting a bandaid on somebody who has been in a train wreck. And I guess I could characterize it as sticking a finger in the dike to stop it from leaking. There are two fairly significant problems that are capable of being solved by the Legislature. That is all this bill is intended to do. Nobody in the House believes it's a total solution to the subsistence problem. Nobody in the House believes for a minute that this issue is not going to have to be revisited. This is purely a stop-gap measure to deal with two of the problems that have been driving this debate. It accomplishes that in two different ways. The solution of the customary trade problem is fairly simple. A definition is written into the statute. Beyond that the

definition as presented requires the Boards of Fish and Game to define when to further restrict certain language that is set out in the definition and to make sure that they do that and that this issue does not continue to go without full definition that they will also direct the Boards of Fish and Game to complete the definition of customary trade. There are differences between the definition that is in this bill and the definition that was presented in the Governor's bill. The reason for the difference is this. The Governor's bill talks about not being - as being relevant to non-commercial transactions, yet in the discussions before the committee, everybody seemed to think, for example, that somebody, you know - the example that seemed to come up over and over again, is somebody in a village exchanging strips or selling a few strips for cash to get money to go out and go subsistence fishing was not inappropriate and should be allowed. But at least in the House people felt, given the time constraints of the special session, not being able to go through the normal committee process, not being able to have the luxury to accept testimony from all the interested people on those issues, they felt it was better to leave the full definition and the fleshing out of the definition to the Boards that have the expertise to deal with it. So they didn't tie the Boards hands. The Boards are going to be in a position where they can accept the Governor's definition if they care to do so. But they are going to be able to do it based on a record, and based on facts and not based on this kind of hothouse environment where at least in the House, legislators were being asked to accept things of faith as the best way to deal with the problem. So that's the customary trade issue.

It deals with the Kenai Peninsula problem in a little bit more complicated way. And I know that Mr. Campbell feels that there may be practical problems with the approach, but I think that it's one that truly gives the Boards more flexibility than they have right now to deal with the situation in Kenai. This is what the bill does.

Number one, it takes the F-3 areas, and I'm sure you're all

familiar with the Governor's bill right now to know what I'm talking about. In the Governor's bill and as you know, in the Governor's bill in F-3 urban areas, you cannot engage in subsistence activities. You have to go outside if those areas to do so. It takes exactly that approach. It says, "Urban areas", and we actually took out the population cap because of places like Sitka. People in the House felt that was an artificial line, that it was better to take the second part of the definition of the Governor's bill which is an area where the principle characteristic of the economy - you know the language and then and I can point it out to you in the bill. And I will do that. It's on page five, line fourteen and fifteen, "A non-subsistence area is an area or community where dependence upon subsistence is not a principle characteristic of the economy, culture and way of life in the area or community." That's language directly from the Governor's bill. We have defined that term starting on page five, line thirty. Again, we've taken the definition directly from the Governor's bill. So the Governor's concept - the Governor's way of defining it as the seven thousand population cap we felt was artificial. We took the Governor's definition where subsistence is a principle characteristic of the economy, culture and way of life. And said you can't engage in subsistence activities in those areas. Everybody who lived in those areas just like in the Governor's bill, is a subsistence user - well not in the Governor's bill but in [indisc.] subsistence user that can go out and engage in subsistence activities in other parts of the state. But in the urban areas, the boundaries of those areas are set by the board. People cannot engage in subsistence activities. But then people, said, well, what about, as an example and there are other examples and I'm not saying that this is designed to give total what the Kenaitze as a statute of general applicability. It is one that could be used in other parts of the state, but just to use an example, what about the Kenaitze? Because they live in an urban area, but we know through a lot of litigation that they have customarily used the resource in that area. What the House

decided to do is say that is that people who have customarily relied on the resources and the bulk -- the broad criteria set out on page five, lines twenty-four to twenty-nine, can qualify for what the House called "customary use permits." The benefit of having a customary use permit is since one of the things I've heard Mr. Campbell say, what's the difference between customary use permit and a personal use permit? Why are you creating this whole new category? Fisheries users. The House's answer to that is the Board may wish to allow people like the Kenaitze who have customary tenets on a particular resource to engage -- to take part in a fishery and not open it to everybody for a personal use fishery. One of the amendments that was made in the House at the request of the fishing groups was to say -- was to do two things. One, it gives the Board the discretion to adopt regulations, to allow for customary use permits. The original version said that they had to. And then it also gives the Board the discretion to allocate resources to those people to whom it has granted customary use permits. So there are two levels of discretion built into the bill. And all it really does is give the Boards a little bit more power to deal with situations where there's evidence presented on the record to them that they can justify based on facts to open a particular fishery in a particular way to a group of people who have customarily relied on the resource. Some of the members were particularly concerned about commercial fishing in Kenai, and wanted to make sure that the Board could structure the way in which it made the allocation. For example, could it allow a couple of nets on the beach or a net on the beach or out in the river. And this approach lets that happen. I'm not going to pretend to you that this bill is perfect, that there can't be amendments made to make it better. But that is the approach in general the House took in adopting in this Committee Substitute bill.

SENATOR KERTTULA:

There were questions [indisc.] so before I ask, Mr. Campbell, Senator Cotten, please.

SENATOR COTTEN:

I wanted to make sure I understand.

SENATOR KERTTULA:

Senator Adams.

SENATOR COTTEN:

Do I have the floor, now?

SENATOR KERTTULA:

You have the floor, Senator Cotten. I apologize.

SENATOR COTTEN:

In section five, that's where you begin to talk about this new - I guess it's a new term. Customary use.

MS. OTTO:

Yes.

SENATOR COTTEN:

And as a result of that, then you went back and did the other sections?

MS. OTTO:

Yes.

SENATOR COTTEN:

Sections one, two three ...

MS. OTTO:

Those are all conforming, but Mr. Chairman, those are all conforming amendments.

SENATOR COTTEN:

Right.

MS. OTTO:

The that is probably more significant, more than a conforming amendment is the one that's on page three, line twelve and that amendment is the one that gives the board the discretion to make allocation decisions.

SENATOR COTTEN:

And originally it was a "shall", and now ...

MS. OTTO:

The original draft of the bill -- the original discussion draft required the Boards to allocate to people who had customary

use permits. The original bill as passed out the Resources Committee on page five, line eighteen said the Board shall adopt regulations providing for the issuance of permits. And both instances, the legislation was changed to give the Boards the discretion to do that, if they chose to do so. It's not mandatory. It's an additional management [indisc.].

SENATOR COTTEN:

In the Governor's bill, that bill also sets aside an area like the Kenai and suggests that it is -- that you can't do subsistence hunting and fishing in that non-subsistence area. In that regard, the Governor's bill is the same. But in the Governor's bill should a person want to harvest fish other than by sport or commercial means, their only option would be personal use. And that would be for everyone. Whereas this allows for some people to get customary use permits, in an urban area, and other people to not be able to get them in an urban area. Is that correct?

MS. OTTO:

Mr. Chairman, Senator Cotten, that is correct, assuming that the Board actually implements this statute. Under this bill, the Board has to set up non-subsistence use areas. They are required to do that. That is the mandatory provision of the bill. The Boards can if they choose to do so, set up this customary use permit system. They don't have to. But they can if they want to, if they determine that it's appropriate.

SENATOR COTTEN:

One quick other question.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR COTTEN:

The Boards may not permit -- I'm reading section five, "May not permit subsistence hunting," et cetera, "in a non-subsistence area." And then the board shall identify the boundaries of the non-subsistence area. So it's really up to the Board to decide that, for instance, the Kenai Peninsula is an area

where subsistence is not a principle characteristic of the economy, culture and way of life. Right. So the Board says yes or no on that.

MS. OTTO:

Yes.

SENATOR KERTTULA:

In legal drafting on line eleven on that same page five, I know what "may" and "shall" are and in draftmanship, "may not" and "shall not" mean the same thing.

MS. OTTO:

That's correct, Mr. Chairman.

SENATOR KERTTULA:

Thank you very much. You have the floor, Senator.

SENATOR COTTEN:

Has there been a lot of discussion about the outer areas of where people can reach on this and what you can imagine the extreme examples of, for instance, could the Board issue a couple of hundred permits for gill nets on the Kenai River? I mean, would that be legal according to this statute? Could the Board do that or they could not do that or has that type of example been discussed?

MS. OTTO:

Mr. Chairman, Senator Cotten, yes, it has. First the Board would need to set up this system. First they would need to develop regulations, setting up the criteria for qualifying. Then they need to make allocations in this. But yes, one of the main reasons for doing this is to allow the boards in different areas of the state to deal with local problems.

SENATOR COTTEN:

I'm anxious, Mr. Chairman, I'm sure we're going to hear from the Commissioner of Fish and Game at some point.

SENATOR KERTTULA:

Yes, I presume we will.

SENATOR COTTEN:

Thank you. That's all I had.

SENATOR KERTTULA:

We can attempt -- may be Mr. Gruening will be able to find him. Inform the Commissioner of Fish and Game there's going to be a request for him to speak on the SB 601. Senator Adams has the floor.

SENATOR ADAMS:

We listened to the other two bills. Both of them had fiscal notes in the neighborhood of being one thousand. Mr. Chairman, if you could get a fiscal note on this before I ask my question, I'd appreciate that.

SENATOR KERTTULA:

I think the Finance Chairman was requesting a fiscal note for us. We do not have one at this time, but he is working on it.

SENATOR ADAMS:

Thank you. And going on to looking at section five, subsection(g), can you describe to me what is the eligibility criteria for permittees? Is it similar to the Governor's bill or what type of criteria am I looking at?

MS. OTTO:

Mr. Chairman, Senator Adams, the criteria set out on page five, lines twenty-four through twenty-nine, and basically they are that the -- these are asked to be fleshed out by the Board -- but it's the availability of alternative resources and either an individuals dependence on the resource for their cultural ties to the resource.

SENATOR ADAMS:

Is the application process similar to the one that was given by the Governor's bill? Do you know?

MS. OTTO:

Senator Adams, I think that the Boards would need to deal with that issue. This is something -- I think one of the riding philosophies behind this bill is that the Boards have expertise in fish and game management, that they are in a better position, given the constraints of the special session to make management decisions. And the House decided to leave the Board with a great

deal of latitude to make those kinds of decisions.

SENATOR ADAMS:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

Are you satisfied? Are there other questions at this time? If not, Mr. Campbell, do you have a comment on this?

MR. CAMPBELL:

Thank you, Mr. Chairman. We think this bill has only partially succeeded in one way but certainly fails in the rest. I think the it succeeded partially in the main thing of the bill, is simply revised some legislators feel that they have had to be able to vote for going home ...

SENATOR COTTEN:

Mr. Chairman, I want to just interrupt here.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR COTTEN:

Remind Mr. Campbell that motives of legislators ought not to be discussed here.

SENATOR KERTTULA:

You were not allowed to do so on the Senate floor.

MR. CAMPBELL:

Mr. Chairman, Senator Cotten, if I can.

SENATOR KERTTULA:

Thank you, Senator Cotten.

MR. CAMPBELL:

I would like to apologize and see if I can start over in a better fashion.

SENATOR ADAMS:

I'd like to interrupt because if you can start talking about motives. The motives of the Governor's bill is not to solve subsistence. It is basically to change ANILCA and that was the Governor's motives. And I apologize for stating that also.

SENATOR COTTEN:

You can talk about ... [laughter]

SENATOR KERTTULA:

[indisc. - laughter] We can talk about the administration.

SENATOR COTTEN:

Right. The Governor's motives are open season [indisc. - laughter].

SENATOR KERTTULA:

You were in order.

MR. CAMPBELL:

What I will try to discuss is what I understand the motives of the bill, I believe, the objectives of the bill is trying to achieve. The bill has been described as a "finger in the dike" and unfortunately we feel we're in a situation where the dike has crumbled and that this simply does not work. The bill basically does three things and I'd like to just go over each of them briefly, as well.

It does as Ms. Otto pointed out, provide the Boards some general language to restrict sale of fish and game resources and that is very mildly helpful. The second thing it does, is it establishes the non-subsistence areas. And we actually first saw this bill as it was created and moved very rapidly through a couple of committee's last night [indisc.] so it was until as we were waiting [indisc.] that I had a chance to really look at what this bill does. I'm sort of amazed. Because if we had done this bill, I believe there's some that would have thought, we knew it all along, the Governor's is trying to get rid of subsistence or [indisc.] rural subsistence users. Because what it does is throughout our Council process there was a lot of talk about the severe distrust of the Board among many rural residents. But what this bill does is that it empowers the Board with a fair degree of leeway, more substantial leeway, I would add, than our bill. There's no population language and some other reasons I'll get into - to if they look at an area and they feel that area if they can make the determination in their judgement that subsistence is not a principal element of the economy, culture and way of life, that they can simply declare that area a non-subsistence area.

Now the bill does list out the criteria and they lifted [indisc.] directly from our bill that they look at and make it that. I think that that's useful. But under this situation, there's some very distinct differences in how this works to the severe detriment of rural subsistence users.

In each bill, subsistence uses are not allowed in the urban areas. But because under the Subsistence Advisory Council bill, the number of potential subsistence users in those urban areas was very limited. Only a small fraction of the population, -- it was within the power of the Boards to, I believe, [indisc.] draw the boundaries very tightly because that small amount of people who are going to go out outside of the urban area were going to have a minimum impact on the rural residents. Here the motivation on the Boards is in fact the opposite. Which is to expand the boundaries as widely as possible and, in fact, I think there's going to be a tremendous temptation, particularly on the residents in between Anchorage and Fairbanks, if they are having a great deal of difficulties, say in the area Glenallen or up the highway or wherever, - to look at that and say, well, maybe we can decide subsistence is not a principal element of the economy and so we just take that element out - that whole area out of subsistence and put it in non-subsistence area and then not have to deal with these conflicts. It also retains the situation where everyone in Alaska is a subsistence user. And so for instance, every G.I. in Fort Richardson or Elmendorf who moves up here and establishes Alaska residency, can then go out, get in their car, drive down the road system and compete with rural subsistence users. For that matter, anybody [indisc.] around the state can compete with rural subsistence users. And we are in, I think, that some folks have said, well, we have a tier two situation criteria [indisc.] to fall back on if we get into that situation and we just say that the tier two criteria do not work well. In fact, they work okay when we're out away from the urban areas. But when we're around the urban areas, tier two hunts are an absolute disaster. They turn, quite frankly, into a liars contest and one that we cannot

enforce. So that's how it has an adverse affect on rural subsistence users.

The third thing it does is, I have to say I think something - well I think that many people look at this sort of customary use in the urban areas, and think, ah, this is what we've been waiting for. This is going to recognize that we, in this urban area, have a special subsistence use. I think those people are in for a somewhat bitter disappointment. And the reason I say that is this customary use which by the way is defined on page seven as "customary use means use of fish stocks and game populations permitted under 16.05.258 and then that's where customary use and it's what -- at least when I was involved in [indisc.] used to say it had a pleasing symmetry to them. But I don't think it answers what customary use is. But worse, it leaves us with the question of how on earth -- and I just ask each of you to think about this. If you were in the position in the Department of Fish and Game and you were dealing with an urban population of the Kenai Peninsula and you were just told you can sort those residents out. You're going to get to pick some who do participate and some who do not. And you're going to sort it out by somehow judging their availability of alternative resources and either their dependence on the resource or the person's cultural need to engage. And I would suggest that a cultural need is used as a racial factor is unconstitutional, and it is not [indisc.]. And I think what you do is put the Boards in the position where they have something absolutely impossible to administer, it's optional where they can provide pretty much the same thing through personal use fishing, right now, they'll simply say, why do it? And in fact, we haven't -- the Attorney General's office has looked at this right now, they say they feel right now if this somehow became a law, that the Attorney General would advise the Boards that this probably would not be feasible. This section is not useable.

So I guess those are the problems with what it does. I believe that we've talked enough in previous committee meetings about all the other problems that we need to fix. I won't run

through that list or take up more of your time. You've seen too much of me already. [indisc.] questions.

SENATOR KERTTULA:

I'd ask the Department of Fish and Game Commissioner -- does he have a comment on the legislation 601? We'd like him to come forward too.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. I'm sorry I came in late. I'm not sure what's been discussed and what hasn't been discussed here at the present time. In my view, the House Committee Substitute 601 is part of the issue here in terms of providing tools to the Board. But it certainly doesn't give them all of the tools. From my standpoint, I guess it's not really the clear definition which would be going to the Board. I guess, we're kind of creating a new class where we talk about customary use. It's kind of my feeling at the present that the Boards have a category of personal use that they could use in this particular scenario. And I think the Boards do use that at the present time. I'm not sure what we've really accomplished with the creation of this term "customary use" in terms of Board authorities. It's kind of my feeling that the bill certainly helps in terms of the authorities of the Board for identifying what customary trade is but the bill falls a little bit short, in my view, in really providing the tools that the Boards needs to deal effectively with the subsistence priority here at the present time. In my view, we need -- and there's a number of things that I think that we truly need -- for the Board to have that.

I think, one, the Board has to have the ability to identify parts of stocks that are eligible for subsistence, certainly, the Boards need the flexibility and the ability to provide for separate harvest provisions. I heard some testimony here in the last few days, about when a subsistence harvest should be occurring. Certainly, the Board can provide for that. But when you get into a tier two situation, for instance, and you have resources that are not, in fact, being fully harvested by

subsistence users, the Board's hands are tied, for instance, in being able to go after those whatever the additional resource is under the present state law. Certainly, some of the definitions that have been provided for in the Governor's bill and so forth would certainly add some strength to 601, but those would be my general comments on 601 at this time.

SENATOR KERTTULA:

Questions? You have the floor. Senator Cotten then Senator Adams, excuse me.

SENATOR COTTEN:

So the pluses of the bill are you define customary trade and you allow the Board to identify non-subsistence areas.

COMMISSIONER ROSIER:

That's correct.

SENATOR COTTEN:

What else you need as far as -- I'm trying to understand what the Department of Fish and Game needs as far as management tools to accomplish your job. You want to be able to identify stocks.

COMMISSIONER ROSIER:

That's correct. Stocks or parts of stocks, that are in fact eligible for subsistence. We still don't address though, as I understand 601, we still do not address the kind of all Alaskan issue here on this. We still kind of got an open situation where everyone is still eligible as a subsistence user. And I think the basis for that -- we need to address that particular issue because as long as that's the situation, the Board has a very difficult time in dealing with the allocation process and giving fair allocation to the subsistence users and the rest of the users that are involved.

SENATOR ADAMS:

Senator Cotten, can I go along with your question just to ask on that.

SENATOR COTTEN:

Okay, I just want to get one thing clear here. So this bill does give you the ability to identify stocks. So that isn't a

problem then?

SENATOR ADAMS:

The question I was going to ask, Senator, is don't we already have that in existing statutes [indisc.- simult. speech] identify stocks.

COMMISSIONER ROSIER:

Yes.

SENATOR COTTEN:

So then that leaves us with some definitions that were in the Governor's bill that aren't in 601?

COMMISSIONER ROSIER:

That's correct.

SENATOR COTTEN:

And the all Alaska issue?

COMMISSIONER ROSIER:

And the all Alaska issue.

SENATOR COTTEN:

That's the two things then that you're lacking that as a manager you need?

COMMISSIONER ROSIER:

As I see it, that's correct.

SENATOR COTTEN:

Okay, thank you, Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator Adams.

SENATOR ADAMS:

Thank you, Mr. Chairman. In your mind, does this House bill cure the problems of this piece of legislation especially in the Kenai area?

COMMISSIONER ROSIER:

It may.

SENATOR ADAMS:

It may. Okay.

COMMISSIONER ROSIER:

It may.

SENATOR ADAMS:

I have looked at the Governor's bill. In my opinion, I have looked at the adjectives the administration says is unconstitutional. What is the administration saying about this piece of legislation and do you have a written opinion?

COMMISSIONER ROSIER:

I don't have an opinion on that at the present time.

SENATOR KERTTULA:

Senator -- you have the floor, Mr. Campbell, excuse me, if you wish. The Senator wishes you to respond.

MR. CAMPBELL:

Mr. Chairman, Senator Adams, when we first saw the version of this bill, it had on page five, the used proximity to the resource as one of the criteria. There were definitely we felt constitutional problems with that when used not in a time of shortage in tier two, but used right up front when there's a time of abundance, [indisc.] time of shortage. On the House floor, I think the [indisc.] concern last night they took that provision out. The Department of Law, is reviewing this -- actually we faxed it to Mr. Nelson, who is back in Anchorage today, hopefully settling a case that will bring the state about fifteen million dollars and be back down tonight. He is preparing a written opinion and will send it down to us. But my preliminary indication they also have at least some constitutional questions, particularly depending on as I mentioned earlier, if cultural is interpreted in a racial manner, then it is unconstitutional. If it is not, then it's very, very, difficult -- I don't know how you'd use that as a discrimination -- or how you would distinguish it on that basis.

SENATOR ADAMS:

Can I ask that same question ...

SENATOR KERTTULA:

You have the floor.

SENATOR ADAMS:

... of the House - the other bodies counsel.

MS. OTTO:

Mr. Chairman, and Senator Adams, we obviously were keenly concerned about the constitutional issues and after looking at the case logs and spending a lot of time reading and I'm sure you guys have too, reading the cases that have been decided by the Supreme Court on the issues presented in these bills, I believe it's constitutional. Legal services has looked at it and they believe it's constitutional. Certainly, the manner in which the term "cultural" is defined is left to the Board. And it's in their power to define it in a constitutional way. I guess on that particular issue, the constitutionality problem is frankly what stood in the way of the House and the all Alaskan policy. They really wanted to solve it and so Commissioner Rosier is incorrect that that issue is left unresolved. But it's left unresolved because the House was unable to come up with a way to do it in a constitutional manner. I would note, beyond that there's a few cases pending right now before the Alaska Supreme Court Morry v State in which the all Alaskan policy of the Boards is being directly challenged. An opinion is due out in that at any time and it's conceivable the court will give us additional guidance on whether or not all Alaskans is in fact constitutional [indisc.].

SENATOR ADAMS:

Mr. Chairman, have the legal opinion passed around, I would appreciate it.

SENATOR KERTTULA:

Please -- Mr. Campbell, do you wish a quick [indisc.].

MR. CAMPBELL:

Yes, sir. Just one very brief note to avoid any confusion about our questioning the use of "cultural" in this context because I think someone might note in all fairness, that in the Subsistence Advisory Council bill we also use the word "culture." And the only thing that I note the difference is the subsistence Advisory Council bill uses the term in the context of principal characteristic of the economy, culture and way of life in the area of the community. We are describing an overall aspect of the

community and the layout thirteen specific revisions that the Board looks at in making that decision. In this use, it is applied directly to a particular person and there are no criteria in terms of guidance as to how the Boards look at that.

SENATOR ADAMS:

Mr. Campbell, as I prepare my exit speech of this special session, and if this is the piece of legislation that passes both bodies and this lands on the Governor's desk, what is the Governor going to do? Is he going to sign it? Is he going to let it pass without his signature? Or is he going to veto it? I just need it so I can prepare my leave slip.

MR. CAMPBELL:

Senator Adams, I would not presume to speak for the Governor at this point, I can perhaps give you some thoughts. That is one, it is going to depend in part what the Attorney General's opinion is when it's finished being prepared this evening. Two, we've acknowledged the fact that in some ways this bill can make things slightly better for urban residents in reducing the conflict of subsistence user than others. But I think the Governor is going to be very deeply concerned that in our view, is rural subsistence users who are hurt under this bill. And I think he will consider that factor in, whether to veto it or not, but I know the Governor cares deeply about rural subsistence users.

SENATOR KERTTULA:

Senator Eliason and then Senator Pourchot.

SENATOR ELIASON:

Mr. Chairman, I'd like to make a couple points. First, I think that should be clearly understood that I think you used Sitka as an example. I think it was a very poor example. The only way you're going to relieve the problems in the community of Sitka or those of us here in Juneau is to change the constitution. Because we're surrounded by the national forest no matter what we do here today is going to solve our problems. And it's not going to solve your subsistence problems in the state waters, we don't have a problem at this point. So, Sitka is a very poor example.

We're in a box and we can't get out of it.

To be quite frank, I think if I were a member of the Outdoor Council, I would support this bill for a number of reasons. One, is that we went through the last two years through a very difficult session dealing with the Boards of Fish and Game and I can't believe that we're going to give the power to the Board of Fish and Game to determine they shall or they may implement subsistence regulations. That doesn't make a bit of sense to me. You're turning it totally over to a Board which, in many cases, you don't trust, and in many cases, I have some real problems with some of the members myself as it relates to sport and commercial fishing. So I think that it seems to be much wiser to set the criteria out as a legislative body. These are the steps you go through. Don't let the fish Board do that for you. You know, what kind of attention are you going to get? That's what scares me about this bill. It's like turning the fox loose in the henhouse. I hope you can see that. You and I have been on this issue about the Board membership and it's not going to get any better. We know that. I think you're going to look for a relief contingency through the courts because this Board, in my opinion, is not going to do a lot on subsistence. I would be very reluctant to turn this power over to those people. I mean, that's being quite frank. I think we can set the guidelines for them to do this. We set the guidelines. Don't let them do it. If they do it, they're not going to do what you think they're going to do. I can almost guarantee you that.

SENATOR ADAMS:

Well, if you weigh the two bills, of the Adams versus the Governor, I think your speech follows along with the Adams bill, Mr. President.

SENATOR ELIASON:

Can I reply?

SENATOR KERTTULA:

Certainly. You have the floor. Senator Pourchot next.

SENATOR ELIASON:

I have some very deep concerns about this and we can't get through constitutional amendment. I know that. But once again, if you're willing -- I don't think I'm willing to give the Board that authority. I don't think things are going to happen like you thought were going to. You're going to be very sorry [indisc. - paper shuffling].

SENATOR KERTTULA:

Senator Pourchot.

SENATOR POURCHOT:

Thank you, Mr. Chairman. I recognize that there's a lot of latitude that people use in arguing for their positions [indisc.] I still find it somewhat funny that we hear from the administration on a couple of points - on the arguments on why they may not like 601 contrasting to some of the efforts we've heard. The first is, of course, the last few days, Mr. Campbell, you have told us on two occasions how important that customary trade definition is and used that as an example why we need that legislation. And I've even argued on several occasions that you've used it in kind of a minor point to justify the big effort involved in a whole lot of other things. And now you're dismissing customary trade as something of minimal importance and maybe not even worthy of overcoming veto on this bill, that I guess, I would in that case hearken you back to your earlier arguments to make this small point, but it's an important point and it does solve the problem. I think the administration's is going to throw the baby out with the bath water. Nobody is claiming that 601 does anything spectacular and solve all the subsistence problem. But it does address a couple of points and one of them that you yourself have made on several occasions is that the definition of customary trade is very important tool that we need to do. So we throw that away at this stage of the game.

The second is on constitutionality. We've had big debates on whether or not the Governor's bill is constitutional or not and if the other bills are constitutional or not. And your attorneys

have gone to great lengths, I think, in stretching why the Governor's bill is constitutional. And now you say that one reason that 601 may not be constitutional is because somehow the definition of "cultural" they might use ethnic background. No one has ever talked about racial distinctions or ethnic distinctions in any of this discussion on subsistence. The people making these definition of cultural, the interpretation is going to be the Board. The Board is not -- I mean it would be ludicrous for them to come up with at this stage with racially defined - or racial definitions or ethnic definitions of cultural. I mean that's your classic red herring. And if that's the best we can do for an initial legal criticism for constitutional criticism I think that's really far out compared to some very real constitutional issues that we discussed so far.

SENATOR KERTTULA:

You may respond.

MR. CAMPBELL:

Thank you. Mr. Chairman, Senator Pourchot, briefly on both points. I believe what I said is that the empowerment of the Boards to restrict or that customary trade was a good thing, I think I described it as sort of a weak empowerment. We have concern -- we think that customary trade is very important. We think that this would be much better if you would put "not through commercial channels". Specify that customary trade could not be commercial. What we are concerned about -- this is definitely better than nothing. But what we're concerned about is that this is not going to give the Boards clear authority to draw [indisc. - cough] that all subsistence customary trade is non-commercial. If it did that that helps much more.

On the second issue of constitutionality and culture, it is my understanding and I am not ... [tape ends midspeech].

Tape 92-18

Side B

[Tape begins midspeech].

MR. CAMPBELL:

... an attorney but things can be unconstitutional in one of two ways. Either facially, that you look at it in a certain unconstitutional on its face or in application. What I suggested is that with culture unfortunately there seems to be one of two choices. Either the Board applies it in a way that means racially which is unconstitutional, but it is useful as a definitive factor for the Board. I mean, mechanically that would work. Or you don't apply it that way, and I think the Board would not apply it in an unconstitutional way. But at that point, we think I don't know what that means in terms of how the Board comes up and says, who has the culture of hunting and fishing? Or who is it important to or whatever. And what I'm saying is, if you do not apply it in a manner that's unconstitutional, then it is not a particularly useful approach in application. That's the only point that I'm trying to make.

SENATOR KERTTULA:

Senator Sturgelewski. Senator Pourchot, are you -- Senator.
SENATOR STURGELEWSKI:

Mr. Chairman, I want to stop this kind of debate because I just had a small question brought to me by someone in the audience.

SENATOR KERTTULA:

I think that it's okay to proceed now.

SENATOR STURGELEWSKI:

Mr. Chairman, through the chair I wonder if Laurie Otto, may I ask you a question. And this was brought up to me. If we would turn to page three line six and seven, item fourteen, my understanding that that is in the existing law. Nothing in the addition of customary use in other areas has any impact on that section, does it?

MS. OTTO:

Mr. Chairman, Senator Sturgelewski, that's correct.

SENATOR STURGELEWSKI:

In other words, that is there and amendments that are being made won't change how the Board would interpret or utilize those

kinds of presumptions.

MS. OTTO:

That's correct.

SENATOR STURGELEWSKI:

All right fin. That was important to some people. Thank you.

SENATOR KERTTULA:

Are there questions around the table? Yes, you have the floor, Senator Pourchot.

SENATOR POURCHOT:

As long as this language is on the table, I wonder if you can use get back to that question that Mr. Campbell raised. What was the rationale of the House on page seven, line nineteen, the definition of "customary trade". Why did the House adopt the language in the Governor's bill for customary trade definition [indisc.].

MS. OTTO:

Mr. Chairman, Senator Pourchot, I talked about this earlier, so I apologize for repeating myself but the -- if somebody has strips and goes to village store and sells them for cash as a means to buy gasoline to go subsistence fishing that is arguably a commercial channel. That is a definition that needs to be fleshed out further and it may not accurately and specifically enough define what you really want to prohibit. The definition that's here is broad enough to allow the Board to say non-commercial channels. But given the amount of time that was available in the House, the members at least in the Judiciary committee didn't feel that they really had a sufficient amount of time to responsibly deal with drawing the lines that needed to be drawn and they felt the Boards do have the expertise to do so. I would note that also in addition to this definition on page six, lines twenty-five and twenty-six, the legislation requires the Board to further flesh out this definition to make sure that we don't just leave this issue hanging in limbo, for some time to come. Beyond that I note that on the February '93 meeting, the

Board already has this issue on the agenda. So it should be dealt with in a timely manner. It's not something that's going to be pending for a long time. And I'm sure the Commissioner can [indisc.].

SENATOR KERTTULA:

You have the floor, Senator and then Senator Eliason.

SENATOR POURCHOT:

I appreciate this certainly conflict [indisc.] minimal amounts of cash and limited exchange in non-commercial. I guess what I am saying [indisc.] certain amount of complication [indisc.].

MS. OTTO:

That's correct and that was part of the debate. How can it be exchanged for cash, particularly when it's -- the example I gave you -- really felt that that was inappropriate. That that's exactly the kind of thing that customary trade is probably talking about. But we just didn't have the time to come up with the definition the members felt was not contradictory.

SENATOR POURCHOT:

Thank you.

SENATOR KERTTULA:

Senator Eliason has the floor then Senator Uehling.

SENATOR ELIASON:

Just one question [indisc.] Was my characterization of the powers that we're giving the Board correct, about how they deal with subsistence? I mean aren't we sort of giving them a blank check for saying you may do this, you may do that [indisc.] but beyond that they could do nothing and they wouldn't address -- if I were, like I say, a member of the Outdoor Council, I don't think I'd want a lot of attention given to subsistence in some cases. So it seems to me that the Board was influenced by that particular group. Do you think you anticipate a lot of action in that area?

MS. OTTO:

Mr. Chairman, Mr. President, this is one issue that -- I think the important distinction is that it's the distinction

between customary use and subsistence use. This does not give the Boards additional power [indisc.] subsistence areas in the areas of subsistence. It creates a whole new category of use of the fish and game resources of the state. So I guess to the extent that it's dealing with an entirely different approach to the problem, I don't think that it gives them more latitude except in defining the non-subsistence use areas, to do things with subsistence.

SENATOR ELIASON:

It seems to me though like they could adopt that interpretation but still do nothing about the issues that come before them because they are not required to do it. I think this thing could be in limbo.

MS. OTTO:

Well, certainly, the customary use permit issue I think it's true that it could remain in limbo. And I don't think that there's any confusion about that. I think what the intent was -- instead of just saying we have non-subsistence use areas. One approach to this would be to say simply we have non-subsistence areas. But there are circumstances, like on the Kenai, with allowing the Kenaitze to have one net on the beach that the Board may wish to allow. And this would give it a tool and a method by which they could allow that. But yes, you're right. If they don't want to -- if the Board decides it's not appropriate in this state to allow customary use permits in non-subsistence areas, they could certainly make that determination under this bill.

SENATOR ELIASON:

Am I right in assuming that the Governor's bill or the bill that we dealt with yesterday, lays out the criteria and the Board doesn't have a lot of ability to make -- they would have to move in that area subject to that criteria. They are mandated to do this.

MS. OTTO:

The approach taken in the Governor's bill to the issues raised in this bill, which is non-subsistence use areas, the

Governor's bill would not allow any subsistence activities in non-subsistence use areas. It would only be sports, personal use and commercial. What we did is take a new category and allow that in non-subsistence use areas. So we are giving the Board more latitude in those areas than they have right now and more latitude -- and not more latitude in the sense to do negative things but in additional power to do something positive for those who are economically and culturally dependent on the resource in a non-subsistence use area.

SENATOR ELIASON:

Which is back to the main point or the point that they have the [indisc.] to do that if they choose not to act, there's nothing that we can do on this [indisc.] issue requirement to do that. Is that correct?

MS. OTTO:

That's correct.

SENATOR KERTTULA:

Are there any other questions? Yes, Senator Uehling, then Senator Hoffman.

SENATOR UEHLING:

Thank you, Mr. Chairman. Along Senator Pourchot's question you had mentioned that in the House that you didn't have time to be more specific, that it was really hard for the Board to make the determination [indisc.] policy however they wish. I'd like to get back to the question regarding the customary trade in the Governor's bill on section (a), there's a more specific definition of what customary trade means. And essentially talks about non-commercial exchange, minimal amounts of cash as restricted by the appropriate Board and it goes on and says, "which does not include sale in commercial channels". Do you have an objection having that being more specific? Or would you rather [indisc.].

MS. OTTO:

Mr. Chairman, Senator Uehling, I just work here. [laughter].

SENATOR UEHLING:

And you still want to work here.

MS. OTTO:

I will tell you that this definition was debated actively in both the Resources and Judiciary Committees there was amendments [indisc. - cough] proposed in Committee. There was a floor amendment proposed on this particular issue. The arguments of the parties who sort of prevailed in their definition were those that I presented to you.

SENATOR KERTTULA:

Senator Hoffman.

SENATOR HOFFMAN:

Thank you, Mr. Chairman.

SENATOR KERTTULA:

And she still works here.

SENATOR HOFFMAN:

I have a question for McKie on the constitutionality question. He says that 601 is unconstitutional because of some cultural problems that are being utilized in the legislation. But if they are saying that that is, in fact true, then we should go back and be consistent and look at Senate Bill 484 which the Governor has submitted and on page five, there is some new definitions of category one talking about game management in units and in there is the word "cultural". So if you say that this is unconstitutional then by the same argument, I think you'd have to say that your legislation is also unconstitutional.

MR. CAMPBELL:

Mr. Chairman, Senator Hoffman, I'd like to run over again, the distinction in terms of the use of the word between two bills that's why I didn't bring it up -- in the Subsistence Advisory Council bill the word "culture" is used as part of the term and whether the community -- I can't find it. Unfortunately, I know it by heart now -- dependence upon subsistence as a principle element of the economy, culture and way of life of the community and the area. And then we have listed out thirteen specific factors which the Board looks at in making that determination. And this is clearly applying to the community as a whole and

factors are clearly not racial. I also want to be clear that I'm saying in reviewing this bill, but at this time we're not saying this bill is unconstitutional. We are simply pointing out that the use of the word "culture" for an individual criteria either can be used racially and in that case it would be unconstitutional, but is probably mechanically helpful in terms of sorting out who can and who cannot. Or it cannot be used -- it can be used in a nonracial sense and in that case it is not very helpful at all in terms of bringing a determination of who qualifies or not. I would assume the Board would interpret it in a line with the constitution but at that point it really loses much meaning in terms of interpreting who qualifies or not.

SENATOR HOFFMAN:

Let me say that the two words are the same. But in your legislation Senate Bill 485 on page five starting [indisc.-simult. speech] starting on line eight you say, "and where it is a dependence upon subsistence is the principal characteristic of the economy, culture and way of life in that area". And then you go to 601, the language on page five, line thirty, it says, "dependent upon subsistence in the principal characteristic of the economy, culture and way of life of the area" which seems to me the same wording. And you are saying that the word -- not only the word but the whole sentence in that area are identical and I would have to find that if one was unconstitutional the other is unconstitutional.

But I'd like to go now to an area that Ms. Otto had talked about in non-subsistence areas. The non-subsistence areas ...

MR. CAMPBELL:

Senator.

SENATOR HOFFMAN:

... you utilized in - I'm finished with those [indisc - laughter].

SENATOR KERTTULA:

Senator Hoffman has the floor. You have the floor, Senator.

SENATOR HOFFMAN:

Non-subsistence areas that you say are in Kenai are rural/urban, can rural area be defined as non-subsistence by your legislation?

MS. OTTO:

Mr. Chairman, Senator Hoffman, I don't believe so. And to the extent it can, it's the exact same situation that's presented in the Governor's bill because the definition is taken directly from it. This body may, for example, wish to put the population caps back in which is what we left out - the seven thousand cap. But other than that it's basically the same definition, because as I read the Governor's bill, even if an area is less than seven thousand, the Board can say that it is an area where dependence upon subsistence is not a principal characteristic of the economy culture and way of life and call that an F-3 which is a non-subsistence area. So we took the same approach that the Governor's bill did, but we left the Board with an opening to give something to people in that area if they were dependent upon the resources. I hope that answers your question. I'm not sure.

SENATOR HOFFMAN:

Thank you.

SENATOR KERTTULA:

Are there further questions? Do the other Senators wish to speak? You have the floor, Senator Cotten.

SENATOR COTTEN:

Just to Mckie or the Commissioner. The definitions that the House didn't deal with, for instance, "customary and traditional", "game management unit", "sustained yield". How critical are those definitions? Do they relate to particular court cases? Do they have particular applications that are critical?

MR. CAMPBELL:

Sir, several of them we feel are fairly critical. In particular, we feel that there is a strong need for some definition of the term "customary and traditional". We also feel there is a very strong need ...

SENATOR COTTEN:

Do you want to go ahead and just tell it. Say on "customary and traditional" and tell us why that's a critical issue.

MR. CAMPBELL:

The customary -- whether it's fish stock or game population is subject to subsistence or not is determined by whether or not it has been customarily and traditionally used for subsistence. And without a definition -- we have currently right now in regulation a series of regs which have worked fairly well in the past but we have lost the use of part of those because of the result of the McDowell case. And when we then lost part of those regs, we would up with the situation that almost every -- that it basically comes down to if you can -- a really relevant part of it -- if it's been used over time. I'm not talking about just an occasional use but over time if there has been a use of a fish stock or a game population no matter how distant in the past that use may be, it proves the use. At that time it is again subject to subsistence whether or not there has been any subsistence use of that stock or population in the recent past. King salmon in Southeast Alaska are a definite example that ...

SENATOR COTTEN;

So for instance, let me try to catch up here, and ask if you didn't have a good definition then, would it be difficult to identify a non-subsistence area? You'd need a better definition in order to do that?

MR. CAMPBELL:

Actually, I think that they could identify non-subsistence area. I think that they have a substantial leeway there in terms of how they do it. I think if I can, continuing for this moment on a non-subsistence area, I think Ms. Otto is correct in that the criteria that are laid out for the Boards are identical in determining those with or without that definition. But the pressures on the Board are very different because under this bill you have the situation that every Alaskan who remains a subsistence user which is an extreme pressure to extend out subsistence areas. Whereas under our bill, only a tiny fraction

of urban residents are subsistence users, and there's a motivation to contract subsistence areas. I'd be happy to continue with other definitions we feel are critical.

SENATOR COTTEN:

Fine. If you could quickly go through them. If there are particular court cases that you're trying to make -- have an effect on, I wish you'd say that as well.

MR. CAMPBELL:

I will sir. To the extent that I'm aware and perhaps I may miss one [indisc.] figure out if I missed a case. On the reasonable opportunity, there are some court cases on this, but more and more there is the situation where not a particular court case -- the Bobby court case is one of them affected in part by this. But we've had a situation where we require Boards to allocate to provide for reasonable opportunity for subsistence. But we've had a situation where many people who are subsistence users feel the Boards have not properly done that. They've provided a season or bag limit or whatever that really does not provide reasonable opportunity. And the guidelines - the one definition of what that is or is not in the Subsistence Advisory Council bill is very clearly laid out what it is not and gives a number of specific factors for the Boards to consider. The Boards have said they want and need that guidance.

SENATOR COTTEN:

Where is that definition in your bill?

MR. CAMPBELL:

In our bill it is on page eight, subsection (01) starting on line nineteen.

SENATOR COTTEN:

So is there -- are those the two most critical definitions then?

MR. CAMPBELL:

Let's see, yes, sir. I believe that the definition "sustained yield" is also extremely important. Commissioner do you want to [indisc.].

COMMISSIONER ROSIER:

Yes, I think that it is. The event that we have a population that needs rebuilding we want to be sure that there's a court mandate here to provide for a harvest that we in fact have the mechanics in place to in fact rebuild. This is a protection for stocks type definition. [indisc.] This is part that we may be conditionally mandated to over harvest if we don't have that definition.

SENATOR KERTTULA:

You have the floor.

SENATOR COTTEN:

Can I ask then Ms. Otto for here interpretation perhaps of why they were left out of the House bill. I understand that you just work here.

MS. OTTO:

Mr. Chairman, Senator Cotten, what we were trying to do in this bill is solve as many problems as -- and I'm saying we because I helped write it and I'm taking responsibility for its flaws and I'm sure there are flaws in this. But what we were trying to do is solve as many problems as we could that were identified by the administration, and for which we could use consensus. And the two most pressing problems that were raised over and over again in our hearings were the Kenai Peninsula and the lack of a definition of "customary trade". We, in fact, were able to reach a consensus on those two points and those are what are in the bill. The other definitions clearly raise important issues that are going to have to be dealt with as is the all Alaskans policy, as are a number of issues related to subsistence. But at least in the process that was followed in the committees where I was involved, we were not able to reach consensus on those issues.

SENATOR COTTEN:

So there was a disagreement as to how to define "reasonable opportunity" and "customary and traditional"?

MS. OTTO:

There was a deep division of opinion on how those should be done and beyond that there were things that came up in the process that made some people concerned about what was actually being done in the definitions. For example, the definition of "sustained yield" although it's really being talked about much, applies only to consumptive of fish and game resources. It's a definition of a statute of a constitutional term by limiting it to only consumptive uses. What is the effect on managing areas like Pack Creek and the McNeal River where you are managing them in large part for non-consumptive uses, i.e., [indisc.]. What is this mean for stocks that are not consumed, that are not taken for consumptive purposes? How does this apply with the constitutional requirement to sustained yield? Is this a legitimate interpretation of that principal? There were all kinds of other collateral issues that came up and as with my dialogue with Senator Pourchot over the customary trade issue, there were so many issues that were raised by this and so many different viewpoints and so many different facts that people felt they were just not able to reach consensus on those points. Although they are important and they do need to be defined.

SENATOR COTTEN:

Mr. Chairman. Thank you, I think we could probably spend a lot of time on those definitions and I won't require the committee to sit through it.

SENATOR KERTTULA:

Thank you. Are there questions around the table?

SENATOR COTTEN:

We could do it if you wanted but I didn't want to be the only one that was interested.

SENATOR ADAMS:

Can I ask each of you -- we look at the Alaska Administration Code and we looked at part six in chapter ninety-nine in subsistence use and we go and look at customary and traditional subsistence use. We have eight criteria which number four has been repealed. Can you tell me if any of those criterias are no

longer needed or unworkable?

MR. CAMPBELL:

Mr. Chairman, Senator Adams, while I'm certainly familiar with the list, I do not recite them verbatim, if I can obtain the list from you I can tell you which ones we have allowed that don't prove very useful in sorting out.

SENATOR KERTTULA:

[Indisc.].

MR. CAMPBELL:

If I can run through them real quickly. One is longer term consistent pattern of use excluding interruption by circumstances beyond users control such as regulatory prohibitions. And the question is if that has to be an ongoing use or not, right now clearly, I believe, under regs that it does not. And by ongoing I don't mean, has to be happening right this moment. But even has to be right now in recent times. It could have been a long term consistence [indisc. -cough].

Two, a use pattern recurring in specific seasons of each year. Sir, in Alaska almost every use pattern recurs in specific seasons of the year.

Three, a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort, cost and conditioned by local circumstances. And actually that is one factor that we appropriated into statutory language in our bill to describe criteria but is not particularly useful in saying this is or is not. It is of some help.

Four was repealed. Five, the means of handling, preparing, preserving and storing fish or game which have been traditionally used by past generations and actually if we stopped right there that would be a useful criteria. But then it continues, but not excluding the recent technological advances where appropriate which does not render it particularly useful in sorting out whether something is or isn't. It means if you dry your fish on an air rack or if you freeze them in a vacu-seal. Either one [indisc.].

Six, a use pattern which includes the handing down of knowledge of fishing or hunting skills, values [indisc.] from generation to generation. And, sir, being in the [indisc.] leading up the point where we are, there are way to many people of all races, origins, everywhere else talk about their use patterns and how their father taught them to squirrel hunt in Kentucky or whatever and that has not proved particularly useful for the Board.

A use pattern in which the hunting fishing effort or the products of that effort are distributors or shared among others including customary trade, barter, sharing and gift giving. And then it says, customary trade may include limited exchanges for cash where it does not include significant commercial enterprises. But that's in the regs and it has not proved particularly helpful to us. I would suggest that the use patterns include sharing there are many people throughout the state again, who make strong cases that is not particularly something for a subsistence way of life. So that factor has not been particularly helpful to us.

A use pattern which includes reliance for subsistence purposes upon a wide diversity of fish and game resources and provides cultural, social and nutritional elements of this subsistence users life. I think that is a useful criteria and in fact that use pattern includes reliance on a wide diversity is specifically included as one of the criteria in the bill. And those are the criteria. And if it would be helpful, I would be happy to see if we could get somebody from the Attorney General's office to tell us the difficulty they've had in excluding species under this.

SENATOR KERTTULA:

Are there further questions of these witnesses? Further statements? You have the floor, Senator Pourchot.

SENATOR POURCHOT:

I wanted to call up on the comment and the frustration by Senator Cotten here earlier on the definitions that were included. I for one am interested in pursuing the possibility of including

some of the definitions, particularly if they'd be helpful [indisc. - cough] position would be in the administration [indisc.] sense of taking resistance in improving this bill, but it seems like there is grounds for that. [indisc.] on the sustained yield definition [indisc.] expressed you had a conversation about [indisc.] I was wondering if Mr. Campbell [indisc.] for the same reasons that I think [indisc.] on how that word got in there. I got the impression that it started out not being in there and I was reading on page ten, line twenty-six through thirty, their definitions saying sustained yield, include that without the word "consumptive" in it. And it sounds to me, from a laypersons standpoint it still works. I would just like your explanation of using "consumptive" doesn't mean that you lose your ability to manage non-consumptive uses by deleting "consumptive" it seems like it doesn't complicate the same interpretation for both consumptive and non-consumptive.

MR. CAMPBELL:

Mr. Chairman ...

SENATOR KERTTULA:

You have the floor.

MR. CAMPBELL:

... Senator Pourchot, as you pointed out [indisc. - paper shuffling] as I look through this I did highlight that word because it had been a particularly controversial word and as I told you we have again I'm sorry we have those aging backlog on opinions [indisc.] from but an opinion specifically on that and certainly none of us would want to be part of something that says we can't manage McNeal River or Pack Creek. But I also thinks it works without this word and I highlighted it because I wanted to make sure you were aware of it's situation for you.

SENATOR COTTEN:

So you don't care if we take it out?

SENATOR KERTTULA:

You have the floor.

COMMISSIONER ROSIER:

Mr. Chairman, I would like to say that I have no objection to that word coming out of there. I don't think [indisc.].

SENATOR POURCHOT:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator Pourchot.

SENATOR POURCHOT:

Again, I don't want to be the one to get into this, but I think there is an area where from the testimony so far it seems an area where if we wanted to we could probably say take out the definition of sustained yield deleting the word consumptive out of the Governor's bill and in some small way solve one more problem.

SENATOR KERTTULA:

We remain open for amendments to the legislation after we complete this section. Are there questions? Further questions? It's the intent of the chair to recess to call the chair looking - - and I would suggest look to the amendments. My understanding is the President of the Senate wishes the Rules Committee to meet and bring a bill to the floor. We cannot act on this bill until tomorrow. I know that much about the constitution. And I know every well it's a constitutional requirement. So it's open for meeting subsequently in the day. We can recess to call the chair, for purposes of the Rules Committee meeting or [indisc.] whatever you should choose. We've exhausted the present bill -- there is a suggestion of an amendment here then. Are there amendments? Senator Zharoff would like to see the bill moved out. Are there amendments. You have the floor, If we can prepare the amendments. That would seem very, very simple, Senator, that might be able to be expressed if we have the bill before us. If there is a question and you want them typed, and it becomes a more detailed in location or amounts of wordage why, of course, we'll have to. You have the floor, Senator Pourchot for suggestion.

SENATOR POURCHOT:

Mr. Chairman, [indisc.] way to do this.

SENATOR KERTTULA:

Precisely, and if there are more amendments, we'll just have to go to another [indisc.].

SENATOR POURCHOT:

[Indisc.] for purposes of discussion I would -- can the Governor's bill 484 on page ten, lines twenty-six through thirty, there's a definition of "sustained yield". Mr. Chairman, I would move that in the appropriate location in SB 601 that that definition of "sustained yield" be included with the exception of the word "consumptive" in line twenty-eight which is not [indisc.].

SENATOR KERTTULA:

You -- does your legal counsel -- would you come forward. Do you have materials -- I would ask that you sit at this table so the Commissioner has room to work here. There's going to be one or two potential amendments come up, we could look at them in this fashion. If there's more and we don't have the time to do so, we'll have to prepare them. I will recognize you just in a moment. Do you understand the motion now? If Senator Pourchot would restate that motion so that everybody around the table has the ability, including counsel, who may well be asked to draft it. And then I will recognize Senator Zharoff. But please, let's first do this.

SENATOR ZHAROFF:

Mr. Chairman, I was going to ask before we totally get into this can we take about a three to five minute break and then maybe talk about some of that.

SENATOR KERTTULA:

I have no objection. Five minute break while we can get in some concerns, Senator Pourchot and counsel can get together here to. Five minute break.

RECESS

1:00 - 5:25 p.m.

SENATOR KERTTULA:

[Indisc.- simult. speech] Will the committee come to order? Everybody was studying the bill and some were preparing