

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 16, 2003

1:08 p.m.

MEMBERS PRESENT

Representative Hugh Fate, Chair
Representative Beverly Masek, Vice Chair
Representative Carl Gatto
Representative Cheryll Heinze
Representative Bob Lynn
Representative David Guttenberg
Representative Beth Kerttula

MEMBERS ABSENT

Representative Carl Morgan
Representative Kelly Wolf

OTHER LEGISLATORS PRESENT

Representative Paul Seaton

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

CS FOR SENATE JOINT RESOLUTION NO. 12(RES)

Supporting the halibut by-catch utilization project of the Alaska Food Coalition.

- SCHEDULED BUT NOT HEARD

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)
03/12/03	0513	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/17/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/17/03		(H)	Heard & Held MINUTE(FSH)
03/18/03		(H)	RES AT 12:30 PM CAPITOL 124
03/18/03		(H)	<Pending Referral> -- Meeting Canceled --
03/26/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/26/03		(H)	Moved Out of Committee MINUTE(FSH)
03/26/03	0638	(H)	FSH RPT 2DP 2DNP 1NR 2AM
03/26/03	0638	(H)	DP: HEINZE, WILSON; DNP: GUTTENBERG, BERKOWITZ;
03/26/03	0638	(H)	NR: SAMUELS; AM: OGG, SEATON
03/26/03	0639	(H)	FN1: ZERO(DFG)
03/26/03	0639	(H)	FN2: ZERO(DEC)
03/26/03	0639	(H)	FN3: (DNR)
03/26/03	0639	(H)	REFERRED TO RESOURCES
03/26/03		(H)	RES AT 1:00 PM CAPITOL 124
03/26/03		(H)	-- Meeting Canceled --
03/28/03		(H)	RES AT 1:00 PM CAPITOL 124
03/28/03		(H)	<Bill Hearing Postponed>
04/11/03		(H)	RES AT 1:00 PM CAPITOL 124
04/11/03		(H)	<Bill Hearing Postponed>
04/16/03		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

MARTY RUTHERFORD, Consultant
to the Administration
and to the Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified to changes made in the proposed
committee substitute (CS) for HB 191 dated 4/12/2003.

BRECK TOSTEVIN, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Provided an overview of the sectional analysis of the proposed CS for HB 191.

PATRICK GALVIN, Petroleum Land Manager
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Provided testimony and answered questions relating to the proposed CS for HB 191.

CHUCK DEGNAN, Director
Bering Straits Coastal Management Program
Unalakleet, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191.

KATHY WASSERMAN, Mayor and Administrator
City of Pelican
Pelican, Alaska

POSITION STATEMENT: Testified on the proposed CS for HB 191.

JOHN OSCAR, Program Director
Ceñaliulriit Coastal Resource Service Area Board (CRSA)
Mekoryuk, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191.

PAT NORMAN, First Chief
Port Graham Village Council
Port Graham, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191.

FRANK KELTY, Member
Aleutians West Coastal Resource Service Area (CRSA) Board
Unalaska, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191.

BOB SHAVELSON, Executive Director
Cook Inlet Keeper
Homer, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191; said the districts will have a severely constrained role in local coastal decisions under this bill.

MARV SMITH, Community Development Coordinator
Lake and Peninsula Borough
King Salmon, Alaska

POSITION STATEMENT: Testified about concerns relating to the proposed CS for HB 191.

LISA VON BARGEN
City of Valdez
Valdez, Alaska

POSITION STATEMENT: Provided testimony on the proposed CS for HB 191.

PAT CARLSON, Manager
Kodiak Island Borough
Kodiak, Alaska

POSITION STATEMENT: Provided testimony on the proposed CS for HB 191.

KAROL KOLEHMAINEN, Program Director
Aleutians West Coastal Resource Service Area Board
Palmer, Alaska

POSITION STATEMENT: Testified on the proposed CS for HB 191.

KEN DONAJKOWSKI, Manager
Health Safety Environment (HSE)
Conoco Phillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of Alaska Oil and Gas Association (AOGA) regarding the proposed CS for HB 191.

SARAH GILBERTSON, Policy and Program Coordinator
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified on HB 191; said AML didn't have an official position on the proposed CS, but offered comments on it.

DOUGLAS MERTZ
Prince William Sound Regional Citizen's Advisory Council
(PWSRCAC)
Juneau, Alaska

POSITION STATEMENT: Testified on the proposed CS for HB 191; said PWSRCAC had increasing concerns about the disconnect

between the apparent intention of the drafters and the language in the bill.

TERI CAMERY, Planner
City and Borough of Juneau (CBJ)
Juneau, Alaska

POSITION STATEMENT: Expressed concerns relating to the proposed CS for HB 191.

ACTION NARRATIVE

TAPE 03-31, SIDE A

Number 0001

CHAIR HUGH FATE called the House Resources Standing Committee meeting to order at 1:08 p.m. Representatives Fate, Masek, Gatto, Heinze, Lynn, Guttenberg, and Kerttula were present at the call to order. Also in attendance was Representative Seaton.

HB 191-COASTAL MANAGEMENT PROGRAMS

CHAIR FATE announced that the 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." [The bill was sponsored by House Rules Standing Committee by request of the governor.]

Number 0132

REPRESENTATIVE MASEK moved to adopt the proposed committee substitute (CS) labeled 03-0069 bil2.doc, 4/12/2003, 5pm, as the work draft, and asked for unanimous consent. There being no objection, the proposed CS dated 4/12/2003 was before the committee.

Number 0185

MARTY RUTHERFORD, Consultant to the Administration and the Department of Natural Resources (DNR), testified. She characterized the Alaska Coastal Management Program (ACMP) as an older program that has not appropriately responded to Alaska's maturing statutory and regulatory regime. She suggested that the existing program is often redundant, using local enforceable policies that are a reiteration of the regulatory agencies' permit standards. She offered her opinion that the programs' consistency review process is unpredictable, is overly broad in scope, takes too much time, and delays the issuance of permits and the startup of projects.

MS. RUTHERFORD suggested that the statewide standards and local enforceable policies are vague and subject to multiple interpretations. However, she said while the program has problems, the sweeping changes that were suggested in the original HB 191 eliminated some of the primary reasons for Alaska's embracing coastal management in the first place, including state and local control over projects requiring a federal authorization, and state and local influence on direct federal activity. During the discussions of the original HB 191, she explained, this administration took to heart some of the comments received from the districts, the coastal resource districts, and the citizens; as a result, this proposed CS returns to the basic structure of the existing coastal management program.

Number 0523

MS. RUTHERFORD explained that [the proposed CS dated 4/12/2003] retains the four existing coastal resource service areas, which are located in the unorganized borough, and that all existing coastal districts continue, retaining the same authorities and responsibilities as under the current program; it retains local enforceable policies and all the statewide standards of the program, including the habitat standard and the subsistence standard; and it ensures that all activities requiring a federal or state permit will have a consistency review. She said district enforceable policies remain applicable to all projects that are subject to a consistency review, not just the outer continental shelf (OCS) projects and federal activities, as envisioned in HB 191. She suggested that this proposed CS ensures that the districts will retain their "seat at the table" as project decisions are made.

Number 0596

MS. RUTHERFORD explained that this proposed CS makes significant changes to the program and attempts to retain important elements while addressing the [aforementioned] problems. For instance, it eliminates the [Alaska Coastal Policy Council (ACPC)] and transfers its duties to DNR; places a sunset provision on the current statewide standards and coastal district plans and mandates that their replacement standards be clear, concise, not susceptible to subjective interpretations, and not duplicative of otherwise existing requirements; clarifies that local enforceable policies may not address a matter that is regulated or authorized by state or federal law unless the policy relates specifically to a matter of local concern; and provides a definition for what constitutes a matter of local concern.

MS. RUTHERFORD further explained that it provides important clarifications on the consistency review process in order to ensure more predictable timelines and standards, which includes the scope of a project that is subject to review and when a project can proceed in phases; encourages the use of general permits; clarifies that the Department of Environmental Conservation's (DEC's) permits and authorizations will constitute the consistency determination for air, land, and water quality; and insulates the coastal management consistency review from delays associated with these permits and authorizations.

Number 0741

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, told members that the proposed CS is premised upon statutory changes in Executive Order (EO) 106, introduced by the governor on February 12, 2003; it transfers responsibility for ACMP from the Division of Governmental Coordination (DGC) to DNR. Mr. Tostevin said the EO did not make substantive changes to the law, but repealed existing statutes found in AS 44.19 and readopted them in a "new title 46.39."

Number 0835

MR. TOSTEVIN said the proposed CS clarifies the scope, applicability, and requirements of the existing coastal management program in AS 46.40; retains coastal resource districts and the current structure of how they operate under ACMP; retains the existing Coastal Resource Service Areas (CRSAs) in the unorganized borough, but eliminates the creation of new CRSAs; eliminates the Alaska Coastal Policy Council and

transfers its authority to the development of statewide standards of the ACMP and the approval of district coastal management plans to DNR; requires DNR to adopt regulations within one year of enactment, establishing clear and enforceable statewide standards of ACMP as well as criteria for the approval of new district coastal management plans; and requires coastal resource districts to submit new coastal management plans to DNR for approval.

MR. TOSTEVIN explained that the plans must have enforceable policies that are clear and concise, that provide greater uniformity throughout the state, and that don't duplicate state and federal requirements. The districts are required to submit these new plans to DNR for approval within six months for first-class [cities] and boroughs, and within a year for other districts; this date is from the effective date of the new regulations. He said the proposed CS streamlines the ACMP by relying on DEC's air, land, and water quality requirements as the enforceable policies of the ACMP for those purposes, and by relying on DEC's determination for implementation of those requirements in order to determine consistency for those parts of a development project.

Number 0991

MR. TOSTEVIN paraphrased from Sections 1-8 of the sectional analysis, which read [original punctuation provided]:

Section 1 contains legislative findings on the need for reform of the ACMP.

Sections 2 [and 4], 5-6 make conforming amendments to existing statutes reflecting the elimination of the Alaska Coastal Policy Council and the transfer of the [ACPC's] functions to the Department of Natural Resources.

Sections 7 and 8 transfer from the [ACPC] to DNR the authority to develop statewide standards and the criteria for adoption of district coastal management plans.

MR. TOSTEVIN explained that Section 3 reflects a change in terminology when referring to district coastal management programs. The proposed CS refers to new district plans to distinguish them from the existing district programs, and also

to distinguish them from the existing statewide ACMP program; so that changes throughout.

MR. TOSTEVIN continued paraphrasing from Sections 9-12 of the sectional analysis, which read [original punctuation provided]:

Section 9 directs coastal resource districts to develop and adopt coastal management plans and set forth the required contents of the plans. AS 46.40.030(b) states that enforceable policies of those plans must meet the requirements of AS 46.40.070 and may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. The term "enforceable policy" is defined in section 43 of the bill.

Section 10 directs DNR to establish statewide standards for the ACMP and district coastal management plan criteria.

Section 11 establishes the Department of Environmental Conservation's air, land and water quality requirements as the exclusive policies of the ACMP of those purposes. This provision provides that the issuance of permits, certifications, approvals and authorizations by DEC constitute a determination of consistency with the ACMP for those purposes and for those components of a proposed development project subject to those permits and other authorizations. This language ensures that the ACMP consistency review process does not duplicate DEC's permitting process. This provision conforms with the provisions of the existing program at 6 AAC 80.140 and the federal Coastal Zone Management Act's requirement that these environmental standards be included in the state's coastal program.

Section 12 repeals and readopts AS 46.40.050 concerning submission of district plans by coastal resource districts. The section removes obsolete language from the initial creation of the program in 1977 and adds a new requirement that a coastal resource district must review and resubmit its plan for approval every five years. This is to ensure that the district plans are regularly updated.

Number 1226

MR. TOSTEVIN continued paraphrasing from Section 13 of the sectional analysis, which read [original punctuation provided]:

Section 13 amends the district plan review and approval provision at AS 46.40.060. It provides that the department may approve a district coastal management plan provided it meets the requirements of AS 46.40, the statewide standards adopted by DNR, and the district plan criteria adopted by the department. A district plan may not arbitrarily, unreasonably, or unduly restrict or exclude uses of state concern. Uses of state concern are defined in AS 46.40.210(8) at section 42 of the bill.

Number 1276

MR. TOSTEVIN continued paraphrasing from Sections 14-19 of the sectional analysis, which read [original punctuation provided]:

Section 14 establishes specific requirements for department review and approval of district coastal management plans in AS 46.40.070. The department may approve a district plan under AS 46.40.060, if it meets the requirements of AS 46.40, AS 46.40.060 and the enforceable policies of the plan meet the requirements of .070(a)(2). 070(a)(2) requires that the enforceable policies be clear and concise, are not susceptible to inconsistent application, and use precise, prescriptive, and enforceable language. In addition, the enforceable policy may not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern. "Matter of local concern" is specifically defined in the bill.

Section 15 makes conforming changes to AS 46.40.090 concerning how local district plans are implemented in the unorganized borough.

Section 16 amends existing AS 46.40.094 that describes how a project may be reviewed for consistency with the ACMP in "phases." This amendment would broaden the phasing statute to allow projects other than traditional oil and gas leasing projects to be reviewed in phases. The phasing test is changed from

whether future information is "obtained in the course of a phase" to whether the information "was not available to the project applicant at the time of the previous phase." This change makes the language consistent with the federal coastal management regulations allowing for phasing of federal activities subject to a consistency review in 15 C.F.R. 930.36(d).

Sections 17-22 amend the existing statute providing for consistency reviews of development projects in the coastal zone.

Section 17 provides that DNR is to establish by regulation a consistency review process conforming to AS 46.40.096.

Section 18 clarifies that consistency reviews are triggered by state resource agency authorizations.

Section 19 provides that DNR's consistency review regulations must provide for public notice, which is a requirement of the federal coastal zone management act.

Number 1452

MR. TOSTEVIN continued paraphrasing from Sections 20-21 of the sectional analysis, which read [original punctuation provided]:

Section 20 provides that "subsequent reviews" also known as "elevations" during the consistency review project are decided by DNR and that they are to be completed within 45 days after the initial request for review.

Section 21 amends AS 46.40.096(g) to exclude certain activities and permits from the consistency review process. Consistent with federal law, an activity that is authorized under a general or nationwide permits previously determined to be consistent with the ACMP is not required to be reviewed a second time. As provided in section 11, an activity that is authorized by DEC under its air, land and water quality requirements are exempted under AS 46.40.040(b). Activities excluded from a consistency

review under the existing provisions of the Forest Practices Act in AS 41.17 are excluded from a consistency review under AS 46.40.096.

Number 1500

MR. TOSTEVIN continued paraphrasing from Section 22 of the sectional analysis, which read [original punctuation provided]:

Section 22 adds three new sections to AS 46.40.096 to clarify what permits or activities trigger a consistency review, the scope of the review once triggered and the geographic scope of the activities subject to a review.

New subsection (i) clarifies that, except as provided in the Forest Practices Act, the exclusions in (g) of .096, and for federal consistency reviews and certifications subject to federal law, a consistency review is triggered by an activity that is subject to a state resource agency permit, lease, authorization, approval or certification.

New subsection (j) provides that except as provided in the phasing statute (AS 46.40.096) and the exceptions above, the scope of a consistency review is limited to activities subject to the permit or authorization and a coastal resource district policy approved by the department under the State Coastal Management Act.

New subsection (k) defines the geographic area where an activity triggers a consistency review and the geographic scope of the review once triggered. The consistency review process is to apply to activities within the coastal zone of the state (defined in AS 46.40.210), activities on the federal outer continental shelf or on federal lands that are the within the geographical boundaries of the state's coastal zone.

New subsection (l) directs DNR to establish by regulation categories and descriptions of uses and activities that are determined to be consistent with the ACMP or that would be made consistent with the inclusion of standard alternative measures. The existing list of such activities is known as the "A" & "B" list. The new legislation directs that these

categories and descriptions of uses and activities be reviewed by DNR and made as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review.

Number 1660

MR. TOSTEVIN continued paraphrasing from Sections 23-43 of the sectional analysis, which read [original punctuation provided]:

Section 23 includes cross-references to existing requirements in the enforcement section of the State Coastal Zone Act.

Sections 24-28 are conforming amendments transferring authority from the [ACPC] to DNR.

Sections 29-37 are amendments to the statutory provisions governing the creation and operation of coastal resource service areas (CRSAs) in the unorganized borough. These sections are amended to retain existing CRSAs but to preclude the creation of new CRSAs.

Section 38 is a new savings clause clarifying that nothing in AS 46.40 diminishes state jurisdiction or affects state requirements as they apply to the federal government under a federal authorization or federal waiver of sovereign immunity. The savings clause also makes clear that the coastal zone act does not diminish the zoning or planning authority of municipalities under AS 29.

Section 39 is a conforming amendment concerning the use of the term district coastal management plan.

Section 40 amends the existing definition of consistency review to track the scope and applicability clarifications in the other sections of AS 46.40.

Section 41 defines department as the department of natural resources.

Section 42 amends the existing definition of "uses of state concern."

Section 43 adds new definitions of the terms "coastal use or resource," "coastal zone," "district management plan," and "enforceable policy."

Number 1782

MR. TOSTEVIN continued paraphrasing from Sections 44-46 of the sectional analysis, which read [original punctuation provided]:

Section 44 repeals statutory references to the CPC and obsolete provisions of AS 46.40.

Section 45 annuls the existing statewide standards and district program guidelines in 6 AAC 80 and 6 AAC 85. This annulment takes effect on July 1, 2005 (see section 49).

Section 46 is a transition provision. First it directs DNR to adopt regulations implementing this Act no later than July 1, 2004.

Second, until the statewide standards and district program guidelines are annulled under section 45 or DNR adopts new regulations, DNR can implement and enforce the statewide standards and guidelines to the extent not inconsistent with this Act.

Third, district coastal management programs approved by the [ACPC] stay in effect until July 1, 2006, unless DNR disapproves or modifies all or part of the program before July 1, 2006.

Fourth, consistency reviews pending on the day before the effective date of this Act may continue and be completed under the prior rules, at the applicants option exercised no later than 60 days after the effective date of the act.

Number 1881

MR. TOSTEVIN continued paraphrasing from Sections 47-50 of the sectional analysis, which read [original punctuation provided]:

Section 47 is a transition provision directing the submission of new district plans by coastal resource districts for initial implementation of this Act. The Act staggers the submission of the new plans based on

whether the coastal resource district is a home-rule municipality or first-class city. Those coastal resources districts must submit new plans within six months of the effective date of regulations adopted by DNR. Other coastal resource districts must submit new plans within one-year of the effective date of the regulations. Subsection (c) provides that the 90-day review time in AS 46.40.070 does not apply to the submissions under (a) and (b) of the transition provision.

Section 48 contains revisor's instructions making changes in article headings and Alaska Administrative Code changes reflecting the transfer of the coastal management program from the [ACPC] to DNR. Subsection (c) provides that if DNR's regulations are adopted before old [ACPC] regulations are annulled, the old [ACPC] regulations at 6 AAC 80 and 6 AAC 85 will be removed by the regulations attorney as obsolete.

Section 49 is the delayed effect date of section 45's annulment of 6 AAC 80 and 6 AAC 85 on July 1, 2005.

Section 50 provides that with the exception of section 49, the Act takes effect immediately under AS 01.10.070(c).

MS. RUTHERFORD noted that the bill packet contained a provisional timeline for implementation in the new program and how it interrelates with the current program.

Number 2116

MS. RUTHERFORD, in response to a question from Representative Seaton with regard to Section 14 of the sectional analysis and enforceable policies, referred to page 10 of the bill, subsection (a), paragraph (2), subparagraph (D), sub-subparagraphs (i)-(iii), and mentioned a "three-part test." She said an example of an issue that could meet this test would be if a particular district had eelgrass beds that it wanted to protect and felt that the statewide habitat standard did not "reach to that." She explained that if it was of critical concern, then [the district] could develop an enforceable policy - as long it was clear, concise, and easily understood and implemented - that would preclude activities in that area such as having a log-transfer facility.

Number 2166

MS. RUTHERFORD, in further response, offered her belief that it is intended to mean the crafting of the language will be as uniform as possible, so that not as much is placed on the applicants; the implementing agencies will have to interpret the enforceable policies to try to determine what various approaches to crafting language is being used. She remarked, "So, that doesn't mean that they have to be cookie-cutter versions of issues of local concern; it means that they have to be crafted similarly." She said the goal is to try to move the local enforceable policies in the statewide standard to be similar to how statutes are crafted, so that they are more readily and easily applied.

MS. RUTHERFORD, in further response with regard to a set of standards or guidelines for enforceable policies, said DNR does not have those standards yet, but there is no intent to have the districts go through a (indisc.) type of analysis. She explained that it would basically be a process wherein the department helps, guides, and works with local districts to determine what might be an "appropriate set." Ms. Rutherford said it is the hope of the [department] to begin to develop some enforceable policies and model plan elements that could be embraced and amended slightly for local issues. She explained that yes, that's part of the goal, but nothing is created at this time.

Number 2301

REPRESENTATIVE HEINZE, referring to a previous House Special Committee on Fisheries meeting on HB 191, talked about concern expressed by municipalities and boroughs that [the bill] takes a lot of authority away from them. She asked for clarification about how this new [legislation] addresses that.

MS. RUTHERFORD explained that it basically returns to the existing program structure whereby the coastal districts, the coastal resource service areas, and the incorporated districts will continue to exist, will continue their existing authorities, will continue to have the right to promulgate enforceable policies, and will retain their seats at the table in project review and decision making.

REPRESENTATIVE HEINZE offered her understanding that [municipalities and boroughs] would not be [included] in any area at all.

MS. RUTHERFORD said no, they're not.

Number 2349

REPRESENTATIVE KERTTULA expressed concern about interaction between DEC's statutes and regulations and how the new coastal management program will work. She said it appears DEC has been separated out so that its statutes are going to be determinative. She asked what interaction is allowed to districts according to those standards, and also whether [districts] will be allowed to [maintain] their own enforceable standards if "they're in any way touching something that's a DEC permit." She asked for an explanation of how this is going to work.

Number 2407

PATRICK GALVIN, Petroleum Land Manager, Division of Oil and Gas, Department of Natural Resources, answered that the way coastal management and DEC permitting interact currently is that DEC's statutes, regulations, policies, and procedures are included as enforceable components of the coastal management program. As it is currently implemented, when a consistency determination is being done, it cannot be completed and it cannot become consistent until DEC has decided that the project meets all of its permitting requirements.

MR. GALVIN explained that when a project requires multiple permits from various agencies, coastal management precludes those agencies from issuing any permits for the project until the consistency determination is completed. He said the relationship with DEC means that the consistency determinations cannot be completed until DEC has completed its permitting decision; in effect, no permits can be issued for a project until DEC has found that it meets all of the permit requirements. He explained that oftentimes, on large projects, a DEC permit such as the air permit - which requires a very complicated permitting process - takes a great deal more time than the remainder of the project review; however, none of the "prints" for the project, which may be completely unassociated with air permitting or with whatever the source of the air discharge is, can be permitted and begin to work until that air permit issue has been resolved and completed.

MR. GALVIN explained that the proposed CS suggests that while coastal management currently doesn't question DEC when it's

issuing its permit, that decision can be made on its own, and the consistency determination should be allowed to proceed based upon the issues absent the DEC component. He said that doesn't mean that a district could not look at aspects of the discharge that are not within DEC's standards or guidelines, such as the sitings of the source. Therefore, he said, the local district would be able to adopt enforceable policies, submit them for approval by DNR, and include them in the program policies dealing with the location of the sources. However, when it comes to the number of parts per million that a discharge should be or what the air permit standards should be, the districts would be precluded from adding requirements beyond what DEC has established as the statewide requirements in those areas.

Number 2591

REPRESENTATIVE KERTTULA asked how many districts currently have policies that add something to a DEC standard that could be precluded.

MR. GALVIN answered that he was only aware of two, which have to do with secondary containment requirements for fuel tanks. Those are the Kenai Peninsula Borough and the Aleutians West CRSA, which require additional capacity; he said DEC requires 105 percent and those two districts want 110 percent capacity of the tank. Mr. Galvin explained the North Slope Borough has policies dealing with spill contingency planning that have very explicit requirements stated in the policy, but they conclude with the statement that nothing in these policies is intended to require anything beyond state or federal existing requirements. He indicated at the time this plan was created, there was a recognition that the standards established in state and federal law in these areas are the standards that will be applied even at the district level.

Number 2666

REPRESENTATIVE SEATON asked if DNR can issue permits even if DEC has completed its permitting and therefore a project may be "thinking that they're going ahead" and may be doing things that would then be precluded by the DEC water discharge permit.

MR. GALVIN said none of the activities could be done that require the DEC permit. He elaborated:

Think of any large project - ... the creation of the Fort Knox Mine. ... If that project were in the

coastal zone, it was permitted - their issues with regard to the creation of the tailings dam and all the construction that had to do with the tailings part, where they had gotten the DEC permits. All the water permits had been in place, but they didn't yet [have] the air permits associated with the processing facility, and they hadn't reached the final design and identified the exact generators and the exact source containment in order to get the final buyoff on that. But they ... knew that they were going to get it. ...

If that project had been in the coastal zone, they couldn't have begun to work on the containments because they couldn't have gotten those permits until they'd gotten that air permit in place, and the consistency determination to allow for those other permits to be issued. But because it was in the Interior, they could get the work going and they saved 18 months in the process by getting the project started there and then getting the air permit at the time that the air permit issue became relevant and they needed to get that in place.

Number 2757

REPRESENTATIVE GATTO asked about the remark, "They knew they were going to get it," with regard to the air quality permit.

MR. GALVIN responded that they knew that they would be able to find a way, knew what the standard was, and were working with the agency to determine, if they had one particular type of equipment, what the operational requirements would be to do that, and if they had another type of equipment, what the operational requirements would be. He said they knew they had three or four options available and were working with the agency to determine that; it wasn't a question of whether they were going to get the authorization or not. Mr. Galvin explained that they knew they would find the "mix" that would get them the authorization; it was just a matter of which one would be the most cost-effective and most efficient at doing the work that needed to be done. He said that's the discretion that goes on in this permit process.

Number 2820

REPRESENTATIVE GATTO remarked:

You currently, probably, hold all kinds of agreements with the federal government, ... agreements on satisfying federal regulations as well as state regulations. But these are agreements that were done by the previous organization. I'm curious how the federal government will look at those agreements when the organization they made the agreements with doesn't exist anymore, or will they say, ... "I understand that those agreements now transfer over to a new organization"?

Number 2851

MR. GALVIN replied, "That's actually a question for the executive orders that became effective yesterday."

MR. TOSTEVIN explained that the executive orders have a savings clause in them that says rights and obligations of the DGC are transferred to DNR; as far as approval from the federal office of coastal management that oversees the coastal program, it's indicated that the transfer of authority from one agency to another is a routine plan change and won't cause a problem with regard to approval.

Number 2886

REPRESENTATIVE GUTTENBERG referred to page 10 and noted that the bill contained terms such as "may" and "if". He asked about the parameters.

MS. RUTHERFORD said there is no question that now the agency will have the discretion of accepting a district plan and enforceable policies associated with it; inherent in that discretion is a determination as to whether or not the term is applied here, and that intent and the finding have been met in the effort to craft policies that are clear and concise. She indicated that if they're going to address a matter that is regulated by or operated under state or federal law, they should have met the [three-part] test. Ms. Rutherford explained that the intent is not to preclude, but to ensure that the standards which had been described are met. She said it would be an iterative process between the agency and the district.

TAPE 03-31, SIDE B

Number 2982

CHUCK DEGNAN, Director, Bering Straits Coastal Management Program, expressed opposition to the requirement to have new plans starting from ground zero. He told members:

The existing plan that we have is applicable because we are living in a rural area and there is very little change in the economic base of the region. ... It would [pose an] additional financial burden of time and effort to completely change the plan. There is a process that would have minor amendments, and that would be [a] more acceptable way to make changes to coastal management plans.

... The other issue that's really of concern to us is the practice of recognizing local knowledge. There needs to be a way to make sure that local people have a say in designing projects that would meet the needs of local people. And when you try to make everything the same on a statewide basis, our state is so big and so different from each other that it puts an additional burden on rural communities.

Number 2898

KATHY WASSERMAN, Mayor and Administrator, City of Pelican, testified as follows:

We appreciate the changes made to HB 191 in response to the concerns of local coastal districts. Pelican has supported its own district since 1984. Our plan with enforceable policies allows us to address issues of local concern that are unique to this area, and we feel it's very important that that continue.

Our concerns with the CS as presented are Section 12, which is a submission of district plans. This provides that a district must review and resubmit its coastal management plans for reapproval every five years, and we feel that this places a large burden on our district, especially as small as we are. We request that this update not occur more often than every ten years because it would involve staffing, public process, and things which would boost our ... expenditures quite high.

Section 47 is submission of plans by coastal resource districts that are a first-class city. Pelican is a

first-class city, a very small one; we incur the costs that go with first-class cities. This will give us six months to draft a new plan. This seems like a very short time period for us to get that sort of work done, even though maybe larger first-class cities could do it because they have additional staff. Our district is short-staffed, and we will be looking to [the ACMP] to help with resources.

Number 2825

MS. WASSERMAN continued:

... Section 3, the planning assistance for development and maintenance of district coastal management plans: Pelican ... must continue to be given due deference when it comes to coastal issues in this area. We provide local expertise to assist the state in its decisions concerning coastal management. But as a small community, the Pelican coastal district relies on help from the state as well; they have been very helpful in the past, and we need to rely on them to get our work done. We use the guidebooks to implement our coastal management program.

The knowledgeable and experienced staff at DGC have helped us with questions that come up concerning our district. These resources must continue to be provided for our plan to function. Something we noticed also today is that this really affects ... the coastal communities in the state of Alaska, and due to the changes in the fishing industry, it's the coastal communities in the state that are really in trouble at this time. The [Matanuska-Susitna] Borough seems to be doing very well. Anchorage seems to be doing pretty well. But if you look at the coastal communities, they're the ones that are suffering, and an unfunded mandate, I think, will just continue to pull us down a little bit further.

Number 2733

JOHN OSCAR, Program Director, Ceñaliulriit Coastal Resource Service Area (CRSA), testified that the Ceñaliulriit CRSA has been in existence for 15 years and is composed of 44 villages: 15 are traditional governments, 28 are second-class cities, and 1 is a first-class city. He explained that local residents are

largely dependent on fish and wildlife resources for their daily sustenance, despite the fact that the fishing industry has drastically affected [other] summertime employment. Mr. Oscar said it has been found that local participation has always proven to be successful in providing wise management and mitigation of problems encountered in planning related to local infrastructure.

MR. OSCAR explained that mining, water and sewer [systems], [aboveground] fuel tanks, road projects, airports, and improvements for erosion control and village infrastructure [exist in the Ceñaliulriit CRSA]. He expressed concern that if the Alaska Coastal Management Program and the [ACPC] are removed, [references] to "habitat fetters" [will also be removed]. He said the only reference in the bill is to "critical habitat fetters". Mr. Oscar remarked, "That served to protect subsistence and traditional fish and wildlife resources." He said traditional and experienced knowledge has always served to offer scientists valuable information regarding development. He expressed concern that due deference in this area will be nonexistent, while the department still has "every last say to everything under the sun, basically."

MR. OSCAR said the other concern is the submittal of coastal district [management] plans every five years. Since he is the only person representing 44 villages, he explained that understaffing will not allow the [Ceñaliulriit CSRA] to successfully meet all of the requirements. He noted that the current requirement is ten years, and he said a rewrite of the whole program to less stringent and less specific standards and policies will eventually create a "rubber-stamp program" for elimination for programs that are not being implemented, as determined by the department. Mr. Oscar said the department may decide to disapprove the rewritten plans to begin with, for example. He suggested that the proposed CS is still questionable, offers much uncertainty, and seems to basically eliminate the whole program in the end, eventually, with all the renewals every five years.

Number 2577

REPRESENTATIVE KERTTULA asked Mr. Oscar how big an area his district covers.

MR. OSCAR said the area serves 35,168 square miles in the Yukon-Kuskokwim Delta, the largest refuge in Alaska, and has 8,993 miles of shoreline and 44 communities.

REPRESENTATIVE KERTTULA asked how many people work for the [Ceñaliulriit CSRA].

MR. OSCAR said only one person currently, but whenever possible he has somebody else helping out; with the available funding for 44 villages, it is impossible to keep up with all of the demands for the requirements of this plan.

Number 2540

REPRESENTATIVE KERTTULA asked Mr. Oscar what his plans would be for putting together new policies and submitting them if this bill passed.

MR. OSCAR explained that [Ceñaliulriit CSRA] has worked with the communities for the past 18 years to streamline and refine the program itself, and it has to go through that process again in meeting with all of the villages and trying to get an approval with them. He said their concerns would certainly be revisiting the old days [and the issues] of subsistence and rural communities versus urban [communities], and that questions would arise again. Mr. Oscar said right now, many people are really uncertain about what would happen if this bill went through as is, since it requires coastal districts to rewrite [their plans].

Number 2488

PAT NORMAN, First Chief, Port Graham Village Council, noted that he hadn't yet seen the proposed CS for HB 191. He expressed concern about whether the areas meriting special attention are still included in the process. He said Port Graham and Nanwalek on the lower Kenai Peninsula are in one of those areas, and mentioned the experience that [ACMP] has helped out greatly in their own development needs and for other developments that want to come into and around those areas.

CHAIR FATE responded that the areas in question would still be included in the process.

Number 2408

FRANK KELTY, Member, Aleutians West Coastal Resource Service Area (CRSA) Board, noted that he has also worked with the City of Unalaska. Mr. Kelty thanked DNR staff for the proposed CS for HB 191 and suggested it was much better than the original

bill. However, he said he still had concerns, and suggested that the legislation still needs a little bit more work. Mr. Kelty expressed concern regarding the requirement that coastal resource districts must review and resubmit their plans for approval every five years, and agreed with previous testimony that the requirement should be changed to every ten years. He said the Aleutians West CRSA has been in the middle of a rewrite; it's on its fourth year and still not complete. Mr. Kelty pointed out that [Aleutians West CRSA] consists of one municipality and two villages in its coastal area, and he said the [review] takes a lot of time and work.

MR. KELTY suggested that language in Sections 11 and 21 should be reviewed and [clarified to specify] what DEC is going to have control over, which might make people feel more comfortable. Mr. Kelty said he thinks many people are concerned that DEC has too much control or will be "going its own way" and that people won't be able to get any input until the permits have gone out for public review. He reiterated his belief that the proposed CS still needs some work, and he expressed concern that this is a [very short amount of time] for [implementing] this plan and having it in place by 2005.

Number 2278

REPRESENTATIVE KERTTULA asked Mr. Kelty for his opinion on why it would be important to have DEC and its standards remain as part of its consistency review process.

MR. KELTY said in the [Unalaska] area there are seafood "out-pole" lines and many individual power plants based in seafood canneries that have their own diesel generation. He mentioned concerns by residents of the community that they would like to comment on these type of issues when permits are moving forward.

Number 2213

BOB SHAVELSON, Executive Director, Cook Inlet Keeper, told the committee he was speaking on behalf of Cook Inlet Keepers' 500 plus members throughout the Cook Inlet watershed that are concerned about the coastal resources. Mr. Shavelson expressed appreciation for the administration's efforts to amend an originally problematic bill, but remarked:

I think we still have the same problems with this bill, in that the effect of the legislation will be the same. There was a comment made early on, from the

administration, that the districts are not being left out in any area at all. And I think that any honest reading of this legislation will show that the districts will have a severely constrained role in local coastal decision-making under the committee substitute.

Second point I'd like to make: ... there was also a comment made that this was a well-worked piece of legislation. And I would just like to suggest that there really has been relatively little time for coastal districts and communities to understand what's admittedly a very complicated piece of legislation.

Third point I'd like to make, and this ... accompanies the whole issue: there really has not been a demonstration of facts to show that [there is] a problem. In fact, before the [House Special Committee on Fisheries] there was some evidence presented that showed that the current ACMP operates in a timely and effective fashion to get projects moving and on the ground. So, again, this is more of a response to a perceived problem, and there [has] been no evidence to suggest otherwise.

The last point I'd like to make is that this is going to be very, very costly to the state and to the local districts. As it was noted by the administration, ... these are very significant changes. And under the federal rules it would appear that a full-blown environmental impact statement and the accompanying costs of that would be required to get these major program changes through the National [Oceanic] and Atmospheric Administration [NOAA].

And also, this is an unfunded mandate to the local districts because they will not only have to periodically review and submit for review to DNR their district plans, but they'll have to rewrite their plans, and we've heard some comments from the districts on that already.

Number 2090

REPRESENTATIVE KERTTULA asked Mr. Shavelson if he had any comment or concern about the "breaking out" of the DEC permit,

and what would happen if there is only a DEC permit and no consistency determination.

MR. SHAVELSON offered his view that [the bill] carves out a large segment of activities that local districts and communities will not have an opportunity to meaningfully comment on. As the legislation is drafted currently, it's so broad that it applies not only to permits and different statutory functions, but also to all the land, air, and water authorizations that DEC possesses.

Number 1959

MARV SMITH, Community Development Coordinator, Lake and Peninsula Borough, testified that his biggest concern is the short notice. He said this cannot be done in six months and asked where the funding is going to come from. He also express concern that the bill consistently states that DNR "shall or will ... or may" accept the plans in the districts; he said it's kind of a double-edged sword. He stressed the need for consistency as well. Offering his belief that this new version is better than the first, he expressed concern that the local comments are heard and that there is an opportunity to participate.

Number 1820

LISA VON BARGEN, City of Valdez, began by expressing appreciation for the reworking of the bill; she said the feeling was that the administration really listened to the concerns and has incorporated many of those into the [proposed CS]. Addressing Section 3, she asked that maintenance be included in the funding that comes through; she said the bill suggests that plans would have to be rewritten every five years, and so funding for the continued maintenance of these plans is extremely important. She also asked for due consideration with regard to lengthening the time between the reviews of [local] coastal management plans.

MS. VON BARGEN turned attention to Section 9 and said that home rule and first-class cities that do exercise planning and zoning authorities aren't covered under the coastal resource definition; only those in the unorganized borough or within boroughs that do not exercise planning and zoning authorities are included. She noted that she was unsure whether that was just an oversight or whether it was an intentional omission.

Number 1721

PAT CARLSON, Manager, Kodiak Island Borough, expressed gratitude for the hard work that had been done and said the [proposed CS] was much better than the previous version. He remarked:

We would be really hard put to deal with the review process in six months, and even a year may be tough, and certainly ... the continuing review process, we would argue for more like ten years, unless there was some dramatic change or ... some specific item that needed review. ...

One of the big concerns I've got is ... dropping DEC from the consistency review. ... Maybe I'm paranoid, but there's always the possibility that maybe DEC might make an inconsistent decision. ... We believe that that ought to be looked at strongly, because in the terms of air and quality and interface of subsistence resources on a local level and ... the residential areas and other areas of concern [that] are great out here in the rural areas, we do not have DEC response; we do not have DEC personnel that deal with air and water quality on [the] island. They deal remotely. They deal through the borough. They look to the borough for kind of local knowledge and enforcement. So, I'm concerned if there's that split.

The other thing that I bring up, and I've mentioned it before ... is ... [AS] 35.30.020, which is compliance of municipal ordinances, which requires [the] State of Alaska [to] comply with local planning and zoning ordinances in the same manner as other owners of property. And I have concerns that ... there [have] been [attorney general's] opinions and other instances as well, unless we say otherwise.

And just to minimize confusion, I think it needs to be really clear how ... planning and zoning interface, because in many cases it may have some of these issues that are in this. ... Maybe the committee could consider having the new committee review the existing plans. We went through tremendous trouble [for] two and a half years to generate this thing. ... Just tell us what's wrong and we can review that. ...

Does anybody know what went wrong with the plan to drive this? In our area it's been pretty quiet, so we're not aware of any big issues, ... and if there are, we'd like to know when we can address them.

Number 1485

MR. CARLSON [in response to a question from Representative Seaton regarding page 10, sub-subparagraphs (i) and (iii), and whether that will encompass or preclude most of the current enforceable policies] remarked:

I would say if the state has an issue with them, tell us what it is so that we can work on what's unique, rather than force us to go through the whole plan all over again, trying to guess what's unique, because in our case, maybe we don't think it's unique and they do. ... It would be better to go through them all, shred out the things that are clearly redundant and repetitive, and ... tell us what's inconsistent and have us focus on those, rather than trying to struggle through the whole plan all over again, because ours is ... 80 pages.

Number 1365

KAROL KOLEHMAINEN, Program Director, Aleutians West Coastal Resource Service Area (CRSA) Board, expressed gratitude for all the amendments done in the bill that allow the CRSA to continue to exist and participate in the program. She said she was going to essentially reiterate what Mr. Kelty had to say earlier, to emphasize how important it is to their district.

MS. KOLEHMAINEN told members that the five-year review cycle will be very difficult, if not impossible, for districts; depending on the extent of the review, it's complicated and very difficult to complete, particularly if someone is trying to do a good job and ensure that it's perfect. The other point is the difference in the language between the main language for DNR regarding plan approval and all of the "shall and will" language as it relates to how plans need to be constructed. It would seem that if the districts have met all of the criteria, then the plans should be able to be approved, or it should be identified what would need to be changed to have them be approved, she said.

MS. KOLEHMAINEN referred to Section 14 and said she'd been trying to consider how difficult that criteria would be for some districts to meet by virtue of the fact that the language in [sub-subsection] (ii) ends in "and" rather than "or". She reiterated that it would be difficult to complete plan revisions in a year.

Number 1109

KEN DONAJKOWSKI, Manager, Health Safety Environment (HSE), Conoco Phillips Alaska, Inc., testified on behalf of the Alaska Oil and Gas Association (AOGA). He explained that AOGA remains firm in its commitment to reform the ACMP and applauds the administration's interest in reforming it. He noted that [AOGA] had reviewed previous drafts, but had not obtained the most recent proposed CS until this meeting and didn't know exactly what was it contained.

MR. DONAJKOWSKI expressed concerns about the draft that had been reviewed by AOGA and said, consequently, AOGA had developed specific language and submitted that to the administration but did not know if [those changes] had been considered in the current proposed CS. In addition, AOGA's editorial comments with regard to the proposed specific language had been provided to the committee. He highlighted the critical considerations that AOGA applied in its development of the modifications by saying there must be recognition that state and federal law is already in place, is comprehensive, and is protective of coastal resources; thus local enforceable policies should only address unique local concerns that are not addressed by those state and federal laws. He noted AOGA's belief that uses of state concern must be the priority with regard to enforceable policies and that local enforceable policies should not arbitrarily or unduly be restricted or exclude uses of state concern.

Number 0972

MR. DONAJKOWSKI said AOGA believes DEC's land, air, and water statutes and regulations are inherently consistent and subject to extensive public comment and review; therefore, that should be clearly articulated in the proposed CS; such permits and authorizations from DEC should then not delay any other associated agency permits or consistency reviews. Mr. Donajkowski suggested the scope of a review should be limited to activities within the geographically defined coastal zone subject to federal or state permits authorizations and so forth. He said that there must be effective flexibility for large,

complex projects and that there are certainly some indications in the administration's comments that they have addressed that. Consistency reviews must be held to a definitive timeframe so the process isn't subject to arbitrary delays. He said ACMP wasn't intended to, nor should it, emulate the so-called "NEPA" process as outlined in the [National Environmental Policy Act of 1969]. Mr. Donajkowski said AOGA is committed to working with the administration and interested legislators as this bill moves through the committee process.

Number 0860

REPRESENTATIVE KERTTULA referred to the uses of state concern and asked Mr. Donajkowski what he would change from the current program.

MR. DONAJKOWSKI said he wants it to be certain that a local matter cannot simply override de facto issues of concern to the state, so that there isn't a "suboptimization" of the state's interests for local interests.

REPRESENTATIVE KERTTULA said currently the program protects these special areas and special uses, but it also has that overriding concern for uses as a state concern. She asked Mr. Donajkowski if he could offer an example or if it was just something he wanted to ensure is maintained.

MR. DONAJKOWSKI told Representative Kerttula that it's something [AOGA] wants to ensure is very clear. He said the ACMP history is fraught with lawsuits, court decisions, and interim legislative fixes.

REPRESENTATIVE KERTTULA said any permitting system, including DEC's, experiences lawsuits. She asked if it was not just coastal management that [experiences lawsuits].

MR. DONAJKOWSKI replied yes, and said [AOGA] has the same interest with any regulation or legislation that applies to this. In response to Representative Seaton [who'd asked about offshore oil and gas], he indicated AOGA would like to be clear that if something is in the coastal zone as defined, it would have to go through the process, but if it's outside that geographical boundary, it would be clear that going through the process isn't required.

Number 0656

MR. DONAJKOWSKI [in response to a comment by Representative Seaton about projects outside the coastal zone that will impact the coastal zone area] said the coastal zone was originally defined to be far from the coastal zone shoreline, in anticipation of encompassing those projects that would directly impact the coastal zone. He said the current process requires one to demonstrate that the project won't [have an impact]; because it's already so far beyond that, one wouldn't know in advance whether there will be a decision that, in [AOGA's] view, can be arbitrary as to whether or not [a project can be deemed as] potentially impacting the zone. He said the coastal zone has already been defined large enough to mitigate any project that would have an impact, and this provides certainty about whether one is in the coastal zone or not.

Number 0554

REPRESENTATIVE KERTTULA asked Mr. Donajkowski if the outer continental shelf (OCS) and the federal development that happens there should be taken out.

MR. DONAJKOWSKI replied absolutely not.

REPRESENTATIVE KERTTULA mentioned having that in the original definition.

MR. DONAJKOWSKI replied absolutely.

Number 0513

SARAH GILBERTSON, Policy and Program Coordinator, Alaska Municipal League (AML), testified that AML represents 140 communities around the state; all of its members support streamlining and economic development, but AML had not taken a position of the current proposed CS because AML had been working with the administration to come up with a CS. Ms. Gilbertson explained that the [administration] had asked for community input; teleconferences had been held, there had been e-mails back and forth, and [AML and the administration] had been working together.

MS. GILBERTSON said she thought the proposed CS demonstrated that AML's and the communities' concerns had been heard. She indicated testimony demonstrates that a lot of AML members still have concerns. For example, one concern is the number of years that communities will have to review and resubmit [coastal management] plans.

Number 0393

MS. GILBERTSON explained that many members would like to change that [requirement] from five to ten years because it is such a huge process to go through. Also, some communities only have six months to review and resubmit or rewrite their enforceable policies. Ms. Gilbertson mentioned concerns that Mr. Kelty had expressed during his testimony regarding the [time it takes] to travel to 68 different villages to hold hearings. She noted that [this is another reason] for the [request] for more time.

MS. GILBERTSON expressed concern about the limitation of local authority or local participation. She remarked, "That comes from breaking out DEC from the consistency review process as we know it now." She reiterated her belief that the proposed CS is much better than the original bill, and she commended the administration for working with AML to come up with something better. However, in light of the concerns that were noted, she asked that the committee take the next week to fine tune this bill to make it better.

Number 0301

REPRESENTATIVE GATTO asked Ms. Gilbertson what she thought would make the bill better.

MS. GILBERTSON reiterated her suggestion of changing the five-year [coastal management plan review requirement] to every ten years, and of considering giving a year to those communities [that only have] six months to rework and rewrite their enforceable policies. She said this would be a lot better and a lot easier for people like Mr. Kelty who go to the [68 villages] and hold hearings. Ms. Gilbertson said she didn't know if there was anything that could be done on the DEC side of things. She reiterated that this would [be a good reason] to use the next week to really talk about that issue.

MS. GILBERTSON [in response to Representative Seaton regarding whether communities represented by AML are concerned that Sections 7, 10, and 13 remove the public hearing and local input process] surmised that he was referring to procedural changes because of the elimination of the Alaska Coastal Policy Council. She said AML had some of the same concerns and had talked with the administration yesterday. In terms of DNR's coming up with the new standards, she said local governments will have to comply with that process; it's still subject to the public

comment process, so local communities and governments will still have a say and be able to comment on those new standards as the administration goes through the regulation process.

Number 0041

DOUGLAS MERTZ, Prince William Sound Regional Citizen's Advisory Council (PWSRCAC), testified that [PWSRCAC] is composed of communities, municipalities, and other entities in the area impacted by the Exxon Valdez oil spill; these are the folks who know firsthand what can happen to local concerns, local livelihoods, and local resources when new events happen in that area.

TAPE 03-32, SIDE A

Number 0001

MR. MERTZ said in reading over the language of the proposed CS and in listening to comments from the administration, [PWSRCAC members] had increasing concerns about the "disconnect" between the apparent intention of the drafters and the language in the bill. From his experience as a former assistant attorney general, he highlighted what a problem it is when the drafters have an intention that doesn't make it into the language of the bill in a clear and unambiguous manner; it is an absolute disaster. Mr. Mertz remarked:

In this case, ... in Section 11 it says that DEC statutes and [regulations] regarding protection of air, land, and water quality are the exclusive enforceable policies of the ACMP. Our friends ... put it in terms of "that's so," but that's not counting matters of local concern. Well, that section doesn't say so, and, in fact, even if it did say so, if you turn to the definition of matters of state concern, which are by definition not matters of local concern, in Section 42 you have all kinds of restrictions on what can be considered a matter of local concern. Marty [Rutherford] gave the eelgrass example.

Well, ... under Section 42, if two adjacent CRSAs both have concerns about the effect of a particular project on eelgrass, then under Section 42 it's no longer a matter of local concern; it's a matter of state concern, and hence the local entities cannot put it into an enforceable policy - only the state can. That's an example of what we see in the language

itself as putting enormous burdens and restrictions ... on the ability of the local entities to come up with any enforceable policies that aren't in effect preempted here.

Number 0197

It is difficult to come up with anything, including eelgrass, which doesn't come within air, land, [or] water quality. Eelgrass certainly is situated into their land or water, depending on where the tide is. I think that one arguably could be not something that a local entity could do anything about. ...

Section 21, which is the one that says the reviewing entity, reviewing for consistency purposes shall exclude from its existence consistency review and determination and activity authorized by DEC under its air, land, and water quality requirements - does this mean that a local reviewing entity cannot find a project inconsistent with its local coastal management plan if the local requirements in any way relate to land, water, or air quality? You could certainly read it that way. ... We hope their intention is not that. But ... if that intention is to be put in the statutes, it's going to require a definite rewrite.

Here's another example of a problem: Section 14 says the department may approve coastal management plans that meet ... detail-listed criteria. Well, the word "may" is ambiguous, and our friends here have said it definitely gives them discretion. Does it give them discretion to reject a plan that meets all of the criteria that are set out in that statute, taken literally? It sure sounds like they can. And yet it doesn't say what criteria ... the department can use to reject the plan that meets the criteria. These are examples of continuing problems with an enormously complicated bill.

We think the only way to avoid having this become an ultimate disaster is to put on the brakes, send this ... to a task force composed of stakeholders, and have them take the time to do it right, to come up with a ... bill that takes whatever consensus emerges from that process and puts it in clear and unambiguous and

enforceable language that nobody can quibble over its interpretation of.

Number 0427

REPRESENTATIVE KERTTULA noted that she had some of the same concerns. She turned attention to Section 14, subparagraph (C), sub-subparagraph (ii), which read in part, "not adequately addressed by state or federal law"; she said she had never seen language like that before. She asked Mr. Mertz if he had ever seen that language used in statute.

MR. MERTZ indicated that he had not. He said this is an example of the kind of ambiguous language that leaves a lot of questions up in the air. In response to Representative Seaton [who'd directed attention to Section 14, sub-subparagraphs (i) through (iii) and asked how many existing coastal policies would qualify under that criteria], Mr. Mertz said he could not provide a number; in looking over existing policies, however, he thought someone could come up with a legal argument that almost everything in every one of them runs afoul of one or the other of these restrictions. He suggested that doesn't mean, necessarily, in the end that a court would say they're all no good or that the department would toss them out. But there's trouble ahead because a reasonable person could interpret it that way, he concluded.

Number 0608

REPRESENTATIVE GUTTENBERG mentioned testimony regarding changing the timeline for [coastal management plan] reviews from five to ten years. He indicated the [testimony] is usually about resource and financial problems related to conducting a review. He asked, if the aforementioned problems weren't an issue, what an adequate time period to conduct the reviews would be.

MR. MERTZ said he doesn't know.

Number 0670

TERI CAMERY, Planner, City and Borough of Juneau, noted that she was testifying before the committee with approval from the city manager to represent Juneau. She said she appreciates the efforts of the administration to continue working on this bill and suggested that there are definitely some improvements in the proposed CS. However, she offered her belief that this version still strips away a significant amount of local control in

various ways, and places the power of approving local policies and plans into the hands of a single agency, which is problematic. She said it creates a great deal of uncertainty for CBJ.

MS. CAMERY noted that [CBJ] has had less than 48 hours to review the proposed CS, and she asked for more time to review it. She said this is a complicated bill with many major changes from the last version. Although it is an improvement over the first [version], she said [CBJ] would really like to review a more carefully considered third version.

Number 0758

MS. CAMERY suggested having a working group. She offered her understanding that the administration has been working with local districts to some extent; she said CBJ has not been involved in that and has many concerns it would like to bring out. She offered her belief that the best way to approach a change to the program of this magnitude is to establish a working group of districts, agencies, and industry. She acknowledged that the coastal management plan does have many problems and expressed her desire to find a way to address those problems in a way that preserves local control and oversight. She explained that this legislation requires a plan revision within six months, subject to approval by DNR, and requires those local policies to be concise, nonduplicative, and enforceable. It appears that the local policies cannot address issues related to state permits, she indicated.

MS. CAMERY said this [legislation] is broad and vague; there's also the larger issue of whether state agencies can adequately perform their duties. She remarked, "I say this without any criticism toward employees of DEC and [the Alaska Department of] Fish and Game." She said very often in [CBJ's] local plan review, it is very difficult receiving adequate comments from these agencies because their budgets have been cut so extensively by this administration and previous administrations. In effect, this approach is not allowing local districts to have any plans that duplicate state policies or address any similar issues; it's saying "trust the state agency," she remarked.

Number 0888

MS. CAMERY explained what happens: for very valid reasons, the state agencies can't effectively address their responsibility. She offered her belief that it's a real consideration that

hasn't been adequately addressed. Many districts have mentioned the difficulty of revising their [coastal management] plans within six months. Ms. Camery said that from Juneau's perspective, that would be absolutely impossible. Those changes would have to go through a public process, be reviewed by [CBJ's] law department, and go to [CBJ's] planning commission and assembly. She requested that the [aforementioned deadline] be increased to at least a year.

MS. CAMERY also requested changing the five-year review to every ten years; reiterated her suggestion that local districts need to be included in a consistency review process for DEC, rather than removed from that process; and stressed the need for local districts to be included and to have due deference and approval of the plans by DNR. She said it is puzzling that after so much work that went into these original policies, and without any criticisms that she was aware of on the local level, this expansive revision is being requested. She expressed very strong concerns about current elements that would be written out because of some perceived overlap with a permit.

Number 1022

REPRESENTATIVE KERTTULA asked Ms. Camery how the local enforceable policies are currently used in the consistency reviews.

MS. CAMERY went on to say that through DNR, all [involved parties] come together for a pre-application meeting and discuss the project as a whole; that format is beneficial to the developer, who gets informed about what permits are needed, what local permits are needed, and areas of special concern. Many times, the developer can revise the project and address concerns before the consistency review begins; then, through the coastal management timeline, CBJ will submit its comments and evaluate how the project is consistent with different elements of the coastal management plan that could include [CBJ's] stream setbacks or the Juneau wetland management plan, which has very specific wetland standards, especially for waterfront areas, which are areas preferred for development. The Juneau plan has a number of unique elements that are felt to be very specific. Ms. Camery explained that those comments would be turned in and then included in the final permitting and (indisc.).

Number 1126

REPRESENTATIVE KERTTULA asked how often projects are rejected because of a CBJ comment.

MS. CAMERY said in the three years that she's been with the city, she could think of only one incident in all the reviews she'd done; it was a case where the applicant came back with a modification that basically redid everything that [CBJ] and the applicant had agreed that the applicant wouldn't do.

Number 1162

REPRESENTATIVE KERTTULA asked Ms. Camery how many permits she reviews a year.

MS. CAMERY said for the ACMP, approximately 40. In response to Representative Seaton [who'd asked whether she thought CBJ's ordinances would still apply under the proposed CS, noting that the previous version specified that Title 29 would still be applicable], Ms. Camery said it was very confusing to her. Currently, [CBJ's] coastal management program is part of Title 29 requirements, part of the local code adopted into local ordinance. If [CBJ's] plan changes significantly through DNR's approval process, then it's hard to know how all of that would wash out. [CBJ] could have one coastal management plan approved by DNR, but still have another plan in the local ordinance, so it could be very problematic.

[Representative Seaton asked that someone with the administration respond.]

Number 1260

CHAIR FATE noted the submittal of another proposed CS by AOGA [a work draft labeled 03-0069 bil2.doc, 4/16/203]. He indicated he would hold the bill until 04/23/03 to allow time for a thorough review of the current bill version; to gather proposed amendments; and for staff to work on the bill with AOGA, other interested parties, and the administration.

CHAIR FATE mentioned Mr. Shavelson's comment that he didn't think the proposed CS would save any permitting time, and that the old ACMP was efficient and effective and saved about as much time as this would. Chair Fate said it was pointed out to him during his discussion with members of the administration that there would be a savings of time. He asked if the attempt was to shorten the permitting period and yet have due process still available.

Number 1422

MS. RUTHERFORD said one of the things Mr. Shavelson referred to during a House Special Committee on Fisheries meeting is that the average review time of a consistency determination is 50.8 days. She said [the time period] doesn't include a clock stoppage; when DGC used to calculate the average time for a consistency review, it didn't identify the amount of time when the process was stopped while a particular agency requested additional information. Ms. Rutherford said that clock stoppage can vary from one week to one year. She talked about one particular project that was supposed to have a 50-day review but that was under review for 465 days.

MS. RUTHERFORD suggested that sometimes the statistics don't always capture the entire picture. She referred to a discussion about removing air, land, and water quality standards from the consistency review, and letting DEC permit decisions that [are found consistent]. Ms. Rutherford said in doing that, many of DEC's conflict permit decisions will be removed from the time that it takes to complete a consistency review. She said someone can get those permits that are part of the consistency review, apart from DEC's determination, out and completed while DEC is still determining whether or not those activities subject to its air, land, and water quality standards are appropriate and can be deemed consistent by that agency.

MS. RUTHERFORD referred to Fort Knox, where it was identified that because it was not subject to a consistency review, and because the permit was not wrapped into a consistency review, 12 to 18 months was saved. Ms. Rutherford offered her belief that there will be extensive time savings associated with these two elements. She noted that Areas Meriting Special Attention (AMSAs) are retained in this proposed CS, so that is not going to be a problem. She mentioned concerns about [funding] and said the [department] is currently attempting to identify what kind of federal grant monies would be available to assist the districts in completing these projects.

MS. RUTHERFORD turned attention to concerns expressed by AOGA and said the proposed CS was available on the [Internet] as of [04/11/03], and that the current proposed CS doesn't capture any of AOGA's proposed amendments. She mentioned a concern expressed by AOGA about a test, under the current program, that has to occur as to whether or not something is subject to a

consistency review, even though it might be outside the boundary of the district.

Number 1642

MS. RUTHERFORD said this proposed CS does resolve that problem; it states clearly that there is a "bright line." She remarked, "The district boundary, as it currently was approved by the coastal policy council, is the bright line; if you are outside of that district boundary, then you are not subject to a consistency [review]; if you are inside that boundary, you are subject to a consistency [review]." She said the reason for this is because Alaska has some of the most extensive coastal boundaries in the nation, and she asserted that this proposed CS does not eliminate the due deference that is provided by the current program to the local districts. Ms. Rutherford explained that this would not change; it's an element of a project review and would be retained for the local districts.

Number 1706

MR. SHAVELSON responded:

The information that I previously cited was from the Division of Governmental Coordination, and I don't believe that clock stoppage was omitted from the statistics that I read that showed, for example, that the average length of a 30-day review, with extensions, was actually 28.2 days. So, I think there's some disagreement over those facts there, and I would be happy to share them with the committee.

Another issue with the delays is that the primary concern from some in the development community previously had been that there was [an] appeals process under the coastal management program that caused a lot of delays. And this legislature fixed that last year. So, a big impediment has been removed there. So I do question that ... the changes now are going to result in significant savings.

And one last point is that ... by separating out the [DEC] permits, we're actually creating a dual process and, in a way, complicating things and making it more cumbersome. So I am not sure that we're going to see any efficiencies coming out of that, but what we will see is local districts and citizens in coastal

communities confused by having to weigh in, in different arenas.

Number 1785

CHAIR FATE, upon determining no one else wished to testify, closed public testimony. [HB 191 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:02 p.m.