

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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amendments. I have one major amendment. I don't know if there are other amendments. There's some suggestions on amendments on my desk. Does everybody have what amendments I have which is just amendment one at this moment?

SENATOR STURGELEWSKI:

I don't think we do. Do we? Amendment number one.

SENATOR KERTTULA:

Amendment one. We're to order. Amendment one I believe is

SENATOR KERTTULA:

Yes, it's titled Senator Halford's [indisc.] Halford and a whole lot of work rather quickly went into that amendment. I also think there's our bill back there someplace -- administration. Senator Halford, if you wish to speak to the amendment, please do so. You may speak in advance of the motion in this committee.

SENATOR HALFORD:

Mr. Chairman, following caucus, I went and got together with the Attorney General and the Commissioner of Fish and Game and staff and try to go through the Governor's proposal to see how it would merge with the House bill and what of the House bill they [indisc.] and so forth. I also received a copy of kind of a mark up that I think some members of the House had worked on to try and achieve the same purposes. When we compared the two bills, there were already two significant differences in what it would take if you were trying to merge those two proposals and they are both contained on page six, but essentially what the -- I'll get to what the legislation does is it gives us the core House provisions with regard to the Boards limiting subsistence hunting and subsistence uses in a non-subsistence area. And it provides that that is a mechanism that is the major limitation and it in essence goes back to the all Alaskan policy in terms of qualifications. It takes up all the individual qualification provisions. It takes up the presumptions of the individual qualification provisions and with them takes out the constitutional questions that have been

raised. I think the majority of the constitutional questions were on those presumptions and there's debate as to whether they were constitutional or not. But those things are taken out.

It also takes out some of the definitions in conflict and I would point out on page six, the House proposed or some of the members of the House that were working on this in an effort that, I think is an honest effort, to try to get some kind of a middle ground, proposed taking out the definition of "subsistence" on page six and proposed deleting the word "consumptive" in front of "uses" in the definition of "sustained yield". They were not in the draft that we worked through in trying to come up with what was a merge. There were substantive questions. But I would just point out that they were questions that were trying to reach some kind of a consensus with the bill with the House and we concur they can be dealt with minimal complication and try to get it out of here. Those are two issues that remain open in terms of differences, at least with those that are trying to reach some kind of conclusions from the House side. And I would ask the administration to kind of go through the same thing in terms of what the bill does and what those questions are. And then I think we should go to those two areas - what needs to be in there like, I have question probably to the Commissioner of Fish and Game, is do we need, if we're going to have a conflict on whether consumptive or non-consumptive is in the definition of "sustained yield", do we need the definition of "sustained yield" in the bill, for example. And what is the reason for having the definition of "subsistence uses" in the bill and if that makes it easier to sell, does that need to be there and why, I guess, can we go the administration?

SENATOR KERTTULA:

Yes.

COMMISSIONER ROSIER:

Mr. Chairman, if I might, in regard to the definition of "sustained yield", I believe that particular definition was

placed in there as more or less a guideline to the courts. Sustained yield is a requirement of the department in terms of managing the fish and wildlife resources in the state. And certainly we can -- we operated for a good many years without that definition and at this point in time, it seems to me it's not totally necessary for use within the bill.

SENATOR HALFORD:

Could I ask the same question on the definition of "subsistence" also on page six.

COMMISSIONER ROSIER:

Subsistence is the - page six.

SENATOR COTTEN:

Page ten.

SENATOR KERTTULA:

Am I looking at the wrong bill, okay, on the new bill 601.

COMMISSIONER ROSIER:

Again, I'm sorry, Mr. Chairman.

SENATOR KERTTULA:

You do have the floor to speak.

COMMISSIONER ROSIER:

Okay, thank you again. In this particular case, I think that this provided additional guidance to the Boards and certainly to the courts as well. But again, I think that overall the bill deals with the definition of subsistence. Here again, we could live without this particular definition.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

ATTORNEY GENERAL COLE:

I wanted to say that if you looked at the definition of subsistence in section thirty-one, it includes in the definition the provision for and the acknowledgement that a component of subsistence is the sharing among the Native peoples. And we discussed that in one of the hearings which I attended and it

was pointed out that that is the major component of subsistence - the sharing. And this is a recognition -- in the section, there is a recognition in this section that sharing is a part of subsistence. And I think that it adds something to the Native subsistence uses and I would like to see it included for that reason. But Mr. Campbell would like to comment on that a little bit. Yes, that's true.

SENATOR KERTTULA:

If you have something further to add, please proceed.

ATTORNEY GENERAL COLE:

Well, let me just say this that Mr. Campbell, points out that if we go with the old definition, there is a recognition of sharing in the old definition. It's just a question of what we do with section thirty-one. Whether we eliminate it entirely or whether we don't.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

Thank you, Mr. Chairman. Section thirty-one was part of the Governor's bill and in trying to reach some type of compromise is it essential that it remain in the bill to be able to maintain the core improvements that this bill makes in terms of managing [indisc.].

ATTORNEY GENERAL COLE:

No.

[Tape ends].

Tape 92-19

Side A

[Tape begins midspeech].

SENATOR ADAMS:

... to the definition of "sustained yield", I think that can be amended if on lines twenty-three if after the word "beneficial" the removal of "consumption" there. And read the sentence out after the line twenty-four "seeks to" the deletion of "provides for desired population. "Increase and provide

undesired" -- provide for surface of -- the deletion of that because that has reflects perhaps ongoing litigation within the state systems. So the sentence would then read, "that provides beneficial uses in perpetuity subject to preference among such uses and seeks to maintain healthy, self perpetuating stocks or populations". That basically would be the recommended language. Or basically the other thing is the complete deletion of that language so that perhaps we can work on it next session. I just offer that as a suggestion, Mr. Chairman.

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Mr. Chairman, I want to make the motion, and unless the attorneys states otherwise, I'm going to make the motion to adopt the CS, I will move to adopt it excluding essentially what is section five and excluding the definition of "sustained yield". Those are not essential to maintain the system. The testimony so far from the administration is that they are not necessary to get a bill that can provide [indisc.] direction. And there are also areas that raise conflict and seemed to have raised some conflict with our colleagues from the other side. So I concur with Senator Adams, if we can avoid that conflict.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

Yes, sir.

ATTORNEY GENERAL COLE:

It would be my suggestion that it be eliminated and that we address it in the next legislative session. I think it's something that the Legislature should address, but I expect it's going to take just a little more work and a little more analysis, a little more input from various groups to achieve an acceptable definition.

SENATOR HALFORD:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

You're suggesting then, Mr. Attorney General, to take out all [indisc.] and not just some and then deal with the definition of "sustained yield" at a later time next year?

ATTORNEY GENERAL COLE:

Yes, sir.

SENATOR KERTTULA:

did you say all of section five, Senator Halford?

SENATOR HALFORD:

Yes, I did. Section five is the definition of "subsistence". Also it's not necessary to maintain the [indisc.].

ATTORNEY GENERAL COLE:

Mr. Chairman, on that point, does that take out the sharing and bartering question provided by the Commissioner and the [indisc.] Attorney General? Can they comment on that? Then Mr. Chairman, it would just stay where it is where it's been deleted on line eight.

SENATOR KERTTULA:

Mr. Campbell, your response was, yes? Are there further comments to those two areas? Thirty-eight, five and all of section five. Senator Halford, you may proceed.

SENATOR HALFORD:

Mr. Chairman, just so we have a -- I guess it's a CS. I assume it's an amendment that the committee can offer [indisc.] CS.

SENATOR KERTTULA:

Yes.

SENATOR HALFORD:

Under our rules as a Committee of the Whole. But I would move and ask unanimous consent that we adopt Senate Committee Substitute for House Bill 601 SC as the Committee Substitute for mark-up purposes excluding the provision on page eight which is

all of section five and, I mean, on page six which is all of section five and on page six, lines twenty-one through twenty-five which is the definition of "sustained yield".

UNIDENTIFIED SPEAKER:

Mr. Chairman, on thirty-six and thirty-seven on lines twelve through nineteen will remain in the bill?

SENATOR HALFORD:

That is correct.

SENATOR KERTTULA:

Are there objections to that motion to use this as mark-up. Senator Adams.

SENATOR ADAMS:

Just shortly object. We have just received this shortly. I think there is four to five different areas that need to be looked at because this bill still does not allow proper perhaps representation of the rural interest in subsistence and it does not get us to where we want to go as far as a constitutional amendment to solve subsistence and it's why we're down where. But I do not mind something to be worked and with that I will remove my objections, Mr. Chairman.

SENATOR KERTTULA:

For the record, we will adopt this as a working bill for 601, as a substitute for 601. I suppose at this stage, you may wish -- with assistance from the Attorney General, Mr. Campbell, those of you that have worked on the amendment I just ask that you proceed Senator Halford on assisting in the briefing.

SENATOR HALFORD:

Mr. Chairman, the language that's before us is all out of the House Bill or the Governor's bill and I guess ...

SENATOR KERTTULA:

Is the entire House bill in ...

SENATOR HALFORD:

No, neither the entire House bill nor the entire Governor's bill is. There's a substantial portion of each bill is [indisc.] a number of pages and the entire classification system

of course is coming out of the Governor's bill and the core provision of the House bill, as I said, is the provision that deals with the Boards with the subsistence hunting and fishing in the non-subsistence areas. I probably would just go ahead and defer to either the Commissioner or the Attorney General and Mr. Campbell to go through the bill. But the bill is all made up of what we spent the last four days on.

SENATOR STURGELEWSKI:

Mr. Chairman.

SENATOR KERTTULA:

Yes, you have the floor.

SENATOR STURGELEWSKI:

The critical issue that we need, it seems to me, to understand is how we govern subsistence now in terms of both rural and urban users. I wonder if somebody could either go through it or somebody could just paint a picture of what happens now. Because we've gotten rid of the structure of presumption and we - you indicated there's a difference in the approach that was used in terms of flexibility of the Boards of Fish and Game. So I'd like to understand just how this bill works.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

ATTORNEY GENERAL COLE:

If you please and Senator Sturgelewski, I'd like to ask Mr. Campbell to do that and give you that picture.

SENATOR STURGELEWSKI:

Okay. Thank you. If that's appropriate.

SENATOR KERTTULA:

Yes, it is, and going through, please respond.

MR. CAMPBELL:

Thank you, Mr. Chairman, Senator Sturgelewski, this bill adopts basically the House 601 approach in terms of dealing with

subsistence users. Everyone in the state will remain a subsistence user, however, there will be declared non-subsistence areas in areas where there is not a dependence upon subsistence as a principal element of the economy, culture and way of life. In those areas, there will be no subsistence users and it is up to the Board to establish that in the criteria. There are thirteen criteria that are listed that were contained both in the Advisory Council bill and in House Bill 601 and those criteria remain unchanged. It's up to the Boards determination.

SENATOR KERTTULA:

I think at this stage then you may want to role through this bill in context. Those things that are part of the bill as previously testified, you can just roll right along. Anything new or different ...

UNIDENTIFIED SPEAKER:

Mr. Campbell [indisc.] I think Commissioner ...

SENATOR KERTTULA:

Yes, he rolled through quite well in about an hour and half or less on the previous bill. Presumably we're slightly more aware now so you can move. Are there other questions before we start this. Senator Zharoff, do you have a question?

SENATOR ZHAROFF:

Thank you, Mr. Chairman. In this area on the non-subsistence areas, I imagine you're talking about on page four subsection (e).

MR. CAMPBELL:

Pardon me, Senator Zharoff. [indisc.].

SENATOR ZHAROFF

On the section there with non-subsistence areas, you're talking about page four, subsection (e).

MR. CAMPBELL:

Page four, subsection (e), that is correct, sir. That language is a direct lift from the House Bill 601.

SENATOR ZHAROFF:

Okay, does this call back for legislative review of those areas that are designated as non-subsistence areas?

MR. CAMPBELL:

Mr. Chairman, Senator Zharoff, this bill does not call for legislative review of any specific areas, however, it does retain the feature of the Subsistence Advisory Council which calls for a review process of the entire bill and how it goes and it will report back to the Legislature within two years.

SENATOR ZHAROFF:

So, Mr. Chairman, my understanding is that there is no legislative review then of those areas that are designated as non-subsistence areas?

MR. CAMPBELL:

That is correct.

SENATOR KERTTULA:

Senator Eliason.

SENATOR ELIASON:

Mr. Chairman, I wonder if you could identify bits and pieces that go in each bill.

MR. CAMPBELL:

I certainly will.

SENATOR KERTTULA:

You might as well start at the very beginning and I think we both have the other two bills - the base of the problem.

MR. CAMPBELL:

Sir, starting on page one, the findings of the Legislature were left basically intact, however, we did delete findings which referred to the percentage of subsistence users in the different communities. It was basically the legislative basis for the presumptions. We also removed specific findings that talked about dependence upon subsistence being the criteria to be a subsistence user. [indisc.] all Alaska issue. We also removed findings regarding applications of presumptions based on domicile. In the purpose of the bill we removed from the Governor's bill the Subsistence Advisory Council bill the

purposes which again, talked about substantial dependence. Those are in the old bills, [indisc.] three and four. And did the same thing in the intent of the bill removing discussion of statutory protection for actual [indisc.] dependence.

Moving then to AS 16.05.268 on page two, the phrase, "except in non-subsistence areas", was added on line nineteen. The step by step allocation process which lays out the [indic.] guidance for the Board and additional preferences for subsistence in existing law right now was retained.

On the next page we deleted those subsections of the old Governor's bill [indisc.] that refer to subsistence use areas and empower the Boards to go through and change the boundaries of those use areas. Continuing deleted those sections of the Subsistence Advisory Council bill that caused the Boards to divide the state up and characterize by regulation into category one, two and three communities. We did retain from the Subsistence Advisory Council bill the portions that is in subsection (c) at the bottom of page three of your CS that calls for the department to prepare and submit a plan to the Boards for stock or populations recovery if there's insufficient animals or fish available.

Let's see, on the top of page four, line three, subsection (e) there is the provision for the non-subsistence area that Senator Zharoff mentioned just a few minutes ago. And that language is taken in total from House bill 601.

Subsection (e) on page four was identical in both House Bill 601 and in the Subsistence Advisory Council bill. So there those bills were consistent already.

UNIDENTIFIED SPEAKER:

What section was that please?

MR. CAMPBELL:

Subsection (e) starting on line seven, page four. Those are the factors that the Board looked at the thirteen factors in deciding whether or not dependence upon subsistence is a principal element of the economy, culture and way of life.

On subsection (f) at the bottom of page four and subsection (g) were retained unchanged and those are also basically very similar to the existing law.

On page five, line six, subsection (h) -- excuse me, moving back up just for a second. In between here, we did some very substantial deletions that I should mention from the Subsistence Advisory Council bill. We deleted those sections that establish presumptions based on community size and we deleted the sections whereby -- basically in the old bill we deleted most of page six and in page seven in it's entirely which set out the individual criteria on which the Boards established eligibility to participate in subsistence. We further deleted on the old bill subsection (j) and subsection (k) and (l) which talked about expediting review process, talked about qualifying basically the criteria. And then we go back into the two other subsections that I just mentioned, that are already in the bill.

We retained the definition of "reasonable opportunity" on subsection (h) starting on line six. Sections three and four on the bottom of page five.

SENATOR KERTTULA:

Yes, Senator Uehling, you wish ...

SENATOR UEHLING:

May I interrupt for a second? [indisc.] community size question where we have the different categories, the different populations and so on, and again the reasoning for that is because we wanted to apply that to what was going on at the federal level and now do you have a comment on that. That's not necessary at all or that's a bone of contention that nobody is agreeing on or what just briefly what happened?

MR. CAMPBELL:

Sir, the reason we deleted that while we had the means of the particular population breaks to at least be the same as the federal level, that was population breaks were used to apply the presumption of individual criteria. Everybody from twenty-five hundred -- since we are no longer doing that we no longer needed

those three breaks. That, by the way, was one of the main areas that some persons had grave questions about constitutionality and I believe when legislative counsel joins us remembers to ask them how they feel about the bill now.

On the bottom ...

SENATOR KERTTULA:

Senator Eliason.

SENATOR ELIASON:

You mentioned the feds. What was the reference to the feds in that section?

MR. CAMPBELL:

Sir, the reference to the feds was a question from Senator Uehling and what he was remembering is back in the original presentation we were talking about why we use the actual population figures of zero to twenty-five hundred, twenty-five hundred to seven thousand. There's no reference to the feds in connection with this bill.

SENATOR ELIASON:

I thought the feds had more or less settled on twenty-five hundred or less as rural and that's as far as they go. Is that right?

MR. CAMPBELL:

Sir ...

SENATOR ELIASON:

Then its up to the state to broaden that criteria if they chose to do so.

MR. CAMPBELL:

The federal government in their regulations regards all communities under twenty-five hundred to be presumed to be rural communities, between twenty-five hundred and seven thousand to be presumed to be, or excuse me, no presumptions, and to be communities over seven thousand to be urban. In our old bill, we had used those same three population figures but we employed them in a different manner, in applying the presumptions. But we have deleted that section in its entirety from the Governor's

bill so that because we're now no longer dealing with individual qualifications or presumptions.

SENATOR ELIASON:

I guess the point being those numbers Senator Zharoff talked about earlier, are not arbitrary numbers. They are set by the feds.

MR. CAMPBELL:

Yes, sir.

SENATOR ELIASON:

Thank you.

MR. CAMPBELL:

On the bottom of your copy of page five, sections three and four are simply conforming sections and left as they are. On the top of page six, you have in adopting the CS just deleted subparen thirty-one, the definition of subsistence. Also deleted in this draft is the definition of subsistence fishing and subsistence hunting. So for all three of those definitions, there are existing definitions in law and those definitions will simply remain in force without change.

Continuing on page six, section six, we retained number thirty-six, line twelve, the definition of "customary and traditional" and line sixteen, number thirty-seven, the definition of "customary trade". You have by actually adopting this CS just deleted subsection thirty-eight, the definition of "sustained yield". The rest of the bill is simply regulations effective date, the portion that picks up the review committee and the transition and that portion, other than references to try to be consistent is the same. It is my understanding that legislative legal is working on a draft of this and will bring it back to you. They [indisc.] of this draft and it is my understanding the only difference is they're going to make sure all the internal references like section (a) or (g) or whatever for consistency. In some [indisc.] I'd simply say there have been, we've taken both bills. We have done major deletions from each one and we have combined the two. We have removed all

those portions of the Governor's Subsistence Advisory Council bill [indisc.] raise the question about constitutionality. And we believe this is a good bill and it will work.

SENATOR UEHLING:

Mr. Chairman.

SENATOR KERTTULA:

Yes, sir. Senator Uehling.

SENATOR UEHLING:

Backing up to thirty-eight, we took out consumptive uses, so "consumptive" is now out of there. We took out -- I'm sorry. So it's completely gone. So just thirty-six and thirty-seven

Mr. Chairman, the other thing I just briefly talked again, but legal drafting is going to come up with some more language so the bill is consistent only or are they going to add something here on [indisc.]?

MR. CAMPBELL:

Mr. Chairman, Senator Uehling.

SENATOR KERTTULA:

You have the floor.

MR. CAMPBELL:

I believe that we discussed this with them. The only change you will see is that they will have typed it on their machine and making sure that all the paragraphs that we refer to as described in subsection (a) or something, that that's really the right paragraph.

SENATOR KERTTULA:

You have the floor, Senator Hoffman.

SENATOR HOFFMAN:

Mr. Chairman, prior to this draft the administration said their legislation was the first step in solving the subsistence problem. If this is adopted what is the second step? The final conclusion to the problem that the state is facing as far as the administration is concerned?

ATTORNEY GENERAL COLE:

Mr. Chairman, Senator Hoffman, this is the first step

because it addresses subsistence on the state and private lands by the administrations view a workable solution to the problem there. Of course, as we have repeatedly said, during the hearings, there remains the problem of ANILCA's application to federal lands. That obviously in the future will have to be addressed and I think it would simply and duly prolong my response here to repeat what has been said on that subject during these hearings in these past five days.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR HOFFMAN:

Is it the intent of the administration to tout this as Alaska's solution to the problem in Washington and say that this is better than what is presently in Title 8 of ANILCA and that Title 8 of ANILCA should be changed to allow something that's similar to this piece of legislation.

ATTORNEY GENERAL COLE:

Senator Hoffman, I just can't respond to that other than saying you first must address this proposed legislation and indeed I think, and see how it works in the next few years. It may be a simple solution to all after we see how it works. And it may not be. So I think it would be premature to respond any further than that at this time.

SENATOR HOFFMAN:

So then it may be and it may not be but it may be that the administration may go to Washington after working for a few months, -- few weeks, few months, few years, and say that we need to change Title 8 of ANILCA because this is working for the people of the State of Alaska. This is something that the Alaskan Legislature has adopted.

ATTORNEY GENERAL COLE:

Well, Senator let me just fence with you just a little bit more. I would say the administration would not do that until it had the blessing of the Native people of Alaska.

SENATOR KERTTULA:

Senator Cotten then Senator Sturgelewski.

SENATOR COTTEN:

I just had a technical question. As I was noticing the proposed change to the definition of "subsistence uses" and I notice that in our statutes it still says for instance by resident domicile in a rural area in the state, I guess I understood that was part of what Cutler struck down in McDowell, I think. Maybe it wasn't Cutler, but whatever. But it still shows up in our statutes. And I was wondering, this is a technical question, when does that either go away or does a reviser take care of that or does it require legislation or is it too hot to handle. What's the deal?

UNIDENTIFIED SPEAKER:

[Indisc.] Larry Holmes right and left jabs.

SENATOR COTTEN:

How is the fight going?

MR. CAMPBELL:

Sir, it doesn't have any effect there. I don't know what counsel would say. They may -- oh, here they are. George might more able answer that question.

SENATOR KERTTULA:

You have the floor, sir.

MR. UTERMOHLE:

Mr. Chair, in regard to the word "rural" being contained in the definition of "subsistence fishing", "subsistence hunting", "subsistence uses" in the current statutes, that term remains there until removed by the Legislature. The courts require, by the McDowell decision, that that term be disregarded and it was applied as if the word is not there. If the Legislature intends that statute be corrected to reflect the current state of law, we would have to adopt the appropriate legislation.

SENATOR KERTTULA:

Do you footnote eventually the court decision effecting those terms?

MR. UTERMOHLE:

The McDowell decision is referenced in the paste notes to 16.05.258. And definitions ...

UNIDENTIFIED SPEAKER:

Mr. Chair.

SENATOR KERTTULA:

Yes, sir.

UNIDENTIFIED SPEAKER:

I wondered if the Assistant Attorney General would like to comment on that.

ASSISTANT ATTORNEY GENERAL:

I'm sorry. I was looking at my [indisc.] Could you repeat the question. I apologize.

SENATOR COTTEN:

I see it is listed as notes to decisions in the statutes. I hadn't caught that.

SENATOR KERTTULA:

It was just methodology as to whether it came out of the statutes.

SENATOR COTTEN:

Right. I was wondering how it ever came out. Did it happen with the revisers bill or it takes a legislative act. One way or the other.

ASSISTANT ATTORNEY GENERAL:

[Indisc.] legislative action.

SENATOR STURGELEWSKI:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR STURGELEWSKI:

Mr. Chairman, to follow-up the questions raised by Senator Cotten. I think we've all been very concerned about the road map and we're taking another step on the road, but we know it's only a part of it. And there have been a lot of attempts to resolve that, including give us several years and we'll see how it is. And I note in the review section of section ten, on page

seven, pretty well confined to what the act is and the review of the act. I had a conversation with one of the members of the Subsistence Council who had apparently advanced to that Subsistence Council - happened to be from the Native community and was very happy with the process, and felt I think it's been mentioned here a number of times that Outdoor Council and groups came together and it was a compromise effort and but a real genuine effort to advance. And taking on some of the notes from that individual and adding some of my own but having very, very little time - what I'd like to do is hand out a piece of paper that is not in any kind of form to see if the body either the amendment on the floor or this group constituting [indisc.] would like to take some action to expand the review process that could not only do that review, but get into the next step. Convene a group of Alaskans, with appointments by the Senate President and the House and the Governor, to convene a council that would look at some of the broader issues. And with that I'm going to have handed out just a very rough idea of what that might consist of. It would obviously take a lot of work and I'm not going to push it unless there's interest in being, say a council formed and that it would have a continuing role to look at these big issues that are still on the [indisc. - cough]. Obviously the authority always rests with the Legislature in terms of making action.. But I don't want ...

SENATOR KERTTULA:

[Indisc.] for a moment while this [tape stops suddenly] of the legislation rather than the suggestion by Senator Sturgelewski.

SENATOR STURGELEWSKI:

Right.

SENATOR KERTTULA:

... this moment because they have to pass around [indisc.]. Senator Adams, you were seeking the floor.

SENATOR ADAMS:

Mr. Chairman, a question to Mr. Campbell. Was any of these

suggested changes or the Senate Committee Substitute which is before us -- was any of these changes submitted to the other body for their consideration?

SENATOR KERTTULA:

You have the floor if you wish to respond.

UNIDENTIFIED SPEAKER:

If the other body referred to Senator Halford, I think ...

SENATOR KERTTULA:

Senator Halford, do you wish to respond?

SENATOR HALFORD:

Thank you, Mr. Chair. The overwhelming majority of the deletions from the Governor's bill particularly after the changes on page six, were recommended by members of the other body. In an effort to try and get what could be agreed on, that the amendment has been proposed. I think that was done by the administration. But the only difference, actually, I think of series of recommendations and now is that they had a different way to deal with sustained yield and left it in that bill.

SENATOR ADAMS:

This ...

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

Yes, a question to the maker of this CS, was that overwhelming majority done in the committee meeting process? Or how was that done? How did you find out about the overwhelming majority of the other body.

SENATOR HALFORD:

It wasn't an overwhelming majority.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

ATTORNEY GENERAL COLE:

Perhaps I could

SENATOR KERTTULA:

He might respond to that same one [indisc. - simult. speech]. Attorney General, please respond.

ATTORNEY GENERAL COLE:

I would say, Senator Adams, that this proposal represents a view among some members of the House, but I would not feel comfortable in saying more than that.

SENATOR KERTTULA:

Are there - yes, you have the floor.

SENATOR ADAMS:

Just, Mr. Chairman, directed to you, Mr. Chairman, when we get done with the administration, I wonder if I could be provided with the rural attorneys to give the other side of the story, if I may on the CS.

SENATOR KERTTULA:

Yes, of course.

SENATOR ADAMS:

Thank you.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR ZHAROFF:

Thank you, Mr. Chairman. What I understand from the presentation, page four subsection (e) lines three through six, this is the only section that survives House Bill 601?

SENATOR KERTTULA:

Mr. Campbell?

MR. CAMPBELL:

That is correct. We deleted major portions of each bill -- deleted a lot more actually out of the Governor's Advisory Council bill [indisc.].

SENATOR ZHAROFF:

Okay, Mr. Chairman -- as I go through and I look at this here, at first look I don't have any problems with it or not, but it sounds like what we're doing here is we're identifying the non-subsistence area and once you identify the non-

subsistence area, then subsistence will not be permitted in that area at all. Is that correct? Okay, how does this affect now - and I'm looking at the original or the House Bill 601. And on page five, subsection (g) the way I understand it, it goes on and says not only do you identify these areas and that you have a non-subsistence area identified and then you go on to line fifteen. The way I read is that the Boards then identify the regulation of fish stocks and game populations that have been customarily taken for subsistence use and then so on. But it sounds to me there that you somewhat evaluate the area even if it's a non-subsistence area and if there have been some traditional subsistence fisheries taking place in there or subsistence game hunting you will allow it to continue under some criteria. But in this new bill, that option has been taken away. And I'm thinking like for example Ship Creek in Anchorage. Now I don't know if there's been any subsistence fish taken out of there, but that's identified as a non-subsistence area. Then under this bill regardless of whatever traditional uses that have been in place before, whatever the strengths of the returns have been this would be excluded from any type of subsistence take. And maybe as you get up into the interior where you have the subsistence dip net fishing or whatever it might be, if that becomes a non-subsistence area, then this no longer is a valid activity that could continue. And I'm wondering if it is the intent to become that restrictive and whether it is the intent that maybe we should leave a little bit of that door ajar so that you still have the possibility to take place. And maybe I may think of Adak for example, where that would probably be identified as a non-subsistence area, but there's no commercial fisheries and yet there is a return that comes into those rivers that people have been able to take as a subsistence fishery. But under this provision would not. And I'm trying to just sort of get a little bit of understanding. Is there a door ajar so that you can get into that?

MR. CAMPBELL:

If I can quickly.

SENATOR KERTTULA:

You have the floor.

MR. CAMPBELL:

Thank you, Mr. Chairman. Senator Zharoff, in non-subsistence areas, everybody would be available for personal use fisheries. Personal use fisheries [indisc.] established in existing law are exactly the same as subsistence use fisheries except they do not have a priority over other fisheries. The customary use fishery that was in 601 also did not have any preference over any other use but they did have a criteria that limited down who could participate in them. It was [indisc.] that if you have the situation where the Boards had a choice the customary use fishing was strictly optional in 601 where they could either establish a personal use fishery fairly easily and allow people to use dip nets or gill nets or whatever means to harvest the fish they need. Or they could go through what we felt was an extremely complicated and pretty unworkable scheme to try and figure out who could participate in that but then simply never use that. And so we simply left existing law in place the way it is so that personal use fisheries are available to non-subsistence areas. And Adak [indisc.] or in Ship Creek or anywhere else in that state [indisc.] non-subsistence area.

SENATOR ZHAROFF:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR ZHAROFF:

Maybe since the Commissioner is wishing to respond.

COMMISSIONER ROSIER:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

COMMISSIONER ROSIER:

I would just elaborate a little bit on what McKie Campbell

has said here. We've got a lot of personal use fisheries in a lot of areas scattered around the state at the present time. Certainly another option of the Board of Fisheries has not been bashful about utilizing. One of the biggest in the state is the [indisc.] fishery on the Copper River. That's considered a personal use fishery up there, literally hundreds of people from all over the interior participate in that particular fishery. The runs on the Copper River are managed to accommodate that particular utilization.

SENATOR ZHAROFF:

Mr. Chairman, I guess what I wanted to do to get on the record that that is not the intent to do away with that subsistence personal use fisheries, slash personal use. So that a lot of people have a little bit of a confusion when you talk personal use and you talk subsistence and when you see this in here and it says you no longer can subsistence fish in a non-subsistence area but yet actually it's a personal use. People are going to have some confusion of that. So I just wanted to have that clarification for the record so that at some point if there is a question that comes up that we will be able to refer back to this session and get the clarification there. I think that's important.

SENATOR KERTTULA:

Commissioner, do you wish to respond at all?

COMMISSIONER ROSIER:

I was just going to say that certainly is not the intent of this, Mr. Chairman.

SENATOR KERTTULA:

And there is no structure in reading this with direct contrary to the [indisc.] Senator Duncan is seeking the floor. Senator Zharoff, are you satisfied? Senator Duncan then Senator Halford.

SENATOR DUNCAN:

Mr. Chairman, I want to make a statement more than anything. Because I'm really concerned about where we are

heading here. I've actually for the past couple of years tried to resolve the subsistence issue permanently and not put a bandaid on it. And I'm concerned that really what we're doing here with this compromise proposal that is before us as well as House Bill 601, I never have been very enthusiastic about House Bill 601 quite honestly. We haven't had a hearing on it. I wasn't sure I was going to support that piece of legislation because I don't think it resolve the subsistence question. I think it just puts off any permanent resolving of the issue for years. [indisc. - cough] works for years and then decide where you go from there.

I, for a long time, have felt very strongly that we could have a permanent resolving of the issue and that requires either the amendment of ANILCA which as we all know isn't going to happen. Or it requires us to come into compliance with the constitutional amendment. And apparently we're not going to do that and we're not going to push it. I signed do not pass an ANILCA [indisc.]. I may vote against this piece of legislation because I don't think it does anything for Southeast Alaska, quite honestly. I signed do pass on Senator Adams' bill because it requires a constitutional amendment and a current resolving of the issue. I don't see this - it doesn't bring us in compliance with ANILCA. It does mean we're going to have permanent dual management on a federal lands. Federal management and that's on ninety percent of the land in Southeast Alaska. Ninety percent in the land in Southeast Alaska is ninety percent and in the municipality of Sitka is ninety-seven percent and in Ketchikan it's ninety-seven or ninety-eight percent. You're going to have dual management in Southeast Alaska. There is a question about what will happen with the waters in Southeast. They completely [indisc.] that in great detail the past two or three days. It's very probably that the federal government will assume management of the waters - the coastal waters in Southeast Alaska and we'll have federal management of those. I just don't see this doing anything and I

just wanted to express that. I'm [indisc.] should be what's considered to be a compromise, but I for one, maybe I'm the only one, may not even support this. Because it doesn't resolve the issue. I think what it does though is it leads people of this state to believe that we have resolved the subsistence issue. And it takes the pressure off of the administration. I takes the pressure off of the Legislature to do the job right. And we'll sit for years trying to decide if this is going to work and meanwhile we'll be under federal management and we really haven't addressed the problems.

Urban residents of Southeast Alaska are to benefit from this. We don't do anything, they're saying [indisc.] just as they are. Personal use statute, personal use criteria will allow the urban residents of Southeast Alaska to continue to do the subsistence hunting and fishing. So I think we need to slow down a little bit and think about what does this do. If we're just interested in walking away from this session saying and trying to [indisc.] and saying we resolved the subsistence issue then we pass something like this. If you really want to do it, you probably turn down everything, bring us back again and let's do a constitutional amendment. Let's do it right. And quite honestly, I'm thinking of removing [indisc.] compromise. [indisc.] compromise on a piece of legislation that really hasn't had a hearing in the whole yet, [indisc.] whether this body wants to support that. I have not [indisc.] the House of Representatives [indisc.] 601. That was their idea. Not mine. The idea is that I was supporting a constitutional amendment and legislation that set criteria to provide for the subsistence priority. This doesn't in my mind do anything in this area of the state. I hope other members of the Committee of the Whole and other members of the Senate will think about that. but I think we're just relieving pressure and years from now we'll decide what the next step is. Senator Hoffman asked about step two. The Attorney General said, or maybe it was the Commissioner, said well, we'll see how this works for a few

years. That's not an answer. So I just wanted to put that on the record. If you've got a response maybe you don't. I think we need to think about what we're being driven to do here is really nothing.

SENATOR KERTTULA:

If there is a desire to speak briefly on this matter. This wasn't a question but there were some questions involved. You may do so, Mr. Commissioner.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. The only response that I would make is that this compromise, this piece of legislation we're working on here certainly responded to the Boards of Fish and Game request for tools ... [tape ends midspeech].

Tape 92-19

Side B

[Tape begins midspeech].

COMMISSIONER ROSIER:

... and legislative guidelines for in fact dealing more effectively with subsistence throughout the state. Not just in Southeast but throughout the state. Certainly this provides that legislative guidance. It may not be one hundred percent, but it is certainly a long ways from where we are under the present law. So [indisc. - cough] the Board being able to do a better job with the state and the Board being able to do a better job with the resources of this state on whichever one is in fact dependent, this bill goes a long way to meeting those needs.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

ATTORNEY GENERAL COLE:

I would be remiss in my responsibility if I sat here silently and did not respond to Senator Duncan's statement that the United States would soon take over the waters of

Southeastern Alaska. In my view, the waters of Southeastern Alaska are navigable waters. The lands beneath those waters are owned by the State of Alaska and never during the Hickel administration and my tenure as Attorney General will we allow the United States to take over the management of fish in those waters without challenge.

SENATOR KERTTULA:

You have the floor Senator.

SENATOR DUNCAN:

I didn't say that that was necessarily a clear cut issue. But I did say it's very likely that the federal government will say that that's the case then the [indisc.] Lands Act, coastal waters, federal withdrawals, they may have a case. That's right. In fact, we looked at the Federal Register just two or three days ago and we saw exact language in the Federal Register that says for Southeastern Alaska area at this time, federal subsistence fishing regulations only apply to non-navigable waters. We asked the Department of Interior and others what that means. They surely didn't say it means that we will never think about assuming withdrawal. [Indisc.] the words that you referred to makes it very clear that the federal government may think about it. [indisc.] I hope that they don't either. My point is I don't think if we [indisc.] the next few years we can wait and see what happens [indisc.] I think we have to do something to be sure that that happens and that takes a constitutional amendment and Senator Adams bill we passed out of this Committee. Or something that you might propose [indisc.] I don't care if it's his bill or not. Excuse me.

SENATOR KERTTULA:

The Russians have a lot of surplus equipment right across from Nome. You might want some of that to help you out. We could also retrofit the ferry [indisc.] Any of those things might be a possibility I suppose, in federal takeover waters. You have the floor, Senator Adams,

SENATOR ADAMS:

In your mind, does this bill regain state management over federal lands? Commissioner.

ATTORNEY GENERAL COLE:

do you want me to play the record, again, Senator Adams?

SENATOR ADAMS:

So the administration has given up on that and you have canceled your trip to Washington D.C. on June 20, 22 with Lujan?

ATTORNEY GENERAL COLE:

I should respond to that by simply saying I have yet to make reservations.

SENATOR ADAMS:

Thank you. Thank you, Mr. Chairman.

SENATOR KERTTULA:

Thank you. On the is particular suggested amendment that has been incorporated into the bill for discussion purposes at this time, are there particular questions that you wish to direct? Yes, Senator Taylor. That is just the mere vehicle mark-up that leads to, I think, this bill. So you can see the sections deleted in 484 essentially. It might be of some help to you while you're taking notes. I know it was to me or will be.

At this time, then I'll ask the AFN counsel and I hope you all remain close would come forward and express some points of view as we did on 484, and 485. And now on 601 as amended. I think they will be available for questions. We'll slowly learn. We would like the Attorney General to remain as close as possible. So someone could mention that to him. There are some that feel that he may wish to respond. If you want a cup of coffee, Mr. Cole, it's up front here. We don't want you to get out of sight. I think at this time we can come back to order, distinguished counsel, you may proceed.

MR. MITCHELL:

Thank you, Mr. Chairman. For the record this afternoon, my name is Donald Mitchell and I'm representing the Alaska Federation of Natives during this part of your proceeding. With

me is Norman Cohen who is also an attorney working with AFN. God, Mr. Chairman, as they say is in the details and this bill makes a number of changes in the way words are used that have significant consequences legally. I will not go through many of those. I think it would probably be more productive in the time we have available to just generally flag the policy concepts that are enshrined in this particular draft and then indicate what they are and also the policies that are not dealt with in this draft. And then Mr. Cohen has some observations and then obviously we'll be available for questions.

I think probably the easiest way to understand what this bill does at the outset is it takes the House concept of the non-subsistence use area that you've become familiar with and it makes a significant change and that says that within these non-subsistence use areas, wherever they may be, the legal consequences that the Alaska subsistence statute is repealed. That's basically the consequence. In these areas, it sort of a free pass and there could be harmless activities that could occur in these areas, but these activities would be regulated under the statutes that authorize all of the kinds of taking other than subsistence take. So that would mean that there could be sport hunting. There could be sport fishing. There could be commercial fishing. There could also, I believe under Senator Zharoff's remark, there could be personal use fishing which would be fishing with a net or fish wheel for food but would not be entitled to a priority or anything like that. This would be open in terms of the Alaskans who could participate in those normal activities. It would be the same Alaskans that can now participate in those activities. In other words, the House approach of having this permit system where individual people who wanted to engage in this customary use category as part of this, that would be eliminated. So again, within these non-subsistence use areas, the legal effect is the subsistence statute would be repealed and all harvest activities that would occur in the areas would occur to other statutes other than

subsistence law.

Now what happens outside of non-subsistence use areas. Outside of non-subsistence use areas the Alaska Subsistence Statute would still govern the rules of the road. However, one of the things that I'm surprised that this does not do is it assuming that the state position or the Morry litigation is correct that the present Alaska law allows all Alaskans to qualify to participate in subsistence uses, everywhere in the state other than in these non-subsistence use areas, that policy would continue. I know there is a lot of concern on the part of the administration at the beginning of the week that one of the reasons that we needed to achieve goals this week was to deal with the all Alaska problem, if it is such. And I think I can represent fairly that this draft does not in any way on my quick reading -- and I may be corrected by the Attorney General or others, but I do not see anything in here that in any way addresses that problem. So in theory assuming that the state position other than asserting in the Morry lawsuit is correct, then all Alaskans would still be able to at least in theory to participate in subsistence uses. One of the details that I think is worth mentioning is that the present Alaska subsistence statute is found that Alaska Statute 16.05.258 and it is a long step-by-step process that describes the thinking that the Board of Game and the Board of Fisheries is to go through in terms of making allocations and dividing up the harvestable surplus among the various user groups. The text of that statute and the way that it was drafted -- it was drafted in 1986 -- focuses specifically on identifying the actual number of animals that the Board would reasonable believe the folks in the subsistence category would need. So, for example, in the Sleetmute area which is a subject of a recent lawsuit on the subject, if the biologist said that you can safely take a total of five hundred moose in an area, then 258 as it is presently drafted in Alaska law, would then require the Board to say, well, how many of those five hundred moose do we need to make available for

subsistence uses? And they would have to come up, as the statute is written, with some kind of a number. Like two hundred moose would be needed for subsistence and some analysis of the relationship between the animals available and the need for Alaskans engaged in subsistence. That process which I won't bore you with anymore because it's a technical matter is eliminated and in place of 258 many of what looks like a lot of the concepts of 258 are recreated in what is the new section 268 which begins on page two, line eighteen of this draft and goes on for some time. And the basic thrust of that, as again as I read it, just one time through, is to basically eliminate that kind of requirement. You start out talking about identifying a harvestable portion that might be available for subsistence, but then when you get to the actual making of that portion available, it starts fudging in a legal sense, and says well, all the regulations authorizing those takings have to do is to provide a reasonable opportunity to participate. Participate not to acquire the amount of animals that would be needed. And that is a drafting change that, I think has a serious enough substantive consequence that has a technical matter worth identifying.

With respect to what happens in situations in which there is not enough of the game population that would be available even for subsistence uses, under present law -- the present law which is sort of the tier two area, tracks the subsistence priority of ANILCA. Which is that if there's not enough for everybody, then you look at the individual Alaskans, dependence is the mainstay of livelihood and local residency and availability of all kinds of resources. I'm sure you're familiar with the process.

On page three, lines nineteen down to twenty-five, those concepts are kept but they are changed in some ways. So to the extent that that portion of the statute, if it were ever to be used in the future as a template for attempting to comply with ANILCA, I think there would be a question as to whether or not

this text would be as consistent with the same kind of provision in ANILCA that is not controversial to my knowledge to date.

The one other thing I would note is I have not been actively involved in the drafting exercise in the House. Mr. Cohen was with them on that. But I do know that there was a lot of concern on the part of the administration, as I understand it about using local residents as a criteria in that statute because it is a fair reading of the McDowell case, and it's certainly a concern that I have as well as the administration, that the McDowell case may stand for the fact that you can't use where anybody lives at all as a criteria. And so if that's true, then local residents are just as vulnerable constitutional challenge under Article eight as rural residents. That hasn't been resolved but I think that is a fair issue among the lawyers, assuming the administration has identified it. And it's something upon which we both agree that is a legitimate concern. However, after taking that kind of thing out of the House Bill, I noticed that on again, page three, lines twenty-two and twenty-three one of the criteria for how you divide up the sub-subsistence category is the proximity of domicile of the subsistence user to the stock or population. To me as the technician, that's just another more longwinded way of saying local residents. And so I would again, sort of like not dealing with the All Alaskans policy, based on some prior representations of the administration I was somewhat surprised to see that still in the text.

You're familiar basically with giving the Boards the assignment of identifying these non-subsistence use areas so I won't go through that. One of the additional changes in the House bill is that with respect to customary trade, it is obviously an issue that's been identified consistently as important. Rather than the House approach, this text as near as I -- I don't have the Governor's bill in front of me, but it looks to me like the Governor's approach to this is the approach that they take in lieu of the House approach and that would be

in two areas. One on page six, the lines seven and eight -- oh this is going? It is? Then I stand corrected on -- okay.

Then the major ...

SENATOR STURGELEWSKI:

Did I understand what you didn't say?

MR. MITCHELL:

Yes, but ...

SENATOR STURGELEWSKI:

You didn't state it.

MR. MITCHELL:

Senator, as I was whipping through this in the bleachers it was my reading that what is identified as section thirty-one on page six, lines one through ten that that was still in the game here. Mr. Cohen has just advised me to the contrary and so ...

SENATOR STURGELEWSKI:

I thought you were on line thirty-six so I was confused.

MR. MITCHELL:

Right, so the first comment I was going to say about customary trade is inoperable and Mr. Cohen has saved me from a horrible public error, once again.

SENATOR STURGELEWSKI:

You could spell potato.

MR. MITCHELL:

Then so the major ...

SENATOR KERTTULA:

Then you saved all the rest of us from the same [indisc.].

MR. MITCHELL:

Mr. Cohen, I think Mr. Chairman has a legendary capacity for saving us all for our impetuosity from time to time. Then with respect to the customary trade definition on thirty-seven, it would appear to me that the -- actually it's the same change. That obviously "non-commercial" is inserted in there. We still have the minimal amount of cash standard which is in the House Bill but non-commercial exchange of -- without debating that issue. I'm not sure what a non-commercial exchange was the

intent of the drafters might be. Non-commercial channels for example, that might be one thing you sell out of your house. It's another thing to sell to a store. But even that, I think, has some problems with ambiguity with visiting if you got serious about that. But non-commercial exchange what ever that means that is a change from the House approach. That's about all I can do at this time is flag that limited obviously.

Then also we have the issue of primarily for personal or family consumption and that is not in the House bill and the only reason that is worth flagging is that is been -- obviously that does not apply to trapping. So that is not a problem. With respect to other kinds of customary trade that I think people would view as legitimate I am not, as a draftsman, fully comfortable in terms of understanding the reach of the intent there. Does that mean that if a person in a village was to take a salmon that they could divide that salmon into strips so long as with respect to that individual salmon some of those strips went into their own refrigerator and they can put the other strips from that same salmon into customary trade? Or does it mean that so long as they are taking it in the generic category of salmon for subsistence for their personal use that some actual salmon -- every last bit of that salmon could be put in customary trade? I realize that may even sound almost silly, but these are lawsuits in the making, at least out past experience has been that these kinds of things do get litigated.

And then, of course, the final two additions -- right sustained yield is gone. But customary and traditional has been added in which is not in the House bill. A definition that I think Mr. Cohen may want to speak to and also a definition of "reasonable opportunity" has been added, which I believe was drawn from the Governor's text and certainly goes again to a lot of the policy issues that have been discussed repeatedly this week and I won't review them for you other than certainly one that leaps right out is page five, line ten that reasonable opportunity does not guarantee the conditions of the hunt or

fishery. And I have at least have assumed to the sole least adverse impact business. That we're not guaranteeing the conditions pursuant to which you engage in this activity will be conditions that you enjoy or you will find helpful. You have no legal standing to basically say that [indisc.] one time [indisc.]. But again I did not draft this, and know what they mean.

So again, just to briefly review, without going through it all over again, this does not deal with the all Alaskans problem that has been represented as being one of the reasons that we need to fix the bill. It obviously is the discussion which Senator Duncan's has indicated has nothing to do with complying with ANILCA. Certainly does not deal with the potential that again Senator Duncan has raised of an expanded assertion of jurisdiction over our fisheries. This would just apply a system in those areas in which we end up retaining fishery jurisdiction whether it is the areas over which the state is presently asserting jurisdiction or a smaller area at some future time.

With that, I think that Mr. Cohen has a couple of additional ...

SENATOR KERTTULA:

I would like to -- you have noted that you are an advocate. that you are definitely [indisc.] counsel and you understand this probably almost like no other person. I mean this whole area. [indisc.] You had little enthusiasm for the, quote, "Governor's bill". Although with constitutional amendment and so one, I don't say that you suggested but there were those [indisc.] suggests there might be something [indisc.] with the Governor's bill if there had been a constitutional amendment and it could be worked together. That's my interpretation. But my understanding is you have even less enthusiasm for this piece of legislation.- suggested legislation.

MR. MITCHELL:

I think with all due respect, Mr. Chairman, the level of my happiness at particular moments of your proceedings is of great

interest to me. I'm not trying to be flip. I'm not really in a position to be making statements about whether any of this is good or bad policy. I think I can testify about the Governor's bill as a technician that I thought it was horribly drafted. I testified to that repeatedly in both bodies. And I certainly indicated on behalf of my clients as an advocate - to say that it's badly drafted is a technician statement. I have also indicated repeatedly on behalf of my client community that the policy that it would enshrine are policies that they believe are bad public policy. I believe that they have also testified that there are components of the Governor's bill -- obviously the customary trade issue being a perfectly good example, that certainly were quite legitimate in terms of policy questions that they recognized were the subject of reasonable debate and discussion. But I wouldn't want to go any farther than that in characterizing their enthusiasm either for the Governor's bill or for this bill. That's obviously a matter for President Kitka and others if we wish their views on that. I was really trying to do to the extent that I'm capable as a dishonest broker to really sort of take you through in a technical sense how we viewed the policy choices that are made in this particular bill without really expressing any personal judgement other than to note for example, that like the all Alaskans policy it had been identified in the administration as a major policy concern and it was absent from this bill.

SENATOR KERTTULA:

It was somewhat unfair of me to even ask that question. I think you did a very good job. Mr. Cohen.

MR. COHEN:

Thank you, Senator. I'd just like to repeat two things that have been said here. One is that the real substance of this is in the details and it's really important to look at the details. And the second thing I'd like to do is repeat what Commissioner Rosier said that the Board was looking for the tools and this provides the tools. Just use that analogy. This

bill does provide many tools to the Boards and virtually all of them work against the interest of rural people who are intending to benefit from the subsistence law. If these tools work against rural residents in a couple of ways. First it provides a great deal more discretion to the Boards for them to do what they would like to do as opposed to what the existing subsistence laws told them to do. And that's I think the important point. That is found in the reasonable opportunity definition where it gives the Boards great latitude to define what is a reasonable opportunity and to do pretty much anything they would like to do. It is also found in the changes between 268(a)(b) and (c) and those similar provisions in the existing 258 that provides the basis for the subsistence law.

And finally in the definition of "customary and traditional" by taking off the table any fish stock or game population that is not first used somehow for a generation is basically saying that no new populations will ever be subject to subsistence use. So I guess it does provide several tools to the Board, but these tools don't do anything positive for rural residents who are looking at these laws to provide them some protection. Rather they all work against them.

SENATOR UEHLING:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR UEHLING:

On that point and we went back to the question of [indisc.] population of different areas you know whether it's twenty-five hundred or so on and so forth. that was part of the original bill. I don't know where you all stood on that particular part of that. Whether that was a help to the bill or a hindrance to the bill because it did sort of fit the federal [indisc] situation.

MR. MITCHELL:

Well, Senator Uehling, it actually, it is sort of a federal

concept that then was used in the way that did not fit into the federal situation. Let's see, the federal concept was having a set of criteria that includes now the federal regulations in certainly populations levels to assist the regulators in figuring out what areas of Alaska are located in rural Alaska and what areas are not for the purpose of deciding which individuals because they live in rural Alaska can participate in certain subsistence related activities. The administration bill took that approach and then sort of moved it from being used to identify which Alaskans can participate into identifying certain areas and that backed in again through the back door without [indisc.] try to get you back in to who these people were with this presumption business. It really had nothing -- it was sort of certainly was a concept that came out of the federal regulatory system but it really had nothing to do with comply with the federal regulatory system and many of us who are operational view this unhelpful in terms of setting up the workable regulatory process.

SENATOR UEHLING:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator

SENATOR UEHLING:

Second point also, Mr. Cohen had just mentioned the situation about discretion of the Board now has was that also the case in the Governor's bill that there was the same amount of discretion [indisc.] hasn't changed.

MR. COHEN:

Senator, that's correct. The provisions that have been retained here are the discretionary provisions borough [indisc.] or discretion except of the definition of sustained yield which was removed.

SENATOR KERTTULA:

Other questions of counsel here? Senator Taylor

SENATOR TAYLOR:

Are we getting close to the Adams bill [indisc.] where we were last sat at yesterday. Have we wasted all our time [indisc.] I haven't heard a positive comment on the bill that's in front of us. I'm totally opposed to it [indisc.].

MR. MITCHELL:

Senator, whether we are closer to a bill or farther from a bill since I am not asked or invited to attend any of the discussion that I'm sure all of you have, you would be in a better position than I would to know the answer to that question. I think I can say is that this legislation certainly to the extent that this particular text that I'm familiar with it was not developed in consultation with me or Mr. Cohen or with any other of the technical drafters that have been helping the Native community through this process. I have no idea who drafted this. And I can obviously reasonable figure it out, but I have no active personal knowledge of who drafted this bill other than to know it wasn't me and to know it wasn't Mr. Cohen and I know it wasn't Mr. Starkey.

UNIDENTIFIED SPEAKER:

Mr. Chairman.

SENATOR KERTTULA:

Are you finished Senator Taylor?

SENATOR TAYLOR:

Yes, sir.

SENATOR KERTTULA:

It's probably a generic question really. Senator.

SENATOR ADAMS:

It was my request to ask for another review of this committee substitute the AFN delegation. Senator from Ketchikan if we're wasting our time, I would like you to ask the Senator who introduced it to remove it from us. And then we'll quit wasting our time and go back to the original bill that was sent over so we can debate that and vote it up or down.

SENATOR KERTTULA:

Is this decided -- yes, Senator.

SENATOR TAYLOR:

I wasn't trying to be facetious. I was merely suggesting what I thought we had been [indisc.] 601 as a format. If we haven't been, then it's my error and I do apologize. I didn't intend it to be that way. I felt there was some compromise we were definitely achieve here and we're not. Then I think it's time to go back [indisc.] sustained yield [indisc.].

SENATOR KERTTULA:

Senator Taylor, as near as I can tell, during the period of time since 601 was brought up and it was collectively decided to hear it and any suggested amendments. Those amendments I think in that whole period was a response the House leadership meeting with President of the Senate, majority leaders and so on, trying to see what was going to happen to the House and Senate and Administration relationship here. That's all -- and so this is a compromise of some sort -- work it out with the House. That was where it came from. Or some parts of the House.

SENATOR ADAMS:

There's no compromise with the House leadership on this bill and I don't believe so this [indisc.] can remark to this fact. But I also would like if we're going to do mark-ups let's take the Governor - let's do Senate Bill 485 and do a mark-up with that to insert with the House bill at least that bill complies with ANILCA. At least that bill retains state management.

SENATOR KERTTULA:

Senator, we wish essentially sent to this task by the House -- by the Senate Caucus. And this was an amendment that was presented and any other amendments including the whole 484 have been represented as amendments to this bill. I was just instructed to bring it before us. Senator Eliason, you have the floor.

SENATOR ELIASON:

Mr. Chairman, [indisc.] it is a condition of [indisc.] we have tried to construct something which we all are not

particularly happy with. I think this is a product of mens good will, I hope and ladies good will trying to bring this session to conclusion. We were faced with some very difficult ultimatums.

SENATOR KERTTULA:

Could the administration's members please come forward again and just speak to this a bit. Attorney General, Mr. Campbell. Commissioner. Excuse me. Senator Eliason. Just to how we got. Senator Eliason [indisc. - simult. speech].

SENATOR ELIASON:

I was trying to saying that being [indisc. - simult. speech] solve the impasse [indisc.] we were outlined those [indisc.] the ultimatums the House had given the Senate. One of those being that they would not accept a Committee Substitute of the Governor's bill on this bill. If we did they'd go home. So that's the conditions we're trying to work under. We're trying to keep this thing together, trying to solve something and of course, [indic] House was I don't think the Senate wants to be about a year [indisc.] proceed and try to reach resolution. And if you're going to go home, you can go home any time you choose to go home, but we're doing what we can to salvage something out of this session here. And this is a movement in that direction. It might not be the final product but in this system as we all know, you got to give an take. You try to take more than you get. Somewhere in this process, we hope we can have something which will relieve some of the problems we have in the management of fish and game on state lands. We know what Senator Duncan said that and I said that the first day I came over here knowing that we weren't going to resolve the problems in Ketchikan, Juneau or Sitka because we can't get to that one without a constitutional amendment. However, I think I'm looking at other parts of the state and I think there's some solution to what we might be brought to bear to solve some of the problems in the other areas of Alaska and state lands and I'm willing to work towards that. Not because it [indisc.] not

because of anything Southeastern but I think it's for the benefit of the whole state, we can come together with something that does something positive. And that's sort of where we are. Otherwise the other option is go home.

SENATOR HALFORD:

Mr. Chairman.

SENATOR KERTTULA:

Yes, Senator Halford.

SENATOR HALFORD:

Thank you, Mr. Chairman. I would just say that I think the compromise ideas both of them were proposed by House members who had not previously supported the Governor's bill. The effort was trying to get a package of things that we could get done in this session and be done with it. I mean, I -- the alternative was essentially to offer the Governor's bill Committee Substitute and I was prepared to do that. But I don't think that their suggestions frankly [indisc.] a step in the right direction. I think the bill that remains before us does clean up some major [indisc.] So I don't think the House proposal -- and frankly, I was very irritated by the meeting that we had. But the proposal that came back was not in my opinion [indisc.].

SENATOR KERTTULA:

Senator Duncan, you were seeking the floor.

SENATOR DUNCAN:

Thank you, Mr. Chairman, maybe I could ask the Attorney General a question here in just a moment. And let me just say a couple of things. I am more deeply concerned about what we're doing [indisc] our efforts after Mr. Cohen has simplified because not only doesn't it resolve the problems of Southeast Alaska because of the large amount of federal ownership, but it doesn't resolve the problems of rural Alaskans. So what are we trying to do. I mean who are we trying to help? Rural Alaska that's where the subsistence lifestyle is predominant and we're not going to resolve the problems there. We're not going to resolve the problems of Southeast. I'd like to help everyone in

the state. That's what we're here for. Is to help everyone in the state by doing it correctly with a constitutional amendment. We [indisc.] discussion. I guess [indisc.] this body pursuing that at this time. What really concerned me, really got me to the point of saying what I said, was that Senator Hoffman said, okay, this is step one. Now tell us what step two is and step two from your -- and tell me if I'm wrong but what you said step two was well, we'll wait several years and see how this works and then decide what we have to do. Well you won't be here for several years probably.

SENATOR STURGELEWSKI:

He doesn't know anything either. [Indisc. - simult. speech and laughter].

SENATOR DUNCAN:

That's not a very comforting answer for the people of this state who are depending on subsistence for their lifestyle. It's not a very comforting answer for those in the areas of the state where there's large -- where there's dual management on federal lands. It's not a very comforting answer for these in the state who really want to resolve the subsistence problem once and for all to hear you say, well, we'll see how this works for several years. It just -- all we've heard here tonight is just relieving pressures so we can all go home and wave goodbye and say we solved the problem and nobody is going to say anything [indisc.]. tell us what step two is. What are you going to do next month after [indisc.]? What's going to be your next step? How are you really going to get to resolving the issue? Are we not going to address it next year at all in the Legislature?

ATTORNEY GENERAL COLE:

Let me respond if I may.

SENATOR KERTTULA:

You have the floor.

ATTORNEY GENERAL COLE:

If you look at this broadly, Senator, you're not going to

solve this problem here tonight, today, tomorrow. That's clear. And anybody that thinks that this problem is going to be solved permanently tonight or tomorrow or next week just hasn't given the problem a lot of thought. It's not going to happen. You know that. We all know that. So that's [indisc.] The decision that the Senate has to make this evening is simply this. Do you want to take the first step along this long and tortuous route to solve this problem? That's the decision you have to make. Do you want to take the first step or do you want to take no step? Because that's -- if I may, please. Thank you. So the decision and this legislative body's decision is simply shall we take the first step towards solving this problem or no step? And the first step is a constructive step that resolves the problem that are pressing and making the management of fish and game in this state difficult for Commissioner Rosier and the Boards. And if you want this confusion, lack of statutory authority and management fish and game effectively in this state you should just do nothing thank everybody and go home. But this legislation solves some of the problems. It's a constructive step and it ought to be taken.

SENATOR KERTTULA:

Senator Duncan.

SENATOR DUNCAN:

Mr. Chairman, first of all, I didn't say that we would solve everything tonight or next week. But we could have solved by November in this general election year [indisc.] with the constitutional amendment on the ballot for the voters in this state [indisc.] We can take step one tonight and pass this legislation and set the criteria and we should take step two in November and to have the subsistence issue to the greatest extent possible resolved. The only other concern would be left is not a concern in my mind to a great extent, but the only concern that would be left would be those who are saying we don't any of the federal oversight by courts. Step three to resolve that would be to convince Congress, convince the other

interested groups in the state that we should amend ANILCa.

My concern with your statement, Attorney General, is you're not proposing step two. You're proposing step one and stop.

SENATOR KERTTULA:

Senator.

SENATOR DUNCAN:

I have not heard a proposal from you, from the administration for step two. Senator Hoffman has asked these questions day after day after day. What is step two? We don't have a step two.

ATTORNEY GENERAL COLE:

Senator, look ...

SENATOR KERTTULA:

You have the floor.

ATTORNEY GENERAL COLE:

If this body wants to adopt a constitutional amendment it certainly may. You may take the vote on that this evening in this body or in the House and present that issue and some constitutional amendment which we don't even know what it is or what the terms are or what it looks like [indisc. - cough] toss around constitutional amendment as if we really knew what we were talking about. It's clear that we don't. But that notwithstanding. It's true. It's a thought we recognized the - the votes in this body are not there to pass a constitutional amendment and so why do you continue to ask me, a member of the administration who doesn't vote on it, who has nothing to do with it, why doesn't the administration adopt some constitutional amendment. That's this body's prerogative. And the House's prerogative. So I mean, you know don't continue to ask me why we don't do it. It's not up to the Governor to do that. It's up to this body to do it. and the House to do it.

SENATOR KERTTULA:

Before we break up and I'll recognize Senator Duncan again, I would like to have your response to the bill before us shortly. We're not out of order because it ties in. But we're

perilously close to being out of order of discussing something that is not essentially before us after last night's vote.

Senator Duncan does have the floor.

SENATOR DUNCAN:

Just one final statement then we'll stop this debate. If I can get the last word in. Mr. Attorney General, I understand the way constitutional amendments are put before the voters of this state [indisc.] I also understand that as long as I've been in the Legislature that if the Legislature is going to do a constitutional amendment it probably takes not just the House and the Senate working in that direction but also the administration. It takes the leadership of the administration. And you can't vote and the Governor can't vote in front of those bodies, but by your strong commitment and your persuasion I'll bet you two more votes in the Senate will be picked up real easy. With your strong commitment and your persuasion that you could have the fourteen votes for constitutional amendment. You could probably get the twenty-seven votes [indisc.] Two years ... [tape ends midspeech].

Tape 92-20

Side A

SENATOR KERTTULA:

At this stage and this time of evening we'll start engendering unnecessary hostilities even from other members of the Senate wishing to chime in.

UNIDENTIFIED SPEAKER:

As opposed to necessary hostilities.

SENATOR KERTTULA:

I'm looking at you Senator Halford. If you weren't sitting right next to Senator Duncan, I might want to recognize. But that's a little close proximity. Will you please comment in any way you wish to the value or whatever of the legislation that's just before us now. Thank you, very much gentlemen. You have the floor, Mr. Rosier.

COMMISSIONER ROSIER:

If I might, one more time. I think is the story that I've been telling right from the very beginning. We have management problems in the state in terms of doing the job that we feel is necessary to maintain our fish and game population. We've gone through a long period of rebuilding these resources over time and I'm very pleased to say that these resources are in very good condition, throughout the state at the present time. We want to see to it that we, in fact, have a system that, in fact, assures those resources are maintained in that state. Certainly we've got a public process of regulations in this state that is strongly supported by most of the residents. It's an extremely democratic system that provides for opportunities to go before the Boards at any time you've got a problem. And that particular issue is to be considered by the Board and develop a management program that meets the needs of the people of this state. On this particular issue, with the assignment of the priority for subsistence the Boards have said, we've got problems. We cannot fully implement the legislative intent of subsistence. We're encountering significant problems. We need guidelines from the Legislature. We need the help from the legislative body to permit us to, in fact, do the job for the people of the state to develop the resource. And based on the legislation before you, I think that you've taken a strong step in that direction. The Boards and the resources in this state.

SENATOR KERTTULA:

You're stating that this bill as amended that's before us is in your view still a substantial tool for perpetuation of the resource?

COMMISSIONER ROSIER:

Very definitely so, Mr. Chairman.

SENATOR KERTTULA:

Thank you. Now around the table, unless there's another statement from McKie. Senator Uehling, you were ...

SENATOR UEHLING:

Just quickly on the second step what would you say the

second step [indisc. - cough] paraphrase to us essentially that the Boards themselves are going to have the management tools to do what necessary then to go forth at least from the [indisc.] sense [indisc.] everything else. But as far as our own [indisc.].

COMMISSIONER ROSIER:

Mr. Chairman, this really begins to put the state's house in order on this. I think ultimately it challenges the state management authority that may come from the feds. We don't know certainly. But certainly, we heard some of the evasive answers the other day. This does put the state's house in order. It says that we've got a management system that works from our standpoint. Feds stay out. It states out the state's authority on state lands and state waters and it's an effective management program.

SENATOR KERTTULA:

Senator Sturgelewski, then Senator Hoffman. Senator Sturgelewski.

SENATOR STURGELEWSKI:

Yes, Mr. Chairman, very briefly. I wonder if we might ask George Utermohle just to make a brief comment. I think perhaps we've been remiss in not getting on the record the question as to legal services view towards it's constitutionality.

SENATOR KERTTULA:

George, if you are -- Mr. Utermohle, if you can respond to that, please do, as legislative counsel.

MR. UTERMOHLE:

Mr. Chair, in regard to the proposed Committee Substitute you have before you, in regard to the Governor's bill which has been before the Legislature since this second regular session, ...

SENATOR KERTTULA:

You already spoke to that.

MR. UTERMOHLE:

Right, I have reviewed ...

SENATOR KERTTULA:

Now about this bill.

MR. UTERMOHLE:

Recognize two problems that were carried forward into the legislation which is now before us in the special session. Both of those items dealt with revisions that have been deleted from the Governor's bill and are no longer contained in this proposed CS. So the problems that we previously recognized with the Governor's legislation are not present in this bill.

SENATOR KERTTULA:

Thank you. Senator Hoffman.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. This compromise legislation is before us and as the President has said, there's always some give and take regarding the legislation. And I would like to hear from AFN if they -- what are they perceived to be getting and what are they giving on this particular piece of legislation that is proposed to be a compromise because when I look at it I don't see anything, as Senator Duncan has pointed out, anything that the Native community and, for that matter any rural residents, are gaining from this particular piece of legislation. I'd like to have that done at some time for the benefit of all of this body. But before that I have a question for McKie Campbell. Throughout this hearing process for the last several days, he has stated that one of the major problems that needs to be addressed is the all Alaskan problem, and yet this legislation does not address that. And I was wondering if he might comment about that.

SENATOR KERTTULA:

Mr. Campbell, if you wish to comment, please do.

MR. CAMPBELL:

Mr. Chairman, Senator Hoffman, I would like to comment. We clearly do feel, as I have stated many times that the all Alaska problem is a real problem. And it was for the reasons that we felt that the original draft of the bill drafted by the

Subsistence Advisory Council was a better overall solution. However, it has become apparent that there are number of members who had other opinions. We also felt [indisc.] been passed by the House and we had hoped that this might be something that might meet some of the needs or compromises that had been mine in the beginning. Maybe I'm entirely wrong about this, but Mr. Cohen, Mr. Starkey and a number of other representatives [indisc.] were closely involved in drafting 601. [indisc.] but we have certainly included the all Alaskans policy in this bill exactly as it was in 601. We felt that we don't [indisc.] House leadership, that we have something that can pass that is very good positive first step towards going down the road.

SENATOR KERTTULA:

Does anybody else wish to ask questions of these gentlemen, speak to the issue? Thank you very much. We're getting on with time in the evening. I hope you remain available. Did you have further comments. Are there any other questions.

SENATOR HOFFMAN:

I have a questions, Senator.

SENATOR KERTTULA:

You have the floor, Senator Hoffman.

SENATOR HOFFMAN:

Thank you, Mr. Chairman. I would like to go back to the first part of my question for AFN and that's their position on the bill and as I said the President had said that any compromise there's give and take. And I was wondering what AFN perceived they were getting in this particular piece of compromise and what they are giving up.

SENATOR KERTTULA:

If you are capable and wish to speak on this question -- we've been having legal counsel here. I welcome your testimony. I ask that it be encapsulated to any extent possible.

MS. KITKA:

I'll make it very short.

SENATOR KERTTULA:

Thank you.

MS. KITKA:

For one thing we don't view it as a compromise. We don't see anything being given to the Native community. AFN came to Juneau strongly ...

SENATOR KERTTULA:

Julie, it's a terrible situation with acoustics here and that does not magnify on this record -- permanent record. So I guess I'll have to counsel everybody to keep quiet and ask you to speak to the extent you can. The members right here were saying they couldn't hear you. Thank you.

MS. KITKA:

Thank you. The Alaska Federation of Natives came to Juneau strongly believing that the recommended constitutional amendment was a critical public policy element in resolving this divisive issue. We believe this and we will continue to pursue it with all our resources. The amendments proposed here have not been fully analyzed by us, but based upon what we've been able to review, the resulting legislation still does not achieve a legislative solution that deals with the issues that have to be addressed. AFN knows and shares with you your desire to solve this issue and we pledge our best efforts to continue to work with you and the administration, both during the remainder of this session and beyond. I am not prepared at this time to be responsive to questions regarding the substance of the issue. But we don't view this as a compromise and anything being given to the Native community.

SENATOR KERTTULA:

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

UNIDENTIFIED SPEAKER:

Would there be some way that you could tell us -- I see it basically that there are three choices. SB 484 as it is now, HB 601 as it is now and I know you can't comment on the content,

versus nothing. If you were to prioritized those, which would be your choice at this point?

MS. KITKA:

Mr. Chairman, based on my understanding Senator Adams' is still under consideration by the Senate and AFN has testified that we support Senator Adams' piece of legislation. I'm not under any impression that that has been taken off the table.

UNIDENTIFIED SPEAKER:

Then if I can just ask it this. That would be supported with the exclusion of what I suggested as being unacceptable? Those three that I just mentioned. Nothing, SB 484 or HB 601 as amended? You're saying Senator Adams' bill, constitutional amendment or nothing. Is that what I hear?

MS. KITKA:

Mr. Chairman, I believe that the Senate has to identify what the purpose of this special session is and what you're down here to solve. I came down here to help the state regain the unified management system. I came down at the direction of the Native people to help do that. The state is unwilling or unable, either one, to deal with that issue in an effective way. We will do the best we can to solve the problems on that. But that is why we came down here. And I think that Senate needs to take a look at what the goals of this special session are and what you wanted to accomplish. And I believe that Senator Adams is a good faith effort that complies with ANILCA and solves the problem. That is what we have put forward as solution. The state does not desire to solve the problem that's at hand, which I believe is where we're at with the threat of federal management, permanent control February first. I think that's important that message be [indisc.] to the Alaskan people because that is why the Native people came down here to help you see. That is what we've been working on the last two years is to help the state regain unified management. We wanted to help the state not at the expense of our rural people who live out there who depend upon hunting and fishing to provide for their

families. If that is not the goal of this Legislature, of it's not the goal of the Senate, I think that we need to be aware of that. I think that it is a very difficult issue to wrestle with. I know it's very difficult to come up with a solution. But I don't think you can allow yourself to be sidetracked off that issue.

SENATOR KERTTULA:

Questions? You have the floor, Senator Eliason.

SENATOR ELIASON:

Of course it takes this body and the other body also to agree on a constitutional amendment. And your group came before the House Committee urging the House to adopt the constitutional amendment [indisc.].

MS. KITKA:

Mr. Chairman, yes, we have. And in fact I believe that the House has passed through a constitutional amendment to two committees and it's sitting in House Rules pending some type of discussion between the House and Senate on adopting it. I believe that we have testified in the House Resources committee, House Judiciary State Affairs committee of what we believe about the House constitutional amendment and it is pending in House rules.

SENATOR KERTTULA:

You have the floor, Mr. President.

SENATOR ELIASON:

[Indisc.] before them the situation we can't put it before us we have fourteen members and even then we have problems. However, it's my understanding and I think it's common knowledge in this Legislature is only twenty-one votes over there to deal with that. The question is, if we would somehow or other [indisc.] fourteen votes on this side, could you pick up six more on the other side?

MS. KITKA:

Mr. Chairman, we hope to work as hard as we could to do that. Our goal down here is to solve the situation as far as

the state losing unified management. I believe the options of the Legislature not wrestling with that issue, is federal courts are going to make the decisions and run fish and game and we will have a dual management system. And that is not in the interest of the fish and game resources. It's not in our interests and in it's not in the state's interest.

SENATOR ELIASON:

The point I was really getting to is the fact that we tried knowing fully well that the House would never concur [indisc.] but we took that step forward and try to get a constitutional amendment started on this side and we failed. Now I don't think it's quite fair to blame this body for inaction on that particular issue because we tried.

MS. KITKA:

Mr. Chairman, I can appreciate that and maybe part of the problem with coming up with adequate members of vote has to do with the language of the constitution amendment. I know that people often think that a constitutional amendment does a lot more things than it actually does, but if a constitutional amendment similar to the one that's being considered by the House which primarily just restores to the Legislature the ability to make these kind of distinctions on that, you know, maybe it's a matter of this body looking at different versions as far as what that is. And maybe it being in the abstract people are a little hesitant about supporting such an approach. But if they are looking at exact language, maybe they're not as hesitant. If everybody understand what the purpose of the constitutional amendment is to restore to the legislative body the ability to make certain types of decisions and distinctions, classifications between rural Alaskans to do certain things, it's not mandating the Legislature to do something. It's to restore back to the Legislature that ability. I find it hard to think that the Legislature wouldn't want to have that additional flexibility. Whether you're going to ever utilize it. But I find it hard to believe that the

Legislature wouldn't to at least have that ability where it had the opportunity to seriously discuss how you could regain that ability to make those type of distinctions. I'm kind of at a loss. Maybe it's a matter of not having concrete proposals. maybe it's a matter of not seriously looking at the House proposals that's made it through several committees and taking a look at it whether or not there is any proponents of that . Maybe there's more support than you think. I don't have the answers to that.

SENATOR KERTTULA;

What we've heard one particular advocates side and it's a very, very important one. We've given it a great deal of time. We have not listened to other advocates outside of the state itself. I think that's very clear. It bothered a few people. I think we've allocated their time, resources to debate, essentially stating the state people and the advocates for AFN to the exclusion primarily of virtually everybody else. Trying to get through in a meaningful way these bills in a difficult setting. I thinks it's about the time of the day and the night that if there is going to be a motion to move this bill out, I try and cut off debate, we ought to start thinking about it. [indisc.] we ought to consider adjourning for the night. In any event, I think it's up to me to start bringing to the table this bill and Senator Halford, you do have the floor. We've had no discussion prior to this.

SENATOR HALFORD:

I think we have adopted a CS.

SENATOR KERTTULA:

We have adopted a CS. This is the CS.

SENATOR HALFORD:

Mr. Chairman I would move that we pass out of the Committee of the Whole Senate Committee Substitute House Bill 601 as before us, noting the two changes from the draft that are on page six.

SENATOR KERTTULA:

Are there objections?

SENATOR ADMAN:

Object.

SENATOR KERTTULA:

Objections noted. Do you wish to state your objection.

SENATOR ADAMS:

This bill doesn't do anything, Mr. Chairman. It doesn't gain state management. It is flawed. I think that it basically doesn't do anything. It just goes back to the original House Bill, vote that one in and let's get out of here.

SENATOR KERTTULA:

Is there a roll call requested or can we do a show of hands? All right. Just a show of hands to move the bill out. I think that that's acceptable. All those in favor of moving the bill out on individual recommendation just show their hands. Have you counted? All those opposed same sign. Lorraine, could your report.

THE CLERK:

The hand vote shows seventeen ayes; three nays.

SENATOR KERTTULA:

Four nays.

THE CLERK:

Sixteen;four.

SENATOR KERTTULA:

I believe that it is one missing, fifteen for and four against. We'll adjourn [indisc.].

ADJOURN

7:30 p.m.

SCOMM

81:4

**CONFERENCE COMMITTEE ON HB 601
JUNE 21 & 22, 1992**

(Meeting held in Senate Finance Committee Room)

SENATE CONFEREES

Senator Jay Kerttula, Chair
Senator Rick Halford
Senator Al Adams

HOUSE CONFEREES

Representative Gene Kubina, Chair
Representative Georgianna Lincoln
Representative Mark Hanley

COMMITTEE CALENDAR

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

SENATE CS FOR CS FOR HOUSE BILL NO. 601 (SCW)
"An Act relating to the taking of fish and game; and providing
for an effective date."

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Conference Committee on HB601
Tape 92-1
Side A

SENATOR KERTTULA:

I hope it's not too optimistic to suggest that we can have our differences outlined for a limited powers of free conference by 6:15. Hopefully, we'll go over a lot of them which have limited differences, but Representative Kubina -- I'll recognize you and any motions you'd like to make.

REPRESENTATIVE KUBINA:

Mr. Chairman, I'd move that the committee accept you as the chairman of the overall committee since obviously your experiences are far wider than mine. I would like to note that I think we got seven years experience on this side and I counted about 75 on that side. So, we'll expect some very intelligent and experienced solutions from that side.

SENATOR KERTTULA:

I think by the time Senator Adams, Representative Lincoln, and yourself, and all of them get through, why you'll have the experience. I'll try to handle this then, as concisely as I can, as closely as possible to the Committee of the Whole. I'll preside. I'll vote. But I think between the five members every point will be taken and adequately addressed.

Again, the way all conference committees are held, sometimes the three senators talk and then the three House members talk or any configuration and that's all fine. It's appropriate for an at ease any time or recess, if necessary. And I have one thought and that particular thought is the only one I've had time to discuss with Senator Halford and I'll ask him to express it. I could start here, but as chairman, I think I probably ought to keep to limited comment. It seems to me very logical to do this approach. But Senator Halford, if you would go over what we discussed as the first point.

SENATOR HALFORD:

Mr. Chairman, I would hope that we can agree on the things that are common to both bills as a starting point and there is a problem with figuring out how to do that. But the section that seems to be the common section, that comes out of the House bills, that originally came to the House was drafted as an amendment to 16.05.258. It was then picked up in the Senate version as an amendment to 16.05.268. The only other difference in that section is that the House version dealt with the customary use category and the Senate section did not. But I would suggest that we might be able to agree that the common section in the customary use question is still an open question. I'm not trying to answer that question ahead of time. But I would -- if there is concurrence -- and I'll try and explain the questions on how it works -- but I would like to see us adopt, as a start of our mark-up [indisc.] or whatever, that going to be, the provisions that are in -- that are common to 16.05.268 in the Senate bill and the amendments to 16.05.258 in the House bill. And that is the provision for the creation of non-subsistence areas and all the criteria which must be followed before the board can do that. That's 13 criteria in the House bill. As I said, that's drafted as an amendment to 258. And if the House wants to maintain the existing 258 as the subsistence priority vehicle and add two new sections as you do [indisc.] to that, I haven't got any objections to doing that. But I just wanted to get that language that's in House bill on page five. It's sections (g), (h) and it goes on to page six through line 24.

REPRESENTATIVE KUBINA:

Mr. Chairman?

SENATOR KERTTULA:

Yes.

REPRESENTATIVE KUBINA:

I think you'll find in your packet that staff has already -- two bills like this -- these are all ready. Page four on the Senate version and starting on page five on the House version -- that they are the one sections that are not marked out. Those

sections are ...

SENATOR KERTTULA:

Those that are in the Senate version or in the House version or the sections common to both are those that are not marked up.

REPRESENTATIVE KUBINA:

Mr. Chairman, then, it's my understanding that as of this time, those sections have to be in any bill that we would vote from here. Is that correct? Since there are a common in both?

SENATOR KERTTULA:

It's my opinion that that is correct. Certainly, it is true when it comes to -- well, usually we do. Yes, I'd say yes.

REPRESENTATIVE KUBINA:

But we'll -- I don't believe ...

SENATOR KERTTULA:

But I don't think there's a reasonable objection, in any case. Yes, there's always the probability to carry it forward -- taking a paragraph here -- that was our approval. You have the floor, Senator Adams.

SENATOR ADAMS:

Just looking at the bill that we had passed out from the Senate -- the Senate Committee Substitute, I agree that we need to look at the customary use in non-subsistence areas. That is throughout the bill from sections one through seven. So, basically, I agree with Senator Halford that we need to look at that very closely. But I am in agreement with the House on this particular effort. One of the things I'm hoping that we would do, and this is my goal, that we will hopefully complete this process tonight. That we can identify the areas that need to be debated before tonight. I hope that we'd have an understanding between the House and Senate for the areas we want to discuss. Customary use is the greatest one. You brought up subsistence allocation in section number two as an area we need to look at. In that particular area, there was a definition, I think, about a definition of reasonable opportunity if someone should rewrite that and discuss that. There is a couple of areas that I had

concerns in and that would be section six customary and traditional definitions. And the last thing I had was the section on eight and the definition of customary trade. I think those are areas that we need to look at and that would be the scope I'm looking at. Perhaps, members -- my colleagues on this side and the other body, have different areas that we'd like to look at. But we know which direction we're going.

SENATOR KERTTULA:

But the four primary, and I didn't write them down here [indisc.] I penciled them in myself here, covered those specific issues, Senator. I'm in agreement that they will be areas of debate and undoubtedly areas that we're going to need some opportunity to cover.

UNIDENTIFIED SPEAKER:

Mr. Chair?

SENATOR KERTTULA:

You have the floor. And we've accepted that which is common. Is there anything in this -- Senator Halford, you're a distinct student of this. Is there anything in this area of exceptions now that differs one from the other?

SENATOR HALFORD:

The areas are identical except that in the House draft it refers to their other questions they brought forward which is the whole question of another category, which is customary use, hunting or fishing, which is essentially the way they deal with urban subsistence questions. There isn't any conflict in the section that is consistent with House consent, but they refer to it in theirs. I noted that they have that in one provision. The wording in the provisions kind of [indisc.] is the same and they're not a deep ended question the way they drafted it. They addressed it in the same sentence.

SENATOR KERTTULA:

Does the bill drafter understand precisely what we're up to here? Do you have any questions? We'll rule out the [indisc. - cough] questions but since we're in a time frame ...

UNIDENTIFIED SPEAKER:

Mr. Chair [indisc.], I understand what you're doing.

SENATOR KERTTULA:

Thank you. Representative Lincoln.

REPRESENTATIVE LINCOLN:

Thank you. I also was going to make the same point that Senator Halford did, but also -- and I didn't really check through all of this to see that everything was the same. But I did note that under the -- just glancing at it -- under the Senate version, if I might just refer to it as the Senate version -- on page four, line 23, that it states an "area or community". And under the version that is in the House it says, "of an area". And deleting "community". So, I'm just raising that because is that -- has this been checked then, that the terminology throughout the sections that we're leaving in are, in fact, the same?

SENATOR KERTTULA:

I'm ...

UNIDENTIFIED SPEAKER:

Go ahead, Mr. Chairman.

UNIDENTIFIED SPEAKER:

I'm told it is, but as I read, it says -- on that same section moves to the House bill on page five, line 15 and it says, "the way of life of an area or community". It's buried up in the section just above what's taken out.

REPRESENTATIVE LINCOLN:

Okay, but below it is (h) "in determining whether dependency", you see. On that same page -- page five, line 31. It says, "characteristics of the ...

SENATOR KERTTULA:

You're using this particular ...

REPRESENTATIVE LINCOLN:

... the same page, Senator, page five, that you just referred to. It's the CS for HB 601.

UNIDENTIFIED SPEAKER:

You are referring to House bill, page five, line ...

REPRESENTATIVE LINCOLN:

31.

UNIDENTIFIED SPEAKER:

... 31, "characteristics of the economy, culture and way of life in an area ...

REPRESENTATIVE LINCOLN:

"In an area". Okay, right there. "Of an area". In this -- and if you look back on Senate bill ...

UNIDENTIFIED SPEAKER:

"Area or community", I ...

REPRESENTATIVE LINCOLN:

Right. And then it has "or community" ...

UNIDENTIFIED SPEAKER:

"Area or community under", the number has changed, anyway.

REPRESENTATIVE LINCOLN:

Yeah, they do. But I'm just suggesting that I have no problem with this as long as we make sure that the terminology is correct in both versions. That somebody needs to check this.

SENATOR KERTTULA:

I was told that they said the same thing, [indisc.] difference [indisc.].

REPRESENTATIVE KUBINA:

I'm informed, Mr. Chairman, that that's probably just a drafting error on the part of the House and that that should have also been included in the House version. She brings up a very good point that we ...

SENATOR KERTTULA:

Well, we'll have somebody, of course, before this -- in fact, get together -- before there's a signature we'll have somebody reproof against the House and Senate versions. You have the floor, Senator Halford.

SENATOR HALFORD:

Mr. Chairman, it was my intended motion that the -- if there are errors within that that are not common, that they be brought to our attention for decision in our draft.

SENATOR KERTTULA:

So we've accepted now, with that provision, the absolutely common areas of legislation of the bill. We can go to the items suggested, or we can go through the bill. I think the first thing is find the differences. And either way, maybe section by section since, I think at this time, we don't have -- it won't be a bargaining element to it if, in fact, it becomes one, so we just understand those that we're in agreement starting out. I'm going to use the committee substitute bill that has been turned down by the House and adopted by the Senate that are marked up for this purpose. So we would start with page one and proceed. And, excuse me for trying to get in some bookkeeping here for just a moment. And then those -- now we're looking for areas of common agreement, are those areas that were going to need limited powers of conference for. Yes, sir.

SENATOR HALFORD:

Mr. Chairman, the first part then of the draft that you're looking at is the finding sections which were not included in the House bill. I do not believe that those findings are essential and that we really need to deal with any potential conflicts there. So, it would be my inclination that we don't have to have the findings section, if the administration concurs.

SENATOR KERTTULA:

Carl, what do you think?

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

That's fine ...

SENATOR KERTTULA:

What is the House ...

COMMISSIONER ROSIER:

Mr. Chairman.

SENATOR KERTTULA:

... what does Senator Adams think?

SENATOR ADAMS:

What?

SENATOR KERTTULA:

We would just delete the findings section unless there is reason for you maintaining them, is what we're saying. We're willing to go ...

REPRESENTATIVE KUBINA:

Could I take that under advisement and then we'll go through this and then we'll have a short discussion. But I'd like to go through some more first.

SENATOR KERTTULA:

Yes, okay.

REPRESENTATIVE KUBINA:

But your proposal is to delete the entire findings section.

SENATOR KERTTULA:

Yes. Since the House didn't have it in it and we don't wish to fight that one.

REPRESENTATIVE KUBINA:

All right.

SENATOR KERTTULA:

We're a hair slow right now. To help each other with our bookkeeping -- let's accommodate each other in that matter. And when you're ready, we'll go to section two.

REPRESENTATIVE KUBINA:

You're going on the Senate version?

SENATOR KERTTULA:

I'm using the Senate version because it was common to the action of both bodies in [indisc.] Section two on page two, subsistence use. Quick discussion around the table on that. You have the floor, Senator Halford.

SENATOR HALFORD:

Mr. Chairman, the existing subsistence priority is contained in 16.05.258. The House format amended that and added new sections to that. The Senate format added a new statement and it brings up the questions of drafting different. But again, in terms of how it's done, I don't have any objections as to whether we amend 258 or repeal 258 and apply 268. But the question that we need to ask that comes up in this, is the question of

reasonable opportunity and the question of the portion of the stock and how that area [indisc.] I think that's what we need to truly question the power of free conference in.

SENATOR KERTTULA:

Precisely. You do have the floor, Senator Adams.

SENATOR ADAMS:

Thank you, Mr. Chairman. On this one, I think, we need to maintain the House bill version. There has been no identification as this has been a problem here from the administration as far as this language goes when it was [indisc.] over on the other body. And I don't think there -- no need has been expressed to change existing allocation of subsistence and this is an area that I'd like to hear from the administration on. I think this language that was in the House is fine as far as allocation of subsistence.

SENATOR KERTTULA:

If there is no objection, and we seldom invite participation but we're getting down to the wire here. If the administration wishes to speak to this question of reasonable opportunity -- Senator Adams' analysis -- you have the floor.

MR. McKIE CAMPBELL, SPECIAL STAFF ASSISTANT, OFFICE OF THE GOVERNOR:

Thank you, Senator, and I'll try to be brief. Basically, we've chosen to repeal and rewrite 258 because, though the way this is laid out, it basically does the same thing as 258, there have been a number of problems in both the boards implementation of this section. Specifically, what has happened is the number of times the boards have simply read this 258, which is all lumped together in one big paragraph, and not done a good job providing for reasonable opportunity for subsistence uses. So we've tried to lay things out step by step by step. If the resource level is this, than you shall do this. You may do this. To provide a very clear record for the board.

The other additional changes in this section are that we changed the existing law and, I believe, Mr. Utermohle has a dozen copies of existing law he can hand out there to you. It calls for

the boards to identify what portion of the stocks may be harvested and how much of the portion is needed to provide reasonable opportunity to satisfy the subsistence uses. Under some interpretations of subsequent court cases that have arisen because the board did not know clearly what they were supposed to do step by step, this one portion has been said to be meaning we need the boards to tell us exactly how many animals and use of the term "satisfy" that then you have to provide that number of animals and to leave seasons open or whatever, until that is satisfied. So instead, we changed the wording to "determine whether a portion may be harvested" and changed it "to provide reasonable opportunity to participate in" as opposed to "satisfy".

And those are the main things -- if you get down to the tier two language, there are a couple other additional changes I can speak about. They are also laid out in 268, some additional preferences for subsistence that some of the members were very interested in. And specifically I will mention, in the Senate bill on page three, subsection 2(c), that is on page three, line 17, there's an additional -- along with laying it out step by step, along with requiring to provide for subsistence up front and first, they also require the board to adopt regulations that differentiate among the consumptive uses and provide a preference for the subsistence uses through other aims, such as different seasons, bag limits, et cetera. We think that that is actually -- the members who proposed that in the council put that in there for the benefit of the subsistence. Just very quickly, you'll be told that this gives the board greater leeway. It actually -- than existing law and it depends on what you refer to as law. It gives them much tighter guidelines than existing statutes but it probably does take them out from support decisions that we have felt resulted from bad decisions resulting from unclear law in 258.

SENATOR ADAMS:

Mr. Chairman [indisc.].

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR ADAMS:

Those existing laws that you have provided there, has a procedural protection for the subsistence uses. The other language does not. A compromise that maybe can lead to this is that if we have perhaps a sunset clause that will let us revisit this. That's what scares me. I need to make sure that we have some type of procedure in place, and you do have some existing laws you read it, and that's why I wanted to maintain that law.

REPRESENTATIVE KUBINA:

Mr. Chair.

SENATOR KERTTULA:

You have the floor, Mr. Chairman.

REPRESENTATIVE KUBINA:

McKi, I believe I recall you testifying in the House Judiciary Committee that this section, as written by the House, was actually a great improvement over what we have now and that it would take us quite a bit forward in improving the problems that you had with existing statutes minus ...

MR. CAMPBELL:

Excuse me. This section that is in the Senate bill, you're talking about?

REPRESENTATIVE KUBINA:

The House version.

MR. CAMPBELL:

This section is not in the House version at all.

REPRESENTATIVE KUBINA:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

REPRESENTATIVE KUBINA:

I think what we're trying to do is establish areas that we differentiate on. And I think we disagree.

SENATOR KERTTULA:

There is some time in which to discuss the area -- perimeter

of disagreement, but at this time then, we'll say this is the area that we will ask the limited powers of free conference. And we go on -- let's see. Where do we proceed from here? Through reasonable opportunity to ...

UNIDENTIFIED SPEAKER:

Page four, line seven.

SENATOR KERTTULA:

Page four, line seven.

UNIDENTIFIED SPEAKER:

This is the recover language?

SENATOR KERTTULA:

"Harvestable portions of a fish stock or game population is insufficient ... for a reasonable opportunity subsistence uses and other consumptive uses." Yeah, the plan for recovery. The comment on plans to facilitate the recovery of stock.

UNIDENTIFIED SPEAKER:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Senator.

UNIDENTIFIED SPEAKER:

I don't know that we need to deal with this on the direct request for conference powers. I think the section is a good section but I don't think it was addressed by the House and needs to be one of the asked for powers. I think it's [indisc.] section.

SENATOR ADAMS:

Mr. Chair.

SENATOR KERTTULA:

Yes.

SENATOR ADAMS:

If we can come through with a compromise on something like this and, it is an area that we need to discuss between both bodies -- but I will throw out a suggestion and then we can ask them for -- maybe that we can come to a compromise and get some of these issues off the waiting list. I'm just throwing this out to

you and so it's for the purpose of section (b) of this section, "reasonable opportunity is an opportunity as determined by the appropriate. [indisc.] One, it allows a subsistence user to participate in a subsistence free hunt or fishery that provides a normal diligent participant ...

REPRESENTATIVE KUBINA:

I'm not sure where you're at, Senator.

UNIDENTIFIED SPEAKER:

Line 29, page five.

SENATOR ADAMS:

Page four, line seven.

REPRESENTATIVE KUBINA:

We're on page four, line seven, subsection (c) ...

UNIDENTIFIED SPEAKER:

Are we on ...

UNIDENTIFIED SPEAKER:

Well, what Senator Adams is reading in Senate CS is the definition of "reasonable opportunity" and I'm sure he's going to give us a slightly different version, but it's on page five, starts on line 27.

SENATOR ADAMS:

I've got three bills before me and I just wanted to throw out that perhaps looking at this that we can say, one, "allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game."

SENATOR KERTTULA:

I think I should go back quickly and then pick up -- realizing these pages can lead to something. Senator Halford says while it might be debatable, apparently, there is reason for asking for limited powers in the section covering...

SENATOR ADAMS:

Senator Halford, as long as we can look at these particular provides and perhaps stop the [indisc.] here, delete certain sections and if that can be done right there, we won't need that

part. I was just trying to eliminate some words within the [indisc.].

SENATOR KERTTULA:

We'll have to question mark up on it.

UNIDENTIFIED SPEAKER:

Senator?

SENATOR KERTTULA:

You have the floor

UNIDENTIFIED SPEAKER:

Could I just add, Senator, reasonable opportunity will be one of those [indisc.] where I find the language you were reading is part of a language on page five, lines 27 - 31 and then it deletes the language that was in the Senate bill and about halfway across line 31, through the first 12 or 13 lines of page six. And I know that there have been a number of proposals for ways to rewrite that and that would be one of them [indisc.]. I appreciate that. Thank you.

SENATOR KERTTULA:

We have in between four and five [indisc. - simult. speech] and it's been determined on this side -- it doesn't look like we'll have to ask for limited powers of free conference to cover this area. Senator Adams seems to think we don't either, so long as we can place the commas and periods and ...

SENATOR ADAMS:

And deletions.

SENATOR KERTTULA:

... and certain deletions. I see no -- on the other hand, if there's any questions, asking for the power isn't a loss. I think we'll just ask for the power and go on from there. It might save time. It might delete and want to change some small amount. That takes us to where now? Clear down to ...

REPRESENTATIVE KUBINA:

Line 19, page five?

SENATOR KERTTULA:

Yeah, okay. I've got 17 and 19. Fish stocks. We're down to

fish stocks (f).

UNIDENTIFIED SPEAKER:

Right.

SENATOR KERTTULA:

The identification, taking and use. What areas from there do we feel that we -- or is it that whole section? [simult. speech]

UNIDENTIFIED SPEAKER:

Okay that compares to the (e) of existing one.

UNIDENTIFIED SPEAKER:

Right.

UNIDENTIFIED SPEAKER:

Which is ...

UNIDENTIFIED SPEAKER:

... fish stocks, game -- yeah.

UNIDENTIFIED SPEAKER:

Change in bison ...

UNIDENTIFIED SPEAKER:

Bison "or portions of fish stocks and game populations not identified" -- regulations.

SENATOR KERTTULA:

"Fish stocks and game populations", including bison. They're not there.

UNIDENTIFIED SPEAKER:

Where was that?

SENATOR KERTTULA:

I presume the bison would still be included but it has never been part of any subsistence. Either way. Is that correct? You have the floor.

MR. CAMPBELL:

Yes, sir, they would. That was put in as an amendment in 86 on the Senate floor but we'll advise it bison are included anyway. So that's just straight drafting. It is essentially exactly the same effect as existing law.

SENATOR KERTTULA:

And there shouldn't be a problem with that?

MR. CAMPBELL:

Yes, sir.

REPRESENTATIVE KUBINA:

I don't see one, unless someone else is going to raise one.

REPRESENTATIVE LINCOLN:

Mr. Chairman. I'm having the same problem as some others are. Trying to pull through the different ones, so we're right now on ...

SENATOR KERTTULA:

Line 19, page five of the Senate Committee Substitute for the House bill. Line 19, page five, fish stocks under non-subsistence regs.

REPRESENTATIVE LINCOLN:

Just under the (f)?

SENATOR KERTTULA:

It's the same essentially, exactly as the present law.

REPRESENTATIVE LINCOLN:

Okay, I've got it now.

UNIDENTIFIED SPEAKER:

I think the House bill assumes current law in place of where the Senate bill addresses a new 268. And that's what you got right here.

UNIDENTIFIED SPEAKER:

That's correct.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

It's very hard to follow because the customary use in non-subsistence areas within the whole one through seven, and we're getting ourselves mixed up in different areas. And so we need to just look and pick and choose on these. And it's very hard to have the bills before us and keep getting ourselves mixed up from which bill we're working out of.

SENATOR KERTTULA:

We're trying to use this bill, but I realize there's

something not in one that may be in another you want to reaffirm even in existing law. We'll go back before we go down through all.

REPRESENTATIVE KUBINA:

I'm going through the Senate bill. That's what we're following.

SENATOR KERTTULA:

Yeah.

REPRESENTATIVE KUBINA:

And we will go back through and check the House bills and make sure we've done it. But if I'm hearing any objections to leaving in the Senate version on page five, lines 19 through 21, section (f). I see no objection.

SENATOR KERTTULA:

It's okay.

REPRESENTATIVE KUBINA:

So that come to an agreement.

SENATOR KERTTULA:

Section (f) - part and what is left - (g) I believe is good also. "Takings and uses of fish are authorized" is our second subject. Does anyone wish to comment to that and maybe (f)?

UNIDENTIFIED SPEAKER:

What's different there?

SENATOR KERTTULA:

McKie.

MR. CAMPBELL:

Sir, the only difference is the slightly expanded list in (g) -- is simply the list that is exactly the list that the boards of fish and game have at their disposal for regulating fish and game. And ...

SENATOR KERTTULA:

That's what they do now?

MR. CAMPBELL:

We all felt it was better drafting.

SENATOR KERTTULA:

Without objection, [indisc.] is okay.

UNIDENTIFIED SPEAKER:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

I just wanted to point out in addition to that, however, there in that first line, following the word "takings", there is added "and uses of fish and game".

SENATOR KERTTULA:

Takings and uses.

UNIDENTIFIED SPEAKER:

Actually, sir ...

SENATOR KERTTULA:

Takings authorized which is the same thing, I think, under your regs, now -- takings and uses ...

UNIDENTIFIED SPEAKER:

I just wanted to point out there's additional language in there. "And uses of fish and game authorized". And that -- the language "and uses of fish and game" has been added to existing law, in addition to the things Mr. Campbell mentioned.

SENATOR KERTTULA:

Isn't it the Attorney General's opinion that any substantial difference, including the regs then, between that and the existing law. Between this suggestion in (g) and the existing law. Interpretation. [indisc.] Anything of substance that anybody [indisc.] on?

UNIDENTIFIED SPEAKER:

Nothing. Absolutely nothing.

SENATOR KERTTULA:

They say it's the same -- Attorney General's.

REPRESENTATIVE LINCOLN:

I think that there's a problem with that section that we need to come back and revisit that section.

REPRESENTATIVE KUBINA:

Mr. Chairman, we would not like to include this at this time and ...

SENATOR KERTTULA:

(g)? You wish (g) to be ...

REPRESENTATIVE KUBINA:

Yes. We either would like to delete it or put it on our list for free conference.

SENATOR KERTTULA:

Okay. We'll put it on the list at this time, then. So, that's the list of (g), page five, is on the list for free conference. Reasonable opportunity.

UNIDENTIFIED SPEAKER:

That's the definition that Senator Adams talked about. He suggested deleting the second part of it, but that is one of the areas that we definitely need conference powers on.

SENATOR KERTTULA:

We'll put conference -- I have it down for free conference committee. Conference committee requires the whole area of reasonable opportunity. That takes us ...

REPRESENTATIVE KUBINA:

Where would you say that ends then?

SENATOR KERTTULA:

Section three.

REPRESENTATIVE KUBINA:

Section three all the way to ...

SENATOR KERTTULA:

Let's see. That's more reasonable opportunity still. How far down does it go? To section five?

UNIDENTIFIED SPEAKER:

It goes to section three. Well, section three is the conforming section because of the different numbering system in this statute and the bill. And section four is the same. So those sections don't need to be addressed either for conference powers. They are necessities. It's technical whether we draft it as an amendment to 258 or substitute 258 to 268.

REPRESENTATIVE KUBINA:

So technically, it wouldn't make a difference how these -- what these statute numbers are?

UNIDENTIFIED SPEAKER:

Depending on what we decide ...

REPRESENTATIVE KUBINA:

On what we end up with final. How do we do that technically? Do we have to list this?

UNIDENTIFIED SPEAKER:

In order not to include it ...

REPRESENTATIVE KUBINA:

I mean, we're not accepting it as it is because when we're done it may be a different number.

UNIDENTIFIED SPEAKER:

Mr. Chairman, I believe that if we deleted those sections it we would have to amend 258. If we maintain a new 268, we'd have to have those two sections. So in either case, we have one bill that has them, one bill that doesn't, so we'll put them in the powers of the normal conference ...

REPRESENTATIVE KUBINA:

We're not accepting it. That we don't need them as free ...

UNIDENTIFIED SPEAKER:

Precisely.

REPRESENTATIVE KUBINA:

... free powers, okay.

UNIDENTIFIED SPEAKER:

We still need to address 304.

SENATOR KERTTULA:

We're down then to customary and traditional -- non-commercial.

UNIDENTIFIED SPEAKER:

Now that is ...

SENATOR KERTTULA:

We need free powers on that one. That's 36 free conference. 37, customary trade.

UNIDENTIFIED SPEAKER:

The House has a different ...

SENATOR KERTTULA:

There's no debate on that one right? It's free conference powers. I was just checking with Representative Lincoln.

REPRESENTATIVE LINCOLN:

Just seeing if you're awake Senator Halford.

SENATOR KERTTULA:

Okay, then six then takes us into regulations that are repealed under the same -- that's all part of the request.

UNIDENTIFIED SPEAKER:

Six, seven, eight are transition sections. Nine -- the House had a review provision where [indisc.] effect legislation? I think those provisions are certainly appropriate.

REPRESENTATIVE LINCOLN:

Yes, there is. Wait a minute.

UNIDENTIFIED SPEAKER:

I would suggest that whatever, you end up with a review provision like that.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

I'd like the House to consider just a view and keep it under consideration the usage of that, at the same time that I ask that the Senator from Eagle River to look at sunset clauses wherever we absolutely need to compromise on.

SENATOR KERTTULA:

[Indisc.] sunset?

UNIDENTIFIED SPEAKER:

We'll work that out.

SENATOR KERTTULA:

This all review section ...

UNIDENTIFIED SPEAKER:

Mr. Chairman, would that require us to require powers then again under that section.

6
SENATOR KERTTULA:

Yes. It's not here. Yes.

UNIDENTIFIED SPEAKER:

So, it will request free powers in that section, then.

UNIDENTIFIED SPEAKER:

Under section nine.

UNIDENTIFIED SPEAKER:

Mr. Chairman, I request that we consider power [indisc.] to consider a sunset section.

SENATOR KERTTULA:

Powers to consider sunset section. Senator [indisc.] would you go over with us now what you believe we've suggested for powers of free conference -- or limited conference. Excuse me? All right. You want to go through the House bill. There are sections in it that we don't have in the Senate section. I'd forgotten that. Let us do that.

UNIDENTIFIED SPEAKER:

This will be a little more difficult because ...

SENATOR KERTTULA:

Why don't you read us through the House bill, Mr. Chairman, because I've been working pretty much off the Senate version. In fact, we have some marks on it.

SENATOR ADAMS:

It would save time to leave it and if there's any differences than as stated. If there's not, we're fine where it is.

UNIDENTIFIED SPEAKER:

Question on the first three pages is basically adding a new category. Customary use on numerous sections.

SENATOR KERTTULA:

Customary use is the fourth category that Senator Adams also -- you have the floor.

REPRESENTATIVE KUBINA:

I would request that we ask for free conference to deal with the question of customary use so we can deal with that later.

UNIDENTIFIED SPEAKER:

Yes, I agree.

SENATOR KERTTULA:

If there's no objection, we will ask for conference on customary use then. We got down to -- we're looking at a [indisc.] portion of (g).

REPRESENTATIVE KUBINA:

So that would be included already in our request.

SENATOR KERTTULA:

The definition of customary use.

REPRESENTATIVE KUBINA:

What about customary -- Mr. ...

SENATOR KERTTULA:

You have the floor.

REPRESENTATIVE KUBINA:

Mr. Chairman, on page three, line 28 and 29, just so we understand that that sentence, which you can see is a new sentence, is included into the customary use term. That concept that we need to deal with.

UNIDENTIFIED SPEAKER

Eight, right?

REPRESENTATIVE KUBINA:

That's correct.

SENATOR KERTTULA:

If there are no objections it will be part of the request. I think it is too.

UNIDENTIFIED SPEAKER:

And the definition of customary use I assume is part of the request on that [indisc.] deal with the definition and implementation of customary use.

REPRESENTATIVE KUBINA:

Okay. And then customary trade, do we have different definitions?

UNIDENTIFIED SPEAKER:

Yes, we do.

REPRESENTATIVE KUBINA: