**ALASKA STATE LEGISLATURE**
**HOUSE SPECIAL COMMITTEE ON FISHERIES**
March 17, 2003
8:40 a.m.

**MEMBERS PRESENT**

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Pete Kott
Representative Ethan Berkowitz
Representative David Guttenberg

**MEMBERS ABSENT**

Representative Cheryll Heinze
Representative Ralph Samuels

**COMMITTEE CALENDAR**

HOUSE BILL NO. 191
"An Act relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; relating to the functions of coastal resource service areas; creating an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; relating to actions based on private nuisance; relating to zoning within a third class borough covered by the Alaska coastal management program; and providing for effective dates."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 191
SHORT TITLE:COASTAL MANAGEMENT PROGRAMS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 03/12/03 | 0513 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/12/03 | 0513 | (H) | FSH, RES, JUD, FIN |
| 03/12/03 | 0513 | (H) | FN1: ZERO(DFG) |
| 03/12/03 | 0513 | (H) | FN2: ZERO(DEC) |
| 03/12/03 | 0513 | (H) | FN3: (DNR) |

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| 03/12/03 | 0513 | (H) | GOVERNOR'S TRANSMITTAL LETTER |
| 03/17/03 | | (H) | FSH AT 8:30 AM CAPITOL 124 |

**WITNESS REGISTER**

KAROL KOLEHMAINEN, Program Coordinator
Aleutians West Coastal Resource Service Area (AWCRSA)
POSITION STATEMENT: Testified on HB 191, requesting that legislation be modified to allow the CRSAs to exist.

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Asked questions and commented on HB 191.

WILLIAM (BILL) JEFFRESS, Director
Division of Governmental Coordination (DGC)
Office of Management & Budget
Juneau, Alaska
POSITION STATEMENT: Presented HB 191, which was sponsored by the House Rules Standing Committee by request of the governor.

JANET BURLESON BAXTER, Acting Special Assistant
Office of the Commissioner
Department of Natural Resources
Juneau, Alaska
POSITION STATEMENT: Highlighted key components of HB 191.

BRECK TOSTEVIN, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Provided an overview of the sectional analysis for HB 191.

TADD OWENS
Executive Director
Resource Development Council (RDC)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 191.

JUDY BRADY
Alaska Oil and Gas Association
Anchorage, Alaska
POSITION STATEMENT: Testified that HB 191 moves toward the original intent of the ACMP.

NOAH NAYLOR, Planning Director
Northwest Arctic Borough
Kotzebue, Alaska
POSITION STATEMENT: Testified that HB 191 hurts the Northwest Arctic Borough in several ways.

WALTER SAMPSON, President
Northwest Arctic Borough Assembly
Kotzebue, Alaska
POSITION STATEMENT: Testified on HB 191, suggesting that the overall process include public testimony.

**ACTION NARRATIVE**

**TAPE 03-14, SIDE A**
Number 0001

**CHAIR PAUL SEATON** called the House Special Committee on Fisheries meeting to order at 8:40 a.m. Representatives Seaton, Wilson, and Berkowitz were present at the call to order. Representatives Kott and Guttenberg arrived as the meeting was in progress. Representatives Samuels and Heinze were excused. Also present was Representative Kerttula.

HB 191-COASTAL MANAGEMENT PROGRAMS

CHAIR SEATON announced that the first and only order of business would be HOUSE BILL NO. 191, "An Act relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; relating to the functions of coastal resource service areas; creating an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; relating to actions based on private nuisance; relating to zoning within a third class borough covered by the Alaska coastal management program; and providing for effective dates."

Number 0012

CHAIR SEATON said that public testimony would be heard at the beginning of the meeting while awaiting for a quorum to assemble.

Number 0073

KAROL KOLEHMAINEN, Program Coordinator, Aleutians West Coastal Resource Service Area (AWCRSA), said that committee members might think that her interest is in saving her job, but the reason for her testimony is because of the seven elected officials of the [AWCRSA] and all that they represent. She then provided the following testimony:

> Geographically, they represent the entire western Aleutian area from Unalaska Island west to Attu Island, an area that is 20 to 60 [miles] in width and roughly 1,000 miles long. It is bounded by the Pacific Ocean to the south and the Bering Sea to the north and has a wealth of natural resources including some of the richest fishing grounds in the state. Like the geography, the communities of the region are also diverse. Unalaska, the only Title 29 community and the number one seafood processing port in the nation for may years, has a population of over 4,000 people, and Nikolski, a tribal government, has 30. Both of these communities contribute members to the AWCRSA board.
>
> Article 2 of Alaska Statute 46.40 provides the authority for coastal management in the unorganized borough and allowed the people of the western Aleutians to form a CRSA [Coastal Resource Service Area]. Sixteen years ago, in 1987, the AWCRSA was established by a vote of the people of the unorganized western Aleutian area. They went through the process and gave of their time to develop a coastal management plan for the region. The plan was signed into law and provides representation of the local interest in state and federal permitting decisions.
>
> The plan has procedures and policies, not to prevent development, but to guide development activities within the coastal zone boundary. Recently we have been updating the plan, a massive undertaking involving mapping of the resources of the entire area; collection of census data and cultural, historic, and economic information; and the development of goals and objectives for the region, culminating in the development of coastal policies. All of this work was accomplished by a volunteer board and using federal funding. Because the CRSA exists in the unorganized area, it serves as a local authority for the entire

area, and the plan is the recognized information source for prospective developers and oil spill contingency planning.

Number 0348

MS. KOLEHMAINEN continued:

If I have gone on at length about the area, it is because I care deeply about the region and respect the efforts of the AWCRSA board. As previously stated, the board is strictly voluntary and its members have contributed many hours over many years to develop what it has become. I would like to add that I am the sole employee, and the entire program is federally funded with monies passed through the state. Now, with a stroke of the pen, this political subdivision of the state will cease to exist.

I have reviewed the proposed legislation and some of the supporting material, and wish to continue by specifically addressing some of the assertions. First, to state the Title 29 municipalities will retain their existing land-use authorities and regulate private land-use activities is correct, but doesn't provide the complete picture. In the AWCRSA, the Title 29 municipality, Unalaska, does not have a coastal management program; that role is provided by the CRSA. I suspect this is true in the other unorganized borough areas as well. Anyone who has been involved with the rewrite of a comprehensive plan knows that it does not happen overnight, and it will take much time and effort for a community to develop a coastal program and be eligible for the financial benefits of participation. Unalaska represents a mere 116 square miles of a much, much larger area.

Number 0495

MS. KOLEHMAINEN continued:

Next, to say that DNR [Department of Natural Resources] is authorized to adopt local ordinances as state enforceable policies for federal reviews also seems to gloss over the very real concern of elimination of a local presence in permit decisions. I guess that is the ultimate in streamlining - the

state makes the decision. I believe another word for that is centralization, but then that word is much less palatable.

And last, to say that the adoption of certain coastal policies for state decisions will continue to recognize a local input is just the second point, made in an only slightly different way. When that happens, you no longer have local policies; you have state policies, and only the ones that were deemed acceptable, apparently.

Number 0552

MS. KOLEHMAINEN continued:

Now that I have said all of this, I would like to conclude by admitting that we recognize that passage of this legislation appears inevitable given the current political climate. In HB 191, Section 10, the legislation purports to provide a program of research, training, and technical assistance to coastal resource districts, including the direct granting to the districts. However, Section 16 repeals [AS] 46.40.120 through [AS 46.40.180] eliminating the coastal resource districts, the CRSAs, which allow huge political subdivision of the state, and includes many of the communities that could benefit the most from coastal grants.

We respectfully request that the legislation be modified to allow the CRSAs to exist permanently as coastal district areas or a similar functional area, or for a period of time long enough to allow the work that has been done to be redirected in a way that will let the areas develop meaningful authority in an acceptable and beneficial form.

CHAIR SEATON noted that Ms. Kolehmainen's written testimony would be distributed to committee members.

Number 0684

REPRESENTATIVE KERTTULA, Alaska State Legislature, inquired as to the kinds of projects [AWCRSA] has commented on during the past year or so. She asked for examples of the sorts of things in which it would no longer be participating.

MS. KOLEHMAINEN responded that some projects that come to mind are the development of the small-boat harbor in Unalaska and the remediation activates on Amchitka Island, for which she has been the resource and information source person for national missile defense activities at Chiniak and Adak and for the hydropower project in Atka. She added that the benefit of the CRSA is not just in providing comments, but also as an entity that provides goals and objectives and as being a tremendous resource to the area that might not otherwise have that resource.

REPRESENTATIVE KERTTULA asked for a description of Ms. Kolehmainen's interaction with the coastal zone project, inquiring about the working relationship as evidenced by how she receives information from project managers.

Number 0824

MS. KOLEHMAINEN said she has been with the program for over four years, and the biggest benefit is through the Division of Governmental Coordination (DGC). She described that she attends a pre-application meeting with the resource agencies, developers, and affected communities - if they choose to participate - and discusses what the project will include. She said they are the local experts and express not only the concerns of the community, but also the advantages and disadvantages of certain types of development. She said that the CRSA or any coastal district could be of benefit to the developer during those early meetings when the plans are being formulated and developed.

CHAIR SEATON announced that there was a quorum and that he would return to hearing public testimony after hearing consideration of HB 191.

Number 0918

WILLIAM (BILL) JEFFRESS, Director, Division of Governmental Coordination (DGC), read from a statement of purpose for HB 191, which was sponsored by the House Rules Standing Committee by request of the governor. That document read [original punctuation provided]:

> Under the authority of article III, sec. 18, of the Alaska Constitution, the Governor has transmitted this bill to reform and streamline the Alaska Coastal Management Program (ACMP). This legislation is

premised on the statutory changes contained in Executive Order 106, which was presented to you on February 12, 2003. Executive Order 106 would transfer responsibility for the ACMP program from the division of governmental coordination in the office of management and budget to the Department of Natural Resources.

The Alaska Coastal Management Program was first enacted in 1977 in order to participate in the federal Coastal Zone Management Act of 1972. The federal program is voluntary, and encourages states to receive funds and the opportunity for federal consistency review. Federal consistency review enables the state to apply its authorities to projects located on federal land and the federal outer continental shelf where otherwise it would be preempted by federal law.

Number 1021

MR. JEFFRESS went on to say:

The goal of this legislation is to create a new coastal management program that retains the benefits of the federal act but eliminates the duplication and complexities built into the present ACMP. This bill would achieve this goal by choosing the simplest of the three management techniques allowed by the federal act. The bill provides certainty and predictability to the ACMP process by clarifying the standards and responsibilities for program implementation.

The central streamlining concept of the bill is the reliance on existing state statutes and regulations as the enforceable policies of the ACMP. The current duplicative consistency review process in AS 46.490.096 and 6 AAC 50 is eliminated by simply relying on the issuance of current state permits by the resource agencies as the means of determining whether an activity is consistent with the ACMP. The bill would eliminate district coastal management enforceable policies but retain a local role in three ways. First, Title 29 municipalities would retain their existing land use authorities to regulate private activities within their jurisdiction. Second, the bill authorizes the Department of Natural Resources (DNR), as the implementing agency, to adopt

local ordinances as enforceable policies to be applied in consistency reviews of federal projects and Outer Continental Shelf (OCS) development. The DNR would consult with the local government when interpreting and applying local ordinance as part of a consistency review. Third, the bill would specifically adopt certain existing coastal district policies for federal OCS development as state enforceable policies. Coastal resource service areas in the unorganized boroughs would no longer exist. However, municipalities within the unorganized boroughs could participate in both funding and regulatory aspects of the program. The way coastal communities participate in the program will now focus on sustainable resource and economic development.

The bill would also eliminate the Coastal Policy Council, but would create a Coastal Program Evaluation Council to submit a report to the Governor on the implementation of these reforms. The council would sunset July 1, 2005.

Number 1221

REPRESENTATIVE BERKOWITZ asked if analysis had been done, perhaps in writing, that could be shared with the committee - analysis done prior to making the determination that coastal management was in need of streamlining.

MR. JEFFRESS responded that during the past week, on several occasions during testimony on Executive Order 107 (EO 107), a cross-representation of different interest groups had highlighted the need to modify the ACMP program. He said that almost every transition team that was put together by the governor, except for the Department of Corrections, included the issue of revamping the ACMP program.

REPRESENTATIVE BERKOWITZ said he had hoped that the basis for this large of a change would be more substantial than anecdotes, because his experience in listening to testimony on EO 107 was that there was also considerable testimony in the other direction as well. He referred to there being discussion of moving towards the "Virginia model" and asked if a side-by-side comparison had been done to examine how the Virginia model would work in Alaska in terms of timelines, costs, et cetera, to demonstrate that the new model would be quantitatively or qualitatively better.

MR. JEFFRESS suggested that Breck Tostevin was available to respond to that question.

Number 1371

REPRESENTATIVE KERTTULA began by acknowledging the difficulty involved in Mr. Jeffress's being new at his job and immediately working with the transition. She stated that one of the jobs that the coastal management program has always undertaken is to work with local people in the coastal districts themselves. She said she wasn't hearing the "normal, same kind of interaction" with coastal districts, from this plan, as she has seen throughout the years. She asked what had been done, before introducing this bill, with the coastal districts, and asked if they were involved with the writing of the bill or if outreach had been done to explain what the bill does, to those some 38 local districts.

MR. JEFFRESS acknowledged that he was new to the position and was not aware of all of the communication that had gone on with the coastal districts.

REPRESENTATIVE KERTTULA said that perhaps somebody else could speak to that. She then asked what the current plan was regarding involving the districts in order to take their comments and concerns into account. She wondered if people would be responding during legislative hearings or if the administration would be reaching out [to communities].

MR. JEFFRESS responded that he thought it was a combination of both of those approaches, saying that they wanted people to respond to the legislative process but he had also received feedback from some of the coastal districts and some of the members of the ACPC.

REPRESENTATIVE KERTTULA asked if any meetings were planned for coastal districts or if an overall review of the legislation was scheduled to ensure that their wishes were understood.

MR. JEFFRESS said that there are plans, with the help of Mr. Tostevin, to brief all of the DGC staff so that everyone is on the same page so that the process of reaching out to the communities and making sure that everyone understands the current legislation can begin.

REPRESENTATIVE KERTTULA said she found it troubling that staff had not previously been briefed and was glad that plans were underway for this to happen, because staff would be responsible for dealing directly with the district.

CHAIR SEATON asked if this was basically a new program or if it was a change to the existing coastal zone management program.

MR. JEFFRESS responded that this would be a "major overhaul of the existing program." He said one area under review is that the coastal zone makes up quite an area of Alaska, but within the context of the whole state, it is a small portion. He continued that throughout the state, a lot of permitting is going on and a lot of the habitat for both anadromous streams and other choice habitats exists in the interior of the coastal zone. With the existing rules, regulations, and statutory authority that's given to the resource agencies, most habitats have been protected. The view is that instead of duplicating a process of policies, this could be standardized and then existing statutory authority and regulations could be relied upon to continue to protect the resources. This would also include those coastal zones. The resource agencies have already demonstrated that they can adequately protect habitat and other resources in the Interior and coastal zone management areas.

Number 1696

CHAIR SEATON asked if there would be local-area input for areas outside of the municipal boundaries and questioned how that would take place if the local service areas were "done away with."

MR. JEFFRESS replied that with DNR as the lead agency, the streamlining process would achieve more consistency, and there would be a process in which all of the resource agencies would go through the public process, which would include public input. He said that if there's a single state permit, there would be consistency in the issuance process.

CHAIR SEATON asked if there is a requirement that substantial changes to the coastal zone management plan requires notification to NOAA [National Oceanic and Atmospheric Administration] and requires public input and (indisc.) on the process. He noted that he hadn't seen any other notice and asked if this legislation was, at this point, being considered as notice to the public.

MR. JEFFRESS referred that question to Mr. Tostevin.

Number 1799

REPRESENTATIVE BERKOWITZ asked about comments made regarding duplicative processes under the current model and asked for identification of where that duplication exists.

MR. JEFFRESS responded that some of the enforceable policies are very similar to the state standards and that it's "an effort of interpretation of which one would apply." He said that several of the coastal zone enforceable policies are almost taken verbatim out of the state standard. When those are put into a permit or a condition, he said, they are both serving the same purpose, this is, trying to get away from duplicative process in areas that are subject to different interpretation.

REPRESENTATIVE BERKOWITZ asked if those areas of duplication could be identified, since a finite number are involved.

MR. JEFFRESS replied that he would imagine this to be so.

REPRESENTATIVE BERKOWITZ said it would be helpful, in learning more about the process, to see a list of where such duplication exists.

MR. JEFFRESS suggested that Mr. Tostevin could provide examples.

Number 1912

REPRESENTATIVE WILSON asked if the duplication process made the whole process more burdensome by taking additional time in order to get everything in place.

MR. JEFFRESS replied that this was correct and that sometimes it was a matter of interpretation of local policies. He said they were looking at the history of permitting in some areas outside of the coastal zone. He said they have the statutory authority and the regulations in place to do the job of protecting the resources. He said the question was, "Why are we putting another layer on top of those?"

REPRESENTATIVE WILSON asked for an idea of the time period that was involved, wondering if it was it two weeks, two months, or two years.

MR. JEFFRESS said he personally didn't have an answer to that, but that perhaps someone from DGC could provide further information.

Number 2028

CHAIR SEATON referred to the comment of state statutes as being basically identical to the requirements of local enforceable policies and asked why an entire series of enforceable policies would be adopted if they were already incorporated in state statutes.

MR. JEFFRESS stated that he probably misspoke in saying that all were duplicative and that obviously there are some on the North Slope concerning whaling in which state statutes are not in place. He said the administration tried to go through the existing enforceable policies and pick out the ones that make sense and that have consistently been used and also represent local communities where that activity is occurring. He said that those are the ones that are embedded in this bill.

CHAIR SEATON said that the committee's list seems to refer to North Slope policies and asked if the other regional policies that differ from the North Slope were also included.

MR. JEFFRESS said a lot of those were embedded in the bill itself, representing other coastal districts.

REPRESENTATIVE KERTTULA said that on a broad level, her experience has been that any time there has been a dramatic change in the program, there has been a lot of planning and work done ahead of time with the Office of [Ocean and] Coastal Resource Management (OCRM). In that way, approval is gained and federal consistency isn't jeopardized. She asked what contact DGC has had with [OCRM] to see if the program was on the right track.

Number 2157

MR. JEFFRESS said they have talked to plan administrators in Washington, D.C., and that quite a bit of flexibility is built into the approval of these (indisc.) coastal management programs. Once the legislation is passed or comes to the point of being reviewed, then they will be able to identify if there are any shortfalls, but as it stands, they are open to moving forward. In response to Representative Kerttula's question as

to whether this legislation had been sent to them, Mr. Jeffress referred to Mr. Tostevin for verification of that.

Number 2205

REPRESENTATIVE BERKOWITZ suggested that a "decision flowchart" showing the workings of the current system and also the future system would be helpful and asked for such a flowchart.

Number 2218

JANET BURLESON BAXTER, Acting Special Assistant, Office of the Commissioner, Department of Natural Resources, testified that HB 191 streamlines the permitting process by almost exclusively relying on existing permit requirements to establish the ACMP standards. She highlighted key components by providing the following testimony:

> Except for federally sponsored projects and projects in the Outer Continental Shelf, the bill eliminates the need for a separate consistency review beyond the individual state permit decisions.
>
> The bill does consistently reduce the coastal management enforcement policies. It eliminates the statewide standards found in 6 AAC 80. It significantly reduces the number of local enforceable policies. It only applies local enforceable policies to federally sponsored projects and projects in the OCS.
>
> The bill emphasizes local governments' use of their own local land-use controls. There's no state application of local policies except on federally sponsored projects and projects in the OCS, where local land-use controls would normally be preempted by federal law.
>
> It eliminates the Coastal Resource Service Areas. Since application of local policies is very rare, there is little justification for financially supporting these entities; future support for coastal communities should focus on responsible resource development and sustainable economic development.
>
> It eliminates the Alaska Coastal Policy Council. Without local plans to approve, or the proper implementation of local plans to ensure, there is little justification for retaining this body. The bill does provide for the

evaluation council for a two-year period to evaluate the program - and that would sunset in two years.

Number 2348

CHAIR SEATON asked if she had said that this significantly reduces the number of enforceable policies.

MS. BAXTER confirmed that this was so.

CHAIR SEATON then asked if for most areas of the state other than the North Slope, which has "many of theirs" included in this plan, basically all of the local input outside of the municipalities, would be eliminated.

MS. BAXTER replied that Mr. Tostevin would address this question in more detail. However, she said it does provide for some of the enforceable policies to be used for consultation through the normal DNR public-input process.

CHAIR SEATON said he was trying to figure out if the enforceable policies were being significantly reduced - which are local determinations on a regional basis - and how projects work within their areas. He questioned how to incorporate regional concerns outside of a municipal boundary in the state development projects.

MS. BAXTER referred to Mr. Tostevin.

CHAIR SEATON noted that she had said this only applied to federal lands, and wondered if it was correct that even the enforceable policies that are adopted are not going to be enforceable on state projects but only on projects that occur on federal lands (indisc.).

MS. BAXTER said she understood that yes, the enforceable polices that are in the bill would be addressed to federal projects and that single projects by agencies would use their own stipulations to cover issues.

Number 2475

CHAIR SEATON asked if the state's position was that all state statutes or all these regulatory areas currently embody the coastal zone management policies and if they are consistent with coastal zone management as it exists today.

MS. BAXTER said that as Mr. Jeffress had said earlier, "we do feel that we have protected the habitat values in the anadromous streams through outside the coastal zone as well as inside the coastal zone, and those protections would exist statewide."

CHAIR SEATON asked if coastal zone management was only for the protection of anadromous streams.

MS. BAXTER said, "What we think is that we have protected values outside the coastal zone with the state standard that DNR and DEC [Department of Environmental Conservation] has, and we feel that by applying those same standards within the coastal zone, we would protect those habitat values as well."

CHAIR SEATON suggested that this was confusing because there are a lot of values other than salmon habitat values.

MR. JEFFRESS said that what is being bypassed is that when resource agencies issue permits, there is a public notice process and public hearings. He said there is also an opportunity on some of the permits - that resource agencies have to mitigate concerns that stakeholder groups or local communities may have. He said this is a statewide process that exists right now, and there is one process for ACMP and one process for the state permits. He said that they can streamline this process by just having a single notice and the opportunity for the public to participate and also for the agencies to consider what mitigation may be appropriate.

Number 2590

REPRESENTATIVE WILSON reflected that this meant that there's a place in the process, if this goes into effect, in which local areas and local stakeholder groups could step up to the plate and fully explain their concerns.

MR. JEFFRESS replied that was exactly right and said that it was confusing as to why there's redundancy with the ACMP program when people on the interior of the coastal zone have to go through public notice and go through comment periods and mitigations with the agency.

REPRESENTATIVE WILSON said her understanding was that when the transition teams from every single area across the state submitted their concerns and suggestions to the governor, that was taken into consideration and was part of this process. She asked if stakeholders in every area would get a chance to

listen, put in their concerns, and give full input into this; she asked if things would happen as they have, but there just wouldn't be duplicity.

Number 2674

MR. JEFFRESS said this was correct. He said that the transition teams were looking at efficiency in government and the economic engines that the state needs in order to have sustainable resource development, meeting the goals of the constitution. When several of the transition groups highlighted that there was a perception that the ACMP process was a stumbling block, that was a motivation to move forward with this legislation. He said he had mentioned this to other committees, that it's hard to quantify how many opportunities the state has missed because the process seems so daunting, and that they are trying to simplify the process so that some of the opportunities can be taken advantage of.

REPRESENTATIVE WILSON asked if somebody could explain the normal public process that would happen before a permit would be granted.

MR. JEFFRESS said that normally the applicant has a pre-application meeting. He said "let's just take a generic permit anywhere in the state." There is a pre-application to define what the role of industry is in providing information that agencies need to make a decision. Then the agencies review and make sure the application is complete, and then there is public notice. There may or may not be enough interest to hold a public hearing, but during that public comment period a request can be made for a public hearing or a public meeting to further disseminate some of the information about the project or to take testimony on it. Then there would be specific regulations governing the permit, and the agencies would then take that information and make their determination.

REPRESENTATIVE WILSON asked if, as a general process, there is a certain time period before and after public notice, allowing for a chance to pull information together.

MR. JEFFRESS answered that was correct and that there were different regulations governing public notice on DEC and DNR permits, but that generally the notice for the public comment period was 30 days, although sometimes that was extended. He said that usually agencies respond to comments and some of that is incorporated into the final decision.

Number 2822

REPRESENTATIVE WILSON asked if the following was a correct understanding of the overall process: first, there's a pre-application meeting and there's the agency review of that, and then there's a public notice of 30 days or longer, and there's a public hearing and public comment process that includes testimony, and then the agency takes that information and makes a determination.

MR. JEFFRESS said that this was a simplified overview of the process.

REPRESENTATIVE WILSON asked if additional steps would be included in addition to what she had said.

MR. JEFFRESS confirmed that this was correct.

REPRESENTATIVE WILSON then commented that this seemed to be fairly complete.

CHAIR SEATON referred to the comment that the coastal zone management program has been perceived as a stumbling block, and asked if a list of projects that have had problems or haven't gone forward would be provided.

MR. JEFFRESS said that some of the permitting process is so daunting that opportunities have been missed regarding potential resource development "for the small mom-and-pop operators" - opportunities that would provide some economic benefit to the state. Regarding other projects that have been permitted, he said "time is money" and some of the delays for additional information have involved a number of agencies involved in these multi-agency permits; the agencies didn't think that the information was pertinent to making the decision and there have been delays on those permits. He said the intention is to streamline this and minimize those delays.

CHAIR SEATON said he was hearing from the committee that what was desired was a timeline and also examples of delays of permitting projects.

Number 2952

REPRESENTATIVE KERTTULA asked if anyone was planning on doing an overview for the committee that would increase understanding of

how the program works. She said that without such information, there was a real vacuum regarding how the program is developed, how the permits are processed, and general permitting that occurs right now. She requested an overview because otherwise "this is a real disservice to the committee," since there would be no way to judge the changes in order to determine if the changes were too broad or adequately specific.

**TAPE 03-14, SIDE B**

REPRESENTATIVE KERTTULA continued that her second area of concern was that she understood Title 16 as only bank-to-bank, instream - as "that's where the jurisdiction is" - and that she has seen cases that have been a (indisc.) of developers, especially along transfer facilities where, under coastal district policies and under habitat standards, ways have been developed to protect streams that are broader than Title 16 allows. She said she was concerned about this and asked, "Are we going to be certain that under this statute and proposal that we are actually going to be protecting the habitat correctly?" She wondered how this was being envisioned. She agreed that changes needed to be made, but said that there are certain instances where the coastal zones provide not only the kind of help to applicants that is needed, but also protection that isn't always available from the agencies.

Number 2927

MR. JEFFRESS responded that protection offered in the interior of the coastal management area was being looked at. He said that Title 16 is bank-to-bank. With the experience of DNR as the lead agency of the multi-agency teams that have been put together, those outside of the stream bank considerations have been noted and taken care of. He said "one of the pluses for having DNR as the lead resource agency" was that those different disciplines could be pulled together to cover the concerns.

REPRESENTATIVE KERTTULA commented in favor of the team idea because it works and also empowers people, but she said she wanted to know where the statutory authority is, as well. She reiterated that it's important to understand how the program currently works in order to assess the correct changes that need to be made.

CHAIR SEATON expressed concern regarding the second-to-the-last question that was submitted to DNR. He said there seems to be some confusion because that question asks why the habitat

standard has been eliminated from ACMP, the postulate being that this was a tool important to ADF&G in allowing for comment on what happens outside of streams in the riparian zone. He asked if "this has not been the tool that has allowed Fish & Game [ADF&G] to go beyond the stream bank into the riparian zone and that there's another tool that's going to be used?"

Number 2833

MR. JEFFRESS replied that he was referring to the habitat tool as not being statewide but as being coastal zone statewide, that is, interior to the coastal zone, which is considerable area, - that habitat standard didn't apply. The existing statutory and regulatory authority given to the Alaska Department of Fish & Game (ADF&G) and the other resource agencies was protecting habitat, outside of the stream bank-to-stream bank. He said that's been true in the Interior and some other areas where there's a redundancy of programs. Statutory and regulatory authority that is truly statewide is some of the toughest in the nation, and Alaska has a track record of proving that habitat has been protected. He added that what would further augment the process is this team concept of pulling the resource agencies together and making sure that specialty areas were covered. He added that this would be part of the public process.

CHAIR SEATON asked if this was the "Forest Practices Act" [Alaska Forest Resources and Practices Act] that basically gave that statutory authority in the riparian zone outside of the stream banks or if some other statutory authority had been provided.

MR. JEFFRESS said the Forest Practices Act gave that authority when dealing with the forest, but the habitat standard of the ACMP program is what gave authority in the coastal zone.

CHAIR SEATON asked, if the standard is being eliminated in the coastal zone, whether the Forest Practices Act would now give authority within the coastal zone.

MR. JEFFRESS replied that existing statutory and regulatory authority that is truly statewide currently give authority. With DNR as the lead agency and a multidiscipline team put together, there can be certainty that those concerns will be addressed. He said the attorney general's office can determine whether or not there is existing statutory authority to allow for that.

REPRESENTATIVE BERKOWITZ asked who drafted the legislation.

MR. JEFFRESS replied that it was drafted by Breck Tostevin.

Number 2680

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, said that he had hoped to go through the sectional analysis in a systematic way in order to address some of the questions.

REPRESENTATIVE KERTTULA suggested that the Mr. Tostevin walk the committee through how the program works now and from where the concerns have come. She expressed the need for committee members to understand how coastal districts and the consistency process works. She noted that she has heard concerns with regard to the habitat standard, due deference, and what happened in the past with elevations and the ACPC, and the evolution.

MR. TOSTEVIN explained that the basic premise of the original program was that there would be a networked program, not another state program, whereby a permit wasn't a permit. However, the state would use existing state authorizations and permits to review activities in the coastal zone. The statewide standards applied in the coastal zone were put into regulation, 6 AAC 80, by the DGC. The ACPC also created some standards whereby district programs were created. To implement the program there was, as developed over time, a consistency review process. The consistency review process [required] that an applicant fill out a coastal questionnaire, which identified the state and federal permits that were needed. The Division of Governmental Coordination would coordinate that coastal review if there were more than two state permits or a federal permit was involved. If there was only one state permit, then that single state resource agency would perform the review. Essentially, the permitting authority for each resource agency would go through its notice and at the same time send notice to coastal districts and the public seeking information regarding the consistency under the coastal program.

MR. TOSTEVIN turned to some of the difficulties. Although the state permit standards and the state environmental laws are generally clear, the state standards are policy and thus more general in nature, as is often the case with the district policies. He noted that often the district programs simply incorporated the state standards. Therefore, there were

problems with applying the standards twice, as well as problems interpreting the standards.

Number 2395

REPRESENTATIVE WILSON commented that the aforementioned process sounds very frustrating and time-consuming. She surmised that this process would take a mom-and-pop operation out of commission for quite some time.

MR. TOSTEVIN acknowledged that this is a complex process. He related that another criticism has been that the state agencies aren't allowed to issue a permit until the consistency review is completed. Therefore, everyone is waiting until the last permit is ready to be issued. Under this legislation, each resource agency would issue its permits as it could work through them, and once the final permit was issued, the consistency review would be issued.

Number 2324

REPRESENTATIVE BERKOWITZ inquired as to how many projects, on an annual basis, ACMP reviews. He also inquired as to the sort of projects that ACMP reviews.

MR. TOSTEVIN said that he probably wasn't the best person to provide numbers. However, [ACMP review] applies to any project on the coastal zone that requires a state permit or authorization or a federal permit or authorization.

REPRESENTATIVE BERKOWITZ surmised, then, that an individual constructing a dock would have to obtain a permit.

MR. TOSTEVIN replied yes.

REPRESENTATIVE KERTTULA requested a breakdown of how many projects actually go through the complete review. She indicated her understanding that many of the projects are brought over with the "ABC list" and merely reviewed as a general permit. "This is a little overblown because many projects ... go through just ... a general permit and are out," she remarked.

MR. TOSTEVIN agreed some do.

Number 2236

MR. TOSTEVIN turned to the document entitled "Sectional Analysis of HB 191/SB 143," which is included in the committee packet, and paraphrased from it. With regard to Section 13, Subsection (a), Mr. Tostevin explained that the CZMA of 1972 provides two benefits to the state because it offers funding as well as to settle the consistency review process. Therefore, the state is allowed to have a say in federal activities. He pointed out that there are three types of federal consistency reviews. He mentioned that the committee packet should include a chart with his sectional analysis. He noted that Section 13, Subsection (c) is an existing provision that refers to the coastal resource district, the definition of which has been expanded to include municipalities in an unorganized borough.

Number 2051

CHAIR SEATON related his understanding that HB 191 eliminates the CRSAs and the ACPC, and puts in place a new organization of the coastal zone management district.

MR. TOSTEVIN explained that there is an existing coastal resource district definition. A coastal resource district can receive coastal management monies and is defined as a borough or municipality. The idea is that those resource districts would use the coastal management monies for planning within its boundaries and use the [borough's or municipality's] own land use ordinances to regulate activities within the district's jurisdiction.

CHAIR SEATON surmised that all areas outside municipalities or boroughs can't receive any funding under this proposed mechanism.

MR. TOSTEVIN said that is correct. For areas in an unorganized borough that are outside city limits, there isn't funding available. He suggested that perhaps the option would be to create a borough.

REPRESENTATIVE BERKOWITZ asked if the legislature could act for the unorganized boroughs.

MR. TOSTEVIN interpreted Representative Berkowitz to be asking whether the definition of a resource district could be amended such that other entities could be included if the legislature so desired. Mr. Tostevin reiterated that the idea behind the legislation was to provide money to those who had zoning functions in order to participate in the program.

CHAIR SEATON surmised, then, that this legislation would only apply to those boroughs that exercise zoning functions.

MR. TOSTEVIN replied no and specified that any borough or city is eligible; however, the program is implemented through ordinances at the local level. He said he assumed that a borough or city could have an ordinance regulating a land-use activity without a comprehensive zoning ordinance.

Number 1857

REPRESENTATIVE KERTTULA inquired about how areas such as the Matanuska-Susitna [Borough], which doesn't have comprehensive zoning.

MR. TOSTEVIN clarified that the legislation doesn't require comprehensive zoning, but simply specifies that DNR can use a government's ordinance as an enforceable policy for federal activities and OCS development. Therefore, if an area wants to participate in imposing such requirements, an ordinance would be used to do so. Otherwise, the municipality or borough would use its zoning and land-use authority as it saw fit in expressing its concerns within its boundaries, which is the case now.

CHAIR SEATON surmised, then, that those in unorganized boroughs wanting a restriction would need to come to the legislature to request a specific statute to regulate that specific [activity/use] for the people of that unorganized borough area. He asked if the statute would be specific to each project.

MR. TOSTEVIN responded that's correct. He reminded the committee that the premise of this [legislation] is that the public has a right to participate in the permitting process.

Number 1735

REPRESENTATIVE KERTTULA pointed out that if the department adopts the local district's zoning, then those will apply against the federal projects that are federally permitted. She asked if [the local district's zoning] would also apply against the state's permit.

MR. TOSTEVIN specified that it would apply to federal projects and OCS development, but not to a state [project]. However, there are state permits that will apply to federal activities as

well as state permits that will apply to OCS development through this process.

REPRESENTATIVE KERTTULA asked if there can be a district-enforceable policy through a local zoning ordinance. Can the state adopt [a district-enforceable policy] against the state permit, she asked.

MR. TOSTEVIN answered that the local entity would influence the state project by commenting on the permit. There wouldn't be a separate enforceable policy.

Number 1650

CHAIR SEATON posed a situation in which there was a development project that was going to take place on state land, not on federal land. Therefore, the enforceable policies wouldn't apply to those projects on state land because it wouldn't be a federal project or OCS development. Since the project would only be on state land, the enforceable policies wouldn't apply.

MR. TOSTEVIN directed attention to the first row of the document entitled, "HB 191/SB 143 Consistency Review Provisions," which is included in the committee packet. He explained that to the extent a local ordinance could apply to a state activity, there are certain statutes that allow local governments to affect state projects. He agreed that the aforementioned would only be within the municipal boundaries. Title 29 grants the scope of the municipality's authority, and he believes municipalities are allowed extraterritorial authority with limited parameters. Mr. Tostevin explained that if the state permit can be issued and the local permits can be obtained, then the activity is consistent with the coastal program.

MR. TOSTEVIN, in response to Representative Wilson, confirmed that communities such as Wrangell and Petersburg, which are municipalities, could go through the regular process with public hearings. He highlighted that Title 9 municipalities would have the authority to enact ordinances as well as the ability to comment on the state permits during the public process. A provision of HB 191 specifies that it doesn't affect Title 29 powers. He also confirmed that projects two miles outside of the Wrangell city limits wouldn't apply because there is no local permitting.

Number 1380

REPRESENTATIVE KERTTULA said, "Another way of putting this would be that there's no more ... consistency determination for state-permitted projects, right?"

MR. TOSTEVIN replied no and stated that the consistency is determined through the issuance of the permits.

REPRESENTATIVE KERTTULA asked, then, how [the district] comments and how deference is given to the districts. She pointed out that on most of the permits, the state law will preempt.

Number 1349

MR. TOSTEVIN specified that the local governments can comment on the permits. The issuance of the permit is the determination of consistency. He noted that the CZMA allows a state to decide what uses and activities it wants to regulate and to demonstrate how its laws regulate coastal uses and protect coastal resources. One of the methods is a direct method using existing state laws and regulations to regulate the coastal zone. There isn't a state consistency review requirement in the federal program. The only consistency review process in the federal program is one whereby the state reviews federal activities, OCS plans, and federally administered permits for consistency with its state's programs. Mr. Tostevin highlighted that HB 191 proposes a self-implementing concept such that existing laws and regulations are used to regulate the coastal zone and the consistency is determined by issuance of the permit, except for reviewing federal activities or activities on the OCS.

Number 1251

MR. TOSTEVIN said that in the review of federal activities or activities on the OCS, DNR can adopt local ordinances to apply to federal activities and the OCS plan. Furthermore, in Section 13, Subsection (f), there are specific intercontinental shelf policies that have previously been adopted by the ACPC and have been included in the legislation as enforceable policies. That provision was one resulting after the administration consulted with coastal districts. He noted that a copy of HB 191 was circulated to the coastal districts.

Number 1118

MR. TOSTEVIN continued with the sectional analysis. In response to Representative Berkowitz's question relating to Section 13, Subsection (d)(4), Mr. Tostevin related his belief that it's

envisioned that DNR will adopt regulations to implement the program.

REPRESENTATIVE BERKOWITZ emphasized that the legislature is the policy-making body.

MR. TOSTEVIN pointed out that certain policies in the legislation are mandatory, while others allow a municipality to submit [policies] to DNR for incorporation into the program. He noted that those ordinances are screened in order to ensure that they aren't making unreasonable restrictions on uses of state concern and aren't duplicative; if that's so, DNR can adopt those policies and enforceable policies for those programs. The aforementioned enables municipalities to apply those programs to federal activities or OCS plans where they wouldn't ordinarily apply.

Number 0949

REPRESENTATIVE GUTTENBERG inquired as to whether DNR is going to be able to filter the local ordinances or whether there will be a review or an appeal from the local ordinances.

MR. TOSTEVIN answered that it's up to DNR to determine whether to adopt the ordinance as an enforceable policy. [The department] must determine whether the ordinance is reasonably restrictive. The department must also determine that the ordinance isn't duplicative of a state standard. The idea is that it's a unique and important local ordinance that would be adopted into the program for reviews of federal activities and OCS [development].

REPRESENTATIVE GUTTENBERG posed a situation in which a municipality adopts regulations and although DNR doesn't approve them, the municipality "stands on them." He asked, "Haven't you put a barrier up in their place?" He remarked that some municipalities don't want things to happen and asked whether [this] isn't simply placing an insurmountable barrier.

MR. TOSTEVIN replied that he didn't think so. He pointed out that first there has to be a municipal ordinance and then DNR will determine whether it should be part of the program for those purposes.

REPRESENTATIVE GUTTENBERG surmised, then, that for local control purposes, it's in place as a local ordinance and thus there seems to be an inherent conflict.

Number 0787

CHAIR SEATON asked if this [legislation] means that the state permit can waive and not agree with the local ordinance.

MR. TOSTEVIN explained that [the municipality] is incorporated into the program for something that the municipality doesn't have power to do alone. Therefore, the program provides the municipality the authority to have a policy that impacts the federal project or the OCS [development] outside of the municipality's boundaries. The department has the ability to determine whether that should be a policy. He reiterated that municipalities do have the authority to implement ordinances, which are regulated under Title 29. He noted that the legislature establishes the powers of the municipalities.

Number 0693

REPRESENTATIVE KERTTULA related her belief that it would helpful for the committee to know what the coastal districts currently have the right to have authority over, and how the municipalities utilize their coastal policies in permits, versus this proposal in which the state permit is the consistency determination. She inquired as to what is left out with just local zoning. Representative Kerttula related her understanding that under HB 191, the state permit is the determination and there is no longer a policy with regard to enforceable policy for coastal districts. The DNR decides if it will accept an already existing local ordinance, and DNR will perform its own permit review rather than a consistency review.

MR. TOSTEVIN explained that if a municipal ordinance has been adopted, then DNR consults with the municipality and interprets and applies that as part of the consistency review. If DNR does, then that's part of the permit issuance. Therefore, each resource agency issues its permit, and if there's an additional municipal policy, DNR will have to interpret that.

CHAIR SEATON directed attention to Subsection (g) [of Section 13 on page 11], which reads: "In selecting enforceable policies under (d)(3) of this section, the department may, for purposes of the ACMP, limit the applicability of an enforceable policy to appropriate activities or to appropriate sectors of the area described in (d)(2) of this section." He asked if the aforementioned language meant that there could be a local ordinance and DNR could decide that the ordinance doesn't apply

to particular activities, if [the municipality] wants to permit those activities.

MR. TOSTEVIN pointed out that [Section 13], Subsection (g) refers to the state laws and regulations on page 7-9. That provision allows DNR to say that a policy applies or doesn't apply in certain areas.

Number 0480

REPRESENTATIVE BERKOWITZ posed a situation in which there is a conflict between DNR's permit and a municipal zoning ordinance. He asked if DNR's permit would trump the municipality's ordinance.

Number 0445

MR. TOSTEVIN answered that it would depend upon the type of review. He directed attention to the chart entitled, "HB 191/SB 143 Consistency Review Provisions." He pointed out that the first row refers to the state's consistency review for activities in the coastal zone that only require a state permit. In this situation, the municipalities apply their ordinances to the activity. However, a federal consistency review, which is illustrated by row two, is one involving activities in the coastal zone, federal land, or the OCS for which there are federally administered permits. Again, if the state permits can be issued, then the federal permit will be consistent with the state's program. Mr. Tostevin highlighted that local ordinances will retain their direct application in the coastal zone. Furthermore, OCS plans actually incorporate certain local provisions.

REPRESENTATIVE BERKOWITZ related his understanding that there would still be a consistency determination but that consistency would now mean whatever DNR wants and would override the local [ordinance].

MR. TOSTEVIN disagreed with that interpretation and characterized it as an oversimplification. The consistency review process is created as a mechanism to determine whether an activity is consistent with [the state's] coastal program. Municipalities have the authority to regulate uses and activities of the coastal zone absent the coastal zone program.

Number 0285

REPRESENTATIVE BERKOWITZ pointed out that Section 13 on page 11, lines 13-16, reads: "**Sec. 46.39.060. State consistency review.** (a) For activities in the coastal zone that only require state permits, the issuance of the applicable state permits implementing the enforceable policies in AS 46.39.010 constitutes consistency with the ACMP." He interpreted the aforementioned language to mean that once a permit is issued, it equates to consistency regardless of the local decision [ordinance].

MR. TOSTEVIN said that's correct; for purposes of consistency, it would be consistent. However, if, for example, the North Slope Borough had a zoning ordinance for the oil company, the oil company would need to obtain [the borough's] ordinance; otherwise, development wouldn't go through.

REPRESENTATIVE BERKOWITZ remarked, "I don't see it being consistent; I see it as a removal of local control over the process." For example, if the North Slope Borough wants something but the state refuses, then the state trumps [the borough] because it's inconsistent. Alternatively, if the North Slope Borough "said no" but DNR issued a permit, then the North Slope Borough would lose, he surmised.

MR. TOSTEVIN disagreed. He explained that the ACMP doesn't preempt a municipality's Title 29 powers. If the North Slope Borough could legally require a permit and the state issued a permit while the borough didn't, then the project couldn't go forward because the borough hadn't issued its permit. Mr. Tostevin directed attention to "**Sec. 46.39.072. Construction with other laws."** on page [13].

Number 0066

REPRESENTATIVE KERTTULA asked whether the question is really about preemption. If the consistency determination is eliminated, then there will have to be a decision as to whether the community has Title 29 powers, whether it has any zoning ordinances in place, and it will be preempted by the state. She asked if there had been review of that. Representative Kerttula highlighted that the state preempts on many activities that [tape ends midspeech].

**TAPE 03-15, SIDE A**

REPRESENTATIVE KERTTULA reiterated that it's necessary for everyone to know what's left for the local areas. For those

districts without zoning ordinances, it will just be the state's permit, she surmised.

The committee took an at-ease from 10:15 a.m. to 10:22 a.m.

Number 0106

MR. TOSTEVIN returned to the sectional analysis [Section 13, Subsection (d)(4)].

REPRESENTATIVE GUTTENBERG said he was wondering about stranding or orphaning something. If a local municipality adopts a set of ordinances that deal with activities and DNR doesn't adopt a specific one, then the local ordinance is in a situation in which it might have another permit dealing with these issues. Although the [borough] needs to issue a permit, the permit request specifies that there must be compliance with all previous ordinances. Therefore, a permit is issued that supercedes the ordinance but the borough can't give a permit for something else because they have violated that.

MR. TOSTEVIN continued the sectional analysis and highlighted that Section 13, Subsection (d)(6), is the self-implementing concept of HB 191. With regard to Sec. 46.39.065, Mr. Tostevin pointed out that the Act specifically lists the federal environmental permits that trigger this type of [consistency] review that's part of the federal program.

Number 0777

REPRESENTATIVE KERTTULA turned to Sec. 46.39.065(e) of HB 191 and asked, if there is a federal permit, whether there would still be a conclusive determination.

MR. TOSTEVIN explained that Sections 46.39.065(d) and (e) refer to the consistency review process in coastal areas for a federally administered permit.

REPRESENTATIVE KERTTULA surmised, then, that if no state permit is required, then there is a conclusive determination.

MR. TOSTEVIN said that's correct.

REPRESENTATIVE KERTTULA inquired as to why [the state] would want to do that. Why doesn't [the state] want to maintain the ability to review federal permits as they come through, rather than having a conclusive determination, she asked.

MR. TOSTEVIN reiterated that the idea is that it isn't requiring a state permit and thus the determination has been made that [the state's] laws and permitting process doesn't apply to the activity. Therefore, the activity isn't deemed inconsistent with [the state's] plan.

Number 0895

REPRESENTATIVE KERTTULA asked, "Policywise, isn't that one of the big beauties of coastal zone [ACMP], is it allows us, as a state, to have some input into those federal permits?" She recalled from her time working with the program that one of the major reasons for the state's becoming involved in ACMP was to be involved with the federal consistency. She inquired as to the policy determination. "Is it just ... we're letting them have a consistency determination," she surmised.

MR. TOSTEVIN agreed that one of the important aspects is the federal consistency process. All that Sections 46.39.065(d) and (e) say is that for purposes of [the state's] determining whether the federal permit is consistent, the [department] will review the state permitting requirements for that activity triggered by the federal permit. If there isn't a state permit for that activity, the [department] will say it's consistent. Therefore, [the state] is exercising the federal review process. Basically, this says that if the activity doesn't trigger a state permit, then it's consistent.

REPRESENTATIVE KERTTULA inquired as to what types of [activities] that would include.

CHAIR SEATON answered that this is [referring] to an activity that would require a federal permit for [an activity] on federal lands.

REPRESENTATIVE KERTTULA suggested that it could also impact state lands.

CHAIR SEATON pointed out that it wouldn't require a state permit.

REPRESENTATIVE KERTTULA agreed and commented that it may be de minimis or it might be huge. She reiterated that federal consistency was a large reason for this to begin with.

MR. TOSTEVIN explained that the idea is that if a federal permit is required for a private applicant in a coastal zone and the state doesn't require a permit for the activity, then the state is saying that [the activity] is consistent.

Number 1089

REPRESENTATIVE KERTTULA inquired as to U.S. Department of Defense activities. She recalled:

> I thought that there were examples where no state permits were required, largely because we're preempted. But where there are activities that take place on even state lands, where because of coastal zone we've had a right to comment and to be involved. And without that, we may not.

MR. TOSTEVIN said that U.S. Department of Defense activities would probably fall under Sec. 46.39.070, which creates the consistency review process for federal activities or OCS plans. He paraphrased from the portion of the sectional analysis relating to [Sections] 46.39.070(c) and (d), which read as follows:

> Subsections (c) and (d) provide that federal activities are to be judged by the standards for state permits in .010(d)(3) and by the local standards adopted under .010(e) and (f). Subsection (d) provides that if DNR determines that a proposed federal activity or OCS plan is inconsistent with an enforceable policy then the DNR shall, if feasible, issue a conditional concurrence under 15 C.F.R. 930.4 setting out conditions that would render the federal activity or OCS plan consistent, thus avoiding formal mediation. If the proposed federal activity cannot be rendered consistent, the department must object to the consistency determination, and the parties then proceed to dispute resolution under federal law.

REPRESENTATIVE KERTTULA said she believes Mr. Tostevin is right about the federal activities.

Number 1230

MR. TOSTEVIN continued with the sectional analysis. With regard to [Sec.] 46.39.080(b), Mr. Tostevin explained that when the federal, nationwide, or general permit was first proposed, it

would proceed through a federal activity consistency review. However, if an applicant is merely obtaining a nationwide or general permit, then that's consistent. In regard to Section 20, Mr. Tostevin explained that general concurrence determinations are activities that have standard stipulations tied to them.

REPRESENTATIVE KERTTULA asked if anything was being added to the current ABC list of activities that need not be reviewed.

MR. TOSTEVIN replied no.

Number 1541

CHAIR SEATON pointed out that HB 191 has two zero fiscal notes and one with $73,000 in 2006. He surmised that there is basically no fiscal impact because it was gained in EO 106, which had to take place prior to [HB 191].

MR. TOSTEVIN responded that is correct.

CHAIR SEATON referred to a document from the Yukon-Kuskokwim Delta [Cenaliulriit CRSA, which is included in the committee packet]. He informed the committee that [Cenaliulriit CRSA] has some problems with subsistence aspects and relates that the Association of Village Council presidents, which serves 56 villages, opposes HB 191. He turned to public testimony in order to give Mr. Tostevin time to review the document so that he could comment on it.

Number 1639

TADD OWENS, Executive Director, Resource Development Council (RDC), informed the committee that RDC has worked in conjunction with the Alaska Oil and Gas Association (AOGA) and several other development associations in order to evaluate the existing ACMP program and to consider improvements or user-friendly alternatives. Mr. Owens announced RDC's support of HB 191. Mr. Owens offered to provide more thorough input at a later date.

CHAIR SEATON requested some examples in which the ACMP has held up development for the RDC's associates.

MR. OWENS recommended that Judy Brady, AOGA, address this as well. However, he informed the committee that the ACMP process for oil and gas projects on the North Slope adds at least a year to the permitting process. Therefore, the permitting process

needs to be refined to be more user-friendly, predictable, and time-sensitive. In many instances, the ACMP has become the poster child for a process that has become very inefficient and isn't time sensitive and thus adds a great deal of delay, he added.

CHAIR SEATON surmised that Mr. Owens believes that would be the case even if the local management [ordinances] are selected as enforceable standards.

MR. OWENS answered with his belief that the administration is attempting, with HB 191, to eliminate many of the cumbersome aspects of the process while protecting the rights of local communities to have a voice regarding development within their boundaries.

Number 1850

JUDY BRADY, Alaska Oil and Gas Association, noted that she has three pages' worth of responses to the questions asked and would submit those to the committee. Ms. Brady informed the committee that AOGA has worked with DGC and various governors and administrations trying to fix the ACMP for a number of years. This legislation moves toward the original intention of the ACMP. She pointed out that the ACMP was never intended to be a permitting system, but rather that the state statutes and regulations would be used for consistency. Furthermore, it was always intended that local governments would have a voice, although they wouldn't have the final say. The state has the final say on federal consistency projects, and that wouldn't change, she pointed out. Ms. Brady said that AOGA is still diagramming this process in order to determine how it works in real life.

MS. BRADY noted that AOGA has never been able to diagram the ACMP process as it currently works. With regard to the question of what projects haven't gone forward, Ms. Brady said that several projects have been delayed fairly consistently and a couple of companies have said that they need to be in the ground faster, know the rules faster, know how long it takes to [obtain] a permit, know whether the project is in the coastal zone, and know what will be required of them. Those companies have turned their backs on Alaska. Ms. Brady related that the companies don't mind the standards, but they do mind the permitting gridlock related to ACMP. She suggested that later AOGA would have specific comments on language. This legislation

is back to basics and what the permitting process was originally supposed to be, she concluded.

Number 2033

NOAH NAYLOR, Planning Director, Northwest Arctic Borough, paraphrased his written testimony as follows:

> The Northwest Arctic Borough and the North Slope Borough can serve as models where our district plans, which strive to protect our subsistence resources, upon which we still depend on today, can allow for major economic development and for the protection of our resources. Our district plans, coupled with our Title 29 planning authority, allowed the leverage needed to promote and mitigate for responsible economic development.
>
> By adopting a statewide "one size fits all" set of enforceable policies, you will take away what we feel is the heart of our district plan, a set of policies that address the unique circumstances in each of our districts. Simply adding a paragraph of each of our plans cannot and should not be viewed as an implementation policy that will address our local needs. By adopting these policies, you will take away a very strong tool provided to us in our district plan - the ability for local due deference, expertise, experience, and control.
>
> This bill hurts us in several separate ways: it takes away our unique enforceable policies; it removes the vital role for local involvement, expertise, and government; and it will result in the loss of federal, state, and borough-invested resources, time and expertise in developing and implementing the borough coastal management plan.

MR. NAYLOR concluded by requesting more time to review HB 191.

Number 2148

WALTER SAMPSON, President, Northwest Arctic Borough Assembly, informed the committee that the Northwest Arctic Borough is a home rule borough. He related his belief that ACMP is being attacked by interest groups. If there is going to be a change, there should be a process for public testimony. Having one ACMP

won't fit all the regions. Limiting liability and mitigating responsibility to the needs of the region is important. If the public process has been used to develop these coastal management plans, then there's no reason why the state can't go through a process to review and change the ACMP. He remarked that the questions raised today need to be addressed.

Number 2298

MR. JEFFRESS said that he has reviewed the [testimony from Cenaliulriit CRSA, which is included in the committee packet]. He pointed out that this is the review process. With the administration taking over at the beginning of December, this is the most expeditious manner in which to move this process forward.

CHAIR SEATON announced that the committee will accept further comments in writing.

[HB 191 was held over.]

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:00 a.m.