

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2168 SCOMM 81: SPECIAL SESSION (SUBSISTENCE), June 1992/HB 601

And have we already listed customary trade as a request?

SENATOR KERTTULA:

It ought to be on the bill. But no, that customary traditional, reasonable opportunity, customary trade, customary use, non-subsistence ...

REPRESENTATIVE KUBINA:

Mr. Utermohle, is it your feeling we've cut out all the differences [indisc.] that you can see?

SENATOR KERTTULA:

Those that we would need conference committee in which to debate the changes?

MR. GEORGE UTERMOHLE, LEGISLATIVE LEGAL COUNSEL:

At this point [indisc.].

SENATOR KERTTULA:

[Indisc.] a little fast.

MR. UTERMOHLE:

I'm not quite sure [indisc.].

SENATOR KERTTULA:

Why don't you put down here -- that's what I started to do and then we went to the House bill. So why don't we proceed that way. Why don't you read through what you have suggested for us and we'll proceed from that. The Senate Committee Substitute, then adding the House Committee Substitute on the new category "customary use".

REPRESENTATIVE KUBINA:

Mr. Chairman, I just want to make sure again, under customary use, that we're also on the House bill on page four, section four, that this allocation section is also -- we're talking about under the same ...

SENATOR KERTTULA:

I would think anything to do with that new term -- maybe not the new concept, the new term would be covered.

REPRESENTATIVE KUBINA:

Okay.

SENATOR KERTTULA:

So whenever Mr. Utermohle is ready, why, we'll just go back through the -- starting with page one and just go right on through it again for edification.

MR. UTERMOHLE:

Mr. Chairman, I was [indisc.] pretty much all the course of discussion and not necessarily the word of the bill. So it would be difficult for you to follow closely. But the first item I need to discuss and it seems to be any one part of free conference, so our term "area or community" in the [indisc. - paper shuffling].

REPRESENTATIVE KUBINA:

That was in the section that were similar but the appearance of the word "community" and "area" was changed and we divided it.

SENATOR KERTTULA:

Which I think we got back to the drafting. So I don't think it's a problem unless she does. Or you do. You have the floor.

REPRESENTATIVE LINCOLN:

Mr. Chairman, I'm not sure ...

SENATOR KERTTULA:

Aside to the whole bill.

REPRESENTATIVE LINCOLN;

Yeah, there were some other areas there that ... [tape ends midsentence].

Tape 92-1
Side B

REPRESENTATIVE LINCOLN:

[Tape begins midsentence] ... I think section, page five, line 15 and 17. So any of those areas where the terminology is different that we would be notified of that to see if we can come up with something that's compatible.

UNIDENTIFIED SPEAKER:

Right.

REPRESENTATIVE LINCOLN:

And that's ...

REPRESENTATIVE KUBINA:

Either way -- it's either our language or your language, and so we don't need free ...

SENATOR ADAMS:

Basically, we're looking at uniform language throughout the bill. And that's what we want.

UNIDENTIFIED SPEAKER:

Consistency determination between that area where we agreed that this is contained in both bills. To be sure that we, in fact, have everything contained in both bills or that if there's a difference, we make a conscious determination as to which way we want it to read.

MR. UTERMOHLE:

I recommend that you include this term in your request or address it [indisc.].

SENATOR KERTTULA:

All right.

MR. UTERMOHLE:

[Indisc.] drafting statutes ...

SENATOR KERTTULA:

If it came up under any question, I think it's probably moved that -- go ahead. And if you can, we're on page one on [indisc. - simult. speech]. I do have. [indisc.]

MR. UTERMOHLE:

Starting with the version passed the Senate Committee of the whole. Section one, there was no [indisc.] with question. Section two, amend 268 or 258 [indisc.] you can't have ramifications with the subsistence with the [indisc.] section [indisc.] bill.

The other issues that were raised by this section were used to determine "customary use" the other [indisc.] to that and the allocation of subsection two.

And there's another issue raised by the preceding powers reflected under subsection (a) and (b) on 268 page two. This is talking about game population. Subsection (d) and (e) [indisc. - paper shuffling]. The difference between the House and Senate

version in regard to this are [indisc.] on the committee covering "customary use". It doesn't [indisc.]. That's okay. In regard subsection (g) there is -- this language is largely ...

SENATOR KERTTULA:

Subsection (g) where?

MR. UTERMOHLE:

Subsection (g), page five. This is largely consistent with existing law, however, it is an expansion upon existing law.

UNIDENTIFIED SPEAKER:

But that doesn't require a conference power, does it?

MR. UTERMOHLE:

If there's no objection [indisc.].

REPRESENTATIVE KUBINA:

If there was objection to adopting at this time, but it doesn't require conference powers to deal with that question.

SENATOR KERTTULA:

I had a list of those requirements.

MR. UTERMOHLE:

Subsection (h) "reasonable opportunity". That didn't [indisc.] that was identified as [indisc.].

SENATOR KERTTULA:

Correct.

MR. UTERMOHLE:

Sections three and four [indisc.] depending on what you do [indisc.].

SENATOR KERTTULA:

Yeah. Moose.

MR. UTERMOHLE:

Section five identified as definitions of "customary and traditional" and "customary trade" are identified. These items are [indisc.]. Section six will be determined by going after [indisc.] 268.

REPRESENTATIVE KUBINA:

This bill is technical. I [indisc.]

SENATOR KERTTULA:

No.

UNIDENTIFIED SPEAKER:

Sir.

SENATOR KERTTULA:

Yes.

MR. CAMPBELL:

There is one part of that that is not non-technical. AS 16.258 repealed is technical. AS 16.05.940(26) is the definition of rural area and I just wanted to make you're aware of what that was.

REPRESENTATIVE KUBINA:

Is that the court -- what's that?

MR. CAMPBELL:

The word is not in use in the law but it sits in the law until the legislature acts to take it out. And that is the repealer of the rural definition.

REPRESENTATIVE KUBINA:

Do we need ...

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

Do we need to repeal that to effectively deal with what ...

MR. CAMPBELL:

Either way.

REPRESENTATIVE KUBINA:

Mr. Chairman. I would suggest that we're either going to repeal it or we're going to leave it in but we're not going to debate the definition of rural. So we don't need power of ...

SENATOR KERTTULA:

It's a moot.

MR. UTERMOHLE:

Sections seven and eight are identified as sections needing limited powers.

SENATOR KERTTULA:

We're not?

MR. UTERMOHLE:

We're not. Section nine was identified as a potential source of [indisc.] for limited powers.

SENATOR KERTTULA:

Correct.

REPRESENTATIVE KUBINA:

In relationship to sunsets.

MR. UTERMOHLE:

[Indisc.].

SENATOR KERTTULA:

Anything else.

MR. UTERMOHLE:

Section ten and eleven were effectively identified. In regard to a sunset provision, that provision will be a new provision [indisc.].

SENATOR KERTTULA:

So that would require ...

MR. UTERMOHLE:

... free powers.

SENATOR KERTTULA:

Free powers. So that's something we would want picking up ...

UNIDENTIFIED SPEAKER:

Wait a minute, Mr. Chairman. If that's the case ...

SENATOR KERTTULA:

Sunset is a provision. On the other hand, it's less than -- pass the whole law and it's then -- it's less than that whole law, because some states it sunsets. Of course, it's definitely a technique of getting at it again.

REPRESENTATIVE KUBINA:

Mr. Chairman, I would argue that it's not much different than an effective date, but when it becomes effective and when it [indisc.] become effective.

SENATOR KERTTULA:

I think so too. I think let's bring up the sunset. We can

get back into it and get technical help on that argument. You have the floor.

UNIDENTIFIED SPEAKER:

The section nine is entitled "Review". And I would say that where we should put our sunset is in section nine consistent with whatever the review of the process is and it's clearly an amendment to the review process. It's not, in fact, the wording or the method of review that was opposed in the Senate bill that passed the Senate. But I think that issue is before us. And all we're doing is implementing the review.

SENATOR KERTTULA:

If you'll draft within that section, I did have my sunset clause written in that section. [indisc.].

SENATOR ADAMS:

I would like you to respond to that, I think, George.

MR. UTERMOHLE:

Mr. Chairman, as a part of review, we simply appropriate to provide for legislative review and that it's a [indisc.] sunset but an issue I think that should have the effect of taking [indisc.] entire body of law out of that [indisc.] would be more than this provision [indisc.].

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

I doubt that Senator Adams was suggesting that we sunset the subsistence priority. I think he was probably suggesting we only sunset our amendment and that is a very much smaller question.

MR. UTERMOHLE:

The danger of sunseting on amendments and then reinstituting what we're replacing here, you're looking at an adding additional provisions to the bill which are not contained in the original. You can go back to the original bill as it is effectively.

SENATOR KERTTULA:

Since it comes at the tail end, right to request and one with the provisions that we stated all of them and the other one

without the provision to sunset. In the meantime, we'll [indisc.]. So that's two requests for the present sunset.

REPRESENTATIVE KUBINA:

Let me ask one other way. Is it not possible to add into any one of these sections any phrase that said, "until such and such a date" in the sentence. Isn't there a way to get around this, is what I'm getting at. I mean, we're creative. Are we legally ...

MR. UTERMOHLE:

I would be more comfortable with an approach like that.

SENATOR KERTTULA:

I'm not particularly comfortable with the sunset provision to begin with, so I'm not sure all the [indisc.].

REPRESENTATIVE KUBINA:

I have a couple of questions, Mr. Chairman.

SENATOR KERTTULA:

You have the floor, Mr. Chair.

REPRESENTATIVE KUBINA:

On page four, did we now cover clearly line seven at section (c), there? Did you state that, George, that that is in [indisc. - coughing]. I guess it's under "reasonable opportunity", so -- or is it? I mean, that's my question.

UNIDENTIFIED SPEAKER:

This is the recovery language?

REPRESENTATIVE KUBINA:

Yeah. Yes.

UNIDENTIFIED SPEAKER:

Plan for recovery.

REPRESENTATIVE KUBINA:

Just wanted to make sure that was included. I wasn't clear that you said what we were asking included this paragraph.

MR. UTERMOHLE:

I stated you did not include this in your request for free power.

UNIDENTIFIED SPEAKER:

That is true. We did not.

REPRESENTATIVE KUBINA:

We did not.

UNIDENTIFIED SPEAKER:

I don't have it here.

SENATOR KERTTULA:

You have the floor, Senator.

UNIDENTIFIED SPEAKER:

Mr. Chairman. Just as a matter of interpretation because, I mean, there are a number of small things that are changed in the proposed Senate bill 268 section that could be adopted as amendments to the House language or existing language in 258. If we're adopting the same language and applying it in the House manner language to 258, are we not within the powers of a conference committee, when we're using that language? Because, for example, the statement "for human consumption". That's one change that's a change to 268. Is that not available to us in applying it to 258? The changes with regard to recovering populations. Couldn't they be applied as an amendment to 258? We're going to get too tied up in the difference in the drafting of applying it to 258 and 268. We're going to have to ask for an awful lot of power that doesn't seem to be consistent with what our intentions were to limit taking up brand new subjects without warning somebody ahead of time.

SENATOR KERTTULA:

If there's a concern, we can ask [indisc.] Senator -- Mr. Chairman.

REPRESENTATIVE KUBINA:

Well, I guess it's the interpretation of the attorney's there. I see what you're saying. We've got one in one section but it's a different law and if we can interchange them -- maybe the easiest way is to make sure we also have the recovery section also listed to ...

SENATOR KERTTULA:

Let us do that.

REPRESENTATIVE KUBINA:

Section [indisc.].

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

Mr. Chairman. Just for your information, can we assume that either provision is drafted in the Senate bill or the House bill is available in whichever drafting style we choose to finalize the bill, either 258 or 268?

SENATOR KERTTULA:

Yes, we have to assume that.

UNIDENTIFIED SPEAKER:

Okay, that's all.

SENATOR KERTTULA:

We get a little extra nuance [indisc.]. That's where I was coming from.

REPRESENTATIVE KUBINA:

Me too. And one other question, Mr. Chairman. On page five, section (f), we agreed to as it is. On section (g), if we decided that we wanted to take out one of those extra criteria that have been added to it, this changes existing law. Would we need then also free conference committee work on that for approval?

SENATOR KERTTULA:

I seem to believe we do.

REPRESENTATIVE KUBINA:

Well, then could we go ahead and just add that just so it's there?

SENATOR KERTTULA:

I had (g) down and we can expand it a little. The committee desires to go on recess until we look at the list. Mr. Utermohle will bring it. The staff will draft it up. We'll have a look at that -- you have the floor, Senator Adams.

SENATOR ADAMS:

I wouldn't mind a short recess so we can go through this list, but there are items here that do not need the powers. So maybe we can settle those issues and then have ...

SENATOR KERTTULA:

Five minate recess.

UNIDENTIFIED SPEAKER:

... maybe about four or five issues and then we get done.

SENATOR KERTTULA:

What time is it now? That's good. Five minute recess and then we'll return.

RECESS

5:05 - 5:32 P.M.

REPRESENTATIVE KUBINA:

Mr. Chairman?

SENATOR KERTTULA:

Yes, Mr. Chair.

REPRESENTATIVE KUBINA:

Mr. Chairman, I'd move that we leave the findings section in the Senate version attached.

SENATOR KERTTULA:

If there's no objection, we'll set this [indisc. - paper shuffling] in some other area.

REPRESENTATIVE KUBINA:

As my House members put it, Senator, we gave you a page and a half. We'll expect a page and a half.

SENATOR KERTTULA:

Is that the way it works? We don't want it. You've got the floor, Senator.

UNIDENTIFIED SPEAKER:

Mr. Chairman, I guess we're getting to the point where maybe it would be a good idea to choose what we would mark up and maybe -- we do have more in the Senate bill if you wanted to use that.

SENATOR KERTTULA:

I feel comfortable using the Senate bill. We're obviously going to have to go back to the House bill. We'll use the Senate bill for mark-up. With that the findings, purposes and intent section, without objection, has been adopted. So we no longer -- [indisc.] it's going to be a little. I guess, Mr. Utermohle -- do

you need other help, George?

MR. UTERMOHLE:

Not at this time.

SENATOR KERTTULA:

Okay. You have the floor, Senator .

UNIDENTIFIED SPEAKER:

Mr. Chairman, one of the things that I think that all the subcommittees are thinking is whether we can, in fact, come up with what sections this sunset definition [indisc.]. I'd kind of like to know what we've gotten back from legal as to whether we can do that. Because, I think, from all sides, we get a lot more opportunity to compromise if you're looking at three or four years provision than if you're looking at something [indisc.].

REPRESENTATIVE KUBINA:

Can we have our staff talk on that, Senator, Mr. Chairman?

SENATOR KERTTULA:

Yes, you go ahead. George first or staff first?

MS. LAURIE OTTO, STAFF TO REPRESENTATIVE DONLEY;

I'm the one that talked to [indisc.].

SENATOR KERTTULA:

Yes, please. I'm always delighted to see you, Ms. Otto.

MS. OTTO:

Mr. Chair. I think that in a copy to Taft's book, there would be a way to work the application period of the statute and the way to do it would be this. To leave the existing subsistence statute intact without making any amendments to this section 258. To make all the amendments that you're going to make to the new section 268. Within the body of this section 268, to say, "this statute is only effective until" whatever date you choose. And we'll also add a section saying that "to the extent that there's a conflict between the new 268 and the old 258, 268 takes priority until" the date that you decide you want it to get out of [indisc.].

SENATOR KERTTULA:

Did the bill drafters have a feeling for what she's said now?

I know you've been in the discussion. Precisely?

MS. OTTO:

Well, I've been on the phone with Tam Cook. We did talk about four or five different alternatives. She thought that was the [indisc.].

SENATOR KERTTULA:

Okay, before -- okay, Tam was into it. But before I entertain questions, George, are you and the [indisc. - simult. speech] your coworkers ...

MR. UTERMOHLE:

[Indisc.].

MR. JERRY LUCKHAUPT, LEGISLATIVE LEGAL COUNSEL:

Mr. Chair, Jerry Luckhaupt. This was one of the four possibilities we discussed in the last ten minutes [indisc.]. I understand [indisc.] that process. It appears [indisc.] you could probably do it without any [indisc.]. It's not our usual drafting style, at all but we can ...

SENATOR KERTTULA:

You're getting to it.

MR. LUCKHAUPT:

... play with it a little and come up with a way that we can use the existing repealer that we have to justify -- well it [indisc.]. There's two ways -- I think we [indisc.].

SENATOR KERTTULA:

All right. Now does that create us any problems in drafting the bill along the lines we are? Is there anything in there that gives us trouble?

UNIDENTIFIED SPEAKER:

Mr. Chair?

SENATOR KERTTULA:

... if we proceed that way. I mean ...

SENATOR HALFORD:

Okay, 258 contains the basic allocation question and it also contains the reasonable opportunity language which seems to be the most significant changes. And Senator Adams, correct me if I'm

wrong. I think that probably does cover most of it. The things that are not covered then, would be the provisions in 940, which in the Senate bill, were the definitions of "customary and traditional" and the "customary trade" and in the House bill were also definitions of "customary use" and "customary trade". But other than that, the real guts of the priorities are in either 258 or 268. So that would work out, I think.

SENATOR KERTTULA:

If the bill drafters are fully aware -- Ms. Otto will undoubtedly have some input here as Senate House Judiciary.

REPRESENTATIVE KUBINA:

I'm sorry, Senator. I didn't hear you.

SENATOR KERTTULA:

We're just saying that if we use the methodology suggested by Ms. Otto, the bill drafters are aware. Senator Halford outlined the fact that reasonable opportunity, allocation, and so on was already there. It's understood. And we can proceed along the lines, then, unless there's somebody else to cover the sunset provision. However, we have not covered the time of it and apparently that would be open for debate now, without asking for powers of free conference, because we're not asking for them. So that's -- the time of the sunset provision must be open for debate. We do have to request that of the attorneys. Do we have to request the time -- five years, seven years, whatever.

UNIDENTIFIED SPEAKER:

Three.

SENATOR KERTTULA:

Three. Whatever we [indisc.].

SENATOR ADAMS;

The reason we suggest three years is for administration change [indisc.].

SENATOR KERTTULA:

I have a feeling listening, frankly, and not now, but previously, to testimony, they said it would take -- it's going to be a great big happy family up here in Alaska, but it would take

a good three years or so for this to be proven. So I feel that that's a little tight. I really do. Usually, when you're bureaucracy is trying to come to that point of view, they're a little more optimistic to be out of it. I could go around the table and then we'll go subsequently to the Commissioner. Senator Halford, do you have a feeling on it?

SENATOR HALFORD:

Mr. Chairman, of course, it was just offered by Senator Adams as a way to try and reach compromise. I think the the final term of the sunset kind of depends on how far we get to try to come together and compromise. But in my opinion, it shouldn't be less than three years because it would take that long to -- and this thing will take effect about the change of the fiscal year. Somewhere this summer. So I would say at an absolute minimum, it should be in effect until the change of both the regulatory year, which is the same our fiscal year [indisc. - coughing] three years away. [Indisc.- simult. speech]. I would say that would be an absolute minimum to getting the feeling about what it does. This is kind of a way to reach compromise on the other issues, too. So it's really an open question, and I think we have to come back to it if we get a package together.

SENATOR KERTTULA:

Let's hear around the table and [indisc.] what you think [indisc.].

UNIDENTIFIED SPEAKER:

[indisc.] three years. I would prefer a little longer just because it takes at least a year for regulations to even make [indisc.] and people be educated and see how long it works.

SENATOR KERTTULA:

You have the floor, Mr. Chairman, if you wish to speak to it.

REPRESENTATIVE KUBINA:

Mr. Chairman, I think the administration would like to give a little input on what they thought. I'm flexible.

SENATOR KERTTULA:

Georgianne, do you want to wait for the administration?

REPRESENTATIVE LINCOLN:

No, I don't want to wait for administration. I don't want them to tarnish my thoughts here. I first was thinking of two-year but I can see where three-year would be a good time frame. If nothing else, but for reapportionment that we are going to revisit again. So I think it is well advised to have a three-year time limit. I'd hate to see it go out too much beyond that, because I think three years is sufficient time. I don't think it's too narrow of a time for rural Alaska to see if this is going to work or not and for us to take another look at it. But we can certainly extend it if we feel that it is something that is workable. So, I think a three-year time frame is a good time.

SENATOR KERTTULA:

Commissioner, would you like to speak to the ...

COMMISSIONER ROSIER:

Mr. Chairman, if I might. Thank you. As you're probably aware, the boards are on kind of a three-year cycle. They get around the State on a three-year cycle and as I've indicated to you earlier, the fish board is now dealing with a fairly significant backlog of proposals that have been there because of their inability to act. So it's kind of my feeling -- certainly if the legislature is looking at having a look-see at the actual effect and the benefits from the program and get a true evaluation of the program, then I really think you're talking about a minimum of five years.

SENATOR KERTTULA:

Well, yeah. You have the floor, Senator.

SENATOR ADAMS:

If I can respond, I'd just say that my recommendation is three years. Basically, I'd like the members to think if we need legislative history on where we're trying to go -- we can not only with this particular subject, just put a letter of intent to go along with this, Mr. Chairman. And any other consideration that we had with any of the sections here.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

Mr. Chairman I would like to come back to this area with the understanding that we kind of got a parameters out there and see how [indisc.] getting together. Because I think that effects ...

SENATOR KERTTULA:

Yes.

SENATOR HALFORD:

... confidence. [Indisc.].

SENATOR KERTTULA:

If there's a question, occasionally at the time of sunset would affect a particular question be for us within the body of the bill. I'd think I'd like to take up before us, then, what we're going to request. Now, my understanding is, and I would like the lady that typed this up, LeeAnn or -- we have 11 provisions to request and we have ten provisions of request.

MR. LUCKHAUPT:

Mr. Chairman?

SENATOR KERTTULA:

Yes.

MR. LUCKHAUPT:

Senator Adams, we now feel [indisc.] Senate bill or at least Senate version of the bill and replace 258 -- 16.05.258 the existing subsistence law. One of the possibilities that we worked this sunset in -- one of the possibilities maybe would be to change or do something to that repeal or we change that to 16.05.268 and that would be repealing [indisc.] three years and that's possibly one way of doing it. [Indisc. - cough] protecting ourselves there to make sure we can cover the sunset provision. One of the many possibilities that we discussed [indisc].

SENATOR KERTTULA:

Then, without objection, we will submit the 11 items to the President of the Senate, Speaker of the House and the members.

REPRESENTATIVE KUBINA:

No objection.

SENATOR KERTTULA:

You have the floor.

SENATOR ADAMS:

Mr. Chairman, can we do that as soon as possible between both bodies so we can make ...

SENATOR KERTTULA:

I think we can recess to call the chair until, I believe, about six [indisc.].

REPRESENTATIVE KUBINA:

The House is scheduled to go in at six o'clock to take up this matter.

SENATOR KERTTULA:

We'll recess now then and come back. And [indisc.] some other things to be done. But I would feel more comfortable in being able to act [indisc.] once you get through.

RECESS

5:50 - 7:02 P.M.

SENATOR KERTTULA:

If the conference committee will come together. We have been afforded the limited conference in the areas that we requested. And when we sat down last, I believe, as a matter of fact, it was the findings and purposes and intent clause was okayed by all members. We're at subsistence use and allocation, section two, page two. There is some reconstruction there, I think, being suggested. Along that line, Senator Halford, would you take the floor on that issue initially?

SENATOR HALFORD:

Mr. Chairman, there are some changes as you go through this 268 [indisc.- simult. speech] for whatever period of [indisc.] existing 258. What we have are essentially temporary law for whatever period we agree to. So I guess ...

REPRESENTATIVE KUBINA:

Could you tell me exactly where we're at now?

SENATOR KERTTULA:

We're on page two, section two. That's generating this part

of the discussion on what we call the SCW or Senate Committee Substitute bill.

SENATOR HALFORD:

This is the whole -- 268 is the basic priority section that replaces temporary, permanently or however 258 in existing law. It is a redraft. The changes are not terribly significant. One of them is, for example, "human consumption". One of them is the whole question of facilitating recovery of stock that's down and how you deal with that.

And then you come to the section we've already adopted which is the non-subsistence areas. We've adopted (f). We didn't adopt (g) and we're talking about taking the uses of fish and game -- (g) is on page five and there were objections to (g). I assume that's probably about where we are. Although, I think we better go back to the question of recovery of the stock or population for increase consumptive uses and management [indisc.]. So I guess the first policy question is on page four, line seven through sixteen ..

SENATOR KERTTULA:

Precisely that's where [indisc.]. Page four, line seven through sixteen.

SENATOR HALFORD:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

I would, for discussion purposes, move the Senate language and ask the administration to explain to us why they believe it's necessary.

COMMISSIONER ROSIER:

Go ahead.

REPRESENTATIVE KUBINA:

Page four, line seven through sixteen, subparagraph (c). Is that where we're at?

SENATOR KERTTULA:

Yes, paragraph (c). Please proceed.

MR. CAMPBELL:

Sir, just very quickly, there was discussion in the advisory council that, too often on subsistence, we all talk about how to slice up the pie and never focus about making the pie any bigger. This was simply an attempt to realize that when there's not enough fish or game for all the uses, that we should also talk about how we enlarge the size of the pie. It was an uncontroversial section of the bill. It's a section of the bill we think is good, but if there's any objection, you can take it out. I'm not aware of anyone ever objecting to this section.

SENATOR KERTTULA:

Are there questions around the table? Message is to be handed.

SENATOR ADAMS:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

SENATOR ADAMS:

What we can do about the House's language, as far as application, to go to the existing language in allocations and since we have, as we said earlier, the procedural process that we go through [indisc.] why do we need this section [indisc.]?

SENATOR KERTTULA:

You may speak to it, Mr. Campbell, since you initiated this portion of the bill. Unless there's objection.

MR. CAMPBELL:

Sir, the reason we simply rewrote 258 and adopted it as a new section in 268 was there have been lots of times in the past that the board, looking at 258, because everything is sort of lumped into a general paragraph, has not done a very good job of providing for subsistence uses. And because of that it makes everyone unhappy. What we wanted to do is we wanted to set out very clearly step by step, if this is the resource size, then you do this. If there's enough for all uses, then you shall do this.

You may do this. If there's enough for subsistence and some but not all other consumptive uses, then you again, clearly set it out step by step by step.

There were also some specific issues in here, word by word, some of those such as "human consumption" in tier two or others I'd happy to go into if you wish. But we felt it was very important to provide the boards a very clear guidebook, step by step, as they work their way through the subsistence allocation process. That it was so important it deserved very clear guidance for them.

SENATOR KERTTULA;

Senator Halford.

SENATOR HALFORD:

Well, I was just going to say that everything that goes into 258, which includes all these things and what we're proposing to have effective for limited duration through the draft bill 268/258 question.

SENATOR KERTTULA:

You have the floor, Senator Adams.

SENATOR ADAMS:

The problems I have with this particular section -- I don't know if you have that hearing over on the House side and the impact that this new language will have that none of us here knows what that impact will have on the resources. And that's why I'm uncomfortable. Why can't we do a piece of legislation on this next year? This year, use existing law which already has a procedure in place.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

I'm a little bit confused, Senator Adams. Are you saying delete this, the paragraph (c) of 268? Or are you advocating going back to 258 with regards to -- because I don't think we can get to -- we're going to try and do a 268 for a period of time and then back to 258. Then we have to make a choice of which one

we're going to do.

SENATOR ADAMS:

258 is still in existing law and that's what we need to look at. What I'm saying, there's too much things in this language that we don't know what the impact will be here in the State of Alaska. And so basically, we work on this language next session.

COMMISSIONER ROSIER:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

COMMISSIONER ROSIER:

Mr. Chairman, if I might?

SENATOR KERTTULA:

Go ahead, Mr. Commissioner.

COMMISSIONER ROSIER:

I think, again, I think that this is really a crucial area here at the present time. Because I think that as was indicated to you, the board has frequently been criticized for not doing the right thing with the existing law. This really, in my view, begins to focus the board in terms of how they make those determinations. Instead of having a broad authority here on this, it begins to put sideboards on how the board, in fact, makes their decisions. And I think that it really gives the subsistence user a major plus.

SENATOR KERTTULA:

Mr. Hanley, you were trying to pick up -- you have the floor, Mr. Kubina. Mr. Chairman.

REPRESENTATIVE KUBINA:

Mr. Chairman, maybe I'd like to get the Commissioner -- and I've heard the question asked a couple of times and I've heard a couple of different answers. Maybe we can ask the administration what their real bottom line is. What they really want specifically out of this bill, so that we might -- maybe there's some things we don't have to argue every paragraph about. But as I understand it, what the administration really wants is a

definition of "reasonable opportunity". A definition of "customary and traditional", "customary trade" and the "non-subsistence areas".

SENATOR KERTTULA:

Somebody wants "customary use".

REPRESENTATIVE KUBINA:

Is that an accurate statement, Commissioner?

COMMISSIONER ROSIER:

Well, I think, that's certainly accurate as far as you went. But I think again, and I think that I've testified certainly in the Senate anyway, that the board needs the guidelines in terms of a clear allocation system within the State. I think, we're talking about something here that affects all user groups in the State and the board needs that legislative guideline in terms of how they, in fact, allocate to the various user groups. I think that that's really a key part of this bill.

REPRESENTATIVE KUBINA:

Mr. Chairman,

SENATOR KERTTULA:

You ...

REPRESENTATIVE KUBINA:

Maybe my point is, would it be more -- if those are things that the administration seems to have to have out of this bill, might it be more reasonable if we go and see if we can reach agreement on those four things individually, and then go back to the others. I mean if we can't ...

SENATOR KERTTULA:

Excuse me.

REPRESENTATIVE KUBINA:

My point is that these are the four items they have to have in the bill. Might it not be more reasonable for us to go directly to those four items and see if we can agree on those four items individually, and then look at the items that we have left and go down to what we can agree to. At least then we know what we've got that they really want out of the bill.

SENATOR KERTTULA:

It's been noted that you won't get "reasonable opportunity" unless you have 268 [indisc.]. I would like to see the answers -- I know we're down to some substantive and minimal requests. And I would like to see us try to -- and I know sometimes we lean to one -- [indisc.] will come together. [Indisc.] or something and arrangements is always occurring. "Substantive use", I was just listening, it seems to me that what -- the administration was saying that they needed that 268, that new definition section, the same [indisc.] which we felt strongly about, would not be an absolute. I'm relying on that thinking, personally, so in the normal course of getting to where you want to get, I feel pretty strongly we need this section. But (c) is up for -- and (c) did provide us originally with the first -- I know we had "human", for instance, as a word at the top of the page but ... [tape ends midsentence].

Tape 92-2

Side A

SENATOR KERTTULA:

[Tape begins midsentence] ... motion [indisc.] pretty much for that out [indisc.] up to there. Yes, you have the floor though, Senator Halford.

SENATOR HALFORD:

I move that the Senate language in CR ...

SENATOR KERTTULA:

What was your motion?

SENATOR HALFORD:

I thought I had moved ...

SENATOR KERTTULA:

I wasn't listening closely then. You have the floor.

SENATOR HALFORD:

I thought I had moved and if I didn't, I do move the Senate language in (c).

SENATOR KERTTULA:

You did move that Senate language in (c), then as part of the debate, Senator Adams came back and started, I think, debating the whole arena from page two on, trying to get a discussion. However, the motion is on (c). The motion is to adopt (c) and -- yes, you have the floor.

SENATOR HALFORD:

Mr. Chairman, just if you could get the specific portion of (c). I mean, I would move (c) and then I think we already adopted a motion on (f) and then I would move (g) and now I would vote a - - "reasonable opportunity" that's an area that we've had a whole bunch of discussion back and forth to work on [indisc.].

SENATOR KERTTULA:

Let's -- to (c), before us now in an orderly fashion. You have the floor.

REPRESENTATIVE LINCOLN:

Thanks. I'd like to keep it to (c), but on the other hand when we're talking about replacing 258 with 268 now, that I'd like to know what the differences are on the language between the two when we've got under House bill, page five, line 10, we have 258 in there. It just seems to me that if we can, again, I guess, go back to the chairman's original question about what is the bottom line, maybe we can get through the back door. Get to what some of these answers are in this bill. Because I think that if we're going to go section by section, it just picks out pieces of it and not the whole pie. So I'd like to take that approach. To take from the bottom line of addressing some of those definitions and seeing if we can't get to it that way. Because, I personally think that we should stick with 258. But maybe we can get to it the other way.

SENATOR KERTTULA:

It's probably, even though there's a very important component of this legislation, we might be able to get to it -- I'd hate to have a two thousand page bill. I will try to accommodate an explanation of what are the key issues. Exceptionally, I suppose we can look at those, yes or no. I think maybe the chairman was

suggesting that, too. But when we get done, we probably still are back to saying yes or no to the sections because the key issues, although they intertwine are -- you can [indisc.] section when you study the key issues. It's pretty much still going right along with -- definitions of the definitions. Senator Adams.

SENATOR ADAMS:

[Indisc.] administration, is there a way that we can continue to keep 258 and yet come up with some type of definition for reasonable opportunity within the body of this [indisc.]. It would say within the body that this legislation [indisc.].

MR. CAMPBELL:

Sir, the way this is drafted, it's drafted as part of 268. I suppose by drafting it and adding a lot of language that is not in either bill, you could get there. But I'm not sure exactly how. You would lose, however, that clear step by step allocation process which we feel is one of the things that's extremely important for the board to prevent some of the problems that we have with us here today. Just the unhappiness among the populace with the board's decisions.

SENATOR ADAMS:

Do you think we could lose the step by step process with the regulations we presently have?

MR. CAMPBELL:

Yes, sir. I don't exactly ...

COMMISSIONER ROSIER:

Yes, yes. Mr. Chairman.

SENATOR KERTTULA:

Yes. We're in subsistence section and I'll recognize you and then I'm going to suggest and request [indisc.] for this particular element. You have the floor.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. This is really one of the priority areas that we feel are essential here in providing the guidelines for the boards to, in fact, operate. They have consistently said, they need that legislative support. They need the legislative

direction to, in fact, deal with the issues of subsistence on a fair and equitable basis. This step by step approach lines out that system to give them the guidelines. It tells them that this is what the legislature intends, and what they are directing the board to, in fact, do. It just -- it seems that it's a very logical priority as far as the bill is concerned. If we're, in fact, going to deal effectively with subsistence in a fair manner.

SENATOR KERTTULA:

Subsistence is identified in those pages. I'm going to request that Senator Halford restate his motion. Yes.

SENATOR HALFORD:

Mr. Chairman -- I will -- what I'd like to do is withdraw the previous motion on section (c) and to try and move forward. I would move that we adopt section two of the bill with the exception of section (c), (g), and (h). Section (c) is the section on facilitative coverage. Section (g) is the section on takings there was objection to. The sections between those two have been [indisc.] already with the question of consistency on the definition of "area and community". And section (h) is the section that deals directly with the definition of "reasonable opportunity". So what I'm doing is picking up all the areas that didn't seem to have a direct conflict and try and focus this back to then (c), (g) and (h).

SENATOR KERTTULA:

I would call -- ask for the question on that, if I could poll the body.

REPRESENTATIVE KUBINA:

Mr. Chairman?

SENATOR KERTTULA:

Yes.

REPRESENTATIVE KUBINA:

I just -- before I feel comfortable voting on this again, on how this whole thing is going to tie together. One thing I was uncomfortable with was why we were dealing with paragraph (c) which is, in essence, in the middle of this entirely new section,

part of which we've already accepted. Because we concurred on the two bills, and in skipping over the first two sections, which is part of what he has just moved ...

SENATOR KERTTULA:

It was my suggestion to proceed that way. So the error is mine. We have accepted (d), (e) and all the way through (f). Is that correct? Previously?

UNIDENTIFIED SPEAKER:

Yes.

SENATOR KERTTULA:

Is that correct?

UNIDENTIFIED SPEAKER:

Yes.

SENATOR KERTTULA:

What about page two and three? Subsistence use sections. That's 268 rewrite ...

UNIDENTIFIED SPEAKER:

Almost all of the 268.

SENATOR KERTTULA:

... right on through (c).

REPRESENTATIVE LINCOLN:

Mr. Chairman? If I might ...

SENATOR KERTTULA:

Yes, you might.

REPRESENTATIVE LINCOLN:

Again, I guess I go back to the 258. What is the objection from using the original language of 258 by Commissioner Rosier -- of the language that we have in the House version, what is the objection to that 258? Because previous testimony there was no objection with it. So I'd like to hear from Commissioner Rosier what are the objections?

COMMISSIONER ROSIER:

Mr. Chairman, can we walk through 258? I don't have it.

SENATOR KERTTULA:

Yes, you may. We're going through it. It's going to take

time though.

UNIDENTIFIED SPEAKER:

Okay.

MR. CAMPBELL:

If I might, in AS 16.05.258, and I believe you all have copies of it there before you. We felt that basically, what we found is that it was a good law, but that many times the boards had difficulty following it because the way it was laid out. There were a number of things implicit in it that were not explicit and in this area, we found it was extremely important to be explicit to the direction of the boards. If this is the situation, you must or you shall do this. You may do this. And also to allow some of the -- the fact is there are some additional preferences for subsistence. If you wish, I could try to go through very quickly and highlight those things that are different.

SENATOR KERTTULA:

It seems as though the Representative does wish that. I don't want to spend all night.

MR. CAMPBELL:

I'll try and do it quickly, if that's what you'd like.

COMMISSIONER ROSIER:

Do it quickly.

MR. CAMPBELL:

I will start on page two, line 21, subsection (a) and I believe that the ...

REPRESENTATIVE LINCOLN:

Are you on the House version?

MR. CAMPBELL:

I'm working off the Senate version.

COMMISSIONER ROSIER:

The Senate version.

MR. CAMPBELL:

There is no equivalent language in the House version. This portion of 258 is not in the House version, which is one of the

problems that you would have in reaching how to get there through 258.

Anyway, working off the Senate version, page two, starting on line 21. The first sentence is essentially existing law with the exception that on line 23, the words "traditionally taken" in existing law that is "traditionally used". And that was changed because it was felt that taking is what we are regulating. But if you wish to change it back to "used", we would not raise the world's biggest objection over that.

Then the next two sentences, starting at the end of line 23 that says, "The commissioner shall provide recommendations to the board concerning stock and population identifications. The board shall make identifications required under this after receipt of the commissioner's recommendations." That was put in because there was a good deal of discussion in the council by Native members of the council distrust of the boards. And at one point they had discussed simply having the commissioner be the person who did the identifications. And other members were uncomfortable with that, so they settled on having the commissioner make recommendations. Again, we think that is good, but if you wish to strike that language, you certainly could.

Then we go into how the board actually makes the allocation process. I'm starting on subsection (b), line 27. Here we say, "The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) can be harvested consistent with sustained yield". There is a difference here. In existing law, it says, "the board shall determine what portion, if any." And then determine -- talks about how much of the portion is needed to provide reasonable opportunity later down.

There have been some people who have interpreted some court cases that this might require the commissioner to allocate a specific set number of animals or set number of fish for a community and under worst case, because then the season would have to stay open until those folks got those animals. Then all other uses would have to wait until that had been allocated. We

don't think that's a reasonable interpretation. We knew very clearly that was not what the legislature intended when it wrote the law in 1986. So we simply said -- laid this out in a way that we felt was clear. So, first thing the board does in (b), decide whether there's enough that anything can be harvested.

Then starting on subsection one, line 30, "if the harvestable portion is sufficient to provide for all consumptive uses, then." I'm flipping over to page three, the boards "shall adopt regulations to provide a reasonable opportunity to participate in the subsistence uses of those stocks or populations." Now, this is one (a), (b) and (c) here is the super abundance of game where there's just enough for everybody conceivably. There is, again, a difference here between existing law and this section and that is we provide a reasonable opportunity to participate. And that was in place of existing law that says, "how much is needed to provide a reasonable opportunity to satisfy the subsistence uses". Because, again, some people that argued and -- it's never been found - but some people had argued that "satisfy" meant that everybody had to get everything that they wanted before you could provide for any other uses. And, again, that was clearly not the intent of the legislature in '86. So we're simply clarifying the language. So anyway, in times of a superabundance, (a) you adopt regulations to provide reasonable opportunity for subsistence, (b) you adopt regulations for provide for other consumptive uses and (c) may, but are not required to, adopt regulations to differentiate among consumptive uses. An example would be the Northwest Arctic caribou herd. The bag limit is five animals a day, 365 days a year. There is not a need for a separate subsistence or general hunt in that case.

Then starting on line nine, subsection two, this is tier one, its the condition of most of the State. "If the harvestable portion is sufficient to provide for subsistence uses and some, but not all, of other consumptive uses, the appropriate board (a) shall adopt regulations that provide a reasonable opportunity to participate, (b) -- and this is optional. At this level, they are

not required to provide for any other consumptive use except for subsistence but they "may adopt regulations that provide for other consumptive uses" and, (c), and this is a new section. It was added, adding an additional preference for subsistence users -- "shall adopt regulations to differentiate among consumptive uses and provide a preference for the subsistence uses, if regulations are adopted under (b) of this paragraph."

So what we're saying there is, one, you provide the allocation for subsistence up front and then, two, you also provide an additional preference for subsistence by use of perhaps, different, more favorable seasons, larger bag limits, whatever. And this is an additional preference that does not exist in existing law. It's something that the folks felt very strongly about that they needed.

Then on line 20, if you're dealing with a resource that is down to the point where it is sufficient for subsistence uses but not for other consumptive uses, then you eliminate all other consumptive uses to allow reasonable opportunity for subsistence. And, again, this is a point that is implicit in existing law but not explicit. There is nothing in existing law that provides clear authority for the board to allow subsistence uses to go on at an unreduced state but eliminates all other uses. In existing law, the implication is you go straight from tier one down into tier two and choose among -- limit which subsistence users. So, again, this is an additional preference for subsistence in this section.

On line 24, subsection four, is the start of what is the equivalent -- the tier two section. "If the harvestable portion is not sufficient to provide reasonable opportunity for all subsistence uses, the appropriate board shall, (a) adopt regulations eliminating all consumptive uses, other than subsistence". And, again, that's implicit but not explicit in existing law. "(b) distinguish among subsistence users, through limitations based on" and then small "i", on line 31 "the customary and direct dependence on the fish, stock or game

population by the subsistence user for human" and the word human was inserted, "consumption as a mainstay of life". And I would emphasize this is only when you are down to the situation where you have eliminated -- you are in a severe resource shortage. You have eliminated all other consumptive uses other than subsistence use and then you're in the process of cutting out some subsistence users and giving it to other subsistence users. And at that point, if it was the unanimous view of the council, they would make clear that we're talking only about what people need for human consumption if we're cutting out other qualified subsistence users.

On line three, existing law says "local residency". The department has always, through regs, interpreted that as how far do you live from the resource. So we simply went to the language that states that explicitly, "the proximity of the domicile of the subsistence user to the stock or population".

Then on line five, subsection -- whatever you would call that, three small "i's". In existing law, it says "availability of alternative resources". However, in our tier two hunts, we had situations where people claimed that what that meant is, say, if it was a caribou tier hunt, do they have any place else they could get a caribou, and if not they didn't have any other available alternative resources. An outdoor columnist for an Anchorage paper, wrote a column bragging how he had qualified for a tier two hunt because he didn't have any other place that he could get a caribou. So he scored himself one hundred percent. That, I think, is very clearly not clearly what the legislature intended. So, again, we said, "the ability of the subsistence user to obtain food if the subsistence use is restricted or eliminated". Because again, we're talking in times of severe resource shortage, down where really peoples lives may be affected. And I believe that all of those changes in the tier two criteria were not controversial. In fact, they were fairly strongly supported by the whole council.

REPRESENTATIVE KUBINA:

Mr. Chair. What is the -- was this section discussed in your little group back there? Was there recommended changes that you guys discussed in this part we just talked about?

MR. CAMPBELL:

Sir, it was discussed and the question kept being, why did you do it? And we kept explaining and we did not come up with any conclusion. We felt that it was very clear to lay it out side by side. We felt that this is a very important section. As I mentioned in at least three or four places, it provides some additional preferences for subsistence users - and I can go back over those - that simply do not exist in existing law. It also makes a number of things explicit that are implicit in existing law. And it restates very plainly the will of the legislature when it passed this law in 1986.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. I would add that in terms of making that initial decision, how much is out there to harvest, certainly there's no way that the department can, in fact, develop the information to the board that says there's "x" number of moose or there's "x" number of caribou or there's "x" number of fish and give the board that kind of a fix in terms of how much is available to give to one user group or the other. This attempts to clarify something that has been a constant source of consternation and concern by a lot of people. I think that by giving the board these very specific guidelines, as well as the department on this, I think that we begin to, in fact, elevate the subsistence priority. It goes to the subsistence user under these conditions and it's very specific to the board in terms of how they, in fact, do that. I think that's the guidance that the board has asked for. It's the guidance that the board needs.

SENATOR KERTTULA:

Are there questions of the -- thank you very much. I thought that was a very fast and very competent going through it. You have the floor.

REPRESENTATIVE LINCOLN:

Mr. Chairman, I guess the problem -- I've got some problems with that section. That's why I keep going back to 258. I realize that there is sprinkled throughout the legislation where we would be going back and forth. But I feel that, for example, on the bottom of when we start going into tier two, page three, number four, which starts line 24 and then it goes on through line 31 on page three, "customary and direct dependence on the fish, stock or game population by subsistence user for human consumption". And then to go further down on line five, to say, "the ability of the subsistence user to obtain ...

SENATOR KERTTULA:

Excuse me, we're moving back and forth with two questions at the same time. Were you asking if ...

REPRESENTATIVE LINCOLN:

No, I'm not through. That, I was saying that "for human consumption" and then on line five, page four, when we then begin to talk about "to obtain food". And that is the concern that has been expressed over and over again, is that this subsistence is not equated to food. And so when we talk about "human consumption" or "to obtain food", that there is nothing in here for the definition for customs, religion, clothing, shelter, all of those purposes. That's why I think we could get really bogged down in this section if we're going to be using 268 instead of 258.

UNIDENTIFIED SPEAKER:

Mr. Chairman?

REPRESENTATIVE KUBINA:

Mr. Chairman, I still would go back to what I said before. I'd recommend that we withdraw this motion again and we move over to, let's say, page six, line 21, and start dealing with a couple of these issues that I believe are the crux of the matter and then, I believe, we may have a reason to come back to these other issues as like we say, trading points or something. I honestly feel that there's some real things that the administration wants to get at this bill. I [indisc.] this is really one of them,

although I have listened to, even prior to this, the department's position. But I'm convinced that if we aren't able to come to an agreement on three or four of these definitions, that we aren't going to be able to come to agreement on anything here and this discussion may be irrelevant.

UNIDENTIFIED SPEAKER:

Mr. Chairman?

SENATOR KERTTULA:

You're talking about going to "customary and traditional", "customary trade", and "reasonable opportunity"?

REPRESENTATIVE KUBINA:

That's correct.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR HALFORD:

The problem is "reasonable opportunity" is in this section. I think the importance of the definitions is kind of in the order that they appear in the bill, actually. "Reasonable opportunity" is the one with the most problem [indisc.]. I think next is "customary and traditional" and on down to "customary trade"

UNIDENTIFIED SPEAKER:

If we could start at the back of the list and move ...

SENATOR KERTTULA:

I am willing to take all kinds of approaches. Both sides have equal responsibility. I am in agreement with Senator Halford on that particular issue. We haven't been in agreement many times this year. I think this is almost a first. [indisc. - laughter] That may have something to do with it.

We will try then section five and get into that, so at least, if very little happens tonight we will have gone through in a pretty considered way these issues. Now we have been on the forerunner of "reasonable opportunity", as it's been pointed out. I'm sure that many of you have taken a side. You have your own points of view on it. "Customary and traditional". Is that where you'd like to start, then, Mr. Chairman?

REPRESENTATIVE KUBINA:

I personally would like to start on that one just because I think [indisc.].

SENATOR KERTTULA:

Why don't we explore it for awhile and see where we get.

REPRESENTATIVE KUBINA:

We're talking about section 37 ...

SENATOR KERTTULA:

36 and 37. They are obvious factors of any amenable settlement, definitions sections [indisc.].

REPRESENTATIVE KUBINA:

Well, Senator, let me ask this. Is there -- and there may be among my own members, here, but is there a reason not to take the Senate's "customary trade" section 37? And if so, I'd like to hear it.

SENATOR ADAMS:

I should be sitting over there with you guys. [Indisc. - simult. speech and laughter]. I thought perhaps that we could look at what the language "customary and traditional" means. "The long term consistent and ongoing taking and use of fish and game in specified area", period. And I leave that on the table as the language for debate.

SENATOR KERTTULA:

I'd like to have you quote that one more time.

SENATOR ADAMS:

Sure. I have it in front of me. Customary and traditional means, "the long term consistent and ongoing taking and use of fish and game in a specific area", period. And I know the administration has a little heartburn with that and I'd like their opinion.

SENATOR KERTTULA:

I wouldn't mind hearing you out on it, with what brevity is possible. You have the floor.

MR. CAMPBELL:

Sir, thank you. There's three main changes that makes the

definition. The first is the removal of the word "non-commercial" which could allow the fact that there has been a commercial use of a particular stock for population over time to then make that stock and population qualify for subsistence. That's a policy decision for you. In other words, a stock or population, probably particularly a fish stock, that has always been used for commercial but never been used for subsistence, under this would become subject to subsistence. That's number one policy decision.

The second is removal, on line 26, of the word "dependence" - "long term consistent and ongoing dependence on the taking and use." That's something we would like to keep but we're certainly -- I don't think the policy concerns are as strong on that particular concern.

The third is putting the period after "specific area" on line 27. And in particular, what we're concerned about there is right now, in existing regulation, the set of regulations that are used to determine what is and is not a customary and traditional stock. And the only one that's really very useful is the one where there's been a multi-generational use. But there has been some confusion on the term of what does multi-generational mean. Specifically, folks, suppose in Cook Inlet, came in and said, "Well, my father and my son and I all went out and used it last week. Does that give us a multi-generational use?" And so we were simply trying to be clear, retain the useful part but make it clear what it is of over at least one preceding generation of users. That also prevents the situation where, for instance, commercial fisherman, through aqua culture dues, construct a hatchery and then a hatchery immediately becomes available for subsistence. And instead, it would have to -- a use would have to develop over a generation before it was eligible for subsistence.

SENATOR KERTTULA:

Is this perhaps vital to that summation statement?

MR. CAMPBELL:

Yes, sir.

SENATOR KERTTULA:

So it's a new imposition, new technology, new problem that you're speaking to here that we haven't spoken to previously. That's quite important. You have the floor.

REPRESENTATIVE LINCOLN:

But on the other hand, Mr. Chairman, you might have caribou that migrate from one area to the other. For example, in my village where caribou was once very abundant, it's no longer there and has migrated to another area that has not seen that caribou in there. So under this definition, as it's written now, that caribou would not be eligible for that particular area to use because it wasn't there for one generation. And hopefully, when the caribou migrate back through my village again, it's been one generation removed, or almost a generation removed. Does that mean that I have to wait for a generation before I begin to use that resource again? So there's some problems in [indisc. - simult. speech] on this with a migratory patterns that we see existing in our State.

SENATOR KERTTULA:

Senator Halford wishes to speak to this. There's probably an area ...

SENATOR HALFORD:

I have a question first. The department and Attorney General, we talk in a year residency -- I haven't heard the term generational and I just wonder what that means? How long a time frame are we talking about? Are we talking about a 30-year, a 40-year, a 20-year period? What is the -- what's required [indisc. - simult. speech] more than one generation?

SENATOR KERTTULA:

Yes, please.

COMMISSIONER ROSIER:

I believe there's a standard dictionary definition of this that's thirty years.

UNIDENTIFIED SPEAKER:

They don't come back in thirty years, you shot 'em all up.

SENATOR KERTTULA:

[Indisc. - laughter]. To answer the legislators position, the question about migratory, I think it was a good question.

MR. CAMPBELL:

Mr. Chairman, Representative Lincoln, this is something we specifically talked about in the council in developing this. We felt that a reasonable and proper interpretation of the board in doing this is, that if there is, for instance, we realize caribou have very migratory routes. And the fact that caribou have been used in the past, and that same stock of caribou migrates back through, they would continue to be used.

We also talked about -- and let me give you some other examples with fish. If, for instance, you set up a new hatchery and that hatchery created a totally brand new -- a run of fish that had never been there before. They then would not be subject to subsistence. It would take a generation before they would be eligible. However, if that hatchery created a stock of fish that mingled with an existing stock that was subject to subsistence, we felt the board would make them all subject to subsistence with stream enhancement. If there was a very weak run of fish that have been subject to subsistence and you went in and you enhanced the stream, then the entire new enhanced run would be subject to subsistence. And we talked about, sort of, the nuances of this a great deal before coming out with this and felt this was a good -- something that the board could work to not take away anything. Because we definitely don't want to do what you're talking about. I don't feel this definition does do that.

SENATOR KERTTULA:

Commissioner Rosier, do you wish to ...

COMMISSIONER ROSIER:

I just -- Mr. Chairman, I might add that various times over the years we've talked about the introduction of new species and so forth. We have an elk population, for instance, in Southeastern, that's an introduced herd. We have no hunting whatsoever on that particular herd. That would at least exclude that population for the time being in terms of utilization. And

it seems to me that that's the type of protection that you would want to see on, say, new introductions.

SENATOR KERTTULA:

Representative Lincoln, do you wish to further -- you have the floor.

REPRESENTATIVE KUBINA:

Mr. Chairman, Senator Adams. If we could - he left out the word "non-commercial".

SENATOR ADAMS:

That's correct. I think the administration supports that. Did they support that earlier?

COMMISSIONER ROSIER:

No. No. Not in that particular section, Mr. Chairman.

SENATOR ADAMS:

Perhaps, Mr. Chairman, we can get close to this if perhaps there is some acceptance of your definition of "reasonable opportunity" to the definition that has been submitted yet. Is there a possibility on that?

MR. CAMPBELL:

Sir, I'm sorry, I'm not sure ...

SENATOR ADAMS:

You're very close to working out the compromise of the definition of "reasonable opportunity".

MR. CAMPBELL:

Right.

SENATOR ADAMS:

Can you come close to the language that we have submitted for "customary and traditional" to be a compromise?

MR. CAMPBELL:

Sir, what we could do or we feel would be reasonable -- or had been requested and we feel reasonable is on the line 27, where it talks about specific area and use pattern and harvest levels, it had been requested and we would be willing to delete -- it's your decision. But delete "and harvest levels" and you feel you can do that without substantive damage to the section..

SENATOR KERTTULA:

That's under the understanding, of course, always that we're working back to "reasonable opportunity"?

MR. CAMPBELL:

Right.

COMMISSIONER ROSIER:

Yes.

SENATOR KERTTULA:

[Indisc.] all three of these definitions. You have the floor.

REPRESENTATIVE KUBINA:

Well, I'm just saying this generations -- I have a problem with. But I don't have a problem with having non-commercial in here, personally. Unless somebody can explain to me something that we are doing subsistence-wise, that is really having a commercial -- traditional and customary commercial benefit to it. Are we -- Senator -- is what I'm trying to say is, it seems like when we're talking about subsistence, it doesn't go with commercial. Maybe my ignorance is showing here, but I don't understand that part. But I do certainly have a problem in trying to define how they're going to these previous generation stuff. So I'm trying to see ...

SENATOR KERTTULA:

That needs further refinement, if, in fact, something does get put together. Does that concern of Representative Lincoln's as re-expressed by Chairman, does it have a need? I'll ask the Attorney General and then I'll go to ...

CHARLES E. COLE, ATTORNEY GENERAL:

Well, no, Mr. Chairman, I don't think that there's any magic in the terms "over at least one preceding generation of users". Perhaps as a substitute they could -- you could insert "over a reasonable period of time" and allow some flexibility there to the board to adapt that period of time to various changing conditions, such as caribou, or elk or these various stocks and species that might come into play. So that there's not ...

SENATOR KERTTULA:

Perhaps your statement is right, but providing for migratory variations, or something that says that we understand precisely your concern.

REPRESENTATIVE KUBINA:

Mr. Chairman?

SENATOR KERTTULA:

Yes.

REPRESENTATIVE KUBINA:

Might I ask that we also bring up Mr. Cohen or someone from -
- who represents the other side ...

SENATOR KERTTULA:

I don't want to get into a debate.

REPRESENTATIVE KUBINA:

I realize that Mr. Chairman ...

SENATOR KERTTULA:

[Indisc.] for five days.

REPRESENTATIVE KUBINA:

We've got three people down here giving one side of the issue. I realize they all represent administration. But we've had them in the back room having discussions with people representing the other side of the issue. And we were not part of that discussion going on back there. So I know they have got close here on some of these definitions. But the problem is, we're only hearing what one side said. And I do not want to debate these a long period of time. I'd like to have a very short and concise answer and let's make a determination which way we're going to go. How we're going to compromise on it and move on.

SENATOR KERTTULA:

All right. I'll bring Mr. Cohen ...

SENATOR ADAMS:

Mr. Chairman.

SENATOR KERTTULA:

... someplace here for expressing a question from time to time. I just had these gentlemen here as assistants in bill

drafting and providing definition. If that's all we're expecting out of Mr. Cohen, I'm perfectly -- find it acceptable. But I don't want to get in debates.

REPRESENTATIVE KUBINA:

I don't either.

SENATOR KERTTULA:

We're not going to be here any longer than we want.

REPRESENTATIVE KUBINA:

Let's make sure they're not talking to each other but only responding to our questions.

SENATOR ADAMS:

If you want Mr. Chairman, the other way to do it, is just get rid of the three and Mr. Cohen. and let's get on with business. We're going to be here until eight in the morning if we just keep this up [indisc. - simult. speech].

SENATOR KERTTULA:

It's not that late either. I'll allow -- what did you want on Mr. Cohen?

REPRESENTATIVE KUBINA:

Mr. Chairman, I was -- I had not gotten a good answer from the non-commercial. But maybe after hearing from what I've heard, I'd like to move -- has there been a motion on language? I know you suggested it.

SENATOR ADAMS:

I suggested it. There was no motion, Mr. Chairman.

SENATOR KERTTULA:

I want to hear Mr. Cohen on that subject.

REPRESENTATIVE KUBINA:

Mr. Cohen, I thought I was giving one side. Had you talked about this in the back and is there ...

SENATOR KERTTULA:

Customary and traditional suggestion by [indisc.].

MR. NORMAN COHEN, LEGAL COUNSEL REPRESENTING ALASKA FEDERATION OF NATIVES, INC.:

Mr. Chairman, the term "non-commercial" was deleted because

it's redundant. The definition of "subsistence" in the existing statutes is "the non-commercial customary and traditional uses". So if you put "not customary and traditional" into that statute, you would have "the non-commercial non-commercial customary and traditional uses". And it seemed as though non-commercial non-commercial -- long term consistent. It's a redundant term and was not there and that's why it was eliminated. Not to somehow have a concept of commerciality in the definition of "customary and traditional". Is that the only question or was there a question about the generation [indisc. - simult. speech].

REPRESENTATIVE KUBINA:

Oh, I don't need to ask you that. I have language I'm going to propose.

SENATOR KERTTULA:

Thank you. You have the floor, Senator Halford.

SENATOR HALFORD:

I would just ask, is that the administration's understanding of the definition of subsistence or subsistence uses in the existing statute? I guess I should look it up myself.

SENATOR KERTTULA:

[Indisc. simult. speech]. I'll allow it.

MR. CAMPBELL:

Sir, I'll be very quick. To the extent that this applies to the definition of subsistence uses, we would agree with Mr. Cohen. However, this term is also used in the identification of which fish stocks and game populations are subject to subsistence and it is in that area that we have a particular concern and feel that it needs to be explicit here. It is also in the definition of "reasonable opportunity" and talks about customary and traditional patterns of use and we want to be clear there, we're not ... [tape ends midsentence].

Tape 92-2
Side B

MR. CAMPBELL:

[Tape begins midsentence] ... commercial patterns but non-

commercial patterns. So to the extent it applies to that definition, we agree. But to the extent that it applies to the other two uses, which we feel are really the more important two uses, we feel non-commercial is important here.

REPRESENTATIVE KUBINA:

Make a motion or talk some more?

SENATOR KERTTULA:

No, I'm -- I don't wish to -- one question. Do you wish to change some language here? Or do you wish to move on then?

REPRESENTATIVE KUBINA:

I want to change some language.

SENATOR KERTTULA:

Change the language is acceptable. The adoption of each one of these terms I think should come in some package.

REPRESENTATIVE KUBINA:

All right. That's fair enough.

SENATOR KERTTULA:

It's all right. But certainly a change in language is fine.

REPRESENTATIVE KUBINA:

Okay, so we're talking about a language change here only and then we'll take number 36 and it will be on our list...

SENATOR KERTTULA:

36, 37 and the previous ...

REPRESENTATIVE KUBINA:

Ones.

SENATOR KERTTULA:

... on "reasonable opportunity".

REPRESENTATIVE KUBINA:

Right. Well, then I'll move this language, Mr. Chairman. And customary and traditional means "the non-commercial" -- they want to keep that -- "long term consistent" and then scratch "an ongoing dependence of the" and put the words "consistent taking and use of fish and game in a specific area and the use patterns of that fish and game that have been established", and then scratch "over a reasonable period of time reflecting changes in

migrating patterns."

SENATOR KERTTULA:

I think that's pretty much what we've discussed [indisc.] You have the floor, Senator Halford. Motion before us.

SENATOR HALFORD:

Thank you, Mr. Chairman. I would object to the motion for purposes of discussion, at least. But I would ask why are we deleting the term "dependence"? Because that seems to modify everything else and implies that there is some neediness involved versus simply a habit or an activity without any dependence.

REPRESENTATIVE KUBINA:

Well ...

SENATOR KERTTULA:

You have the floor if you wish to respond.

REPRESENTATIVE KUBINA:

Well, Mr. Chairman, the problem with me being in this position is -- when we're talking about individual words, at times, I have a hard time. And again, I think I would rather refer to the other side of the issue on this to explain that answer. Why is it important to have that specific word [indisc.], Mr. Cohen.

SENATOR HALFORD:

My point is, Mr. Chairman ...

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

... dependence has always seemed to me to be a part of the debate with regard to everything dealing with subsistence. And now we're going to be saying that customary and traditional doesn't have any reference to the term "dependence" in its basic definition. And that, I'm not sure that it's the administration's concern or anyone else's. But it just seems that is maybe more important than almost everything else in that definition [indisc. simult. speech].

COMMISSIONER ROSIER:

It's very important. It's very important.

SENATOR KERTTULA:

Mr. Cohen, you may speak to it if it's something you're familiar with.

MR. COHEN:

Yes, sir, Mr. Chairman. The problem is a fairly complicated one and let me try to explain as best I can. The term "subsistence uses" means "the customary and traditional uses". It doesn't mean "the customary and traditional". So that's a use that you're describing. You're not desiring a dependence. So if you put the word "dependence" in the definition of "customary and traditional", you're saying "customary and traditional -- "subsistence uses" are "customary and traditional uses". They're not going to be uses anymore, but they're going to be dependents. And it's just a -- it doesn't -- the term, at least in my reading of it, the term and the effect of it doesn't make sense in the context that is used in how the subsistence allocation system works. Now, that's my understanding of the problem with the term "dependence".

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Is "customary and traditional" used anywhere else or referred to anywhere else other than in the section 30, definition of subsistence uses?

MR. COHEN:

As I understand it in the existing 258, it's not used. So it doesn't [indisc.] maybe it's used in customary and traditional there or something. But I guess I [indisc.].

SENATOR HALFORD:

Mr. Chairman:

SENATOR KERTTULA:

You have the floor.

SENATOR HALFORD:

I would suggest that that's a part of the whole Native

understanding that they depended on these resources for generations and their lifestyle and that's why they regard them as essential. That's number one. The fundamental reason for inserting "dependence" there. This isn't something that's just a matter of wishful thinking or desire. It's been an historic dependency. But I would say it would be certainly, well, to strike out on line 26 the second and third words "and ongoing". That's certainly perhaps surplusage and may be stricken. But dependence is the fundamental key to the whole subsistence.

REPRESENTATIVE KUBINA:

Mr. Chair.

SENATOR KERTTULA:

Yes, sir.

REPRESENTATIVE KUBINA:

My understanding is the definition of "subsistence" itself has the word "dependence" in it so it's already there again. One of the problems I had was the words "ongoing" in that is the board going to determine that yesterday you had a dependence but today you don't. Is that one of the ways that they're going to ...

UNIDENTIFIED SPEAKER:

Mr. Chairman. It would be my suggestion that you just remove "and ongoing".

COMMISSIONER ROSIER:

Take that out.

MR. CAMPBELL:

Mr. Chairman, if I might?

SENATOR KERTTULA:

[Indisc.].

MR. CAMPBELL:

The definition of -- actually there's not a definition of "subsistence" either in this bill or in existing state statute. There is a definition of "subsistence uses". In the definition of "subsistence uses", at least by my quick reading, I cannot find any mention of the word "dependence". It does use the words "customary and traditional" in that. But the much more important

place is in terms of the use of "customary and traditional" are in the identification of stocks and populations. And there I believe, it's customarily and traditionally. And then also in the issue of "reasonable opportunity" where, I believe, it is highly desired, probably by some of Mr. Cohen's clients, that we identify and protect customary and traditional patterns. And it is in those two contexts the words "dependence", I think it becomes very important.

SENATOR KERTTULA:

Because we are going to go on to suggestions from other senators and I think, perhaps some House members that we merely debate between ourselves shortly. I'm going to go on to the word "customary trade" now. Hold your motion in advance with your permission rather than taking it up. I think we'll go through each one of these definitions. You wanted them debated, listened to, restated and then we'll come back and make our decisions independently of ...

REPRESENTATIVE KUBINA:

I assume the secretary has [indisc.].

SENATOR KERTTULA:

... independently of assistance from others. Why are the problems that come up with 37 as a definition or its mere existence [indisc. cough]. That's "customary trade" means "limited non-commercial exchange for minimal amounts of cash, as restricted by the appropriate board, fish and game [indisc.-simult. speech]. You have the floor, Senator.

UNIDENTIFIED SPEAKER:

Mr. Chairman, this is one we do have included in both the Senate and the House bill with some slight differences.

SENATOR KERTTULA:

Is there an important problem regarding the, quote, "slight differences" of customary trade?

UNIDENTIFIED SPEAKER:

"Non-commercial" again in the Senate version and not in the house version.

COMMISSIONER ROSIER:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

COMMISSIONER ROSIER:

If I might?

SENATOR KERTTULA:

You may speak to it.

COMMISSIONER ROSIER:

In that vein, in line 29, we can delete the "non commercial" word.

SENATOR KERTTULA:

"Non-commercial ..."

COMMISSIONER ROSIER:

"... exchange for minimal amounts of cash as restricted by the appropriate board of fish and game resources harvested primarily for personal or family consumption; semicolon, customary trade does not include sale in commercial channels ..."

REPRESENTATIVE KUBINA:

Mr. Chairman.

SENATOR KERTTULA:

Yes, you have the floor.

UNIDENTIFIED SPEAKER:

I would point out that the other difference is the Senate language says, "harvested primarily for personal or family consumption" while the House language does not contain that. They both contain the provisions on "money sales of furs or furbearers" and the senate language includes, essentially excludes "sales in commercial channels". Those are differences just so we can get the issue out there. I will move the Senate language excluding "non commercial" and then we can have amendments to either delete "not including sales in commercial channels" or delete "harvested primarily for personal or family consumption" which gets you back to the House definition.

SENATOR KERTTULA:

Yes. Since they're in both versions, I'll hold that as before us. Is there objection to deletion of the "non-commercial [indisc.- paper shuffling]. If there's no objection to it, we're going to delete that word. That is an action of the committee.

SENATOR ADAMS:

Did - excuse me, also did the maker have the deletion "also commercial channels" in there, the language that is in there? Because that's a -- our Senate version is in overkill on that. So I ask the representative from Eagle River to consider that. That's another [indisc.].

UNIDENTIFIED SPEAKER:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

I think that is not as important as some of the other things we're dealing with in the previous two. But I would kind of ask the administration if this definition, I think, is not as broadly used as any of the other areas of controversy. So this is an area where I would certainly be most willing to compromise, I think. The two areas are "harvested primarily for personal or family consumption" and "sales in commercial channels" [indisc. - simult. speech] attorney for AFN would also ...

SENATOR KERTTULA:

Yes.

COMMISSIONER ROSIER:

Mr. Chairman, if I might?

SENATOR KERTTULA:

You may proceed.

COMMISSIONER ROSIER:

In regards to line 31, "primarily for personal or family consumption" I believe that certainly the House committees received testimony from my department that this was really a protective mechanism for the situation as it exists. That's how it's done at the present time. But in terms of the need for it in

here, I think that it's not necessary to have that wording. I think that it is more important that we, in fact, have the negative there referencing the "customary trade not including sales in commercial channels".

REPRESENTATIVE KUBINA:

Mr. Chair.

SENATOR KERTTULA:

You have the floor, sir.

REPRESENTATIVE KUBINA:

Mr. Chairman, what about if I move after the word "not" on line one, page seven, just put the word "typically" so that we're not addressing something that incidentally happens once for some reason, keeping people from doing this. If they [indisc.-simult. speech]. Oh you want to take the whole part out. My misunderstanding.

COMMISSIONER ROSIER:

No. No. No. No. No. No. Mr. Chairman, if I might?

SENATOR KERTTULA:

You have the floor.

COMMISSIONER ROSIER:

Thank you. I was suggesting perhaps we could delete the wording "primarily for personal and family consumption". But we need to retain the reference here to customary trade not including sales in commercial channels.

UNIDENTIFIED SPEAKER:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

ATTORNEY GENERAL COLE:

Are we not -- Commissioner said we could strike the language "non-commercial exchange" on line 29. Non-commercial. But he did that with the understanding that there would remain the language at the end of line 31 and line one on page seven.

SENATOR KERTTULA:

Yes.

UNIDENTIFIED SPEAKER:

That says "does not includes sales in commercial transactions". I mean one of the two should remain.

SENATOR KERTTULA:

Yes.

MR. COHEN:

Mr. Chairman.

SENATOR KERTTULA:

Yes, Mr. Cohen.

MR. COHEN:

The drafting change that the Attorney General just suggested was another sort of redundancies in this draft and so I understand what they're referring to. In terms of the "commercial channels", the way that House bill [indisc.] in there, to let the boards figure out exactly what kind of commercial channels were acceptable and which kind weren't by giving them the authority to, after hearing and comments and proposals from the public, figure out exactly what to include in commercial channels and what to exclude because there are situations of small commercial sales in village stores that would be prohibited by this definition the way its written. And that's one of the reasons why "commercial channels" was not in the House bill but there was authority and direction to the board by regulation that would take care of [indisc. - simult. speech].

SENATOR KERTTULA:

I'm calling for a three minute recess at this time. I'd like to [indisc.].

RECESS

8:14 - 9:36 p.m.

SENATOR KERTTULA:

Come back to order. It's my understanding that chairman would like to look at some of the definitions within the senate bill and have another look at subsistence. We feel that we should perhaps have one more look. So, we will recess until eight o'clock tomorrow morning sharp. Understand, that's eight o'clock

tomorrow morning sharp.

REPRESENTATIVE KUBINA:

That's acceptable with us, Mr. Chairman.

RECESS

9:36 p.m.

RECONVENED

11:00 p.m. 6/22/92

SENATOR KERTTULA:

We've all participated in varying ways on the rough draft now and I fully understand that this [indisc.] job.

REPRESENTATIVE KUBINA:

Mr. Chairman.

SENATOR KERTTULA:

Yes.

REPRESENTATIVE KUBINA:

Would it be all right if I had our staff counsel sit up here so I could get [indisc.] one place or another so I don't have to bring her forward.

SENATOR KERTTULA:

Yes.

UNIDENTIFIED SPEAKER:

Where do you want me?

SENATOR KERTTULA:

Why don't you sit here, where Charlie's sitting. You're to the right [indisc.]. I have asked that you look at the rough draft now. Let's spend some time just individually looking over this rough draft.

REPRESENTATIVE LINCOLN:

Mr. Chairman, so the changes are marked in here?

SENATOR KERTTULA:

Yes.

SENATOR ADAMS:

Perhaps that we're missing a letter of intent. Is there a letter of intent that should go along with this piece of legislation?

UNIDENTIFIED SPEAKER:

I know you suggested it. We haven't drafted [indisc.].

REPRESENTATIVE KUBINA:

Can counsel speak on that, Mr. Chairman?

SENATOR KERTTULA:

I'd like to go over this first for a bit and it might be diverting to me. Letter of Intent for page six, Laurie, do you want to comment on that?

MS. OTTO:

Yes, Mr. Chairman. The definition of "customary trade" on line 29, [indisc.] copy [indisc.] non-commercial. The intent of that is to provide latitude for the board to deal with, in a situation that everybody finds acceptable. And that is, for example, somebody selling strips from a village store and that's the whole purpose of this. I think the administration has said from the beginning and that that's okay. [Indisc.]. So it's just to clarify. and to make absolutely sure that we discuss having a letter of intent at that point, so that there would not be subsequent litigation.

SENATOR KERTTULA:

Fine.

REPRESENTATIVE LINCOLN:

Mr. Chairman?

SENATOR KERTTULA:

You have the floor.

REPRESENTATIVE LINCOLN:

I wonder if Laurie or someone who was in that group could just kind of quickly walk us through each of these sections so that we ...

SENATOR KERTTULA:

Could we then move to adopt this as the working -- adopt this second substitute as the working draft. That's all I'm asking at this moment.

UNIDENTIFIED SPEAKER:

So moved.

UNIDENTIFIED SPEAKER:

So moved.

SENATOR KERTTULA:

No objections. Mark second. The working draft at this time before us. This does not indicate adoption of any of the changes, or as a matter of fact, of the legislation. But this is the working draft and you have the floor, Ms. Lincoln.

REPRESENTATIVE LINCOLN:

Well, Mr. Chairman, if we could have Ms. Otto go through the sections that where they have been changed in relationship to what we spoke about yesterday. And those eleven areas of concern that we had, maybe, you could point out where those areas of concern had been addressed as you're walking us through those changes.

MS. OTTO:

Okay, it might be actually easier to sort of [indisc.] to go over the 11 items and explain how they've been dealt with.

SENATOR KERTTULA:

I think [indisc.] very long though that's probably the proper way for everybody. [Indisc.]. Do you think you could move through rather rapidly [indisc.]. I think that's ...

MS. OTTO:

Mr. Chair, of the number one which was where it was going to be placed, we decided to go with the approach of [indisc.], the Governor's -- this bill, creating a new 268 rather than trying to draft onto 258. One of the reasons for doing that is that 258 would be less intact depending on the length of the sunset period [indisc.]. So 258 is going to stay on the statutes, but these new provisions are in 268.

SENATOR KERTTULA:

All right.

MS. OTTO:

[Indisc. - simult. speech] concepts and guidelines on page two, line [indisc.] page four, line six, there are a number of sort of technical amendments to pick up some of the amendments [indisc.] 258 that had gotten left out of this bill. Those

significant things are adding the language at the bottom of page two that's [indisc. - simult. speech]. So that corrected that problem that was in the original draft. The language on page three, lines four and line seven [indisc.] taken out [indisc. - simult. speech] toward the last line for non-consumptive uses. The next thing is on page three and that's on line 22, adding on [indisc. - simult. speech] at the bottom of the page. This is what ...

SENATOR KERTTULA:

Excuse me. You have the floor, Senator.

SENATOR HALFORD:

Thank you, Mr. Chairman. I'm trying to understand the effect of the change in the middle of page three with regard to adopting regulations for consumptive uses. This is a stocks and then a the slight change in (c) which essentially says that we have to adopt regulations differentiating among users. I'm wondering if this is a new requirement that's not currently required in the old 258. I had at least understood that the system worked, that if you had adequate resources that clearly provide for subsistence and all other uses, you didn't necessarily have to make a differentiation between uses. I wanted to make sure that this doesn't require a differentiation where there is adequate resource to make that not necessary.

MS. OTTO:

Mr. Chairman, Senator Halford, it does not do that because it -- this section of (c) only kicks in if the board decides to do what it has the authority to do [indisc.]. The change on ...

SENATOR HALFORD:

But that's to adopt any regulation to provide for any other consumptive use. So if there's a season or a bag limit or any harvest, (b) has to kick in, I would assume. And if (b) kicks in, then it requires the differentiation among consumptive uses. And the preference is not questioned. But is there a reason to differentiate when you have plenty of resources there to be used?

MS. OTTO:

This is only -- from our point of view this is [indisc. - simult. speech].

SENATOR HALFORD:

Maybe you could, if they are sure that that's the case, I haven't got a problem. I just want to make sure that that doesn't require a new differentiation.

SENATOR KERTTULA:

Mr. Campbell, you might respond briefly on this subject.

MR. CAMPBELL:

This is consistent with the intent of the council and what it requires is, in a tier one situation, where there is enough for all subsistence uses and enough for some, but not all, other consumptive uses and they adopt regs for the other consumptive uses, at that point they differentiate. That was a policy point the council felt was important. It is an additional preference that is guaranteed to the subsistence user in this language, over and above what was in 258. But it was something we intentionally put there and supported.

SENATOR HALFORD:

Okay, if this is modified by the -- there's enough for some but not all other consumptive uses ...

MR. CAMPBELL:

Correct.

SENATOR HALFORD:

Okay, I think that works fine in that context. I did not realize this has a sunset, too -- was getting to that point and it does work.

SENATOR KERTTULA:

Proceed.

MS. OTTO:

I guess I was at page three, line 22 [indisc.] to the bottom of the page. The existing subsistence law requires the boards to do this for all stocks and populations, whether or not there's a need to restrict the harvesting of the subsistence users. That is a major concern of the commissioner, because it's really only

relevant in circumstance [indisc.] subsistence users. The [indisc.] deleting this entirely from the statute was because it was overbroad. So what we did with this amendment is narrow down the application of the provision in existing law, to only those circumstances where it's necessary to do so. That approach was acceptable to everybody. It's all there but [indisc.].

And the next change is on page four, line two [indisc.] existing law. So that's how we got the definition that uses [indisc.].

SENATOR KERTTULA:

Yes.

MS. OTTO:

This gets us to the recovery process on page four, line seven through 16. We basically agreed to delete that. It's not a necessary provision of the bill. Everybody accepted it. No problems with doing that.

SENATOR KERTTULA:

[Indisc.].

MS. OTTO:

Yes. The next thing is page five, line 22 through 76, which is the taking and uses [indisc.] subsection (g) we agreed to leave that as is in the bill and not take it out. Not do anything to it.

The definition of "reasonable opportunity" [indisc.] that appears on page five, line 27 through 31. A period after "game" and everything else in the definition [indisc.].

The next one is the definition of "customary and traditional" and that's on page six, and there was some confusion of the [indisc.] that went along with the word "dependence" in this context. It was to be resolved again [indisc.] essentially solves the problem and added in on the last [indisc.] on line 26. We also took out the [indisc.]. We took out preceding generation user language and replaced it with what was written in. And that gives the boards more latitude to deal with situations like that [indisc.].

The customary trade issue we've already discussed and I did have around here -- there's some draft floating around for a possible letter of intent [indisc.]. On the top of page seven, actually [indisc. - paper shuffling] which starts on page seven, line 15, we decided to go along with the Senate version on that.

The remaining issues are those that are listed on the back of the page and that is whether or not [indisc.] some kind of sunset provision, if so, how long is that going to be? And number two, whether or not the House concept of customary use permits should be accepted and we had modified the language somewhat although [indisc.] make a little bit more clear. But [indisc.] was whether or not we were going to accept that concept. And basically, what we've got with the customary use permit concept is giving the boards the discretion to create customary use permits. It's not mandatory. They don't have to do it. Two, tie it into an effective date [indisc.] Senate bill that says the provision still goes into effect until regulations are adopted. The application is not mandatory and there is no priority for people who are [indisc.] customary use permits. There in line along with sports users and commercial users. That's the concept that is still [indisc.].

SENATOR KERTTULA:

Those two areas would have to be drafted. Where is customary use in the House bill? What page?

REPRESENTATIVE KUBINA:

House bill starts on page one, Mr. Chairman.

SENATOR KERTTULA:

One?

MS. OTTO:

It's actually ...

SENATOR KERTTULA:

Oh, here it is. I see it now.

MS. OTTO:

[Indisc.].

SENATOR KERTTULA:

Right.

MS. OTTO:

[Indisc.]. And there was some technical changes to that to make it a little bit more clear.

REPRESENTATIVE KUBINA:

Do we have that?

MS. OTTO:

I do [indisc. - simult. speech].

REPRESENTATIVE KUBINA:

... paragraph we really need to do?

MS. OTTO:

That's the only paragraph we need to -- well, there's [indisc.] the last page to it has a [indisc.] definition.

REPRESENTATIVE KUBINA:

We don't need the ...

MS. OTTO:

It's just cleaning up the definitions. The real question is whether or not [indisc.] customary use permit concept ...

REPRESENTATIVE KUBINA:

Okay. And if we did have it, do we not need it inserted in the other places at the beginning of the bill?

MS. OTTO:

If you accept that concept, you need to have all the other provisions in the House bill where you talk about customary use permits. But that's how you give the boards the power to implement [indisc.].

REPRESENTATIVE KUBINA:

Mr. Chairman, would you like to -- do you want to go on to where there is agreement or do you want to continue to talk about what there ...

SENATOR KERTTULA:

There's two areas that are open, but I would suggest, frankly, that possibly go on to those areas that we can agree on or maybe we'll agree on and then move to the final two. Even

though drafting may be slightly different. [Indisc.]. We understand customary and use and the sunset provisions and probably both of them will take a little bit of time [indisc.] And Senator Halford, around the table. Does anyone have a comment? I was going to go right around or I'll go left to right back to me. On ...

REPRESENTATIVE KUBINA:

Left to right, does that have any significance?

SENATOR KERTTULA:

I hope. From the extreme [indisc.]. Senator Halford, do you have comments about suggestions that have now been explained? The sections that have now been explained. Do you have questions to any of them?

SENATOR HALFORD:

If we've reached conclusions, I believe that those sections can represent some minimal improvement over existing law.

SENATOR KERTTULA:

You have the floor.

UNIDENTIFIED SPEAKER:

I agree.

REPRESENTATIVE KUBINA:

Mr. Chair.

SENATOR KERTTULA:

[Indisc.].

REPRESENTATIVE KUBINA:

Mr. Chairman when you're ready, I'm prepared to make a motion to accept the changes that [indisc.].

REPRESENTATIVE LINCOLN:

Mr. Chairman, I think that I really applaud the work that the small group did between last night and this morning in making those changes. I think that they are changes that certainly improve the language of this bill and I'm ready for a vote ...

SENATOR KERTTULA:

Senator Adams.

REPRESENTATIVE LINCOLN:

... for that portion.

SENATOR ADAMS:

I will accept your compromise that we have before us but I still will not be voting for that piece of legislation that is drafted from this body. It doesn't solve the subsistence bill, but I am pleased to see that these compromises have been made [indisc.].

SENATOR KERTTULA:

You have the floor for a motion.

REPRESENTATIVE KUBINA:

Mr. Chairman, I move that the conference committee accept our second working draft as presented before us, not including the two issues that are still in disagreement, handwritten on the last page.

SENATOR KERTTULA:

If there is no objection, this working draft now is bill. It has been adopted to date. Before us now are "customary use", and sunset. Does anybody wish to spend any time on either of those items before taking a vote? Do you wish to speak to them? Does anybody wish to speak first to "customary use"? Around the table, Senator Halford.

SENATOR HALFORD:

Mr. Chairman, I believe that "customary use" can be dealt with under the existing structure with regard to personal use but I would not oppose some kind of statement or letter of intent [indisc.-coughing] but I am afraid I think we're adding to much of a burden on the board, who really don't get anything done until we get the regulations adopted [indisc.].

SENATOR KERTTULA:

You have the floor, sir.

UNIDENTIFIED SPEAKER:

I would tend to agree. We already have personal use regulations in effect, working for that. And this is supposedly going to be a voluntary thing that they can or can't. It's another category [indisc.].

SENATOR KERTTULA:

What do you think of the intent? What do you think about the possibility of just an intent in this carefully drafted intent?

UNIDENTIFIED SPEAKER:

That's fine with me.

SENATOR KERTTULA:

You have the floor, Mr. Chairman.

REPRESENTATIVE KUBINA:

Mr. Chairman, at the appropriate time, I'll move the House language on the customary use provisions and ask for a vote on the issue.

SENATOR KERTTULA:

Representative Lincoln, can you contribute [indisc.].

REPRESENTATIVE LINCOLN:

Yes, Mr. Chairman, I also feel that it is important to have the "customary use" put into this bill. I think that it does provide opportunity then, for urban subsistence users to get an allocation. It gives the board, certainly, the discretion, on how they create the customary uses. And whether to allocate any resources. But it again, goes back to the board's may adopt regulations. So I think it clarifies for the reader, clarifies for the citizens of the State of Alaska, what the intent is on subsistence. So I'm supporting putting "customary use" back into the bill.

SENATOR KERTTULA:

It has been a continuing debate and potential for argument over it. But [indisc.] urban people to have this section in before a lot of definitions and a lot of work done with this. [Indisc.] as I understand it, personal use, they say it covers this area. Under a different category, it does cover it. It already has the regs. I'm not trying to debate, I'm just saying [indisc.- cough] we all have.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

As I stated earlier I think my chair should be by Mark Hanley on the other side, I disagree with my colleague from Eagle River on the burden of the board with what is vital. I think the board is crying for direction as they have testified throughout, but I think that the compromise maybe [indisc.] with the letter of intent of some type.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

If you wish to speak, Attorney General. I think we've had Laurie's speaking before all of here. You may have the floor.

ATTORNEY GENERAL COLE:

I just want to say that we discussed the utilization of a letter of intent on this subject. I think that in this area, it might be well to go beyond simply a letter of intent and have an explanation in writing from the commissioner as to how the present law would enable the boards to reach essentially the same result.

SENATOR KERTTULA:

I would say an intent letter with notation, a detailed letter for the records is forthcoming from the commissioner.

UNIDENTIFIED SPEAKER:

Commissioner Rosier, would like to make a few remarks.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman. I think that we can certainly comply with that.

SENATOR KERTTULA:

Noted in the letter of intent and you want it dated specifically so you're exclamation can change from time to time [indisc.] rather forthcoming.

I think we have a feeling for the customary use provisions. I would call -- if there's a motion on adoption of any aspect of customary use, without the letter of intent first and then the letter of intent. If a second motion is required, I would entertain that.

REPRESENTATIVE KUBINA:

Mr. Chairman, I would move the House language on page five of the House bill, starting on line 15 as amended that you have before you and included also over on page seven on "customary use".

SENATOR KERTTULA:

Lorraine, you are keeping a record for any votes. I could use a hand vote.

REPRESENTATIVE KUBINA:

That would also include, of course, the inserts throughout the front. That's correct, Mr. Chairman. [Indisc.].

SENATOR KERTTULA:

We'll ask the House first to vote, then the Senate. The next time it will be the Senate first on the next issue. Mr. Hanley?

REPRESENTATIVE HANLEY:

No.

SENATOR KERTTULA:

Ms. Lincoln?

REPRESENTATIVE LINCOLN:

Yes.

SENATOR KERTTULA:

Chairman?

REPRESENTATIVE KUBINA:

Yes.

SENATOR KERTTULA:

Mr. Halford?

SENATOR HALFORD:

No.

SENATOR KERTTULA:

Mr. Adams?

SENATOR ADAMS:

Yes.

SENATOR KERTTULA:

Senator Kerttula? No.

REPRESENTATIVE KUBINA:

Mr. Chair

SENATOR KERTTULA:

You have the floor.

REPRESENTATIVE KUBINA:

Upon the failure of the vote, I would request that the letter of intent that we have already being drafted up on the other issue, that administration include a paragraph on this issue on how they would specifically deal with this under the personal use permit, if that is the way it will be done. And that so before we vote on the final issue we have that ...

SENATOR KERTTULA:

... we move that letter of intent as far as construction goes. If you wish to adopt -- if you want to move the letter of intent, please do.

REPRESENTATIVE KUBINA:

Well ...

SENATOR KERTTULA:

Move to compose the letter of intent.

REPRESENTATIVE KUBINA:

I would so move to compose the letter of intent.

UNIDENTIFIED SPEAKER:

I'll object.

SENATOR KERTTULA:

Obviously, it still has to be read. To sunset provisions. Around the table. I'll start going the other way this time. Mr. Adams.

SENATOR ADAMS:

Three.

SENATOR KERTTULA:

Three years sunset suggestion. Representative Lincoln.

REPRESENTATIVE LINCOLN:

Three years.

SENATOR KERTTULA:

Mr. Chairman?

REPRESENTATIVE KUBINA:

Mr. Chairman, I'm comfortable with a three-year sunset. It

takes us into another administration. It is a non-election year. I'm comfortable with the three years. I think it gives us enough period of time to deal with the issue and see how they should work.

SENATOR KERTTULA:

You have the floor, Mr. Hanley.

REPRESENTATIVE HANLEY:

I would prefer five years. We've heard testimony from the commissioner that the board meets on a three-year cycle. Many of the areas would not have any regulations adopted before that. The legislature would have to deal with the issue, after only possibly -- if the regulations did get adopted immediately, they would have maybe only a year to see what it was before we had to start dealing with it again. I would ask for a longer time frame. Obviously if there's something found that's major wrong with it, the legislature could change it. But if we don't give it time to work, and we can't see what the implications are of this, we will be deciding -- or forced to decide what to do before we have any actual results. So I prefer a longer time frame. I think five years would be my suggestion.

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Mr. Chairman. I'd originally said I think I could live with three years. I'm not sure that I realized how long it would take to get the regulations adopted. I'm afraid I don't think that we're making the kind of significant changes that are going to result in a lot of differences. So I would try to go to a longer period than three years so you could get a real three-year history of it. That takes a year or two to get the regulations in effect. I would be interested in longer than three years [indisc.]. Originally, I thought three years would be enough.

SENATOR KERTTULA:

The art of reasoning together, I see we're in a difficult spot here. It seems like I'm the one almost in the middle on this

subject. Mr. Kubina, would you like to comment, however, to Mr. Halford's concerns. [Indisc.] voice as well as anyone else, and that is the possibilities of doing something meaningful. Getting people out there to understand and perhaps support a three-year period. The administration [indisc.] close to it on the subject.

REPRESENTATIVE KUBINA:

Mr. Chairman, my understanding is that the time limit to get regulations on this issue will not take anywhere as near that length of time. Especially, because of the amount of things that are now in here, with the definitions and what not. But I would maybe throw out something a little bit different. We had said that ... [tape ends midsentence.]

Tape 92-3

Side A

REPRESENTATIVE KUBINA:

[Tape begins midsentence] ... a four-year term that it was -- rather than in July. It seems like we always do things in July. We did things on -- we have an election in '92 and one in '94. That's two years. And then in '96. I'm trying to think how that ...

UNIDENTIFIED SPEAKER:

December '96.

REPRESENTATIVE KUBINA:

Well, I'm thinking of ...

REPRESENTATIVE LINCOLN:

Mr. Chairman?

SENATOR KERTTULA:

I'd like to listen to him first. He has the floor, but then I will listen to you.

REPRESENTATIVE KUBINA:

Let me think how this will work here a minute, Mr. Chairman. Let me yield to Representative Lincoln.

SENATOR KERTTULA:

Representative Lincoln, [indisc.].

REPRESENTATIVE LINCOLN:

Thank you. The reason that I went with three years is that when that sunset comes up in the three-year period, there's nothing that would prohibit us from extending that out if we see that that's not working. So a three-year is nothing magic. It's just saying that at the end of that three-year period, we are going to take another look at it. And I'm prepared to make a motion when you're ready.

SENATOR KERTTULA:

Attorney General, do you wish to speak to this for just a moment? Do you have anything to say about this?

ATTORNEY GENERAL COLE:

Well, sir I, think it's more proper to have the commissioner respond because he has the experience in this area.

SENATOR KERTTULA:

All right. Commissioner, if you would like to speak just for a moment.

COMMISSIONER ROSIER:

Thank you, Mr. Chairman, if I might. Three years is barely going to see the State covered with the regulations to be implemented. As I indicated to you, the fisheries board is currently sitting on a large backlog and, certainly, as they get into the implementation of the law, the board is going to be looking for additional time. Because of the workload of the board, you're talking about a three-year cycle. And really to give you a true analysis of the impacts of the legislation, it simply would not be in place in a three-year period. Certainly, I would prefer, myself, to see a longer period, preferably five years.

SENATOR KERTTULA:

I have a question. You will have some experience by that time in which you can make some judgements with the great experience of your department. Hopefully, you'll be the commissioner at that time. In which to enlighten the legislature about the need for an extension of the sunset, would you not? If in fact we developed a three-year. I'm trying to come to a conclusions rather quickly.

COMMISSIONER ROSIER:

There would be some experience there, certainly. I mean, the board, beginning with the next round on this would be ...

SENATOR KERTTULA:

Mr. Kubina, do you seek the floor?

REPRESENTATIVE KUBINA:

Mr. Chairman, in reviewing what we've done on page seven, if we look at the review section, it says, "therefore it's the intent of the legislature that the operation of this Act and the regulations adopted under this Act be fully reviewed by the Governor no later than June 1, 1994". Down on line 27, it says "No later than September 1, 1994, the Governor shall provide a report to the legislature on the results of the review and the proposed recommendations for statutory amendments." You know, this whole bill is set up for a change in '95. It only makes sense to make it a three-year, really. The administration has set it up for it in the first place. So I think their arguments really, now, in the bill, itself ...

SENATOR KERTTULA:

Senator Adams, can seek the floor, unless [indisc.].

REPRESENTATIVE KUBINA:

... have been made for three years.

SENATOR KERTTULA:

Go ahead, Senator.

SENATOR ADAMS:

I am confident that years [indisc.]. Mr. Chairman, that in the review section that it's going to be reviewed both in June 1, 1994 and then submitted to the legislature. To look at those results so we can actively participate and that's why, I give the provision three years, so we can take the recommendations from the commissioner of this administration and look at it from that side. I agree with my colleagues on [indisc.].

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Well, I agree with the consistency with regard to the review provisions in the bill, but the review provisions are put in the bill because we had a fairly extensive system of classification by community size and the differences of presumption and a fairly complicated and involved [indisc.] system of qualification and essentially not all active policy. And now back to a much, much simpler policy and really three or four definitions to implement that policy. So I'm afraid the review provision are probably not as necessary as they were with the original bill. And the timing is not as strongly tied to those bill review provisions either. The review is now going to be much, much simpler than I would have expected had the original bill proposed by the subsistence group gone forward.

SENATOR ADAMS:

Question. May I ask a question of my colleague? If there's anything in this piece of legislation [indisc.] policy decisions, could not you and I and, if we're reelected, [indisc.-laughter] changes -- work on changes that perhaps [indisc].

SENATOR HALFORD:

Senator Adams, we could always work on changes. We have for the last decade.

REPRESENTATIVE KUBINA:

Mr. Chairman, I would only add that it almost sounded like Senator Halford was arguing for the three-year review and the simplicity of the review is going to take, it only seems a natural thing that it's not going to take that long a period of time to review it. And if the reports come in that everything is working out here, a simple one line extension of the sunset date or removal of the sunset date [indisc.]. When you're ready for a motion, Mr. Chairman, I believe that we should move for three years.

SENATOR KERTTULA:

I'm ready for a motion [indisc. - simult. speech] before us.

REPRESENTATIVE KUBINA:

Mr. Chairman, I would move that we would have a sunset --

well, maybe, I'd ask one other question.

SENATOR KERTTULA:

Please.

REPRESENTATIVE KUBINA:

Would it be appropriate only for the two sections, the 268 and the 940, or might it be appropriate for the entire bill? And maybe if we could have our counsel discuss what was said about that.

SENATOR KERTTULA:

If you have something for discussion, you have the floor.

MS. OTTO:

Mr. Chairman, this is one of those issues that are complicated by [indisc.- cough] need to add. It's going to require going through the bill by the drafters and inserting provisions that have in fact been sunset [indisc.] as appropriate. The intent is, as I understood it, to go back to the status quo at the time that this bill -- or whatever time period you choose. So it would be at minimum in 268 and 940 but given the time that we have available, I can't tell you with certainty that there aren't any other sections that might need to have some kind of provision like that incorporated into it. I think that needs to be left to the drafters, based on the policy [indisc.] time.

SENATOR KERTTULA:

Fine.

REPRESENTATIVE KUBINA:

So with that, Mr. Chairman, I would move that ...

SENATOR KERTTULA:

I'm going to ask for a moments recess [indisc.].

RECESS

11:35 - 11:42 A.M.

SENATOR KERTTULA:

To the motion, is there anything further to be stated about sunset provisions being three years?

UNIDENTIFIED SPEAKER:

Question.

SENATOR KERTTULA:

Question. Mr. Hanley. You can have the floor if you wish to speak to it.

REPRESENTATIVE HANLEY;

Mr. Chairman, just because I think it would be difficult for the boards to deal with -- the legislature will be -- for our side. The legislature will be considering this in the '95 session, I assume. And the board meeting in the spring trying to deal with the sessions with the seasons bag limits, method and means and everything [indisc.] that takes effect July first. They're generally meeting in that same time frame. I think it's a mistake to have a change occur right at the same point. I would go along with just a difference of three years or three years and four months so that the change would be -- instead of, I think we talked about July first to October thirty-first. I think that, at least, doesn't have the change occurring right when the boards are in the middle of the process. I think that's more reasonable. And I could support three years and four months, where I don't think I can support three years after listening to what this department has said about how it has to make [indisc.] to work.

SENATOR KERTTULA:

Once, anything further in debate around the table? You have the floor, Senator Adams.

SENATOR ADAMS;

Recess.

SENATOR KERTTULA:

You wish to recess?

SENATOR ADAMS:

[Indisc.]

SENATOR KERTTULA:

We'll be one minute recess.

OFF RECORD

ON RECORD

REPRESENTATIVE KUBINA:

Is there an actual motion on the floor, Mr. Chairman?

SENATOR KERTTULA:

The motion before us can be amended, of course.

REPRESENTATIVE KUBINA:

Mr. Chairman, I move to amend the motion to be -- it was three years, which it would have been by July of '95, to make it October one, '95.

SENATOR KERTTULA:

Objections. So ordered. It's adopted. At this stage, we are going back to the intent letters and have this bill put in context. Let us be right back here in thirty minutes. Try to get the intent letters done.

RECESS

11:45 - 1:05 p.m.

SENATOR KERTTULA:

Are these letters of intent precisely what was desired, that's the question.

REPRESENTATIVE KUBINA:

I don't see any problem on our side, Mr. Chairman.

SENATOR KERTTULA:

Non-commercial exchange.

REPRESENTATIVE KUBINA:

For number one.

SENATOR KERTTULA:

Non subsistence areas. Yes, you have the floor, Senator.

UNIDENTIFIED SPEAKER:

The exchange language -- "limited non-commercial exchange". I have not heard that it ever applied to [indisc.],

SENATOR KERTTULA:

I always thought that word constitutes. [Indisc.] it out.

UNIDENTIFIED SPEAKER:

That had not been a consideration I had heard of before. And again, commercial is a [indisc. - simult. speech].

REPRESENTATIVE KUBINA:

No, but I think as it's stated here about, I can be wrong but

[indisc.] salmon strips I thought -- maybe somebody made some jerky or something like that, in the store -- is that a ...

SENATOR KERTTULA:

I'm not aware of it at the village stores I've been to.

UNIDENTIFIED SPEAKER:

I've never heard of that.

SENATOR KERTTULA:

Mr. Cole.

ATTORNEY GENERAL COLE:

Pardon me

SENATOR ADAMS:

[Indisc.].

SENATOR KERTTULA:

Lance, can you come forward? We've got a question on a letter of intent.

MR. LANCE NELSON, ASSISTANT ATTORNEY GENERAL:

Sure.

SENATOR KERTTULA:

We have problems with a letter of intent [indisc.].

ATTORNEY GENERAL COLE:

May I be heard?

SENATOR KERTTULA:

[Indisc.] you have the floor.

ATTORNEY GENERAL COLE:

Are we dealing with the definition of customary trade?

SENATOR KERTTULA:

Yes. The first one. [Indisc.] over hunts.

ATTORNEY GENERAL COLE:

Well, I had another view there that I wanted to express.

SENATOR KERTTULA:

Yes.

ATTORNEY GENERAL COLE:

It "... is intended to provide for some limited commercial exchange in particular hunts or fisheries ..." and then it goes on, "... such as the traditional sale of salmon strips in village

stores."

I haven't spoken with Mr. Nelson about it, but my view is that the limited commercial exchange should be limited to historic practices and not expand commercial exchanges beyond what has been in the past. I mean, that was some of the discussion, I think which Ms. Otto would verify.

MS. OTTO:

[Indisc.].

ATTORNEY GENERAL COLE:

Yeah, well, except we put "such as traditional sale of salmon strips...". "Traditional" comes farther in the sentence than I think it should. We should say, "to provide for some limited traditional commercial exchange."

UNIDENTIFIED SPEAKER:

That's better.

SENATOR KERTTULA:

Or [indisc.] information legal services will bring our product to us in about thirty minutes. That's what they're working on. Yes, sir. Okay, Senator Halford, Senator Adams.

SENATOR HALFORD:

I would say "it's not intended to prohibit continued" and then go on from there. And that way you can -- talking about existing practices versus something fairly new. The term "limited non-commercial exchange" is now the term that we accepted in the bill. We want to make sure that we're not stopping sale of salmon strips. That's the example. What the term "limited non commercial exchange in the definition of "customary trade" and then it goes on "is intended to" or it could say "is not intended to prohibit continuation of limited commercial exchange in particular" and I question "hunts". But if you do that, you probably won't have a problem [indisc.] in particular hunts or fisheries, such as "traditional sale of salmon strips in village stores." I think that would do that.

ATTORNEY GENERAL COLE:

Mr. Chairman.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

I was going to agree with the Attorney General on leaving the language that's "limited traditional commercial exchange". I would like a recommendation from the Attorney General.

ATTORNEY GENERAL COLE:

Well, I think that it's been the understanding that where there has been -- where commercial exchanges are to be recognized, should be only in those areas where they have traditionally occurred and not opened up new vistas of "limited commercial exchange". See, it's because what this focused on was the traditional sale of salmon strips in village stores. And people say, "Well, that's happened and it's part of the historic practice." But we should not expand limited commercial exchanges beyond those which have been historically traditional.

SENATOR KERTTULA:

I think there's no disagreement. Ms. Otto, do you have something you wish to suggest here?

MS. OTTO:

I actually was agreeing with the Attorney General in terms of the changes suggested and that would be to insert between "limited" and "commercial" on the third line, the word "traditional" and then delete it from the fourth line.

SENATOR KERTTULA:

Delete whereabouts on the fourth line?

MS. OTTO:

"Such as the sale". Take out "traditional". And basically draw [indisc.] Attorney General. I think that's really what we intended in our discussion and that would be a way of solving the concerns of ...

REPRESENTATIVE LINCOLN:

Just delete "traditional".

SENATOR KERTTULA:

Is that understood in context now? Okay. Is there a motion

on this particular intent? You have the floor, Senator.

SENATOR HALFORD:

Just so we understand how it affects hunts versus the fisheries. In order for it to be legal to sell the product of hunts or game essentially, there would have to be proven that this is a continuation of a traditional practice.

REPRESENTATIVE KUBINA:

Mr. Chair. [indisc. - simult. speech].

SENATOR KERTTULA:

Is there a question around the table? No. Is there a motion again on it?

REPRESENTATIVE KUBINA:

Mr. Chairman.

SENATOR KERTTULA:

You have the floor.

REPRESENTATIVE KUBINA:

I would move the letter of intent number two, with the change we made, dropping "traditional" on the fourth line and inserting it between the "limited" and "commercial" on the third line.

SENATOR KERTTULA:

Objections? So ordered. It's done.

REPRESENTATIVE KUBINA:

The only other question, I have, is to make sure that we have the title of the bill correct. Whatever the "CS's" are. [indisc. - paper shuffling].

SENATOR KERTTULA:

You may move on it.

REPRESENTATIVE KUBINA:

I'd also move on the letter of intent number one on "customary use in non-subsistence areas".

SENATOR KERTTULA:

Questions about that? Around the table?

ATTORNEY GENERAL COLE:

May I have an opportunity to confer with Mr. Nelson for a moment, sir?

SENATOR KERTTULA:

Yes you may have it. [Indisc. - simult. speech].

ATTORNEY GENERAL COLE:

Mr. Chairman?

SENATOR KERTTULA:

Yes.

ATTORNEY GENERAL COLE:

My thought is that in that first line instead of the word "are", a-r-e, that you substitute "encouraged". So that it reads, "the Boards of Fish and Game are encouraged to use the personal use category". That get's you about the same way, but when it says "are to use" I mean that's direct. It may be that ...

SENATOR KERTTULA:

Is there objection to putting ...

REPRESENTATIVE KUBINA:

Objection.

SENATOR KERTTULA:

Objection?

REPRESENTATIVE KUBINA:

Mr. Chairman, we object. We don't understand really the issue here. You are actually telling the board of fish and game rather than taking the language that we had in the house version and making it a whole new category, that this is the place that we want that category to be used. So unless you have another category that would be a more appropriate category to put those people in.

ATTORNEY GENERAL COLE:

No. May I say, it should be "the boards of fisheries". You may want to change that. That's technical.

UNIDENTIFIED SPEAKER:

"Boards of Fisheries". I think we can take that out.

ATTORNEY GENERAL COLE:

What I was getting at was simply this, Mr. Chairman. Suppose that the Board of Game does not do that. I mean, what is the effective legal remedy? Probably none. And so, rather than to

face that type of possible non-enforceable directive, if you say, "are encouraged" I think you get to the same point and then you don't have a situation where the legislature is directing the Boards of Fisheries and Game to do something which they cannot enforce. It's the only reason for that suggested change. It's no major issue. But it just seems to me it's a recognition of a situation.

REPRESENTATIVE LINCOLN.

Mr. Chairman? It seems to me though if we put "the Boards of Fisheries and Game are to encourage use of the personal use category to provide opportunities..." that it doesn't -- that's exactly what it does. It's a maybe. It encourages. I mean it's not a given. It's up to their discretion. And the boards are to use -- this way they "are to use the personal use category to provide opportunities". It's not -- they still have authority there, but this says that they must use that personal use category to do that. And so I really object to changing it to "encourage". It changes the content of the whole sentence by changing that one word.

SENATOR KERTTULA:

Ms. Otto, you seem to have a ...

MS. OTTO:

I guess it seems to me, Mr. Chairman, that the boards clearly don't have any legal obligation to grant personal use fisheries. And to me, the directive is that these customary users, instead of being protected in the statute, fall into that category. That's what I think all that it's trying to say. As I understood it to be the intent when I wrote it. It's not that they have to give the permit or the permits to these people, but when they do give them, this is the category that they fall into. And that's why I wrote it that way.

SENATOR KERTTULA:

Senator Halford.

SENATOR HALFORD:

Mr. Chairman, I kind of see the Attorney General's concern,

although maybe there's another way to do that. What we're doing is we're saying "the boards are to use the personal use category to provide opportunities" wherever subsistence qualifications aren't met. And there are places where the customary uses are not really established and subsistence is not improved. I think there needs to be some kind of discretion [indisc. - cough] statement there. I was just sitting here trying to figure out "fish and game are to use the personal use category to provide opportunities for customary uses as appropriate in areas where". There needs to be some statement of discretion because there are areas in the state where there probably aren't customary uses under the definitions that you guys presented in yours. Yet there also are not subsistence definitions as a principle characteristic in the economy and culture in the way of life in the area. There is something in between there. And that's why you had criteria to apply your customary uses. So if there's some kind of discretionary statement [indisc.] that's all [indisc.] that meets the Attorney General's concern.

UNIDENTIFIED SPEAKER:

[Indisc.].

SENATOR HALFORD:

Well, I would suggest then on the second line you insert after "customary uses" and before "in areas where" the words "as appropriate". Because then they do have the determination in that process.

SENATOR KERTTULA:

Senator Adams.

SENATOR ADAMS:

I just want to say the House [indisc.] quite a bit to the original bill on the "customary use" and I thought that, perhaps, with the letter of intent, it was going to make it strong as possible. And I hope we're not going to water down the language here.

SENATOR KERTTULA:

You have the floor, Senator Halford.

SENATOR HALFORD:

Mr. Chairman, I was just trying to make the language work, because I think the House bill did have the substantive determination as to whether the "customary uses" were appropriate in areas where subsistence wasn't permitted.

SENATOR KERTTULA:

You have the floor, Ms. Otto, if you have a comment to make.

MS. OTTO:

The comment I would make is that, I'm getting concerned, I guess, that this is muddying what the intent of this is going to end up to be. And that is to give the boards an outlet for providing for customary use under the personal use category. And I just have a hard time saying, as a matter of law, what the harm would be in letting it stand as is. [indisc.]. I see Senator Halford's point. But I just think it's going to make it more confusing in the long run if we add that in, than if we leave it out.

REPRESENTATIVE KUBINA:

It's a deal breaker.

SENATOR KERTTULA:

You have the floor, Senator.

SENATOR HALFORD:

The question I had is that there are cases under the House proposal where providing opportunities for customary uses under your definition of "customary uses" weren't appropriate in areas where subsistence was not a [indisc.] characteristic of the economy because customary uses hadn't been established. And the way this reads, it almost reads like an absolute. And so you know the board is not going to be able to do that in every area where subsistence is [indisc.] and characteristic. All I was trying to do is find some language that gave them the same kind of determination that customary uses be appropriate and that they provide for them through the personal use category. That's all.

UNIDENTIFIED SPEAKER:

It's not a terribly significant area. I mean we're -- I