

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 23, 2003

1:05 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE JOINT RESOLUTION NO. 12(RES)

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

- MOVED HCS CSSJR 12(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 105

"An Act relating to loans to satisfy past due federal tax obligations of commercial fishermen and to the commercial fishing loan program."

- MOVED HB 105 OUT OF COMMITTEE

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: SJR 12

SHORT TITLE:SUPPORTING HALIBUT BY-CATCH PROJECT

SPONSOR(S): SENATOR(S) STEVENS G

Jrn-Date	Jrn-Page		Action
03/13/03	0491	(S)	READ THE FIRST TIME - REFERRALS
03/13/03	0491	(S)	RES
04/02/03		(S)	RES AT 3:30 PM BUTROVICH 205
04/02/03		(S)	Moved CSSJR 12(RES) Out of Committee MINUTE(RES)
04/04/03	0691	(S)	RES RPT CS 6DP SAME TITLE
04/04/03	0691	(S)	DP: OGAN, SEEKINS, STEVENS B,
04/04/03	0691	(S)	WAGONER, LINCOLN, ELTON
04/04/03	0691	(S)	FN1: ZERO(DFG)
04/07/03	0732	(S)	RULES TO CALENDAR 4/7/2003
04/07/03	0732	(S)	READ THE SECOND TIME
04/07/03	0732	(S)	RES CS ADOPTED UNAN CONSENT
04/07/03	0732	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/07/03	0732	(S)	READ THE THIRD TIME CSSJR 12(RES)
04/07/03	0732	(S)	COSPONSOR(S): ELLIS, ELTON, DAVIS,
04/07/03	0732	(S)	LINCOLN, OLSON, HOFFMAN, THERRIAULT,
04/07/03	0732	(S)	COWDERY
04/07/03	0733	(S)	PASSED Y17 N- E3
04/07/03	0733	(S)	TRANSMITTED TO (H)
04/07/03	0733	(S)	VERSION: CSSJR 12(RES)
04/08/03	0836	(H)	READ THE FIRST TIME - REFERRALS
04/08/03	0836	(H)	RES
04/08/03	0860	(H)	CROSS SPONSOR(S): LYNN
04/09/03	0900	(H)	FSH REFERRAL ADDED BEFORE RES
04/16/03		(H)	FSH AT 9:00 AM CAPITOL 124
04/16/03		(H)	Moved HCS CSSJR 12(FSH) Out of Committee MINUTE(FSH)
04/16/03		(H)	RES AT 1:00 PM CAPITOL 124
04/16/03		(H)	Scheduled But Not Heard

04/17/03	1024	(H)	FSH RPT HCS(FSH) 5DP
04/17/03	1024	(H)	DP: HEINZE, OGG, GUTTENBERG, WILSON,
04/17/03	1024	(H)	SEATON
04/17/03	1024	(H)	FN1: ZERO(DFG)
04/17/03	1024	(H)	REFERRED TO RESOURCES
04/23/03		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 105

SHORT TITLE:COMMERCIAL FISHING LOANS

SPONSOR(S): REPRESENTATIVE(S) STEVENS

Jrn-Date	Jrn-Page		Action
02/14/03	0215	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0215	(H)	FSH, RES, FIN
03/12/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/12/03		(H)	Moved Out of Committee MINUTE(FSH)
03/12/03	0509	(H)	FSH RPT 3DP 3NR
03/12/03	0509	(H)	DP: KOTT, WILSON, SEATON;
03/12/03	0509	(H)	NR: BERKOWITZ, SAMUELS, GUTTENBERG
03/12/03	0510	(H)	FN1: (CED)
03/12/03	0510	(H)	REFERRED TO RESOURCES
04/23/03		(H)	RES AT 1:00 PM CAPITOL 124
03/26/03	0638	(H)	FSH RPT 2DP 2DNP 1NR 2AM
03/26/03	0638	(H)	DP: HEINZE, WILSON; DNP: GUTTENBERG,
03/26/03	0638	(H)	BERKOWITZ; 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
04/16/03		(H)	Heard & Held MINUTE(RES)
04/23/03		(H)	RES AT 1:00 PM CAPITOL 124

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
03/17/03		(H)	MINUTE(FSH)
03/18/03		(H)	RES AT 12:30 PM CAPITOL 124
03/18/03		(H)	<Pending Referral> -- Meeting Canceled --
03/26/03	0638	(H)	FSH RPT 2DP 2DNP 1NR 2AM
03/26/03	0638	(H)	DP: HEINZE, WILSON; DNP: GUTTENBERG,
03/26/03	0638	(H)	BERKOWITZ; NR: SAMUELS; AM: OGG,
03/26/03	0638	(H)	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		(H)	FSH AT 8:30 AM CAPITOL 124
03/26/03		(H)	Moved Out of Committee
03/26/03		(H)	RES AT 1:00 PM CAPITOL 124
03/26/03		(H)	-- Meeting Canceled --
03/26/03		(H)	MINUTE(FSH)
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

SENATOR GARY STEVENS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SJR 12 and HB 105.

JOSEPH LANHAM

Petersburg, Alaska

POSITION STATEMENT: Expressed concerns about HB 105.

CHERYL SUTTON, Staff
to the Joint Legislative Salmon Industry Task Force
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 105.

GREG WINEGAR, Director
Division of Investments
Department of Community & Economic Development (DCED)
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 105.

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As chair of the House Special Committee on Fisheries, explained discussion in that committee during hearing on HB 105; asked questions relating to HB 191 and requested examples of local enforceable policies that meet the criteria under Section 14.

BRUCE TWOMLEY, Chairman/Commissioner
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 105.

GERALD McCUNE, Lobbyist
for United Fishermen of Alaska (UFA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 105.

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

POSITION STATEMENT: During hearing on HB 191, explained changes in the new proposed committee substitute (CS) dated 4/22/2003.

DANA OLSON
Wasilla, Alaska

POSITION STATEMENT: During hearing on HB 191, discussed concerns; asked that members look at the issue in its entirety.

MIKE MILLIGAN

Kodiak, Alaska

POSITION STATEMENT: Testified on HB 191; asked that the role of local government not be circumvented.

BOB SHAVELSON, Executive Director

Cook Inlet Keeper

Homer, Alaska

POSITION STATEMENT: Expressed concerns relating to HB 191.

BRECK TOSTEVIN, Assistant Attorney General

Environmental Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Responded to concerns expressed about HB 191 and answered questions.

JACK CUSHING, Mayor

City of Homer

Homer, Alaska

POSITION STATEMENT: Testified on HB 191.

LISA VON BARGEN

Community & Economic Development

City of Valdez

Valdez, Alaska

POSITION STATEMENT: Testified on HB 191, suggesting clarification in Section 39 of the new proposed CS.

NANCY HILLSTRAND

Pioneer Alaskan Fisheries

Homer, Alaska

POSITION STATEMENT: Testified in opposition to HB 191.

MARV SMITH, Coastal Zone Coordinator

Lake & Peninsula Borough

King Salmon, Alaska

POSITION STATEMENT: Testified on HB 191, noting concerns that remain and suggesting changes.

JOHN OSCAR, Program Director

Ceñaliulriit Coastal Resource Service Area Board

Mekoryuk, Alaska

POSITION STATEMENT: Expressed concerns about Section 29 of HB 191, in particular.

DANIEL BEVINGTON, Coastal District Coordinator

Kenai Peninsula Borough
Soldotna, Alaska

POSITION STATEMENT: Expressed concerns about HB 191.

ACTION NARRATIVE

TAPE 03-33, SIDE A

Number 0001

CHAIR HUGH FATE called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Fate, Masek, Gatto, Heinze, Lynn, Morgan, Wolf, and Kerttula were present at the call to order. Representative Guttenberg arrived as the meeting was in progress.

SJR 12-SUPPORTING HALIBUT BY-CATCH PROJECT

CHAIR FATE announced that the first order of business would be CS FOR SENATE JOINT RESOLUTION NO. 12(RES), Supporting the halibut by-catch utilization project of the Alaska Food Coalition. [Before the committee was HCS CSSJR 12(FSH).]

Number 0226

CHAIR FATE asked whether anyone else wished to testify. He then closed public testimony.

The committee took an at-ease from 1:09 p.m. to 1:11 p.m.

[There were two motions to move wrong versions of the bill, which were then withdrawn.]

Number 0424

REPRESENTATIVE MASEK moved to report HCS CSSJR 12(FSH) out of committee with individual recommendations and the accompanying fiscal notes, and asked for unanimous consent.

Number 0459

REPRESENTATIVE GATTO objected. He asked the sponsor to speak to the changes.

Number 0490

SENATOR GARY STEVENS, Alaska State Legislature, sponsor, turned attention to page 2, lines 6-8, reporting that there was a

change in the [House Special Committee on Fisheries] to make it absolutely clear that this is a specific permit called a prohibited species donation permit and is authorized by the National Marine Fisheries Service (NMFS). The purpose of the permit is to authorize the use of halibut catch from vessels with observers. The intention is to make it absolutely clear that no fish would be used from vessels that don't have federal observers aboard to ensure that no one has "played fast and loose" with keeping certain halibut. He noted he was glad the change was made to clarify the intention.

Number 0565

REPRESENTATIVE GATTO withdrew his objection.

Number 0574

CHAIR FATE asked if there was any further objection. There being no objection, HCS CSSJR 12(FSH) was reported from the House Resources Standing Committee.

HB 105-COMMERCIAL FISHING LOANS

Number 0591

CHAIR FATE announced that the next order of business would be HOUSE BILL NO. 105, "An Act relating to loans to satisfy past due federal tax obligations of commercial fishermen and to the commercial fishing loan program."

[The bill was sponsored by then-Representative Gary Stevens. However, the written sponsor statement was prepared by the Joint Legislative Salmon Industry Task Force, on which then-Representative Gary Stevens served as vice chair and Senator Ben Stevens served as chair.]

Number 0726

JOSEPH LANHAM testified on his own behalf, informing members that he had four concerns. First, if this is constructed so that the permit cannot be seized, in most cases it will just delay the inevitable. The only reason a person needs to pay taxes is because of making profits; if the person made money, then the taxes should have come out of those profits first and then been saved [until the tax was paid]. Thus he suggested it was the person's choice to get into that situation, in many

cases, because the person had misallocated his or her funds. Mr. Lanham added:

This being said, there is no policy in the bill that says that the state loan officers for the Division of Investments have to show any kind of debt-service ratios that show that the fishermen can pay the estimated taxes for next year, as well as the new, current portion of long-term debt.

Number 0808

MR. LANHAM addressed his second concern, what the loan-loss reserve is. He explained:

It says that the program was highly used, but does not say how much these loans cost the fund in delinquencies or cost the fund in constant deferrals. And where are ... some of these loans that were booked back then, when the program was highly used, still receiving deferrals and still only receiving interest payments? I may be wrong, but I have heard from several fishermen that they receive deferrals from the state constantly.

MR. LANHAM noted that his third concern relates to the waiver of the 0.5 percent loan fee: he disagrees with it because the Division of Investments competes with commercial banks; lowering the fee will make companies that lend to the commercial fishing industry less competitive with the program. Although the original intent of the [state] program wasn't to compete with banks, he said the state has become the lender of first choice, instead of the lender of last resort. The state can refinance up to \$300,000, which has resulted in the loss of profitable customers who never have missed a payment or been late with their payments, but who now are in jeopardy of doing so. He explained:

They do this by subverting the requirement to have a "decline letter" from the bank and having the customer qualify for bank financing through the bank by refinancing it back to the state. And the state loan officers instruct fishermen to come to the bank to set interim or "bridge" financing. What this is, is the customer actually comes in, qualifies for conventional financing, and does not need the state. But the state, under the [refinancing] program, pays off a

good-performing loan and then takes it over from us and uses us, in a way, to get around the \$100,000 limit.

This is a deceptive practice because it just disguises the fact that they are initiating loans over \$100,000, which is ... the new money limit that they have. The state loan officers will go as far as to send commitment letters to the borrower assuring them that if they qualify for bank financing, they will refinance and do the deal.

Number 0946

MR. LANHAM addressed his fourth concern: the only entities that can foreclose on permits are the Internal Revenue Service (IRS), the State of Alaska, or the state's authorized financing companies such as the Commercial Fishing and Agriculture Bank (CFAB) or the Division of Investments. By contrast, banks are prohibited by the state from financing limited entry permits. He continued:

The phrase in HB 105 that talks about stopping creditors is really ... referring to the IRS, the state, and CFAB. The state and CFAB can make their own decision whether or not to foreclose on the permit in the interest of the state, as they are in the interest of the fisherman in the first place, and if it is good for the fishing community. If the IRS forecloses on the permit, their only interest is to turn it into cash to pay a tax bill. To do that, it would have to be resold, ... and the only people that would buy a limited entry permit are fishermen who would fish it. So ... if the permits are to be foreclosed on and then sold, there wouldn't [be] the dire consequences referenced in the bill, because the permits would be fished.

CHAIR FATE requested that Mr. Lanham stay on teleconference.

Number 1058

SENATOR GARY STEVENS, Alaska State Legislature, sponsor, explained that HB 105 stemmed from the Joint Legislative Salmon Industry Task Force, appointed by the House and Senate the previous year, which met during the summer and fall of 2002. Out of that task force came half a dozen bills that are moving

through the legislature. The intent is to help the salmon industry, which is in crisis, face enormous problems including competition from farmed salmon and low prices. He said a lot of fishermen are in jeopardy of going out of business.

SENATOR GARY STEVENS brought up concerns voiced by Mr. Lanham. With regard to foreclosure, he said it isn't in the state's best interest for fishermen to go out of business and lose their permits, among other things. Hence the purpose of HB 105 is to try to forestall that and help fishermen with federal taxes when they are in a position of jeopardy. Noting that the state had this program from 1995-1997 and 2001-2003, he said it was widely used and very successful. With respect to delinquency, Senator Stevens said he didn't have those figures and suggested the Division of Investments could respond. He added that the 0.5 percent waiver is to help fishermen even more. He urged members to give serious consideration to the legislation. In response to a question from Representative Guttenberg, he said it isn't inevitable that all of these fishermen who are having trouble paying their taxes will go out of business and lose their permits; he cited the previous two time periods during which the program existed as evidence of that.

Number 1364

REPRESENTATIVE MASEK referred to the fiscal note analysis [prepared by Greg Winegar of the Division of Investments, Department of Community and Economic Development (DCED)], which read [original punctuation provided]:

This legislation allows Alaska harvesters to refinance existing Commercial Fishing Revolving Loan Fund (CFRLF) loans. Current law requires the Division to charge a one-half percent fee to refinance. Section 1 of HB 105 removes the one-half percent refinancing fee and that will result in a reduction of income to the CFRLF. Interest rates are currently at record lows and as a result, the Division anticipates that the majority of borrowers eligible to refinance will do so prior to the effective date of this legislation. We expect approximately 180 refinancing applications in FY 04 and then approximately 80 applications per year thereafter. This will result in a reduction to the fund in FY 04 of \$30,150 and a reduction of \$13,400 each year thereafter through FY 09. These reductions were calculated as follows:

180 loans x \$33,500 (average loan size) = \$6,030,000 x
.005 = \$30,150
80 loans x \$33,500 = \$2,680,000 x .005 = \$13,400

These calculations are based on interest rates remaining relatively flat or increasing gradually through FY 09.

REPRESENTATIVE MASEK asked why language was put in the bill to remove that [0.5 percent].

Number 1397

SENATOR GARY STEVENS replied that at this point he doesn't think it's necessary [to include the 0.5 percent]. He said the program has been successful in the past, and that this is just a further encouragement to fishermen to use this program and to make it less expensive.

REPRESENTATIVE MASEK responded that she is really troubled by the legislation because many Alaskans have to pay federal taxes and are delinquent on them, and yet the state doesn't help them out. Calling it self-serving in this time of a state fiscal crisis, she said she isn't happy to see that Section 1 of the bill removes the 0.5 percent. Representative Masek questioned the long-term viability of fishing for many people as a way to earn a living, and remarked that when Canada had trouble with its fishing industry, it looked at helping fishermen get training in other occupations.

Number 1513

REPRESENTATIVE HEINZE recalled hearing this bill in the House Special Committee on Fisheries and said she supports it. She asked whether the IRS has seized limited entry permits in the past.

SENATOR GARY STEVENS deferred to Cheryl Sutton, who'd been working on this bill [as staff to the Joint Legislative Salmon Industry Task Force, which Senator Ben Stevens chairs].

Number 1540

CHERYL SUTTON, Staff to the Joint Legislative Salmon Industry Task Force, responded:

No. Thus far, we have been successful in not having the IRS seize any permits, largely due to the fact that Bruce Twomley with CFEC [Commercial Fisheries Entry Commission] has been very successful in this area. And a large portion of this bill has to deal with that subject. We are trying to protect the state's interests in this, and clearly it's in the state's interest not to lose permits.

MS. SUTTON, in response to Representative Masek's earlier question, said the task force had recommended removing the 0.5 percent refinancing fee just as an additional help for people who want to refinance their loans and take advantage of lower interest rates. She pointed out that this is a self-perpetuating revolving loan fund. It's the borrowers who are putting money back into the fund, and the last general fund (GF) appropriation was in fiscal year 1985 (FY 85).

Number 1653

REPRESENTATIVE GATTO asked whether the 0.5 percent forgiveness would be absorbed easily by the fund. He suggested it is in the state's best interest to prevent defaults with the IRS, and that part of the loan capital therefore is being invested [under the bill] in trying to avoid that. He asked, when the IRS comes to collect from a person who is out of money, whether it can take the person's permit.

MS. SUTTON suggested Mr. Twomley of CFEC could address that. She added, "Our whole objective is not to allow the IRS to seize a state asset, which is the limited entry permit." She clarified that the 0.5 percent refinancing fee has nothing to do with "the IRS loans." She also pointed out that people who are most at risk are those with no other "economy" apart from commercial fishing, mostly those in Western Alaska. She added, "I'm sorry that they're not on line to testify to this bill today, because we heard immense testimony through the task force." She emphasized that this is a state loan program that is only for state residents, and that the interest is in keeping these permits in rural areas where there is no other economy. She suggested it serves a dual purpose in that regard.

Number 1812

REPRESENTATIVE MASEK referred to page 3, lines 7-12 [sub-paragraphs (ii) and (iii)], which relate to lack of training, lack of employment opportunities in the area of residence, lack

of other occupational opportunities besides commercial fishing, and economic dependence or a traditional way of life. Referring to passage of the Alaska Native Claims Settlement Act (ANCSA) as well as federal funding through the Bureau of Indian Affairs (BIA), she said there is a lot of federal and state money invested through nonprofit and for-profit organizations that have the ability to help folks who live out in these areas. She recalled growing up as an Alaska Native in a village of fewer than 100 people, relying on fishing. Now, however, her father's fishing permit is useless. She said:

They do have other funding to retrain him, but the only jobs that are available are basically federal or state or municipal, or through tribal entities. So I just kind of take that into ... strong consideration, because I don't think that's a very fair statement to put into this bill here, because there are other opportunities available. It's just up to the individual person on ... if they want to [further] their training in other areas.

REPRESENTATIVE MASEK asked why this language was added in the bill.

Number 1933

SENATOR GARY STEVENS replied that he could speak for the six coastal villages on Kodiak Island that depend heavily on the salmon industry and traditionally have fished for salmon for years. He agreed that if fishing disappears, other programs can help, but said they're all "social programs, giveaway programs" to provide people with food and so forth. Speaking for fishermen he knows on Kodiak Island and in Old Harbor, specifically, he said they don't want those giveaway programs, but want to compete and want help to keep participating in a fishing industry they know well and have performed well in for years. He suggested Representative Masek's comments play into what he is saying.

REPRESENTATIVE MASEK stated her preference for removing lines 7-12 from [page 3 of] the bill, but left it to the committee's discretion.

Number 2032

REPRESENTATIVE MORGAN responded that he tends to agree with lines 7-12 because he sees no difference in the timber industry

in Southeast Alaska. He asked, when that collapsed, who stepped in to provide training and jobs. Noting that he represents a lot of villages in Bush Alaska, he voiced his belief that it is a fiduciary responsibility of the state and federal governments to deal with social issues. He said he sees nowhere that the state or federal government asks a private company to take over the social problems. Private companies exist to make a profit, he observed, whereas the state and federal governments are there to help socially, as much as they can, whether through education or food stamps or welfare.

REPRESENTATIVE MORGAN agreed with Senator Gary Stevens about handouts, saying there is nothing better than working and receiving a paycheck to make a person feel good and independent. He offered his belief that training should exist, although he suggested looking into what kind of training it should be later.

Number 2138

CHAIR FATE related his understanding that HB 105 allows people to borrow money from the revolving loan fund in order to pay for their income tax. He posed a situation in which an individual files for a late tax return, which takes close to nine months; then the individual enters into litigation over the tax and that exceeds the date specified [when the delay was granted]. He asked if there are any remedies or allowance [for such a situation].

SENATOR GARY STEVENS deferred to the representative from the Division of Investments.

Number 2260

CHAIR FATE asked how prudent businesspeople allow themselves to get behind to that extent. He asked, "How can they not pay their taxes and save the money out, because paying taxes implies that they've made a net income that's \$30,000, which is the limit here, which we'll say ... is close to a net profit of about \$100,000."

SENATOR GARY STEVENS turned attention to factors beyond the control of commercial fishermen, such as the market and the production of farmed fish. The current situation is probably the worst situation commercial fishermen have found themselves in the last 50 years, he said. Due to the costs, even a good fishermen who does everything correctly can be in [debt] at the end of the season.

CHAIR FATE suggested that if the season was bad, the fishermen wouldn't have much income tax to pay, especially when writing off expenses [for boats and equipment]. An income tax is predicated on one's net income. He remarked that whether the fishermen is using cash accounting or accrual accounting would make a difference.

Number 2406

GREG WINEGAR, Director, Division of Investments, Department of Community & Economic Development (DCED), responded. In regard to the two-year requirement, Mr. Winegar said he believes Chair Fate is referring to the eligibility section. The two-year requirement essentially relates to residency. As far as what taxes can be covered, the division can go back several years if necessary.

CHAIR FATE asked if most fishermen operate on a cash basis or an accrual basis.

MR. WINEGAR answered that both are used - and for some, neither, which is part of the problem. Mr. Winegar said that much of it is an education problem. Since this program was introduced in 1995, the division has done what it can to educate people about necessary recordkeeping. For instance, the division created the volunteer tax and loan program; the division, in cooperation with the University of Alaska and the IRS, goes to areas and helps people prepare tax returns at no expense. Over the years there has been quite a change, and the situation is much better now, which is in part due to this cooperative effort. This legislation would provide another tool. He added that this would apply to about 15-20 loans a year and thus wouldn't be a costly program. This loan fund has done well, he added.

MR. WINEGAR informed the committee that currently this program has a fairly high delinquency rate of about 43 percent. However, 79 loans have actually been paid in full. The program began with a total of 307 loans that have been made over the life of the program; most of the loans were made in the first two to three years of the program, when there was a substantial noncompliance problem. In the last three fiscal years, 20 loans have been made. Therefore, he characterized it as a small tool. A total of \$5 million in payments has been obtained, in comparison with \$6.4 million that was loaned. Mr. Winegar noted that the division will work with borrowers who have difficulties.

CHAIR FATE asked if those [loans] are collateralized with assets other than the limited entry permit.

MR. WINEGAR replied yes, in some cases. In most cases, the permit is the primary collateral for the loan.

Number 2619

REPRESENTATIVE GATTO directed attention to page 3 and pointed out that in order to satisfy the loan, either sub-subparagraph (i), (ii), or (iii) is required. He said he sees it from the point of view of a loan's being refused because satisfying one of the three would make it easy for an individual not to satisfy any of the sub-subparagraphs. For instance, sub-subparagraph (i) says, "has had a crewmember or commercial fishing license under AS 16.05.480".

MR. WINEGAR clarified that a lot of individuals qualify under [sub-subparagraph (i)] because in order to qualify, someone must have a limited entry permit that is in jeopardy of being taken by the IRS.

REPRESENTATIVE GATTO suggested it would be difficult to satisfy sub-subparagraph (ii), and thus one would default to sub-subparagraph (iii). He said, "For me, it seems like for some people who might purposely not want to give a loan to for some reason, you could find somewhere ... in all of these three things where they might not qualify." However, he said he understood that almost everyone would qualify under sub-subparagraph (i).

MR. WINEGAR agreed for this particular part of the program. He explained that sub-subparagraphs (ii)-(iii) come from language already in the statute for [subparagraph (B)] loans, which was put in place in the early to mid-1980s. He related his understanding that the legislature at the time felt that in order to qualify for this program, someone would need to have some sort of commercial fishing experience or the other specified conditions.

Number 2754

REPRESENTATIVE WOLF referred to the high delinquency rate and recalled hearing about a loss of over \$1 million. He called this proposal a handout.

MR. WINEGAR responded that he wouldn't say \$1 million has been lost because the [division] is working with those individuals, although these are collateralized loans and some of the money could be lost. With regard to the 0.5 percent fee, it relates to the refinancing program. In the last couple of years the rates have dropped dramatically, and thus the majority of the portfolio has already refinanced.

MR. WINEGAR noted that during [Joint Legislative Salmon Industry Task Force] hearings a number of testifiers [requested] that they not have to pay the 0.5 percent to refinance. However, there would be some impact to the fund; because the rates have decreased so far, most people have already financed. If the rates drop further, the fiscal note could be adjusted. The fiscal note is something on the order of \$30,000 in the first year and \$13,000 for the next couple of years. There will be an impact, he said, although he didn't believe it would affect the financial integrity of this particular loan fund.

Number 2854

REPRESENTATIVE WOLF pointed out that every time the interest rates decrease, people refinance, and that includes a loan origination fee. Representative Wolf said he has a problem when the legislature is cutting programs and that this is already capable of being done by CFAB. In 1987, when the economy hit bottom, the state didn't come in and bail out the contractors. Although Representative Wolf said he had no problems helping out industry in the state, he said he finds this 0.5 percent problematic.

MR. WINEGAR said he wouldn't argue with Representative Wolf on the 0.5 percent, as it's a relatively small fee. He noted that the process has been streamlined as best as possible, but there are costs associated with a refinance.

REPRESENTATIVE WOLF said it all adds up.

Number 2963

REPRESENTATIVE GUTTENBERG inquired as to the impact of the 0.5 percent reduction on the revolving loan fund.

MR. WINEGAR answered that the division forecast that the impact would be about \$30,200 in 2004 and \$13,400 each year thereafter. This is really a factor of what interest rates do, he said.

TAPE 03-33, SIDE B

MR. WINEGAR continued by saying if the rates don't decline further, it won't be substantial. If the federal government cuts the rate again and the rates drop, then the fiscal note would increase to some extent because there would be a larger group seeking refinancing. Therefore, it's related to what the market rates do.

Number 2965

REPRESENTATIVE MORGAN inquired as to the impact to the state if these permits are lost to the IRS.

MR. WINEGAR answered with his belief that it would be a fairly substantial impact. With this program and through working with the IRS, the intent has been to avoid [the IRS taking the state's permits].

Number 2920

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, informed the committee that in the House Special Committee on Fisheries, which he chairs, it was discovered that [fishermen] have filed tax returns and have made arrangements with the IRS. He explained that some people in rural Alaska didn't realize that the IRS existed and had accumulated IRS debt without maintaining receipts to write off expenses. Therefore, this population is being aided by this program. With regard to the 0.5 percent, he said this program places no cost on the state general fund (GF).

REPRESENTATIVE SEATON reported that the task force had related to [the House Special Committee on Fisheries] that one of the few ways fishermen could be helped is through refinancing of loans at the lower interest rates and not being charge 0.5 percent of the whole loan fee as an upfront fee. Therefore, [a fisherman's] ongoing expenses could be lowered at this time when the salmon prices are so low.

REPRESENTATIVE GATTO asked whether any of this IRS obligation is allowed to be a result of some nonfishing obligation such as child support or whether it's restricted to IRS debt as a result of fishing.

Number 2796

MR. WINEGAR answered that this particular language is restricted to IRS obligations. He noted that in the original legislation in 1995 a provision allowed this to be used for child support as well, which created a lot of concern. Therefore, the relating language was removed in one of the first hearings on the original legislation.

REPRESENTATIVE GATTO asked, "Is it obligations that are limited to a debt as a result of fishing deficiencies or losing years, or can it be any debt?"

MR. WINEGAR answered that technically he believes it can be any debt, although he didn't recall any that fell into that category.

CHAIR FATE said that's a good question because of the two-year timeframe. He related his understanding that the revolving loan fund was initially funded with GF funds.

MR. WINEGAR replied yes. He explained that when the fund was created in 1972, approximately \$60 million went into the fund. About \$74 million has gone out of the fund since fiscal year 1985, when the last appropriation was made.

CHAIR FATE asked if CFAB also lends money for the same type of indebtedness.

MR. WINEGAR explained that CFAB is a bit different because it's a cooperative. Although the programs do overlap to a small extent, basically those qualifying for a CFAB loan don't qualify with the division.

CHAIR FATE surmised, then, that there is no competition between CFAB and the state.

Number 2654

MR. WINEGAR reiterated that there are a couple of areas in which the two program overlap. One is in the refinancing arena. Under current statute, the division has the ability to refinance existing vessel and gear loans. However, the division doesn't encourage someone to take out bank loans and immediately come to the division. In fact, the division is going to implement regulations to make it clear that someone would have to have a loan on the books for at least a year before being allowed to refinance. There is also overlap with regard to [subparagraph (A)] permit loans. By law, only two entities can

take a permit as collateral: CFAB and the state program. However, there is language that specifies that the loans are intended for those who don't have other sources of financing.

Number 2569

BRUCE TWOMLEY, Chairman/Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game (ADF&G), recalled that fewer than 10 years ago there was an IRS official in Anchorage who'd attended a meeting of the Alaska Association of Village Council Presidents; afterward, the official had remarked that the IRS is trying to collect taxes from people who don't even know the IRS exists. He said those in rural villages who don't know of their tax obligations and don't file tax returns can end up having enormous tax debts because of the penalties. In these cases, IRS officials thought these individuals were evading taxes and thus went after limited entry permits in some of those cases. The IRS has seized a number of limited entry permits and forced the sale of those limited entry permits. Often, this has resulted in these permits' being taken out of villages and sold at bargain prices to people out of state. However, for one reason or another, those permits haven't actually transferred because the permits go through the [CFEC], and often there is a basis under state law to deny the transfer, which results in [CFEC's] negotiating with the IRS and resisting the forced sale of the limited entry permits.

MR. TWOMLEY explained that the commission has resisted the forced sale of the limited entry permits because it is protecting state law in the matter; state law declares that limited entry permits are privileges not subject to the claims of creditors. The aforementioned is the case for two important reasons, he said. First and foremost, the legislature wants control over this privilege so that it can be changed. The other reason this is a privilege is to keep [Alaskan fishermen] in the water, especially those in rural areas who may depend on fisheries as their only source of cash income.

MR. TWOMLEY emphasized his belief that it would be devastating to a number of communities to lose these particular privileges. With regard to compliance rates, Mr. Twomley indicated he'd recently reviewed statistics which illustrate that fishermen aren't less compliant than other small independent businessmen. The limited entry system and permits make fishermen especially vulnerable to tax enforcement. Therefore, the loan program has helped in that it allows the [commission] to intervene and negotiate with the IRS and help those facing enormous claims.

MR. TWOMLEY noted that the state has also made it easy for the IRS to go after the earnings from the limited entry permits. Since this program has been in place, the IRS has realized that its patience can pay off and that fishermen and their families can retain the benefits of the local fisheries, he said, which is why [CFEC] supports HB 105.

Number 2282

REPRESENTATIVE LYNN expressed shock that some people in the U.S. don't know that the IRS exists. He said he hoped something would be done to contact [the state's] educational system as a method of informing Alaskans that the IRS exists. In the meantime, he asked if anything is being done to educate people about the IRS.

MR. TWOMLEY pointed out that since [CFEC] has become aware of the problem, a number of forces such as the university, the Alaska Business Development Center, and the state loan program have brought a lot of resources to this matter. The situation has greatly improved. Mr. Twomley related that this situation isn't totally unique to Alaska. As a result of this work, he has been appointed to a national taxpayer advocacy panel from which he has learned that there are other groups of individuals who are equally unaware of the IRS tax obligations. The IRS joined the educational effort. Mr. Twomley said that a lot of resources have gone into education and a great deal of progress has been made and continues to be made. The situation that existed in 1995 doesn't continue now.

REPRESENTATIVE LYNN clarified that he blames the system that allows this lack of knowledge about the IRS.

Number 2150

REPRESENTATIVE GATTO made the following analogy. He pointed out that he uses an office provided by the government. If he were to be kicked out and the IRS said he owed a lot of money, the IRS couldn't take his office and rent it out, because the office belongs to the state. Similarly, the limited entry permit belongs to the state. Therefore, he questioned how the IRS could take a permit to use something and sell it.

MR. TWOMLEY said Representative Gatto has put forth the state's theory. This permit is a privilege, and it's critically important to the state that it remains that way, because it's a

means of enforcing conservation laws, among other things. However, he acknowledged that [the permit] generates property rights.

REPRESENTATIVE GATTO inquired as to the resolution.

MR. TWOMLEY answered that currently there is an agreement to disagree. He emphasized that there are discussions.

Number 2020

GERALD McCUNE, Lobbyist for United Fishermen of Alaska (UFA), testified in support of HB 105. He informed the committee that UFA has worked with fishermen, and advocates that people pay and file taxes on time. Mr. McCune emphasized that UFA's interest in the tax loan obligation program is the desire to keep the IRS from taking these permits. For example, a permit was seized in Yakutat two days before Christmas; there was an attempt to sell the permit for \$5,000, although it was worth \$15,000.

MR. McCUNE pointed out that other assets can be obtained to satisfy tax payments, such as a paid-off boat. The IRS seized a boat in Cordova to pay for an individual's taxes, but since the permit wasn't taken, the individual could continue to fish. Mr. McCune likened permits to a carpenter's tools. He agreed with earlier testimony that the education process has come a long way. Mr. McCune added that fishing this year, in certain arenas, isn't looking too bad. He related his belief that in the next two to three years there is a good chance that the industry will be turned around so that people can make a decent wage and many of these difficulties will be eliminated.

Number 1835

REPRESENTATIVE GUTTENBERG acknowledged that the season would be one factor [when people don't pay their taxes]. However, he suggested that there are other liabilities that prevent people from being able to pay their taxes.

MR. McCUNE reiterated that this problem has come a long way since 10 years ago. He acknowledged that there are a few problems because of low [fish] runs and low prices at the same time.

REPRESENTATIVE GUTTENBERG pointed out that a good season doesn't necessarily mean that someone will make a profit or even [have money to] pay taxes.

MR. McCUNE said people need to be responsible. He clarified that he wasn't advocating bailing out fishermen or anyone else who doesn't pay taxes. He reiterated that his main interest is to keep the IRS out of the state program. He noted that the program has been used less each year; he surmised that more education is happening and more people are aware of taxes. Still, it's the loan program's job to review an individual's portfolio [to determine the risk], he said.

Number 1675

REPRESENTATIVE MORGAN asked about start-up costs. He noted that like farmers, fishermen must have the necessary equipment in order to make a profit.

MR. McCUNE answered, depending upon the fishery, that someone can spend from \$2,000 to \$10,000 to gear up. If the fish don't return, the person will still owe some kind of tax such as self-employment tax at some point.

CHAIR FATE closed public testimony.

Number 1604

REPRESENTATIVE KERTTULA moved [to report HB 105 out of committee with individual recommendations and the accompanying fiscal notes]. There being no objection, HB 105 was reported from the House Resources Standing Committee.

The committee took an at-ease from 2:20 p.m. to 2:25 p.m.

HB 191-COASTAL MANAGEMENT PROGRAMS

Number 1565

CHAIR FATE announced that the final 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 the House Rules Standing Committee by request of the governor.]

CHAIR FATE indicated the committee aide was obtaining copies of a new proposed committee substitute (CS) labeled 03-0069 bil2.doc, 4/22/2003, 1:30 pm., which he said tries to meet some of the problems articulated by committee members, the Alaska Oil and Gas Association (AOGA), and the governor's staff. He asked Marty Rutherford to explain the changes that resulted from this cooperative effort.

Number 1475

MARTY RUTHERFORD, Consultant to the Administration and to the Department of Natural Resources (DNR), informed the committee that the Senate Resources Standing Committee would be considering the companion bill that afternoon. She noted that available to answer questions were Breck Tostevin of the Department of Law; Patrick Galvin, currently with DNR's Division of Oil & Gas, but formerly the director of the Division of Governmental Coordination (DGC), which used to house the Alaska Coastal Management Program (ACMP); and Randy Bates, the newly appointed coastal program coordinator in the ACMP.

The committee took an at-ease from 2:28 p.m. to 2:29 p.m.

Number 1324

MS. RUTHERFORD drew attention to a one-page synopsis dated April 21, 2003, which she said is generic in nature and little different from the one members saw the previous week; an updated timeline dated April 21, 2003, which reflects changes in the new proposed CS; an updated chart that compares the new proposed CS with the existing coastal management program; an updated sectional analysis [dated April 23, 2003]; and one sheet that discusses changes between last week's proposed CS [dated 4/12/2003] and the new one [dated 4/22/2003].

Number 1240

MS. RUTHERFORD highlighted changes in the new proposed CS. She told members:

Section 3 adds the word "maintenance" of an improved district plan as eligible for funding assistance. This change was requested by the Alaska Municipal League and the coastal districts. ...

Section 11 includes very specific statutory references to what was intended as DEC's [the Department of Environmental Conservation's] air, land, and water quality requirements. This change was requested by Doug Mertz on behalf of the Prince William Sound RCAC [Regional Citizens' Advisory Council]; they were indicating they were concerned about the broadness of the air, land, and water quality references.

Section 12, which is also on page 8, extends the required renewal period of district plans from five to ten years. Also, this change was requested by the Alaska Municipal League and the ... coastal districts.

Section 13, which is on ... page 9, removes the addition of the term "unduly" in the type of restrictions a district plan can impose on a use of state concern. This was requested by Chairman Fate, and I believe Representative [Seaton] had some concerns about that word as well, earlier.

Section 14, which is on page 10: there are several changes to this section. It amends AS 46.40.070, which sets up the requirement for department review and approval of district plans. It ... changes the introduction from "The department may approve", which is a discretionary action, [for] a district plan meeting the requirements of (a)(1) and (2), to "The department shall approve" a district plan if the commissioner ... finds that it meets the requirements. This change was requested by the Alaska Municipal League and the coastal districts.

It also removes ... (a)(2)(B) as duplicative. I think several members on the committee requested that change, and we heard it also from the Alaska Municipal League and the coastal districts. It changes "geographic area within the coastal zone" in (a)(2)(D) to "a defined portion of a district's coastal zone". And it changes "identified" - and this change is in [(a)(2)(C)(i)] - ... to "demonstrated" as sensitive to development. ...

Number 0981

MS. RUTHERFORD continued with changes in the new proposed CS:

[Section 14 also] deletes the phrase "or contemplated" from (a)(2)(C)(ii) as redundant. We heard the concern about that from various parties as well. Also in Section 14, ... line 28, ... (a)(2)(C)(iii), it adds "local" [before] "usage" to clarify that a matter of local concern must, among other requirements, involve local usage or scientific evidence. This change was requested by ... Chairman Fate.

There is one error on your sheet. The next reference to Section 19 should say Section 20. ... Section 20 is on page 12. It changes "interested parties" to "affected parties" in [the] list of persons from whom DNR requests consistency review comments. This change was requested by Chairman Fate.

In Section 21, which is on page 13, it revises the lead-ins to (1)(A) and (B) and revised (B), to reflect the listing of statutes instead of the simple term "air, land, and water quality" in AS 46.40.040(b). And, again, the intent is to ensure that the definition of "air, land, and water quality" is quite specific.

Number 0810

MS. RUTHERFORD continued with changes:

Section 22 amends new subsection (k), which is on page 13, governing the scope of a consistency review to add "that are located". The administration thought that there was ... lack of clarity there, so we added those words [ourselves]. New subsection (m), ... page 14, adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. It also adds new subsections (n) and (o), which [establish] a 90-day deadline for completing consistency reviews. And it adds a new ... subsection (p), ... which expressly states that a final consistency determination may not be held up by a DEC or other permit excluded under AS 46.40.096(g).

Section 43, ... on page 21, adds a definition of "project" from 6 AAC 50, which are newly promulgated

regulations dealing with consistency reviews, so it's consistent with the current regulations.

Section 46(b), which is on page 22, ... adds clarifying language that the ... former [Alaska] Coastal Policy Council's regulations implementing the coastal management program remain in effect until DNR adopts new regulations or they are annulled under Section 45, whichever occurs first. This was done in order to provide [assurance] that Representative Kerttula and her office requested.

And Section 47, which is on page 23, is a transitional provision requiring revised ... district coastal management plans; [it] now gives all coastal districts one year after DNR adopts new regulations for the statewide standards or until July 1, 2005, whichever is later, to submit revised district plans. And, again, this was requested by the Alaska Municipal League, the coastal districts, and Chairman Fate.

Number 0565

CHAIR FATE reopened public testimony. He announced his intention to move the bill from committee at the next hearing.

Number 0464

DANA OLSON testified that she lives in the Matanuska-Susitna coastal district. She indicated she'd asked the Legislative Information Office (LIO) to fax an article titled "Chicago Biosphere Reserve Considered by Steering Committee," dated April 2, 2003, from the Paragon Foundation's The Powerhouse, reprinted with permission of the Property Rights Foundation of America. She told members this legislation fails to consider that the U.S. Man and [Biosphere] Program under the U.S. Department of State reviews and approves nominations for the U.S. before forwarding them to the UNESCO [United Nations Educational, Scientific and Cultural Organization] headquarters in Paris for formal consideration; it also fails to consider that curtailing the existing political processes in Alaska will result in having no access for submitting nominations for this.

MS. OLSON said this establishes "criteria of urban interface"; she cited the lawsuit over the Miller's Reach fire as an example of intergovernmental agreements and policy relating to that interface issue. Suggesting members need to address that, she

explained, "This 1970 Act does give us legal standing to go in and create nominations, whether or not you feel that you can curtail our political process or not." She said AS 46.03.040 is the requirement for an environmental plan that never has been implemented. She added, "Negotiated rule making does not provide for nominations. And it's anticipated that I will probably make recommendations for nominations. And it may impact your rule making, your permitting, while that process is ongoing."

Number 0179

MS. OLSON observed that people often think only wilderness can be put under such a designation, but she said that isn't true. She told members:

Where there's been no consideration whatsoever on shallow gas, natural gas, impacts to the local communities, I asked ... my local coastal district, the Mat-Su Borough, to provide me, under a Freedom of Information Act, the impact of that type of activity, and they've not yet provided it to me. And, two, I've asked that the Mat-Su Borough also respond when I made a request for a permit standard that would allow a citizen group to determine whether or not the notice requirement that is required under the Alaska constitution is being met, and that be a permanent part of ... their administrative process or their coastal district program, and they have not yet responded on that.

MS. OLSON concluded by saying she didn't feel this issue had been looked at in its entirety, and asked that members do so.

Number 0040

MIKE MILLIGAN told members his comments would be of a general nature. He noted that he'd served on the borough assembly in Kodiak.

TAPE 03-34, SIDE A

Number 0001

MR. MILLIGAN recalled that through working with coastal zone management, [the assembly] was able to craft a solution that enabled them to express how they wanted to see oil-related development occur in the borough. He said:

From that, we were able to set various parameters, not the least of which was how we wanted to tax oil. We were able to work with industry, and our ... borough mayor at the time eventually got on the outer continental shelf council and became a chairman for Arctic Power. So I think ... there seems to be a predilection that there is some development that's not occurring because of regulations. My view is that development occurs when the regulations are good and adhered to.

I see no advantage for resource development in decreasing the power of local governments to participate in this process. If you were to look at an area that's overregulated, ... that would be Europe. And if you go look at Europe right now, you look at the environmental regulations, particularly in regards to timber, and you will see a much higher level of regulation. We are not timbering right now because of markets. If you go to Fairbanks, you go to Anchorage, and even probably Juneau - certainly here in Kodiak, you can go to Spenard's, you can go to Home Depot - you can buy European forest products in those stores right here in Alaska. You can't buy Alaskan products. And it's not because of regulations; it's because of markets.

If you want this resource development to occur, then you need to look at ways to develop those resources, ways that are happening through the [Alaska Science and Technology Foundation]. Do not circumvent ... the role of local government; ... I strongly encourage you to keep local government involved in this matrix.

Number 0248

BOB SHAVELSON, Executive Director, Cook Inlet Keeper, who'd testified at the previous hearing, added that the timeline provided in the materials circulated by the administration doesn't appear to provide any conditions for an environmental impact statement (EIS), which likely would be required under the National Environmental Policy Act (NEPA) for such sweeping changes to the state's program. He said this implicates not only the zero fiscal note attached to this legislation, but also the timeline for implementation.

MR. SHAVELSON noted that his organization has more than 500 members throughout Southcentral Alaska. He expressed concern that the bill will deal a significant blow to local communities that seek to have some type of local oversight with regard to local-resource decisions. Section 14 of the bill will make it virtually impossible for a local coastal district to have in place an enforceable policy that doesn't conflict with state criteria or law; thus it will disenfranchise those local communities from regulating their resources.

MR. SHAVELSON expressed hope that in order to truly get an understanding of the effects of this legislation, committee members will ask the administration to come forward with a dozen or so examples of enforceable policies, based on specific facts and related to coastal districts, that would "sustain through the very convoluted and legalistic criteria that's laid out in Section 14."

Number 0438

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, responded to Mr. Shavelson with regard to the necessity for an EIS. He stated:

It's our understanding on this legislation that that would not be required, that ... these changes would be done incrementally as routine plan changes. They would be reviewed by ... the federal NOAA [National Oceanic and Atmospheric Administration] agency, OCRM [Office of Ocean and Coastal Resource Management], and that it would not require that kind of delay.

MS. RUTHERFORD added:

I would note that in the third year after the Department of Natural Resources does the promulgation of new statewide standards and the following year, during which the local plans are updated, ... there is a third year identified for working the OCRM process as well. And we will be proceeding incrementally on those sort of mundane changes that are already laid out and effective immediately, with OCRM, during that time as well.

Number 0534

REPRESENTATIVE KERTTULA asked whether OCRM has stated that it will be a routine plan change and that there won't be anything more onerous required for the state.

MR. TOSTEVIN replied:

We've had discussions with OCRM. They ... can't, at this point, ... guarantee that ... it's a routine plan change or a minor amendment. But they're not indicating that this is the kind of, quote, new program - a wholesale revision - that would be triggered under the prior version. So ... I think that the [word] that we're getting from them is that this is going to be much more of [an] amendment of the current program or routine plan change, as opposed to a wholesale reapproval of a new plan.

REPRESENTATIVE KERTTULA asked, however, whether OCRM in fact won't be able to give that kind of guarantee until it sees what the legislature does with this. She said she'd barely made it through [the new proposed CS], and surmised that it had only reached Washington, D.C., the previous night.

MS. RUTHERFORD responded:

That is correct. ... We really don't know. And, frankly, what my expectation is, is that ... since we're not changing the structure of the program - that fundamentally the districts will continue and ... the basic shape of the program will continue - that ... that will be routine program changes. ... But I do think that as the department and the districts begin to rewrite the standards, ... there will be a more substantive review by OCRM. ... And whether that ends up being routine or not will be determined by the federal OCRM. But we have built in time to address that as well, as part of the process.

Number 0703

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, referred to Section 14 and said he is hard-pressed to figure out whether any local enforceable policies can be written. He also expressed concern that local ordinances that are adopted won't be able to be enforced. He said it seems there will be [major] structural impacts upon the coastal zone.

MR. TOSTEVIN suggested looking at the big picture as far as the ordinances and said:

This legislation does not affect the powers of municipalities to enact zoning ... within their own boundaries. They have that right now, the zoning authority. There's actually a savings clause in the CS that says this doesn't affect ... the zoning power of Title 29, municipalities or boroughs. ...

With respect to the coastal program, what the coastal program does is allow municipalities or boroughs ... and [Coastal Resource Service Areas (CRSAs)], coastal districts, to enact ... enforceable policies to apply to the state where they wouldn't ordinarily apply, ... and also to the federal government where they wouldn't ordinarily apply. So the legislation ... is requiring that to impose those additional enforceable policies that meet ... those tests in ... Section 14.

Number 0860

REPRESENTATIVE SEATON asked whether it's the case, however, that the requirements in Section 14 preclude almost any local enforceable policies. He requested that the administration come forward before the next hearing with perhaps six local enforceable policies from any coastal district that would meet the criteria in the bill.

MS. RUTHERFORD replied:

We'll be glad to do that. And I know that there have been other districts that have suggested that ... one of the most helpful exercises ... might be for Department of Natural Resources to identify problem enforceable policies within ... the various district plans. And I think that that might be a useful ... exercise, and I think that the department's looking seriously at that. We'll be glad to develop some examples.

I might note, though, ... it's a matter of perspective. ... I still get a lot of comments from a lot of the development community that they are concerned about how broad this is. ... The language here, in their opinion, is too broad. And literally they've said that it's large enough to drive a truck

through, whereas the districts are saying it's smaller than a breadbox and nothing can be approved through it.

The reality is that I think ... it is in balance. I think that it does limit a duplication of existing standards ... and it does require ... that the drafting of the new enforceable policies be done with an eye towards more prescriptive and more precise -- and be more substantiated. But I think it certainly does allow for them, and we'll try to show that to you.

Number 1002

JACK CUSHING, Mayor, City of Homer, informed members that he has been on the Alaska Coastal Policy Council representing lower Cook Inlet since about 1996. A civil engineer, he said he'd worked on the Alyeska pipeline and the Northwest Alaskan pipeline during the planning phases. He told members:

I'm afraid what's happening here is you're opening up a bigger can of worms than what you might be solving. I think that the program ... was up and going and smooth after years of work on it, and I think by the time you get thing rewritten, you're going to find that you've ... opened up a whole lot of new doors and it's going to be ready almost for immediate modification just about the time it takes to get this to where we are right now.

I think we're going to possibly be jeopardizing funding during this interim time, just in the manner we're talking about. If nothing else, the elimination of the Alaska Coastal Policy Council: that was perceived by the people of the state as an intermediary board to go to, during the petition process, that had elected citizens on it as well as the administrative folks. And I think a lot of people held off going into court just because they felt, well, ... if they had a chance to go by these nine elected officials and they heard what the comments were, they got their input, that ... they could live with the determination that was made.

When I looked at the number of projects that actually got stopped, that got turned down, ... it's

pathetically few. And the few that did get input at the coastal policy council level, I think, came out better for it.

Number 1155

LISA VON BARGEN, Community & Economic Development, City of Valdez, thanked [Ms. Rutherford] and others at DNR for considering comments in reworking the proposed CS. However, she expressed concern with Section 39, page 19, subsection (2)(C), "home rule and first class cities of the unorganized borough or within boroughs that do not exercise planning and zoning authority". She suggested it is vague as to whether that means "home rule and first class cities that do not or do exercise planning and zoning authority". Thus she asked that after the words "unorganized borough" there be a comma added and that it then read: "or within home rule and first class cities within boroughs that do not exercise planning and zoning authority". She thanked participants for their hard work.

[Chair Fate called upon Lawrence Widmark and June Kegnan, who'd signed up to testify at the Sitka LIO, but there was no response.]

Number 1287

NANCY HILLSTRAND, Pioneer Alaskan Fisheries, spoke in opposition to HB 191. She told members:

I think that it's time that we stopped being afraid of regulations that give us some structure in planning. We're in business. We've been a corporation for 40 years here in Alaska. And the structure and delays and all the different stopgaps that allow us to run as a business have saved us from making extremely costly mistakes.

And HB 191 takes the crucial oversight of local communities out of the democratic process. And I just wonder why this administration is afraid of a healthy tension of democracy. It just seems as though that's what we're looking at here. ...

Our corporation relies on policy that sustains fisheries. Habitat sustains fish. And the community and most other coastal communities rely on the oversight needed from this policy to create a level of

planning to minimize "oops." "Oops" is when we make costly mistakes because of lack of ... conscientious, meaningful debate. "Oops" causes extremely expensive restoration.

And I wonder: are we willing to be responsible to pay this price in the future? Thank heavens for delays, because it's really important for us to have good debate and good, conscientious oversight, because that way, we won't have to pay in the future. And so, I thank you very kindly, and I'm against [HB] 191.

Number 1380

MARV SMITH, Coastal Zone Coordinator, Lake & Peninsula Borough, thanked Ms. Rutherford and the DNR staff for listening to and incorporating earlier testimony. However, he voiced concerns with Section 14, specifically, the ability for local districts to have some control over how they implement changes in their plans. He said it seems DNR still has too much control over how that can happen effectively. Referring to sub-subparagraph (2)(C)(i), he therefore suggested "demonstrated" should be changed back to "identified".

MR. SMITH turned attention to Section 22 and the 90 days to get a coastal consistency review completed. He asked:

If we ... do not have all the information we need to effectively do a consistency review, is that 90 days' clock still [ticking]? Will ... the clock stop? Because if that's the case, then we'll be forced to [be] inconsistent with the consistency review. We just need to know: the 90-day rule, is it from start to finish or whatever? It's vague in how it's worded; I think it should be clarified a little better in that category because it could make ... far more ability of us to do a better job. If we've got a good product to begin with and we can do a good consistency review, we like to do those. And we want to do them on time, and we agree with the administration's policies on getting them done timely in all manner, and we try, every effort we can, to do that.

Also, another concern ... is that if we do have to do all these plans and go through the public hearings, ... the recent budget cuts [are] going to drastically affect our ability to do them in a timely manner.

Just going to places like Chignik, ... from King Salmon it's a \$500 plane ticket for one person; additionally, if you go to the northern parts of our borough where you [have] to charter an airplane, it's almost a thousand dollars. ... You can fly to ... the Lower 48 cheaper than you can fly ... to some portions of our borough to make these meetings. So it's going to be very costly [for] us to do that.

Number 1547

MR. SMITH referred to discussion in a previous hearing. He asked that instead of [districts] having to rewrite their plans completely, time should be taken to help them identify what is needed to make the plans meet the needs of the administration. He suggested this would be much more effective.

Number 1576

JOHN OSCAR, Program Director, Ceñaliulriit Coastal Resource Service Area Board, who'd testified at the previous hearing, referred to Section 29 and questioned the relationship of the state constitution to these bills.

Where the federal government requires equal treatment in the coastal zone communities, only the municipalities in these bills can be represented in the makeup of [the proposed] Alaska Coastal Program Evaluation Council. If the traditional, primary governments are to be included in these bills, does this also provide the state's recognition in the existence of these traditional governments?

Two, would these traditional governments be also considered as affected parties? And, third, ... there's no fiscal note attached with these bills. It will also cost the state hundreds of thousands of dollars to provide for the rewrite of all 33 coastal districts' [plans] in Alaska. We are already [short] of funds. But how is the state going to adequately provide for these public hearings?

Number 1674

DANIEL BEVINGTON, Coastal District Coordinator, Kenai Peninsula Borough, told members:

The borough has a long history of support for its coastal program; it goes back more than two decades. We've found that the coordinated review of permitting under the ACMP has helped us manage our resources and expedite development, which benefits the applicant, our communities, ... and the environment. A good example of this is the Kenai gas pipeline that's well underway.

The legislation asserts that the local government should exert its own coastal management control through planning and zoning powers. At this time, it is our view that this would add an unneeded complexity and duplication, and ultimately slow down valuable economic development opportunities throughout the borough. We also concur with the comments made by ... Lake & Peninsula Borough.

One crucial aspect of the bill proposal is the elimination of local district review of oil-spill prevention and contingency plans. Also, the bill removes the district from reviews of federal outer continental shelf [OCS] plans. On this first point, the lower Cook Inlet has ... [a] significant amount of activity requiring oil-spill ... plans. And presently the district reviews all those plans and participates when it's appropriate.

On the second point, a great area of federal waters occurs within the boundaries of the Kenai Peninsula Borough in lower Cook Inlet, and the activities in that area could very well affect and significantly impact the resources and ... ultimately the [socioeconomic] well-being of our communities.

So the issue of promoting economic development while balancing development interests with our long-term community interests is a complex ... subject which demands meaningful involvement of our communities across the state of Alaska, including the local districts. ...

Number 1786

MR. BEVINGTON continued:

At a minimum, the bill should assure that the local district has a seat at the table for oil-spill contingency plans and federal outer continental shelf plans. ... Also, we're very concerned with the elimination of the structure under the [Alaska] Coastal Policy Council structure, and believe that ... DNR should adopt some representative body which would allow that type of involvement of our communities in the planning for the Alaska Coastal Management Plan.

Number 1825

REPRESENTATIVE WOLF asked that Mr. Bevington call his office to talk about this.

Number 1845

CHAIR FATE closed public testimony.

Number 1865

MS. RUTHERFORD referred to concern about the DNR process and said:

First of all, I want to assure people that DNR has probably the most expansive public process imbedded in statute, in regulation, and the [resultant] case law of any other agency. It exceeds the APA [Administrative Procedure Act] that is in place for most other agencies. And I might note that ... the commissioner of DNR regularly balances various interests as part of all their areawide planning exercises that they do. And that is something that is inherent in DNR's function. ... It's imbedded in their area-planning exercises, in their special-use designation development; it's imbedded in forest-timber sales, land sales, and oil and gas lease sales. So this balancing of interests that involves the public process will be part of what DNR does as they proceed [under] the new legislation.

Another thing that I want to note is, this bill, again, does not eliminate the districts' place at the table. They will be at the table. They will have due deference on their enforceable policies. And that's something that the districts need to hear again, because it's important to them and we recognize that.

Number 1938

MS. RUTHERFORD continued:

The other thing that I think is important: Mr. Shavelson made a reference to the EIS process. One of the things that I think will bring a lot of comfort to the Office of [Ocean and] Coastal Resource Management ... is the fact that under this revised CS that replaced the original [HB] 191, statewide standards and local enforceable policies will continue. And those statewide standards are a comprehensive body of standards. Under the old bill, they were ... eliminated, and that would have been a major concern to OCRM. ...

On the funding: the reason there's not fiscal notes associated with this bill is there are special project monies that are available to the coastal management program, and they will simply be refocused to help support the districts as they rewrite their plans or review their plans and rewrite their local enforceable policies. Again, hopefully, the department will be helping them to identify those truly problematic enforceable policies, instead of just having to sort of pick up the rock and see whether it's the right one.

Number 1998

MS. RUTHERFORD continued:

Regarding the 90-day clock, someone asked whether ... there was some additional opportunity. ... It is a comprehensive timeframe, except if there is an elevation. ... It does provide for a 45-day elevation. However, this has been an issue that has been focused on by Alaska Municipal League, and we're trying to see whether or not there is a way to provide them some comfort.

I would note something, however, that under ... the federal law there are already timeframes in place that very closely mimic what was in this bill, now, in the new sections, that for federal activities there is a 60-day clock: if, in fact, the state doesn't act

within that ... 60-day ... clock, then an activity is presumed consistent. ... For federally regulated activities, it's a six-month clock. And, frankly, 80 percent of all projects that are reviewed under the coastal management consistency review program are subject to one of these ... federal clocks. So I think that's ... another important piece to it.

And, finally, ... I want to assure Dan Bevington and the Kenai Peninsula Borough that ... the program as it's currently laid out in this bill does allow for OCS enforceable policies. It's one of the primary concerns of this administration, and it is protected. And we want to assure you that ... those [kinds] of enforceable policies are allowed.

Number 2082

REPRESENTATIVE KERTTULA expressed concern that although the OCS may be included, there is a definite change with regard to "how we're dealing with DEC standards"; that the program is only continued for a couple of years while everything else is put in place; and about the language that says "we continue only if it's not inconsistent with the Act." She highlighted the number of issues remaining. [HB 191 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:15 p.m.