ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
March 25, 2002
1:10 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 343(RES)
"An Act clarifying the term 'best technology' required for use in oil discharge prevention and contingency plans; affirming existing Department of Environmental Conservation regulations defining 'best technology' and oil discharge prevention and contingency plans approved using those regulations; and providing for an effective date."

- MOVED CSSB 343(RES) OUT OF COMMITTEE

HOUSE BILL NO. 474
"An Act relating to public rights-of-way and easements for surface transportation affecting the Anchorage Coastal Wildlife Refuge."

- MOVED CSHB 474(CRA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 46
Relating to the moratorium on fish farming in British Colombia.

- MOVED CSHJR 46(RES) OUT OF COMMITTEE

HOUSE BILL NO. 508

"An Act relating to publication of results of testing for paralytic shellfish poisoning by the Department of Environmental Conservation and to participation of the Department of Environmental Conservation in the development of operating plans of qualified regional dive fishery associations."

- MOVED HB 508 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 343
SHORT TITLE:BEST AVAILABLE TECHNOLOGY:DISCHARGE PLAN
SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
02/27/02	2319	(S)	READ THE FIRST TIME - REFERRALS
02/27/02	2319	(S)	RES
03/04/02		(S)	RES AT 3:30 PM BUTROVICH 205
03/04/02		(S)	Moved CS(RES) Out of Committee
03/06/02	2386	(S)	RES RPT CS 6DP 1NR SAME TITLE
03/06/02	2386	(S)	DP: TORGERSON, TAYLOR, HALFORD,
03/06/02	2386	(S)	STEVENS, WILKEN, LINCOLN; NR: ELTON
03/06/02	2387	(S)	FN1: ZERO(DEC)
03/13/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/13/02		(S)	MINUTE(RLS)
03/13/02	2416	(S)	RULES TO CALENDAR 3/13/02
03/13/02	2417	(S)	READ THE SECOND TIME
03/13/02	2417	(S)	RES CS ADOPTED UNAN CONSENT
03/13/02	2417	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/13/02	2417	(S)	READ THE THIRD TIME CSSB 343(RES)
03/13/02	2417	(S)	PASSED Y17 N1 E1 A1
03/13/02	2418	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/13/02	2420	(S)	TRANSMITTED TO (H)
03/13/02	2420	(S)	VERSION: CSSB 343(RES)
03/15/02	2538	(H)	READ THE FIRST TIME - REFERRALS
03/15/02	2538	(H)	O&G, RES
03/22/02		(H)	O&G AT 8:00 AM CAPITOL 124
03/22/02		(H)	Moved Out of Committee

03/22/02	2642	(H)	O&G RPT 3DP 2NR 1AM
03/22/02	2642	(H)	DP: DYSON, CHENAULT, FATE; NR: JOULE,
03/22/02	2642	(H)	GUESS; AM: KOHRING
03/22/02	2642	(H)	FN1: ZERO(DEC)
03/25/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 474
SHORT TITLE:ANCHORAGE COASTAL WILDLIFE REFUGE
SPONSOR(S): REPRESENTATIVE(S)GREEN

Jrn-Date	Jrn-Page		Action
02/19/02	2315	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2315	(H)	CRA, RES
03/05/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/05/02		(H)	Heard & Held
03/05/02		(H)	MINUTE(CRA)
03/19/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/19/02		(H)	Moved CSHB 474(CRA) Out of Committee
03/19/02		(H)	MINUTE(CRA)
03/20/02	2617	(H)	CRA RPT CS(CRA) 2DP 4NR
03/20/02	2617	(H)	DP: SCALZI, MEYER; NR: MURKOWSKI,
03/20/02	2617	(H)	GUESS, KERTTULA, MORGAN
03/20/02	2617	(H)	FN1: ZERO(H.CRA)
03/22/02	2655	(H)	COSPONSOR(S): MCGUIRE
03/25/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HJR 46
SHORT TITLE:BC MORATORIUM ON FISH FARMING
SPONSOR(S): FISHERIES

Jrn-Date	Jrn-Page		Action
02/19/02	2308	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2308	(H)	FSH, RES
03/04/02		(H)	FSH AT 3:30 PM CAPITOL 124
03/04/02		(H)	Scheduled But Not Heard
03/18/02		(H)	FSH AT 3:30 PM CAPITOL 124
03/18/02		(H)	Moved CSHJR 46(FSH) Out of Committee
03/18/02		(H)	MINUTE(FSH)
03/19/02	2602	(H)	FSH RPT CS(FSH) 6DP
03/19/02	2602	(H)	DP: DYSON, COGHILL, SCALZI, KERTTULA,

03/19/02	2602	(H)	STEVENS, WILSON
03/19/02	2602	(H)	FN1: ZERO(H.FSH)
03/25/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 508
SHORT TITLE:DIVE FISHERY ASSOCIATIONS/PSP REPORTS
SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
03/20/02	2618	(H)	READ THE FIRST TIME - REFERRALS
03/20/02	2618	(H)	RES
03/25/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

SENATOR JOHN TORGERSON
Alaska State Legislature
Capitol Building, Room 427
Juneau, Alaska 99801-1182
POSITION STATEMENT: Presented CSSB 343(RES) on behalf of the Senate Resources Standing Committee, sponsor, which he chairs.

LARRY DIETRICK, Director
Division of Spill Prevention and Response
Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801-1795
POSITION STATEMENT: Testified on SB 343; indicated the issue is the legislative intent for meeting the "best available technology" statutory requirement.

DOUGLAS MERTZ
Prince William Sound Regional Citizens' Advisory Council
319 Seward Street
Juneau, Alaska 99801
POSITION STATEMENT: Testified in favor of SB 343.

MARILYN CROCKETT, Deputy Director
Alaska Oil and Gas Association (AOGA)
121 West Fireweed, Suite 207
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in support of SB 343; indicated passage of SB 343 would remove the obstacle faced by the industry because of the supreme court decision.

BRECK TOSTEVIN, Assistant Attorney General

Environmental Section
Civil Division (Anchorage)
Department of Law
103 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on SB 343.

SUE ASPELUND, Executive Director
Cordova District Fishermen United (CDFU)
P.O. Box 939
Cordova, Alaska 99574
POSITION STATEMENT: Testified on SB 343; supported the proposed amendment language submitted by the Prince William Sound RCAC and strongly encouraged including periodic best available technology conferences consistent with the 1997 regulations.

ROSS COEN
Alaska Forum for Environmental Responsibility
P.O. Box 82718
Fairbanks, Alaska 99708
POSITION STATEMENT: Testified on SB 343, saying he is opposed to its intent and believes [DEC] should promulgate regulations that comply with the supreme court's decision.

GARY CARLSON, Senior Vice President
Forest Oil Corporation
310 K Street, Suite 700
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in support of SB 343, saying it is necessary to clarify the legislative intent, DEC practices, and regulations currently in place.

TOM LAKOSH
P.O. Box 100648
Anchorage, Alaska 99510
POSITION STATEMENT: Testified on SB 343; requested a requirement for DEC to examine improvements in the ability to address problematic spill-response situations.

SUSAN SCHRADER
Alaska Conservation Voters
P.O. Box 22151
Juneau, Alaska 99802
POSITION STATEMENT: Testified in opposition to [SB 343], which rolls back oil spill protection laws that the legislature passed a number of years ago.

LAURA ACHEE, Staff
to Representative Joe Green
Alaska State Legislature
Capitol Building, Room 403
Juneau, Alaska 99801-1182
POSITION STATEMENT: Presented HB 474 on behalf of Representative Green, sponsor.

JESSE VANDERZANDEN, Executive Director
Alaska Outdoor Council (AOC)
P.O. Box 73902
Fairbanks, Alaska 99708
POSITION STATEMENT: Testified in support of HB 474.

JEFF LOWENFELS
(No address provided)
Anchorage, Alaska 99501
POSITION STATEMENT: Testified in support of HB 474.

MIKE MITCHELL, President
Anchorage Trails and Greenways Coalition
1331 Hillcrest Drive
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in opposition to HB 474.

CHIP DENNERLEIN, Director
Division of Habitat and Restoration
Alaska Department of Fish and Game (ADF&G)
333 Raspberry Road
Anchorage, Alaska 99518-1579
POSITION STATEMENT: Testified in opposition to HB 474.

MIKE JENS
9300 Grover Drive
Anchorage, Alaska 99507
POSITION STATEMENT: Testified in opposition to HB 474.

LORVEL SHIELDS
2140 Shore Drive
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in opposition to HB 474.

JIM REEVES
4001 Westwood Drive
Anchorage, Alaska 99517
POSITION STATEMENT: Testified on HB 474, saying he supports a resolution that will result in a trail.

MICHAEL DOWNING, Chief Engineer
Design and Engineering Services Division
Department of Transportation and Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898
POSITION STATEMENT: Testified that the department opposes HB 474.

BOB BELL
801 West Fireweed Lane
Anchorage, AK 99503
POSITION STATEMENT: Testified on HB 474.

CHERYL SHROYER
P.O. Box 113264
Anchorage, Alaska 99511
POSITION STATEMENT: Testified in support of HB 474.

JANEL FEIERABEND, Director
Friends of Potter Marsh and
the Anchorage Coastal Wildlife Refuge
3170 Marathon Circle
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in support of HB 474.

JEAN ELLIS, Staff
to Representative Peggy Wilson
Alaska State Legislature
Capitol Building, Room 409
Juneau, Alaska 99801-1182
POSITION STATEMENT: Presented CSHJR 46(FSH) on behalf of the House Special Committee on Fisheries, sponsor, which Representative Wilson co-chairs.

GERON BRUCE, Deputy Director
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
P.O. Box 25526
Juneau, Alaska 99802-5526
POSITION STATEMENT: Answered questions pertaining to HJR 46.

JULIE DECKER, Executive Director
Southeast Alaska Regional Dive Fisheries Association
P.O. Box 2138
Wrangell, Alaska 99929
POSITION STATEMENT: Spoke in support of HJR 46 and HB 508.

CHERYL SUTTON
Southeast Alaska Regional Dive Fisheries Association
P.O. Box 39214
Ninilchik, Alaska 99639
POSITION STATEMENT: Spoke in support of HB 508.

ACTION NARRATIVE

TAPE 02-19, SIDE A
Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Masek, Scalzi, Fate, Green, Stevens, and Kapsner were present at the call to order. Representatives Chenault, McGuire, and Kerttula arrived as the meeting was in progress.

SB 343-BEST AVAILABLE TECHNOLOGY:DISCHARGE PLAN

CO-CHAIR MASEK announced the first order of business, CS FOR SENATE BILL NO. 343(RES), "An Act clarifying the term 'best technology' required for use in oil discharge prevention and contingency plans; affirming existing Department of Environmental Conservation regulations defining 'best technology' and oil discharge prevention and contingency plans approved using those regulations; and providing for an effective date."

Number 0154

SENATOR JOHN TORGERSON, Alaska State Legislature, presented CSSB 343(RES) on behalf of the Senate Resources Standing Committee, sponsor, which he chairs. He explained that the bill responds to the Alaska Supreme Court's February 1, 2002, ruling in Lakosh v. Alaska Dept. of Environmental Conservation by clarifying the meaning of "best available technology requirement for oil spill contingency rulemaking plans." First, it clarifies that the 1997 negotiated regulations, which establish a three-tiered approach for making best available technology (BAT) determinations, is a correct interpretation of the statute; second, it confirms the continued validity and effect of the 1997 regulations, which have been utilized in approving over 100 contingency plans since April 1997; and third, it affirms the continued effect of contingency-plan approvals issued under the 1997 regulations, and ensures that plan holders can continue to operate under those approvals.

SENATOR TORGERSON said this bill doesn't eliminate or weaken the BAT requirement; however, some have incorrectly argued that the bill rolls back protections enacted in 1990 after the Exxon Valdez oil spill. The BAT requirement has been part of the contingency statute since 1980, long before the Exxon Valdez oil spill. In 1990, the legislature amended the existing law to add rigorous oil spill response planning standards; however, the legislature did not address the relationship between the planning standards and the best available technology. This bill would restore the 1997 consensus criteria developed in negotiated rulemaking, which have been used for making BAT determinations for the last five years.

Number 0362

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), came forward to testify, noting that DEC is responsible for reviewing and approving all discharge prevention and contingency plans for over 120 facilities in Alaska. Those facilities include: oil terminals, pipelines, exploration and production facilities, tank vessels, oil barges, nontank vessels, and the railroad. In addition, DEC has been working with the Department of Law since the supreme court ruling to devise a remedy that meets the supreme court ruling on best available technology that is described in the contingency plans.

MR. DIETRICK said the issue is the legislative intent for meeting the "best available technology" statutory requirement. The court noted that when an agency has adopted regulations under a delegation of authority from the legislature - using the process prescribed by the Administrative Procedure Act - it is presumed the regulations are valid; thus the review is limited to whether the regulations are consistent with and reasonably necessary to carry out the purposes of statutory provisions, and whether the regulations are reasonable and not arbitrary. Following the Exxon Valdez oil spill, the legislature established what are arguably the toughest response planning standards in the world, he noted.

MR. DIETRICK further explained that when reviewing the contingency plan, DEC had interpreted the statute to mean that meeting Alaska's tough response planning standards also satisfies the BAT requirement, if the equipment is proven, reliable, and appropriate for its intended use and the magnitude of the spill it is addressing. This interpretation was

developed through an extensive workgroup process when the regulations were developed in 1997. The court recognized that this approach has considerable merit and that the agency judgment in this regard deserves considerable deference, but only to the extent that the legislature actually granted DEC authority to define "best available technology" in terms of reliance on the response-planning standards.

Number 0500

MR. DIETRICK told members the court has raised a rather narrow question regarding whether [DEC's] regulatory interpretation meets the intent and lies within the limits of authority delegated by the legislature. Best available technology wasn't defined by the legislature, so the court has interpreted the statutory language to mean that the legislature intended to impose two separate requirements. This precludes DEC from relying on the response-planning standards or performance standards put in regulation to establish the BAT requirement.

Number 0555

MR. DIETRICK noted that the court's ruling has invited the legislature to clarify the intent. The department believes any legislation should meet the following goals. First, because of the timing of the release of the court decision and the time remaining during this [legislative] session, it is important that any legislation be limited to what is necessary to address the court ruling; there isn't time to entertain other statutory changes and to do credible research in coordination with the regulated community and other stakeholders. Second, legislation should be passed this session to ensure continued operation of Alaska's facilities and eliminate the "cloud of uncertainty" from the court ruling regarding the validity of existing plan approvals made since 1997. Third, the legislation must validate the existing regulations and preserve the approach for making BAT determinations as envisioned by the 1997 task force. Fourth, the legislation must sustain the same level of rigor for plan reviews as now practiced, and not diminish the existing response capability. Fifth, the legislation must continue to support the ability of the department to evaluate new technologies and make BAT findings.

Number 0707

MR. DIETRICK said SB 343 meets these five goals and provides a straightforward language clarifying the legislative intent. In

addition, it validates the BAT approach taken by the department in a 1997 negotiated-rulemaking process and affirms the continued effect of contingency plans approved by the department since 1997. He suggested the language is responsive to the supreme court ruling, and doesn't reduce the rigor of existing contingency-plan reviews or diminish the response readiness and capability of industry. The bill also provides for the department's periodic examination of new technologies to keep Alaska on the forefront of environmental protection worldwide. He stated that the department supports SB 343.

Number 0762

REPRESENTATIVE STEVENS asked Mr. Dietrick when and where the last [oil] spill DEC was involved in occurred, and what the best available technology was that the DEC used in the cleanup.

MR. DIETRICK indicated [oil] spills occur almost daily in different amounts across the state. He talked about a large spill in Prince William Sound where a new boom was used, and said [DEC] believes it would be a good candidate for reviewing and making a determination of its best available technology. He offered an example of a recent event: a fish processor hit a rock [in Prince William Sound], resulting in the largest refined-products spill there. The recovery rate was over 50 percent, using aforementioned technology and the Alyeska SERVS [Ship Escort Response Vessels System] response capability.

Number 0879

DOUGLAS MERTZ, Prince William Sound Regional Citizens' Advisory Council (RCAC), came forward to testify, noting that his organization involves 18 communities and other entities within the area affected by the Exxon Valdez oil spill. He said the RCAC recognizes the need for [SB 343] and for clarification after the supreme court decision. He mentioned concerns about the enormous amount of discretion that [CSSB 343(RES)] would give DEC on how and whether to implement the BAT requirement. He referred to the statute and said it uses the word "may" rather than "shall" [several times], and where it can say "shall", it says "may". He said as a result, DEC is vested with an enormous breadth of discretion, from making the BAT requirement highly burdensome, to making it a "meaningless walk-through," or anything in between.

MR. MERTZ expressed concern that the department should implement the regulations put together by a bipartisan group in 1997. He

said there is general agreement that these are good regulations and really do the job. He suggested that if implemented, they would be to the entire state's advantage. One part of those regulations - considered important by everyone who put together that package of regulations, including the agency, the industry, environmentalists, and the RCAC - was the requirement that every five years a conference on BAT [would be held]; experts from industry, government, and all sources could come together and attempt to reach a true consensus on what is the best available technology. He pointed out that although the conference was supposed to happen every five years, the deadline was missed last year; now, there is a request in to fund, from the "470 fund," [a conference] in the upcoming fiscal year.

MR. MERTZ told members it is important that discretion in the department be narrowed by the legislature's telling the DEC [to comply] because regulations require it. He said "we've" given [the legislature] language that would accomplish that, fairly mild language in the declarations section at the beginning of the bill that would simply say these regulations were put together and that they are the law, just as the statute is.

MR. MERTZ referred to a handout that would later be addressed by proposed conceptual Amendment 1. Titled "Suggested Changes to Senate Bill 343," it read:

> The Prince William Sound Regional Citizens' Advisory Council suggests that such language could be inserted into Senate Bill 343 at 1(a)(5) by changing it to read as follows (new language in **boldface**):
>
> (5) under AS 46.04.030(j) and 46.04.070, the Department of Environmental Conservation adopted regulations at 18 AAC 75.445(k), effective April 4, 1997, that established a reasonable three-tiered process, **including periodic Best Available Technology Conferences**, for defining what was meant by best available technology;

MR. MERTZ explained that adding the foregoing language would make it enormously difficult for the agency to "write off" that part of the existing regulations and essentially decline to take the best opportunity for discovering and defining what the best available technology is.

Number 1137

REPRESENTATIVE GREEN referred to page 3 [line 30] and asked Mr. Mertz whether he felt that [provision] was stringent enough. For example, a company might find that the technology it is already using is the best available technology. He surmised that [a company] would find the best available technology.

MR. MERTZ suggested [the provision] meant "they" shall come up with a declaration as to what is the best available technology. It may be standards-based or something else, but doesn't require going through the processes they committed themselves to in the 1997 regulations. The [regulations], by contrast, require that a process is gone through in order to examine what [technology is available] and to make a fact-specific finding. He said that is what [his organization] would like to see tightened up here, either through making those "mays" mandatory or through the milder suggested method - referring to the regulations and the declarations so those regulations clearly are required.

Number 1268

MR. MERTZ, in response to Representative Green's request for an example, suggested that the worst-case scenario would be if the agency decided it didn't have the manpower or funding to do an actual examination regarding what technology exists. New things are happening all the time. For example, if the five-year examination through a conference weren't held, and the only requirement would be for the entities to present their contingency plans to be examined - to find whether they could clean up a specific number of gallons in a certain number of hours - then the specific technology wouldn't be examined and compared to evolving technology in the rest of the world. Instead of being a standard that improves as technology improves, it would be fixed forever until "they" decide to reexamine what exists in the world.

Number 1368

REPRESENTATIVE GREEN posed a scenario in which "they" had looked at a "C Plan" [contingency plan] and agreed that the equipment available is the best available technology; however, some new technology had been developed in the meantime that wasn't covered but [that the provision] said will be covered. He asked if that meant DEC would be derelict in its duties.

MR. MERTZ said he didn't think so.

REPRESENTATIVE GREEN asked Mr. Mertz if he was concerned that "they" won't stay abreast of current technology. He mentioned that there might be extenuating circumstances. He said the bill says they are going to stay abreast of technology to the best of their ability and may not [have the technology most recently available]. He expressed concern that if the bill says "will", then they won't ever be able to stay [current] on [the most recent technology available].

MR. MERTZ responded that the beauty of referring to the 1997 regulations is that they provide a methodology for reassessing periodically - every five years. This would prohibit a judge from saying that recently developed new technology must be incorporated into the C Plan approvals.

REPRESENTATIVE GREEN indicated he'd interpreted the ruling of the supreme court to mean that some definition was needed. He mentioned that he thought the supreme court would be satisfied as long as [BAT] was addressed. He remarked, "I think if you nail that too tight, you're almost determined to fail."

MR. MERTZ replied, "That's why we are not advocating nailing it too tight." He mentioned that the requirement is not tied to specific technology. He indicated that requiring so many "shalls" would make it possible for somebody to claim that because there is certain new technology currently available, regardless of when it was developed, the new technology must be incorporated. He offered his belief that by [having the bill refer to] the regulations and the five-year conference, a reasonable judge would [maintain that] the requirement for a grand reexamination is every five years, not every month.

Number 1565

REPRESENTATIVE GREEN asked Mr. Mertz if he was concerned that the "may" would allow it not to be done.

MR. MERTZ said [that would be so] if it weren't coupled with a reference to the regulations - an affirmation that the process in those regulations is what is intended.

REPRESENTATIVE GREEN offered his understanding that regulations are an advent after a statute has been determined.

CO-CHAIR MASEK remarked that she thought Representative Green had a point, and that it was better to fix the problem by statute rather than regulation.

Number 1612

MR. MERTZ, in response to Representative Kerttula, explained that the [regulations] were created in 1997; the first five-year conference should have occurred during the last fiscal year.

REPRESENTATIVE KERTTULA asked where the process was in terms of holding such a conference.

MR. MERTZ answered that DEC and the industry support [the conference], and there is a component in the governor's CIP [capital improvement project] budget for seed money for it, for the coming fiscal year. It is anticipated that the industry would also provide the experts some money, and there may be funding from other sources. He said the plan is underway.

Number 1664

REPRESENTATIVE KERTTULA asked when the response standard was last looked at in statute; if the Exxon Valdez [oil spill] was the last time there was a response standard; and if the RCAC felt comfortable that by overturning the case and saying, "If you meet the response standard, you are best available technology," that meets what needs to be done in Alaska.

MR. MERTZ said no. He explained that the RCAC has been very much involved in examining C Plans and - at least in Prince William Sound - actual capabilities for cleanup. There has been a good deal of controversy and concern about meeting those performance standards, whether those [standards] had become outdated since the Exxon Valdez [oil] spill, and the legislation immediately following. He said with those performance standards in place, "we" are at a juncture: the technology is rapidly outstripping what was put in place back then.

REPRESENTATIVE KERTTULA asked Mr. Mertz if there was technology that the state wasn't using that he thought would be better.

MR. MERTZ said, "No."

Number 1749

REPRESENTATIVE KERTTULA asked Mr. Mertz if he was satisfied to accept mentioning of the conference in the bill.

MR. MERTZ replied that it would be "folly" for the legislature itself to set new performance standards every year or to declare what the best available technology is; it should be left to the agency that has expertise to decide some of these [issues]. If [the agency] is given complete discretion and not required to update periodically, however, then there is a risk that updating and reexamining won't happen as time goes on. He remarked that [requiring this conference] is a sensible middle ground.

CO-CHAIR SCALZI called the RCAC the "watchdog group" for the industry. He asked Mr. Mertz if [the RCAC] has watched and participated in compliance standards that the industry is under, and the overview that DEC has.

MR. MERTZ answered in the affirmative.

CO-CHAIR SCALZI asked Mr. Mertz whether he thought there was enough [in place] without [placing] further mandatory requirements on legislative intent.

MR. MERTZ said the watchdog function the Prince William Sound RCAC and its sister organization in Cook Inlet perform is very valuable. However, the [organizations] aren't regulatory agencies and have no authority. He said only DEC and the federal authorities can do that.

Number 1865

CO-CHAIR SCALZI said Mr. Mertz was correct, but that the RCAC is better than the legislature at knowing where a problem in a situation may occur. He said [legislators] value agencies like [the RCAC] to help them know that the industry is keeping up with certain standards, and hope to rely on the input that [the RCAC] gives them every year. He said he didn't know if it was needed to have regulations [put in place] that might be unnecessary. He remarked that he thought relying on [the RCAC] was perhaps better than relying on some of the agencies.

Number 1937

MARILYN CROCKETT, Deputy Director, Alaska Oil and Gas Association (AOGA), came forward to testify, noting that AOGA has 19 member companies and represents all of the [oil and gas] producers in the state, including the three in-state refiners. She said because of the nature of their operations, all of AOGA's members are required to have "oil spill discharge" and

contingency plans in place. She said AOGA has a vested interest in resolution of this issue.

MS. CROCKETT noted that on February 1, 2002, the Alaska Supreme Court determined it was unable to find the legislative intent it was looking for, in deciding whether the regulations promulgated by DEC, following a stakeholder process, in fact met with the legislature's intent when the bill was passed. She said AOGA participated in that stakeholder process, along with other public-interest groups, the RCACs, local municipalities, and utilities. That process began in 1996, and the regulations were adopted by the department in 1997 after the group reached agreement on what those regulations should contain. Two sections of the regulations that the supreme court has thrown out are [18AAC 75.445](k)(1) and (2), dealing with the BAT's meeting the response-planning standard and the prevention standards. With regard to the conference, she said Mr. Mertz is correct: industry supports the conference and the regulations it worked on with the stakeholder group. She agreed the conference should be held this year; the regulations were adopted in 1997, and 2002 is the five-year timeframe for that.

Number 2038

MS. CROCKETT said this decision has placed everyone - AOGA's members, the public, and DEC - in a tenuous position. She explained that those two provisions are not on the books at this time, so the department is not able to approve any new contingency plans, nor able to process the renewals in a timely fashion. She said C Plans have to be renewed every three years. At the time of renewal, they must include the best available technology that has been proven reliable and appropriate for whatever that activity is.

MS. CROCKETT said the court decision was also very limited in its scope, and it acknowledged that the legislature had [given] considerable authority to the department in making these determinations - they simply could not make the link that the two sections of the regulations provided. She emphasized AOGA's strong support for the bill as it reads, and said AOGA is not pursuing any diminishment of the department's authority, nor would AOGA support any diminishment of the department's authority at this time.

MS. CROCKETT said the objective [in the passage of SB 343] is to remove the obstacle that [the industry] is faced with because of the supreme court decision, and [AOGA] is hoping to get a

validation of the regulations that were developed through the stakeholder process. It is a time-critical factor for industry: some projects are very close to getting final approvals for all of their permits but are unable to reach that final-approval stage because of the two provisions being removed. She again encouraged passage of the bill.

Number 2136

REPRESENTATIVE McGUIRE asked Ms. Crockett how she responds to the concern that there needs to be more reference to the [BAT] conference in the statutes, as opposed to in the regulations.

MS. CROCKETT answered that [AOGA] doesn't believe the bill needs to be amended to include that specific provision because it is in the regulations. She remarked that the entire set of regulations could be included in the bill, if necessary, to make everyone more comfortable. The department has the regulations in place governing how it makes these determinations. She said the [amendment] that had been suggested is to the findings section of the bill, and reiterated her concern about the timing and that the bill pass as soon as possible.

Number 2222

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, testified via teleconference. He noted that he would cover two topics: the reasoning and effect of the Alaska Supreme Court's recent decision concerning the BAT requirement for oil contingency plans, and how the legislation responds to the supreme court's decision in a focused and measured way.

MR. TOSTEVIN explained that SB 343 seeks to clarify the statutory requirement that oil spill contingency plans use best available technology in light of the Alaska Supreme Court's ruling in the Lakosh v. DEC case. The best available technology has been in place since 1980 for response equipment used in C Plans. Due to the addition of oil spill prevention to the C Plan statute in 1990, the BAT requirement became applicable to prevention equipment at that time. In addition, the 1990 amendments added the rigorous oil-spill-response planning standards to the C Plan statute, but the legislature didn't address the relationship between the planning standards and the BAT requirement.

MR. TOSTEVIN said the court found two parts of DEC's regulatory criteria for determining whether an oil discharge contingency plan uses BAT to be inconsistent with statute. These regulatory criteria were developed as part of a negotiated rulemaking in 1997, which included numerous stakeholders from throughout the state with a broad range of interests. In the Lakosh case, the Alaska Supreme Court was confronted with a general challenge to these regulations. He said the court's ruling was a narrow legal decision focusing on the language of the regulations, as opposed to a technological determination of whether any particular piece of equipment or technology used in the C Plan was indeed the best available.

MR. TOSTEVIN reported that in finding parts of the regulations inconsistent with the statute, the court relied upon the dictionary definition of the term "best" - concluding that in the absence of legislative history to the contrary, the BAT regulations could not rely on the stringent response planning standards for oil spill response technologies, nor rely on performance standards set forth in regulation for determining BAT for prevention technologies. The Alaska Supreme Court concluded that while reliance on performance standards for determining BAT had considerable rhetorical merit - and had been used in other federal and environmental statutes in lieu of a one-size-fits-all technological rule - the absence of specific legislative history on the interplay between these standards and the BAT requirement led the court to the conclusion that the criteria were invalid with regard to the statute.

Number 2409

MR. TOSTEVIN said given the Alaska Supreme Court's ruling overturning the 1997 workgroup's use of the response-planning standards and the prevention-performance standards, the BAT statutory requirement is ripe for legislative clarification. He said [SB 343] would restore the regulatory criteria adopted in the 1997 negotiated rulemaking, which had been used in approving more than 100 C Plans since April 1997. He suggested this legislation doesn't weaken the BAT requirement, but is an effort to restore the consensus criteria used for making BAT determinations for the last five years - criteria that have resulted in major improvements in oil spill prevention and response.

MR. TOSTEVIN explained that SB 343 clarifies that the 1997 negotiated rulemaking regulations that established a three-tiered approach for making BAT determinations are a permissible

interpretation of the statute. Also, [SB 343] affirms the continued validity and effect of the 1997 regulations; if SB 343 is enacted, DEC would not be required to revise its BAT regulations. Furthermore, [SB 343] affirms the continued effect of the contingency plan approval issued under the 1997 regulation and ensures that plan holders could continue to operate under those approvals.

Number 2461

REPRESENTATIVE KERTTULA asked Mr. Tostevin if the department only looks at the performance standard when it makes a determination on best available technology, and if work had been done to try to make a determination of what's available and what could be reasonably expected from the companies to have available.

MR. TOSTEVIN answered that for response equipment, the regulation requires that if it is technology that meets the response-planning standard, it also must be proven, reliable, and appropriate for its intended use. For example, if used for nearshore skimming, the equipment would have to be reliable and appropriate for that purpose, and would also have to be reliable and appropriate for the magnitude and type of the spill it is addressing. He said it isn't simply meeting the response-planning standards; rather, there are additional criteria involved in making that determination.

REPRESENTATIVE KERTTULA asked whether that was in the statute or in regulation.

MR. TOSTEVIN said it was in the 1997 regulations.

REPRESENTATIVE KERTTULA asked if there are any other regulations [with similar requirements] - not just to meet a performance standard.

MR. TOSTEVIN explained that the regulations call for the review and the five-year conference to review breakthrough technologies; if DEC finds there is a new technology [available], it makes a finding with respect to that technology. He noted that it would be picked up in the next renewal of the contingency plan process.

Number 2585

SUE ASPELUND, Executive Director, Cordova District Fishermen United (CDFU), testified via teleconference. Ms. Aspelund told the committee that CDFU fought long and hard following the Exxon Valdez spill to make sure the oil companies and the state have worked to ensure that oil spill contingency plans are the best possible to prevent a repeat of 1989. The BAT is one of the most crucial elements within prevention and response contingency planning. Furthermore, CDFU supports the proposed amendment language submitted by the Prince William Sound RCAC [text provided previously]. She said CDFU strongly encourages the inclusion of periodic BAT conferences consistent with the 1997 regulations, as negotiated by stakeholders that included CDFU; furthermore, it is CDFU's opinion that compliance with the performance standard and adherence to best available technology are two very significant things.

Number 2637

ROSS COEN, Alaska Forum for Environmental Responsibility, testified via teleconference, noting that his organization is a nonprofit group dedicated to holding industry and government accountable to environmental laws and regulations. He mentioned that he had testified in previous committees in opposition to [SB 343]. He said he is opposed to [SB 343's] intent and believes DEC should promulgate regulations that comply with, not circumvent, the supreme court's decision. He said he also believes the legislature should withhold action while [DEC] holds a public-comment period on such regulation changes; he offered his understanding that this bill is on the way to passing. He stated that he fully endorses an [DEC]-sponsored conference on BAT, which was stipulated in the 1997 regulations but never has been held. He said the conference is supported by the RCAC and AOGA. He strongly encouraged that the conference be [included in this] legislation.

REPRESENTATIVE KERTTULA asked if the theory behind having the conference is so everyone can find out what the [BAT] is - some commitment on the record, not just in regulations that haven't been followed.

MR. COEN indicated he would like to see this bill go down. However, given the present circumstances, he would like to see a conference [added to the bill].

Number 2738

GARY CARLSON, Senior Vice President, Forest Oil Corporation ("Forest Oil"), testified via teleconference, noting that Forest Oil holds leases on approximately 200,000 acres, primarily in the Cook Inlet, and a license for an additional 200,000 acres in the Copper River Basin. He said Forest Oil is a major investor in resource development in Alaska. He indicated he'd like timely passage of SB 343. Mr. Carlson explained that Forest Oil is one of the companies caught in the dilemma caused by the supreme court ruling. Forest Oil supports the position of AOGA, [DEC's] prior testimony, and the [assistant] attorney general's analysis of the bill. The State of Alaska has one of the most comprehensive oil spill prevention and requirements in the world, he told members. Forest Oil's position is that SB 343 is necessary to clarify the legislative intent as well as DEC practices and regulations currently in place.

MR. CARLSON said in Forest Oil's case, the Redoubt Shoals development phase includes facility and pipeline installation; more than 300 jobs this summer are in jeopardy without quick resolution of this problem. Forest Oil has "built" BAT and all aspects of Redoubt development, including state-of-the-art materials of construction, facilities siting, and innovative pipeline design. After more than three years in the permitting process, Forest Oil anticipates having all required state and federal permits in place by early April. The current BAT requirements have changed the permitting rules in the middle of the process, however. Alaska offers a limited construction season; therefore, getting SB 343 on the books within the next few weeks is critical to the commercial success of this project. The project is not only critical to Alaska operations, but to the industry as a whole, he told members. He encouraged the committee, the legislature, and the administration to act as quickly as possible to enact SB 343 as it is now written.

Number 2864

TOM LAKOSH testified via teleconference, noting that he was the plaintiff in Lakosh v. DEC. He explained that he'd pursued litigation because in 1995 when the Prince William Sound contingency plans were approved, several communities, affected individuals, and user groups had appealed the decision of that contingency plan; one basis was that the department had failed to adequately consider best available technology as it was understood then. Subsequently, during the litigation process - the administrative appeal process - DEC decided to change the regulations because it couldn't withstand the strict scrutiny of the law at that time, he told members. Now, DEC has again

failed to apply the law as it was written in 1980, and has failed to implement any form, manner, or shape of the regulations. He has been compelled to pursue this at every turn, he said. He mentioned the 1997 regulation and the demand that the agency substitute the technology conference and subsequent analysis of breakthrough technology.

TAPE 02-19, SIDE B

MR. LAKOSH noted that several committee members live in districts where there are severe problems with dealing with hazardous substance spills - in particular, oil spills. He recommended asking Forest [Oil Corporation] if it can respond in Cook Inlet's ice from its new development; that may stop its ability to be approved under the "reliable and appropriate" standard, he suggested, because currently there is no reliable and appropriate method of removing oil from ice-bearing waters; however, there are some scant references to it in various contingency plans. Under none of them does DEC have the delusion that any of these permittees can respond in broken rivers; in fact, Susan Harvey (ph) lost her job over this same type of political fix to a technological problem, he informed the committee.

MR. LAKOSH, with regard to floating ice, said there is no ability to meet the response-planning standard under those conditions. He referred to Prince William Sound and said the huge barges and millions of dollars' worth of equipment are unable to respond in seas higher than six feet - those systems are designed poorly and require people to work on deck, and there is a limit to that. However, some design features in some of their equipment show a great deal of promise for expanding the ability to work in the more severe Alaskan conditions.

Number 2987

MR. LAKOSH told members the BAT [provision] was supposed to improve the ability to protect Alaska's resources, because it's not constitutionally permissible to put an ultrahazardous activity in the middle of everybody else's reasonable, concurrent uses without the ability to mitigate the damage that the hazardous activity could create. Comparing an oil spill to a fish trap, he said the constitution outlawed fish traps because they didn't provide for sustained yield and reasonable concurrent use. He said neither do oil spill contingency plans - mere "paper tigers" - that don't employ the best technology designed to operate in Alaskan conditions.

MR. LAKOSH urged the committee to go back through the testimony and take time to look at what the response problems are in each particular district. He requested that members include a requirement for DEC to examine improvements in the ability to address those problematic spill-response situations; that is what BAT is needed for. There is a big gap in the ability to recover spills under severe Alaskan conditions, he explained. The spill equipment presently [used] has been stagnant for some time and was never designed to operate under Alaskan conditions. He indicated that in recent years many northern European countries have [acquired technology more advanced] than [Alaska's current] system.

MR. LAKOSH said this inability of DEC to properly determine BAT goes back 21 years - 21 years of accumulated damage to Alaskan citizens from DEC's dereliction of duties, including problems of response to spills in ice, response to spills in high seas, and response to spills in tundra, as seen at the Livengood spill. He also mentioned the railroad-related spill in [the Willow] area and the need to have BAT response in the Susitna [River] regarding ice.

MR. LAKOSH said the legislature is essentially taking an administrative role in approving illegally issued permits; that administrative function may be subject to appeal. There are several other bailouts that the legislature will have to do if DEC isn't strictly directed to provide the analysis of spill technology that was mandated by law by two previous legislatures. He said, "This legislature, by a wave of a wand cannot reinterpret as a matter of law." Encouraging the committee to look at the changes he'd recommended, Mr. Lakosh said the [changes] are not that far from the RCAC's or DEC's position in using the technology conferences and an analysis for breakthrough technology. He suggested that it be done on a semiannual basis instead of every five years, however, to be more consistent with statute. He mentioned the response industry and some conversations with manufacturers.

Number 2676

REPRESENTATIVE KERTTULA asked Mr. Lakosh if he had brought the tractor tugs to the awareness of the industry.

MR. LAKOSH said that was not his original action, but he did strongly support them, and he strongly supports their being tethered throughout Prince William Sound.

REPRESENTATIVE KERTTULA asked Mr. Lakosh if he'd argued to see those [tractor tugs] used.

MR. LAKOSH said yes.

Number 2610

SUSAN SCHRADER, Alaska Conservation Voters (ACV), came forward to testify. She told the committee ACV believes SB 343 will weaken the state's oil spill response laws. In addition, this bill will be a disincentive to the oil industry to spend the money needed for resource research and development on best available technology. She reported that [ACV] also believes this bill gets DEC "off the hook" for requiring best available technology. She said the opinions of the attorneys that she works with differ from the assistant attorney general's opinion. She remarked that the supreme court case is about differing opinions. She said ACV is opposed to [SB 343], which represents a rollback in the oil spill protection laws that the legislature passed a number of years ago. She concluded by saying she hoped the committee would consider all viewpoints on this bill.

Number 2546

REPRESENTATIVE KERTTULA asked Ms. Schrader how she would have DEC determine what is best.

MS. SCHRADER indicated she wasn't the person to answer that question because her knowledge of the details of oil spill planning and prevention was minimal.

REPRESENTATIVE KERTTULA suggested that a standard of "the best" is inherently unworkable because it would be [difficult to determine] what "the best" is. She asked if the problem was a performance standard. She indicated that even with the best technology available in the world, if there is not a good performance standard, then it [might] not meet the necessary requirements.

MS. SCHRADER referred to the supreme court decision. She said there are two lines of approach to determining the quality of the C Plan: meeting performance standards and planning standards, and also addressing best available technology. She indicated ACV would like to see the "winnowing" process - the alternative analysis to determining best available technology - be kept in regulations, and that DEC be required to go through

that process. She indicated if an applicant comes in with a draft plan and it meets the planning standard, then that would allow DEC to determine that as the best available technology. She said DEC is not required to go though the winnowing process, however, which ACV feels would result in a potentially stronger more protective plan.

Number 2438

REPRESENTATIVE KERTTULA remarked that DEC is testifying that it is not changing its regulations; however, it is meeting regulations that are currently on the books. She asked Ms. Schrader if this bill allows [DEC] to get out of something that it currently does in regulations.

MS. SCHRADER said ACV's belief is that DEC doesn't need to address the Lakosh decision through statute; it already has started its regulatory process to address the court's decision. She indicated ACV would like to see that process continue. She said ACV does support the concept of a conference, whether every five years or every year. A conference between DEC and industry shouldn't be the end to determining best available technology, however. There has to be opportunity for public comment on whatever comes out of those conferences. She said ACV thinks DEC can address all of the court's concerns through the regulatory process.

Number 2381

REPRESENTATIVE McGUIRE asked if ACV supported the regulations that came out of the stakeholder working group; whether the stakeholder panel included [an environmental] representative and who that person was; and whether Ms. Schrader has a problem with the concept behind the regulations and their being implemented in statute.

MS. SCHRADER answered that she'd tried to determine who the environmentalists were on the stakeholder group, but nobody she has worked with knows or has come forward. She said ACV was just formed in 1997, and didn't take a role in [the stakeholder group]. She said, however, that ACV does agree with the supreme court's interpretation that DEC did not promulgate regulations coming out of that 1997 stakeholder group that comport with the statute.

MR. DIETRICK recalled that the 1997 stakeholder group included RCACs and industry groups; the lead contact for the

environmental community was Patty Saunders (ph), who represented a number of environmental organizations, and another person who was her alternate. There were other participants, but all stakeholders were at the table, he remarked.

REPRESENTATIVE McGUIRE said she wanted it stated on the record that there was representation by the environmental community.

REPRESENTATIVE KERTTULA asked Mr. Dietrick if there would be any impact by requiring a five-year conference and mentioning it in the intent statement. She offered her understanding that this is something DEC will do. Furthermore, it is not much of a requirement, and the RCAC has asked that it be done.

Number 2205

MR. DIETRICK said he didn't think there would be a problem with that. He remarked that the problem that has been expressed is timing with regard to passage of the bill. He said the proposal by the Prince William Sound RCAC included in the packet hadn't been reviewed internally, but that his first review would indicate it isn't a problem.

MR. DIETRICK pointed out that DEC believes in holding the BAT conference, had agreed to that process in 1997, and thinks it is an important and efficient way for the state to examine new technologies; without the conference, DEC does it on an individual plan review basis. He added that he would argue that there are benefits to the conference, the industry, and all parties. Doing a comprehensive review on a periodic basis allows DEC to identify technologies that individual companies may not have to repeat, he explained. There are 120 facilities, so there's an efficiency there in making the BAT review and moving in that direction.

Number 2112

CO-CHAIR MASEK referred to a letter submitted by DEC. She said there are five points that refer to [SB 343]. She remarked that it seems to be in order. She said she didn't think it had caused the committee that much concern, and that it is testimony from DEC's deputy commissioner. She said she felt this bill would answer some of the issues from the [supreme] court's ruling in wanting the legislative body to clarify its intent. She remarked that she believes this legislation does that.

REPRESENTATIVE KERTTULA said after the Exxon Valdez [spill], she thinks the BAT standard was a compromise from requiring the industry to meet the best technology. She remarked that there was an intense reaction [to the oil spill]. She said it was a compromise to come down from something that could have been required of the industry. Best available technology ends up being a "circular" standard; if there is not a good performance standard, then it's not going to matter what kind of technology there is because it's going to be meaningless, she suggested. She referred to Mr. Dietrick's testimony and said the converse is also true: when there is a conference, scientific information is shared; when it's known what's available, the performance standard can be pushed.

REPRESENTATIVE KERTTULA referred to the testimony about oil and broken ice, which she said is a difficult issue. She said DEC and the industry are in an eternal balance of how to meet a performance standard and how to do what's reasonable. She said the supreme court's decision was correct on the language - it looked behind the intent and tried to do the best it could. She remarked that the committee is stuck in a difficult position because it doesn't want to stop everything from moving forward. She mentioned the Exxon Valdez oil spill, and said she had some real concerns about this legislation. "It's not really in me to just overrule a court case and say, 'Go on your way,'" she added.

REPRESENTATIVE KERTTULA explained that her biggest concern is that DEC has very few resources; it has excellent people who do everything that they can, but there is concern about their future. She mentioned testimony and the compromise that seems to be coming forward of at least putting the five-year conference in the intent [language]. She therefore told members that what she would like to see coming out of the committee today is explicitly mentioning the conference in the intent language, which will help both sides. Mr. Dietrick is right, she said: it is going to help the industry because DEC will not have to review every single plan.

Number 1878

REPRESENTATIVE GREEN remarked that the addition is in the bill to guide litigation and to help the supreme court understand what the legislature meant when saying "they" have the authority to determine what the best available technology is. He indicated there is no way for the statutes to stay current on best available technology, and that it would be difficult for

the legislature to stay informed because technology is constantly changing.

REPRESENTATIVE GREEN indicated perhaps a superlative would essentially force noncompliance. Therefore, "may" is the only logical way to go for an agency charged with ensuring that the best technology is available. He also indicated using "may" would allow a watchdog organization to monitor the administration for compliance, whereas "must" would result in micromanaging of the administration.

REPRESENTATIVE GREEN indicated that it is important to resolve the issue and get permits processed. He suggested that putting things in intent language helps the supreme court with another piece of litigation. He mentioned an incident in 1989; he indicated the intent was not in statute. He told the committee that [SB 343] takes care of what the supreme court found was missing. He expressed his desire to move the bill out.

CO-CHAIR SCALZI indicated agreement with Representative Green on the practical application of the service project. He said most local fishing vessels have participated throughout the state since the Exxon [Valdez] oil spill. Each year, the vessels go through the practice of picking up material that is supposed to symbolize an oil spill, and every year there is some new change. He said often [the process] goes backwards: methods used a couple of years ago may be more efficient than new technology or machinery. He indicated the equipment's effectiveness won't be known until it is used on an actual oil spill.

CO-CHAIR SCALZI offered that [this issue] is subjective, and that the latitude of having "may" in the language is needed. He said he thought referencing the [conference] would be fine if it's part of the intent language, and is what the legislature wants to do. He added that the bill is written fine the way it is, however, and that he supports moving it out.

CO-CHAIR MASEK indicated her belief that nothing is being taken away; the legislature must validate the existing regulations and preserve the approach to use for making that determination as envisioned by the 1997 task force. She said the same level of rigor for plans reviewed must be sustained, as now practiced, and not diminish existing response capability. She said the legislation must continue supporting the ability of the department to evaluate new technologies and make BAT findings.

Number 1469

REPRESENTATIVE KERTTULA responded that she thought the language Co-Chair Masek had read was from DEC; however, it is not in the bill itself. She said mentioning the conference is very little to ask.

REPRESENTATIVE KERTTULA began specific discussion of [conceptual Amendment 1]. She referred to line 21, but suggested [an amendment] would be more appropriate after line 17: to add language that the regulations require best available technology every five years. She explained that the conference will identify best available technology in an orderly way. She indicated [the amendment] is in line with the RCAC and [current] regulations. She said she didn't think it would cause any problems, but seems to engender some goodwill on the part of the RCAC and other groups.

Number 1420

REPRESENTATIVE KERTTULA moved to adopt the foregoing as [conceptual Amendment 1], to add the language wherever the drafter believes it is appropriate.

Number 1399

CO-CHAIR MASEK objected.

REPRESENTATIVE KERTTULA, in response to Representative Green, clarified that [conceptual Amendment 1] would say that regulations require a BAT conference every five years, which will identify best available technology in an orderly way. She pointed out that there are almost two pages of intent [language before the committee]. She said she would be in [favor] of taking it all out, but that if there are two pages, it seems little to ask that one sentence about a conference be added.

CO-CHAIR MASEK responded that she thought Representative Kerttula had a good motive; she reiterated her own belief, however, that the issue is "answered" in regulations and doesn't need to be included in the bill.

CO-CHAIR MASEK called an at-ease from 2:29 p.m. to 2:30 p.m.

Number 1198

A roll call vote was taken. Representative Kerttula voted for conceptual Amendment 1. Representatives Fate, Chenault, Green,

McGuire, Stevens, Masek, and Scalzi voted against it. Therefore, conceptual Amendment 1 failed by a vote of 1-7.

Number 1174

REPRESENTATIVE GREEN moved to report CSSB 343(RES) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSB 343(RES) was moved out of the House Resources Standing Committee.

HB 474-ANCHORAGE COASTAL WILDLIFE REFUGE

Number 1120

CO-CHAIR MASEK announced that the next order of business before the committee would be HOUSE BILL NO. 474, "An Act relating to public rights-of-way and easements for surface transportation affecting the Anchorage Coastal Wildlife Refuge." [Before the committee was CSHB 474(CRA).]

CO-CHAIR MASEK called an at-ease from 2:32 p.m. to 2:35 p.m.

Number 1095

LAURA ACHEE, Staff to Representative Joe Green, Alaska State Legislature, presented HB 474 at the request of Representative Green, sponsor. She told the committee that the Anchorage Coastal Wildlife Refuge (ACWR) was created in 1988 by the state legislature. She referred to a map that illustrated ACWR's [location] along part of the coastline, adjacent to the Municipality of Anchorage. She said Cook Inlet has a unique coastline because Fire Island protects a section of land from the movement of ice in Cook Inlet. She also mentioned the uniqueness of the area as a habitat for shorebirds, coyotes, and other small animals. She said HB 474 recognizes the fragility and the value of this section of land by requiring that legislative approval be granted before the state acquires or creates any new surface transportation rights-of-way through the refuge.

REPRESENTATIVE GREEN mentioned some [proposed] alternate routes illustrated on the map. He said the route of most contention is the "orange" route [located along] the bluff - the most critical of the habitats. There is also a "gold" route that goes inland to connect with other existing sections of trails, which would be far less expensive than trying to build a route along the [bluff]. In addition, the [gold route] would connect existing

trails, which is one of the concepts - to [allow] neighborhoods, schools, and so forth to utilize the [route]. Most important, the route would stay out of those critical habitat areas and allow a view for everyone, he explained. He mentioned that he was told the gold route offers as much of a view of [Cook] Inlet as the orange route does; furthermore, because of the location's being elevated, more of the inlet can be seen.

CO-CHAIR MASEK asked which route is the original trail.

REPRESENTATIVE GREEN said there is no original trail; the purpose of [HB 474] is to prevent [a trail in that area].

CO-CHAIR MASEK mentioned the Tony Knowles Coastal Trail.

REPRESENTATIVE GREEN indicated the Tony Knowles Coastal Trail was at the beginning of the map. He mentioned other existing trails that go through the park. He said there is an area scoured by ice every year that the trail runs along. He also mentioned an area shielded by Fire Island, which has allowed a saltwater marsh habitat to develop; an area near the Old Seward Highway and new Seward Highway; and a previously existing trail. He indicated that a section near the top section of the map is critical [for preservation]. He explained that the concern is that if there is going to be a trail there, then it will be the least damaging.

CO-CHAIR MASEK asked Representative Green which [proposed] trail he was rejecting.

REPRESENTATIVE GREEN said he thought the gold route would be better because it avoids some critical areas and home sites on the bluff. He mentioned that putting a trail on the bluff would [require] condemnation. It would [require] habitat destruction to put the trail at the bottom of the bluff, he added.

Number 0698

JESSE VANDERZANDEN, Executive Director, Alaska Outdoor Council (AOC), testified via teleconference. He told the committee that AOC recently held its annual meeting, with about 24 member clubs represented by delegates who voted unanimously to support the passage of HB 474. He mentioned that AOC had worked closely with Dave Adams from SARTA [South Anchorage Regional Trail Advocates] on the issue and on the consideration of different routes. He mentioned writing a letter in support of the gold route at one time.

MR. VANDERZANDEN conveyed a primary concern: that future access regarding trails and roads, if they are to be constructed, doesn't limit or impact existing uses such as currently found at the refuge regarding waterfowl hunting and at the Rabbit Creek rifle range. In regard to legislative oversight on that particular trail, he suggested the precedent is fairly clear because [the legislature] initially created the refuge and some of the parameters surrounding the refuge. He indicated the legislature should participate in changes made to the refuge that may impact habitat, existing uses, and so forth. He said AOC strongly supports passage of HB 474.

Number 0481

JEFF LOWENFELS testified via teleconference, noting that he lives on the bluff over the proposed coastal trail. He offered his belief that there are some compelling reasons why there shouldn't be a coastal trail in the refuge. He said he had been involved in a number of permitting processes for 27 years; however, this one seemed the most unusual, with constant shifting of environmental proposals and, at nearly every public meeting, a new proposal that someone in the government has brought up. He said there are incredible levels of frustration at meetings - more than anything he has been involved in, including permitting for the [proposed] gas pipeline. There is a tremendous lack of trust of officials because of the political gamesmanship that has been played, he remarked. As examples, he cited the name of the trail, the extension of the trail, comments by the governor that the trail will be down in the refuge, and comments by the commissioner of the Division of Natural Resources (DNR).

MR. LOWENFELS expressed disbelief that public officials have gone about the process this way - exposing themselves and both sides to continuous, extensive, and expensive litigation. As someone who lives on the bluff, Mr. Lowenfels said he wants this settled once and for all; he is tired of going to meetings and having people come up with new proposals, the latest being the so-called "fuchsia" route, for which, despite extensive testimony, no map has been made available to the public. He said there is something so wrong with the process that the legislature was asked to "step back in," which is quite unusual. He urged the committee to pass HB 474.

Number 0150

REPRESENTATIVE McGUIRE remarked that many people who live in her and Representative Green's districts are profoundly affected by this issue. She mentioned that she had also experienced similar frustration pertaining to the trail route. She said she and Representative Green had been in touch with the Department of Transportation [& Public Transportation (DOT&PF)]. She told members that a woman in her district had received bad treatment from DOT&PF in her first effort at being involved in state government; as a result, [the commissioner] had since issued the woman a letter of apology. Representative McGuire said she believes it is important to have this second layer of representative process because the process has not worked. She described it as one of the most "dramatic abuses of government" she has ever seen.

TAPE 02-20, SIDE A
Number 0028

MIKE MITCHELL, President, Anchorage Trails and Greenways Coalition, testified via teleconference. He told the committee the coalition is a nonprofit corporation in operation since 1994, with members throughout the greater Anchorage [area]; its mission is to promote both trails and protected open spaces in the area. He spoke in opposition to HB 474, which he said would politicize, disrupt, and ultimately trump a public process that has been going on for several years - to study alternative routes and pick the optimal route to connect the existing coastal trail with the Seward Highway corridor. He mentioned that the coalition's members feel the process is working.

MR. MITCHELL said hundreds of people throughout Anchorage have put [time] into this process - attending various meetings, submitting testimony, and advocating for various routes. He said everyone agrees, and there have been frustrations on all sides; however, it would be inappropriate at this point to step in, at the end of this process, to give the legislature a "trump card" and to [relegate] the entire process to a simple "yea" or "nay" vote, without any real standards for that vote, and without the full understanding of all of the issues that have been discussed.

MR. MITCHELL directed attention to those members from outlying areas and said the precedent that could be established by [HB 474] is a dangerous one. He explained that this could take a particular project and potentially bypass the permitting process that has been established - a public process that provides opportunity for input at the grassroots level and that provides

certain decision points and certain criteria for evaluation of the various routes and for the [decision] regarding the optimal route.

Number 0268

MR. MITCHELL said [HB 474] would ultimately bypass [the process] and [leave the decision] to the legislature, basically disregarding the efforts of [participants] throughout Anchorage. If this were adopted in other areas, then it could potentially put the decision made at the local level at the will of the legislature, [which consists of members] from across the state who haven't had the opportunity to hear all of the information and to carefully consider the various factors that need to go into this decision. He said the Anchorage Trails and Greenways Coalition and its members urge the committee to oppose [CSHB 474(CRA)].

Number 0365

CHIP DENNERLEIN, Director, Division of Habitat and Restoration, Alaska Department of Fish and Game (ADF&G), testified before the committee, noting that he couldn't judge or take responsibility for anything that happened on the project before January 7, but would offer a few observations and take full responsibility for everything he'd done since then.

MR. DENNERLEIN told members that the concern over the refuge's value is legitimate. Mentioning that he'd lived in Anchorage for almost 30 years and [previously] owned a house on the bluff, Mr. Dennerlein indicated he and his family have several interests in this area, and that he has spent a lot of time involved in the coastal trail [issue]; in addition, he has been an executive manager for the city and a state park director.

MR. DENNERLEIN agreed that the refuge is unique; as an example, he cited the area of no ice scour. He said it is a very important habitat type all through Cook Inlet, such as the Kenai flats, which is why snow geese stop there. He also agreed the orange route is of the most concern because it is located in the "heart of the habitat." He mentioned an aerial map and that Representative Green had pointed out where the refuge widens.

Number 0630

MR. DENNERLEIN highlighted the organic soil depth and the nesting in the area; in addition, there is a lot going on in the refuge. He referred to a memo and said:

> Yes, we did come up with a new, alternative route. Yes, the controversy focuses on the orange route - in particular, the portion of the orange route that runs between the fill area and down toward Johns Park. There's a lot of wildlife reasons I could give you for that - I'd be happy to - but the bottom line is that I would not, as habitat director, issue required permits for that route. I ... am convinced that I couldn't do so under my statutory authority and the values at stake there, and I think we correctly focused on the problem.

MR. DENNERLEIN reiterated that he had hunted extensively in the [refuge] area, which isn't currently hunted and was closed by the Alaska Board of Game. The bluff in that area is about 20-30 feet high, and the birds go up against the back of the bluff; there were noise issues, and concerns about shot and shotguns. He remarked that it is also a very important section of true refuge.

MR. DENNERLEIN said the process has been tortuous. Many people had put a lot of work into the process, which he would like to see go forward. He offered his belief that Representative Green was correct regarding the area most at stake. A new route was designed because there still are many "checks and balances" to come in the process: coastal management reviews, Title 16 permits, and special areas permits. He mentioned putting together a list of reasonable, viable alternatives that the Federal Highway Administration (FHA) must approve, which will go to the public.

Number 0832

MR. DENNERLEIN explained that his desire is to give the public a chance to see the most coastal, in-character route that ADF&G feels it could permit. Indicating the route couldn't be built immediately, he mentioned building, design issues, and techniques [associated with building the route]. He talked about the causeway that would go through the refuge and how it would be built. He said [the fuchsia route] has no associated issues that would require a section of trail to be lifted off and [placed] on another [area] of the map. The new fuchsia route's problems could be solved through design and management.

If the FHA puts that [route on the map] and [the department has] requested to take the orange [route] off, then the [fuchsia route] will go before the public, which he said is the point. He told members:

> Put in front of people what is real - show them a spectrum, from the gold [route] to the most coastal in character that avoids critical wildlife problems that could be issued permits under the law, so they're looking at range of alternatives that's realistic. I think that's the right thing to do, and I think between the National Environmental Policy Act [NEPA] - the concurrence that agencies have to have - that the routes would be viable and would meet statutes, and all the way through to the courts if we mess up. I think there are many checks and balances. And I finally agree with [Representative] Green's comments on the last bill: if you get into micromanagement, you soon get into a lot of trouble.

MR. DENNERLEIN concluded by saying it is about time to put a set of alternatives in front of people that are real and that cover the spectrum, and then let that process play out.

Number 0980

MR. DENNERLEIN, in response to Co-Chair Masek, said he was testifying in opposition to HB 474. With regard to specific permitting, a few points in the bill are troublesome in terms of the whole municipality, he added.

REPRESENTATIVE CHENAULT requested a copy of the [fuchsia route].

MR. DENNERLEIN indicated he would provide that. He mentioned the release of a draft document for the set of alternatives by the [FHA], and said he was hoping the orange [route] wasn't on the [draft document]. He reiterated that he wouldn't permit the middle section [of that route].

Number 1067

REPRESENTATIVE GREEN noted that Mr. Dennerlein had said he wouldn't permit the orange route. Representative Green said it's been a very long and tortuous process wherein DOT&PF has insisted [several times] on the governor's behalf that "we stay on the orange route and argue against it." He remarked that if Mr. Dennerlein could see the error of [the process] in the short

time that he has been involved, then it is inconceivable that DOT&PF and others under the administration shouldn't also have [heard] what people have been saying for two and a half years.

MR. DENNERLEIN responded, "I think the train left the tracks early on." He pointed out that the [coastal trail route] was going to be managed as a municipal trail project, and the AOC is also correct about uses. He indicated wildlife management and hunting aren't within the municipal charter. The municipality doesn't manage those two things, and those were the resource and use issues on which a lot of the decision would turn, he pointed out. He said he thought it was the managing system that was uniquely ill-equipped to deal with it; therefore, it was good that the resource management agencies became involved.

Number 1151

MR. DENNERLEIN said he thought people didn't listen to each other about different species of geese, and that there was miscommunication: geese on the park strip - Canada geese - aren't snow geese. He said, "We sat down and put together some principles, and I think geography works for us." He remarked that the area below Kincaid [Park] is open to hunting. He mentioned the difficulty of getting up and down the bluff. "You could take them along the top of the bluff in that section, separate hunters and trail users forever, naturally," he said. He mentioned that he'd tried to get all of the users together to listen to each other. The technical point is that these routes never went to the agencies, he added.

Number 1257

REPRESENTATIVE GREEN mentioned that Mr. Dennerlein's predecessor was opposed to the [coastal trail route] because of the destruction that would happen to the habitat, and now he's "not allowed" to talk. Also, the cost issue that had been talked about has suddenly gone quiet; the estimates [indicate] it would be extremely expensive to go into the refuge because of the ice and the unstable nature of the ground, he said. He indicated that building and maintaining the trail would be expensive. He added that the [projected cost] had gone from $300,000 to $2.2 million, although cost overruns are nothing new. He said one big concern expressed to him by people who live there is that people using the trails frequently have dogs with them. Dogs have a tendency to kill wild animals and could potentially disrupt the birds that nest in the habitat.

Number 1446

REPRESENTATIVE McGUIRE referred to a letter [dated March 14, 2002] from Mr. Dennerlein to Kurt Parkan, Deputy Commissioner, DOT&PF. She asked Mr. Dennerlein if he thought ADF&G could be objective if there were a mandatory no-build alternative.

MR. DENNERLEIN responded that the letter was for the purpose of putting the alternative [fuchsia route] on the list that the [FHA] approves. He said was not alone in designing the [fuchsia route]; furthermore, his predecessor was very supportive of the process, and many biologists in the department worked as a close team on the [route]. It is consistent with the refuge to bring people to it and provide education opportunities, he said. He reiterated that the problem occurs when [the route] goes above or below the bluff.

REPRESENTATIVE McGUIRE suggested DOT&PF was very careful to endorse a specific route because "they knew they didn't have the EIS [environmental impact statement]." She asked Mr. Dennerlein how he could endorse a route that hasn't been [made available] to the public. She said that Mr. Dennerlein had made statements supporting the fuchsia route. She asked him whether he was endorsing a particular route.

MR. DENNERLEIN said ADF&G didn't have any objection to a coastal route. He started to mention the management plan.

REPRESENTATIVE McGUIRE interrupted to ask if [ADF&G] had no objection to extending the route or was in support of a coastal route. She pointed out that the letter Mr. Dennerlein wrote says, "ADF&G has consistently supported that concept of extending the South Anchorage Coastal Trail."

MR. DENNERLEIN spoke about correspondence from his predecessors and others that support the concept of extending a south coastal trail and providing people with the opportunity to experience the refuge. He said the concept of extending the south coastal trail is different from a route. In Anchorage, he said, citizens and agencies often support a decision to build a road and then look at alternatives; even when an alternative is chosen, an agency may not issue the permits. He mentioned the interchange for the Parks Highway and Glenn Highway and the permitting process as an example.

Number 1726

REPRESENTATIVE McGUIRE asked Mr. Dennerlein who designed the route.

MR. DENNERLEIN replied that the route was designed by a combination of biologists at ADF&G. He said he was involved in it, although it comes largely from a proposal that ADF&G tried to advance earlier on. The route was based on a concept that the commissioner of ADF&G and the department had tried to propose. He mentioned some refinements made to the route, and some "user perspective" with regard to using existing infrastructure to address issues such as parking.

REPRESENTATIVE McGUIRE asked Mr. Dennerlein if [the route] was designed at the request of the governor. She referred [to the route] as a "moving target." She said people in her and Representative Green's districts almost had to hire an attorney to get a copy of the orange route and had to invoke the Freedom of Information Act to get one. She reiterated that she wanted to know where the fuchsia route came from and how that process occurred.

Number 1932

CO-CHAIR MASEK suggested that Representative McGuire give Mr. Dennerlein a list of questions; she asked Mr. Dennerlein to provide her and the committee with the answers.

Number 2119

MIKE JENS testified via teleconference. A resident who lives on the bluff, he told the committee he has been a follower and a supporter of the coastal trail project since its inception. He mentioned that he finds it unusual that such a momentous decision had been turned over to the legislature. He remarked that he doesn't think it should be done, and that this may set a precedent for the future. He said he thought the fuchsia route had some merit and should be considered.

MR. JENS reported that with regard to DOT&PF, he'd had the opposite experience of that conveyed in testimony: he'd spent a lot of time with [DOT&PF personnel] and found them gracious and informative. He'd been able to get information whenever he needed it, [DOT&PF] had been very forthcoming, and he had never had to wonder what was going on. Mr. Jens recounted his own frustration because there doesn't seem to be much progress, partly because there are so many differing opinions, hidden agendas, and personal agendas about whether people want this

trail in their backyard. Most of the opposition is from people who live on the bluff, he said. Mr. Jens referred to studies and said that most of Anchorage is supportive of the trail.

MR. JENS mentioned overhearing information about where the various routes would be located. He pointed out that the boundaries of the coastal wildlife refuge zigzag along the coast and come up to the bluff in a couple places. He mentioned that the trails that have been discussed don't really go into the refuge, but do cross some isolated corners of the wildlife refuge. He said the trail planners had been trying to go up on the bluff to avoid crossing an isolated corner of the boundary, which would knock out houses; he suggested that was absurd and shouldn't be considered. He mentioned that it should be considered, however, whether crossing a corner of the wildlife refuge creates an impact. He also mentioned HB 131.

MR. JENS said he didn't think the committee should pass HB 474. Rather, it should be left to the vote of the people in Anchorage, because it's an Anchorage decision; he surmised that [a vote would reveal] that most of the people want to see the trail built. Mr. Jens said he just wants to see some trail built, and doesn't care if it's below the bluff. The fuchsia route is a good compromise and should be given some serious consideration, he concluded, or else all of the money is going to be spent and nothing will have been accomplished.

Number 2337

LORVEL SHIELDS testified via teleconference. A longtime resident of Alaska who has a doctorate in biology with expertise in ecology and animal behavior, Mr. Shields said he has lived on the bluff over 13 years and has spent an enumerable amount of time in the refuge; in addition, he is bicyclist and makes extensive use of the Anchorage trail system. For the last five years, he has served as the elected representative for the Bayshore/Klatt Community Council on coastal wildlife refuge issues; in that capacity he has attended hundreds of hours of public meetings concerning the route of the proposed southern extension of the Anchorage trail system.

MR. SHIELDS told members he had seen a cabal composed of engineering firms. Regarding the DOT&PF, other representatives of the state executive branch, and the [Municipality] of Anchorage, he said each entity had its own agenda. The engineering companies wanted the profits from the contracts; the more difficult the trail built, the better, he suggested. The

[Municipality] of Anchorage wanted the trail in spite of the fact it can't afford to maintain the trails it currently has. The end product of this grouping was and continues to be a collective effort to get the trail built, with virtually no regard for the biological worth of this rare salt marsh ecosystem or the costs of the project, he said. The Anchorage Coastal Wildlife Refuge is a state refuge; it doesn't belong to engineering firms, the [Municipality] of Anchorage, DOT&PF, or the governor. It belongs to the citizens of Alaska, and what happens in any state refuge is important to all Alaskans, he told members.

MR. SHIELDS recalled that a few years ago there was a very late spring; a flyover census by the ADF&G showed approximately 1,500 snow geese, 10,000 Canada geese, and too many ducks to count, hunkered down in the coastal refuge waiting for ice-out farther north. These animals were able to feed and otherwise sustain themselves for at least ten days in the refuge because it is an intact, thriving ecosystem.

MR. SHIELDS urged the committee to pass HB 474, which would provide the legislature with a valuable mechanism to protect this precious state refuge from being used for damaging, trivial, and sometimes self-aggrandizing projects. He pointed out that if the costs overrun on building, the estimated building cost of $22 million is by the same factor as the planning stage - $300[,000] to $2.2 million dollars. That 11 miles of trail would end up costing $154 million dollars.

Number 2502

JIM REEVES testified via teleconference. He told the committee there is an overwhelming consensus in Anchorage in favor of finding some route that will connect Kincaid Park with Potter Marsh and beyond. The controversy involves identifying which route [to use]. He said this controversy has many facets and provokes a great deal of anxiety, bad feelings, and distrust because it affects people where they live.

MR. REEVES told members he is one of the people who eagerly and enthusiastically support some resolution of this controversy that will result in a trail. He said he has been very involved in the [trail route] controversy. He added that he had been involved in many other similar controversy's about public lands and trails and recreational developments in the borough; furthermore, this [trail route] has the same characteristics that all of those others do. People on one side of the argument

feel there is a preconceived plot, cabal, or clandestine conspiracy; people on the other side think there is some skullduggery afoot because it's a moving target and there's no clear definition of what the proposal is. There's no conspiracy, he said, nor good or bad people [involved]. Rather, there is a complicated, important local decision that must be made in a public process that involves many people and many state, local, and federal agencies.

MR. REEVES spoke against the idea of complicating this already complicated controversy by adding one more "theater of battle" or forum: putting the legislature in the position of having one more decision about this is simply a bad idea, he said; it is unnecessary. Opponents of this route through the wildlife refuge argued against it based on concerns about wildlife refuge values and have been very persuasive. He said ADF&G and others are trying to respond to their concerns on the merits by identifying other alternatives that will address the wildlife values and accommodate them. There's no reason for the legislature to step in and attempt to "trump" that process; it's working just fine the way it is, he concluded.

Number 2665

MICHAEL DOWNING, Chief Engineer, Design and Engineering Services Division, Department of Transportation & Public Facilities, told the committee he oversees his division, which develops environmental documents and does projects for DOT&PF, taking them from the end of planning to the beginning of construction. He said [DOT&PF] opposes HB 474 for a number of reasons. For one thing, it's an awkward way of influencing the outcome. He spoke about prejudicing the environmental document and keeping the objective. He remarked that he couldn't think of a step that would prejudice the outcome more than this bill would.

MR. DOWNING said that anytime there is concern about how the department develops a project, there is a tendency to want to add steps to the process. An environmental impact statement is very difficult to do; a whole series of projects are in the EIS phase that the department has had difficulty in completing; adding steps doesn't help. He said this is very early in this process, with much public testimony to go through; it is appropriate for "us" to continue the study to expand the scope of work to look at more alternatives, and for [DOT&PF] to develop a cooperative alternative with ADF&G, he said.

Number 2803

REPRESENTATIVE KERTTULA asked Mr. Downing whether any other refuges have required legislative approval.

MR. DOWNING answered no.

REPRESENTATIVE KERTTULA asked Mr. Downing what [obtaining legislative approval] would do to the process.

MR. DOWNING answered that this bill deals with right-of-way acquisitions - the creation of the corridor or the acquisition of property. The federal process doesn't allow the acquisition of right-of-way at this early stage; he indicated [the department] must have an alternative that it has a record of decision in support of. He said the reason is because it prejudices the outcome to make right-of-way decisions in advance of the environmental document's completion.

Number 2854

REPRESENTATIVE KERTTULA asked Mr. Downing if requiring prior approval would interfere with how the federal process requires [DOT&PF] to act.

MR. DOWNING answered that he isn't sure how the FHA would react to this, or whether it would advise [DOT&PF] in terms of continued eligibility now that the alternatives have been taken off the table. He said [DOT&PF] has represented to the public that these are viable alternatives and has worked to develop the alternatives with public input, but now would have to say no, these won't be looked at further.

REPRESENTATIVE GREEN asked Mr. Downing if he has had any other areas like this: saltwater marsh, federal habitat, or state-created park.

MR. DOWNING indicated DOT&PF had just agreed with ADF&G on provisions that will allow construction of the interchange for the Parks Highway and Glenn Highway intersection. He remarked that [DOT&PF] had done considerable investment relating to that project, including investing [a large amount] of money in habitat protection there.

REPRESENTATIVE GREEN asked if he was referring to the saltwater marsh.

MR. DOWNING deferred to the ADF&G representative.

MR. DENNERLEIN explained that it is brackish water influenced by fresh water and salt water; the rearing occurs not in the stream channel but in the flooded area around those creeks, mostly in fresh [water]. There are several other areas. The Kenai River would be another one "we'll" work together on, and Cooper landing is a major habitat.

REPRESENTATIVE GREEN mentioned the possibility of alternatives.

TAPE 02-20, SIDE B
Number 2990

REPRESENTATIVE KERTTULA asked if coming back to the legislature [with such an issue] is normal procedure.

MR. DOWNING responded that under federal highways programs, it's a "4(f)" determination, and in this case this is 4(f) property; "we" can only select an alternative in a 4(f) property if no feasible and prudent alternative otherwise exists. That is the case in refuges, state parks, and federal parks - any kind of recreational facility.

Number 2915

BOB BELL testified via teleconference, noting that he is a registered professional engineer who practiced engineering in Alaska for over 31 years, and that he doesn't live on the bluff. He reported that he'd served on the Anchorage Municipal Assembly from 1993 until 1999; one duty was serving on the AMATS [Anchorage Metropolitan Area Transportation Study] committee. When [the coastal trail] project came before the committee at that time, it showed a line running down the bluff.

MR. BELL explained that at the time, he'd asked if a route had already been [chosen], and "they" said no. He'd asked why the line was running down the bluff and pointed out that the area of study was everything between the Seward Highway and [Cook] Inlet; "they" had said the line would be taken off, but when it came before the municipal assembly, the line was still there. Again, he'd questioned why the line was still there along the bluff, and was told not to worry about it, that it would be taken care of - which "they" never did.

MR. BELL said during a Bayshore/Klatt Community Council meeting there was a debate on the extension of the coastal trail; Mr. Shields was on one side of the debate, arguing against putting

the trail in the refuge. In favor of putting [the trail] in the refuge was the project manager for HDR [Alaska, Inc.], which is charged with doing the study, he said. Shortly thereafter, the governor, on two separate occasions, stated that he wanted the trail in the refuge, Mr. Bell said.

MR. BELL remarked, "It's blatantly obvious that this project is badly, badly, prejudiced." When "we" asked "them" to look at inland routes, they gave it a cursory review, he said. He referred to conspiracy and distrust and said Mike Jens had testified that he thinks the fuchsia route is a good route; Chip Dennerlein said it would be available to "us" in a month. Mr. Bell asked: Why would Mike Jens know what that route is now, when we don't?

MR. BELL said he thinks it is extremely important that the legislature oversee this process, which has a bad history of prejudice towards the bluff route, disregarding the community's wishes. He indicated South Anchorage residents don't want the route going down [the bluff], but want the route up on top so it can connect all of the other facilities in Anchorage. He mentioned that he thought this would be a very serious problem without legislative oversight. He pointed out that the north extension of the coastal trail goes up Ship Creek and out the Glenn Highway, and is not coastal. He said he didn't know why that requirement is placed on "here." He said he could [identify] engineering problems in the process with the trail being down in the refuge.

Number 2752

REPRESENTATIVE GREEN mentioned the point at which all of the various trails come together. He indicated the plan is to put the trail somewhere along the railroad track. He said the area is steep, and there are hillsides above or marsh below. He asked Mr. Bell what his opinion was of the ability to [place a coastal trail in that area] without disrupting the stability of those slopes.

MR. BELL answered that there is already a considerable amount of erosion along those slopes. He said [from an engineering perspective] that he didn't think [it was possible]. He said [the route] would either go down the railway right-of-way or it would cross the highway and go down the Old Seward Highway on the east side of Potter Marsh. He remarked that he didn't think [the route] could get through there.

Number 2679

CHERYL SHROYER testified via teleconference, noting that in January her term as president of the Oceanview Community Council finished, and that she was speaking as an individual, not a member of the executive board. Ms. Shroyer urged the committee to pass HB 474. She offered her belief that having legislative approval of a process that has run amok is a good idea. She said "we" are disappointed, disheartened, and discouraged. Mentioning that in 1998 the [council] had decided to maintain a neutral approach to the trail and was assured the process would work, she commented, "Boy, was that wrong. We have suffered through the spaghetti map public workshop; we all drew little lines on these maps." She said the result of the workshop was a short list of alternatives that was very disappointing; it wasn't alternatives [suggested in the workshop].

MS. SHROYER mentioned the viable-alternatives report and noted that during one particular meeting, eight out of ten people spoke against the trail and the way [the process] had gone; in addition, there was a petition with hundreds of signatures against the trail. However, the report said the public was very responsive and positive, which the council could not believe. That was very frustrating, she said.

MS. SHROYER referred to the preliminary engineering report and the environmental impact report. She said at each [meeting] all the community council people showed up and testified, but that testimony seems to have disappeared. Furthermore, the governor had a picture taken standing in the marsh and said he wants the trail to through the wildlife refuge, she told members. She mentioned that during one community council meeting, someone had asked what the point was of all the meetings and everything that [the council] had testified to, when the governor stands there and says he wants [the route] through the marsh. She said she didn't know what to say. Ms. Shroyer concluded by pointing out that this process has had an interesting impact on the people in Oceanview: because they are so disappointed, discouraged, and disheartened, they are now angry, and it has steeled their resolve to come to the meetings.

Number 2474

JANEL FEIERABEND, Director, Friends of Potter Marsh and the Anchorage Coastal Wildlife Refuge, testified via teleconference, noting that the organization's mission is to help protect the integrity of the marsh through education. She mentioned that

the organization had just hosted an [event] for which the topic was sandhill cranes as "refuge royalty." The lesser sandhill crane eats, sleeps, and nests like royalty in our coastal refuge because the habitat there so perfectly supports its well-being, she said. The 32,000 acres that comprise the refuge, which extends from Potter Creek to Point Woronzof, were designated as a state refuge in 1988 by the state legislature in recognition of the value of the habitat and the need to protect waterfowl, shorebirds, salmon, many mammals, and other animals that use the unique area. The state was very wise to think about the future and to establish the refuge, knowing that "wild and wonderful" will always have value, she told members.

MS. FEIERABEND brought attention to a list of observed refuge life, which can be found in the Anchorage Coastal Wildlife Refuge Management Plan printed in 1991 by ADF&G. She remarked that the list had grown since then. Talk of development of any kind in the refuge should raise flags of grave and major concern, due to the fact that the area has been established as a state refuge - home to many migrating birds and mammals, she cautioned. It is managed by the state; any possibility of encroachment by development into the refuge should be studied and analyzed by state decision makers, she suggested. Study and analysis of information provided by state biologists and other experts should be made by the same decision makers that are part of the checks-and-balances system.

MS. FEIERABEND also suggested the state decision makers should read reports such as the "Wildlife Field Study 2001"; books regarding the human and canine impact to wildlife should also be [reviewed]. Our state refuge is a unique and special place that hosts a wealth of plant communities, invertebrate communities, and wild animals, she said. Birds fly from as far away as South Africa to use it; the lesser yellow-legged chick, only hours old, walks for miles to settle into it. Mammals of all sizes use it, and [the refuge] is one of the last protected coastal areas abutting the city. These birds and mammals know no boundaries, she pointed out.

MS. FEIERABEND said wise statesmen who think beyond municipal orders and concerns should be part of the checks-and-balances system when it comes to state- and even broader-funded projects. It is up to the legislature to weigh in on the protection of the very area it deemed worthy to reserve as a refuge, she concluded, reiterating that HB 474 helps to protect the treasure that belongs to all of Alaska.

Number 2207

REPRESENTATIVE KERTTULA asked why there is an exception for the railroad and the road, and why those wouldn't have to come back to the legislature, too. They are more intrusive than a trail, she noted.

REPRESENTATIVE GREEN answered that the [railroad and road] were there before the park was established.

REPRESENTATIVE KERTTULA asked if [the legislature] had any legal right to take any action on that.

REPRESENTATIVE GREEN pointed out that there is also a reserved corridor out to Fire Island that predates the [refuge].

REPRESENTATIVE KERTTULA asked Mr. Downing why it would be necessary to exempt roads or railroads from [HB 474] if the desire is to protect the refuge.

MR. DOWNING agreed that it is inconsistent to require approval for a trail but not a highway. He said he couldn't explain it.

Number 2120

REPRESENTATIVE McGUIRE moved to report [CSHB 474(CRA)] out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 474(CRA) was moved out of the House Resources Standing Committee.

HJR 46-BC MORATORIUM ON FISH FARMING

CO-CHAIR SCALZI announced the next order of business, HOUSE JOINT RESOLUTION NO. 46, Relating to the moratorium on fish farming in British Colombia.

[There was a motion to adopt CSHJR 46(FSH) as the working document, but it was already before the committee.]

Number 2068

JEAN ELLIS, Staff to Representative Peggy Wilson, Alaska State Legislature, presented HJR 46 on behalf of the House Special Committee on Fisheries, which Representative Wilson co-chairs and which sponsored the resolution. Ms. Ellis informed members that on January 31, 2002, the Government of British Columbia announced that the provincial moratorium on fish farming would

be lifted. This decision could substantially affect the Alaskan economy and environment, both directly and indirectly, she said. This resolution strongly encourages the Government of British Columbia to reinstate the moratorium.

MS. ELLIS reported that in 2001, there were 29,000 accidental releases of farmed salmon from British Columbia salmon farms. Escaped farmed Atlantic salmon, which have been caught in Alaska's commercial fisheries, pose a threat to Alaska's marine environment and the ecology of Pacific salmon. Escaped Atlantic salmon from British Columbia are now spawning in approximately 80 streams on the West Coast, Ms. Ellis said. They compete with Alaskan salmon for food, and there is a continuing concern with possible disease transfers. Seafood is Alaska's number-one international export, and the commercial fishing industry is Alaska's [primary] private-sector employer. Therefore, the House Special Committee on Fisheries strongly encourages the Alaska State Legislature to support reinstatement of the British Columbia moratorium on fish farming.

MS. ELLIS acknowledged that there are some concerns with the bill. She said there is not proof that the salmon are actually spawning in the 80 [streams]; however, the salmon are spawning in [at least] a few streams.

Number 1896

REPRESENTATIVE KERTTULA moved to adopt [Amendment 1]. She requested that Ms. Ellis explain the content, noting that the changes are technical ones that Ms. Ellis has worked on through checking facts and talking to fishermen. She agreed that the 80 streams cannot be verified, for example.

MS. ELLIS brought attention to the first portion of Amendment 1, which read [original punctuation provided]:

> Page 1 line 16
> Delete "farmed Atlantic salmon are the largest bycatch by British Columbia fishermen and"
>
> Page 2 line 2
> Following "fisheries"
> Insert "as far west as the Bering Sea"

MS. ELLIS explained that although the [existing statement] is probably true for salmon fishermen, for clarity it would be

better to remove that sentence. Therefore, [the resolution] would read as follows:

> **"WHEREAS** escaped farmed Atlantic salmon have been caught in Alaska commercial fisheries as far west as the Bering Sea; and"

MS. ELLIS turned to the second part of Amendment 1, which read [original punctuation provided]:

> Page 2, line 8
> Delete "spawning"
> Insert "found"
>
> Page 2, line 8
> Following "streams"
> Insert "and most of these salmon are mature and capable of spawning"

MS. ELLIS explained that the wording would then be: "found in approximately 80 streams". In response to Co-Chair Scalzi, she pointed out that the Alaska Trollers Association had found [these changes].

[Following a loose discussion of placement of the words and punctuation, Representative Kerttula, whose name was on the amendment, suggested the written wording was fine.]

Number 1625

CO-CHAIR SCALZI asked if there was any objection to Amendment 1. There being no objection, Amendment 1 was adopted.

CO-CHAIR SCALZI asked whether anyone else wished to testify; there was no response.

REPRESENTATIVE STEVENS asked if these salmon have been found farther out the Aleutian chain. He asked whether that is as far west as Adak.

Number 1559

GERON BRUCE, Deputy Director, Division of Commercial Fisheries, Alaska Department of Fish & Game (ADF&G), answered by relating his belief that the resolution refers to the fact that in a trawl survey in the Bering Sea, an Atlantic salmon was captured. Therefore, the assumption is that Atlantic salmon are present in

the Bering Sea in some numbers and would be caught in salmon fisheries there; those fisheries include the coastal fisheries in Bristol Bay in the [Yukon-Kuskokwim] region along the north side of the peninsula. However, there are no actual documented recoveries of Atlantic salmon in those commercial fisheries.

REPRESENTATIVE GREEN asked how the diseases of a Atlantic salmon would enter into the wild stock of Pacific salmon.

MR. BRUCE answered that it would vary, depending upon the particular disease. He explained that certain diseases are transmitted through spawning activities. Therefore, if the two [types of salmon] are spawning in the same area, a disease could be transmitted.

REPRESENTATIVE GREEN related his understanding that salmon return to the stream in which they were hatched. These Atlantic salmon were hatched elsewhere. He asked how these Atlantic salmon knew where to go.

MR. BRUCE explained that a certain amount of straying occurs naturally in a salmon population. It is an evolutionary technique that enables them to colonize new areas and to survive if they can't return to the stream in which they were hatched.

CO-CHAIR SCALZI added his belief that salmon also swim with different schools.

Number 1355

CO-CHAIR MASEK moved to report CSHJR 46(FSH), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHJR 46(RES) was moved out of the House Resources Standing Committee.

HB 508-DIVE FISHERY ASSOCIATIONS/PSP REPORTS

CO-CHAIR SCALZI announced the final order of business, HOUSE BILL NO. 508, "An Act relating to publication of results of testing for paralytic shellfish poisoning by the Department of Environmental Conservation and to participation of the Department of Environmental Conservation in the development of operating plans of qualified regional dive fishery associations."

Number 1300

CO-CHAIR SCALZI, speaking on behalf of the House Resources Standing Committee, sponsor of HB 508, explained that paralytic shellfish poisoning (PSP) is a serious biological disorder that occurs naturally in shellfish; therefore, it is in the state's best interest to ensure that it is monitored to the best of the state's ability through the Department of Environmental Conservation (DEC). The reporting of this disorder, as well as the testing, is an advantage to the dive-fish industry in particular, so that information can be posted online as soon as possible. In addition, the department will benefit by shifting the [responsibility] of making the announcement to the industry, rather than having to send out individual facsimiles as the [test results] become available. It creates an efficiency and is also available for the general public to know which beaches or areas may have concentrations of PSP.

Number 1186

CO-CHAIR SCALZI addressed the second part of the bill, which speaks to DEC's involvement, along with the Alaska Department of Fish and Game (ADF&G), in the development of the associations for the dive [fisheries]. He explained that DEC is [supportive] because it will be more involved and will have "upfront" information and input regarding the dive fishery. He clarified that [HB 508] was requested by the [shellfish] industry in concurrence with DEC.

Number 1127

JULIE DECKER, Executive Director, Southeast Alaska Regional Dive Fisheries Association (SARDFA), testified via teleconference. She told the committee SARDFA supports HB 508; she also mentioned that a letter of support had been submitted to the committee. She offered some background on how DEC currently distributes PSP results. In the past, lab personnel faxed the shipper who'd paid for the test as soon as possible after the results were known. This year, upon the request of SARDFA - which paid for the first 19 tests in the geoduck season - the lab faxed all registered geoduck shippers, DEC regulators, and the SARDFA office when the results were known; then SARDFA sent e-mails to its members and posted the results on its web site.

MS. DECKER explained that ADF&G currently has a system of posting its news releases through software that allows sending an e-mail contained in the news release to its distribution list of people and posting the news release on its web site - all with a "single click of a button." She highlighted reasons to

post the PSP results on the web site. First, it creates a more efficient process for the DEC lab to distribute the results. Second, it eliminates problems associated [the question of] "who is allowed or when they are allowed to see PSP results"; if DEC is removed from having to deal with that issue at all, the results will automatically get posted, enabling public access to that information. Third, it fits a "vision" of a developed shellfish industry in Alaska, which is performing PSP testing on a regular basis in certain areas of the state. For example, in Washington [State], where many PSP tests are performed daily in an area, regulators are able to use this information to track PSP blooms, she noted.

MS. DECKER explained that this web site would allow both regulators and the public to track PSP blooms in an area in real time. In addition, the web site would be used by the DEC lab, DEC regulators, shellfish shippers, SARDFA, ADF&G biologists, aquatic farmers, potential [aquatic] farmers looking for new farm sites, subsistence users, and PSP researchers. She remarked that she hopes DEC includes all historical PSP on the web site to make it an all-inclusive site.

MS. DECKER mentioned that she'd e-mailed Rodger Painter of the Alaskan Shellfish Growers Association (ASGA), and he didn't have any problems with HB 508; however, he'd mentioned possibly adding the Jellet Biotek [Limited (JBL)] data of community monitoring programs currently being established by Ray RaLonde. She also mentioned a conversation with Lee Gerber, NorQuest Seafoods, Inc., plant manager in Ketchikan; she said Mr. Gerber recognized the possibility of hysteria surrounding misinformation in the food industry but had offered NorQuest's support for HB 508.

MS. DECKER referred to the annual operating section. She said DEC currently works in coordination and planning with ADF&G and SARDFA; however, it's been difficult to bring everyone together at the appropriate time for preplanning of the fisheries. She said she thought bringing DEC into the annual operating plan process with ADF&G and SARDFA would help all three groups plan with an appropriate timeline. In conclusion, Ms. Decker said she believes HB 508 is part of SARDFA's larger goal of creating a more efficient industry that maximizes the value of its resources.

Number 0819

CO-CHAIR SCALZI agreed that [HB 508] is a small piece of a larger plan. He mentioned HB 208 [relating to aquatic farms for shellfish].

Number 0772

CHERYL SUTTON, Southeast Alaska Regional Dive Fisheries Association (SARDFA), testified before the committee. She told members that in 1997 legislation was passed that allowed creation of the Regional Dive Fishery Association. She said she was the person who drafted that bill, but hadn't had the foresight to include DEC. She said she'd put ADF&G in [the bill] because it is a partner in management, but DEC is very involved because the fisheries cannot occur without [DEC's] approval on PSP testing for all of the shellfish species. She highlighted the desire to have [DEC] in the planning process; get the problems out of the way upfront; and have a better view of how the fishery is going to occur, how much testing has to be done, how much it will cost the industry to pay for the testing, and so forth.

MS. SUTTON mentioned that Janice Adair [Director, Division of Environmental Health, DEC] had indicated in a letter that some people in the industry might not like to have PSP results posted [on a web site]. Ms. Sutton told members that in all of her experience, however, she cannot think of a downside to posting PSP results on a web site. She indicated Japanese buyers don't care about the level of micrograms, and that she couldn't foresee [posting of PSP results] as a tactic to scare buyers; rather, it would be a public-information source so people could plan more effectively. She specified that although [scaring buyers] was a concern for DEC, she didn't see any need not to post all PSP results for all of the species. She said HB 508 is a great bill and encouraged the committee to pass it.

Number 0588

CO-CHAIR SCALZI mentioned an amendment drafted on behalf of SARDFA, which addressed Ms. Adair's letter. He asked Ms. Sutton if she was in support of the amendment.

MS. SUTTON reiterated that she could not think of any reason why posting results on an Internet site would harm anyone. She said she thought it would be good [to do] for all PSP [results].

CO-CHAIR SCALZI said the committee would not move that amendment.

Number 0489

CO-CHAIR MASEK referred to a letter submitted by Julie Decker, which says it is necessary to establish a state web site where all PSP results will be posted. She asked if DEC [currently] has the role of deciding who will receive the PSP results.

CO-CHAIR SCALZI explained that when DEC does [PSP] testing, it only notifies the person for whom those tests are performed. Posting that information on a web site would allow everybody [equal access to the results]. [PSP results] are public information; it is beneficial if everybody knows [those results].

Number 0321

REPRESENTATIVE GREEN moved to report HB 508 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 508 was moved out of the House Resources Standing Committee.

ADJOURNMENT

Number 0228

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 4:20 p.m.