

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 31, 2004

1:34 p.m.

TAPE (S) 04-9

MEMBERS PRESENT

Senator Bert Stedman, Chair
Senator Thomas Wagoner, Vice Chair
Senator Gary Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

COMMITTEE CALENDAR

SENATE BILL NO. 361

"An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."

MOVED CSSB 361(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 361

SHORT TITLE: SMALL CRUISE SHIP DISCHARGES

SPONSOR(S): RESOURCES

03/04/04	(S)	READ THE FIRST TIME - REFERRALS
03/04/04	(S)	CRA, RES
03/31/04	(S)	CRA AT 1:30 PM FAHRENKAMP 203

WITNESS REGISTER

Linda Hay
Aide to Senator Scott Ogan
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 361

Dan Eastman
Director, Division of Water
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Testified on SB 361

Denise Koch
Division of Environmental Health
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Testified on SB 361

Brice Brockway
Vice President of Operations, Cruise West
2401 Fourth Ave. Suite 700
Seattle, WA 98121

POSITION STATEMENT: Testified in support of SB 361

Captain Michael Jones
Lindblad Expeditions
1415 Western Ave. Suite 700
Seattle, WA 98101

POSITION STATEMENT: Testified in support of SB 361

Chip Thoma
Box 21884
Juneau, AK 99802

POSITION STATEMENT: Testified on SB 361

Ray Gilespie
Lobbyist, Small Cruise Vessel Association
POSITION STATEMENT: Testified on SB 361

ACTION NARRATIVE

TAPE 04-9, SIDE A

CHAIR BERT STEDMAN called the Senate Community and Regional Affairs Standing Committee meeting to order at 1:34 p.m. Present were Senators Gary Stevens, Wagoner, and Lincoln. Senator Elton arrived one minute later.

SB 361-SMALL CRUISE SHIP DISCHARGES

CHAIR BERT STEDMAN announced SB 361 to be up for consideration and asked Ms. Hay to come forward and introduce the bill.

LINDA HAY, aide to Senator Scott Ogan, called attention to the sponsor statement in the packets and explained that the intent

of the bill is to create a regulatory system allowing older small passenger vessels to continue to operate in Alaska waters while taking steps to minimize discharge and harm to the marine environment.

CHAIR STEDMAN asked if there was someone from DEC who would like to speak.

DAN EASTMAN, director of the Division of Water with the Department of Environmental Conservation (DEC), introduced himself and proceeded to explain that in 2001 the Legislature passed a bill directing DEC to regulate the discharge of wastewater from cruise ships. In February 2004 DEC released the report "Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska." According to the report, the news regarding wastewater discharges from cruise ships is good.

Mr. Eastman explained that large cruise ships, which have more than 250 passengers, are complying with the terms and conditions set forth in the 2001 legislation. Small cruise ships are those carrying between 50 and 250 passengers and although they are compliant while underway, they are having difficulties when they are stationary.

Early in the session the small cruise ship industry approached the department seeking to work cooperatively to deal with small cruise ship compliance problems. DEC suggested:

1. All new vessels must comply with the full force and intent of the 2001 legislation. "So that we would be dealing and talking about only existing vessels."
2. Both new and existing vessels must maintain compliance with the requirements of the bill including those for registration, for sampling, for reporting and inspection.
3. DEC would work with existing vessels on legislation to develop best management practices in regulation, which would seek to optimize wastewater quality and to the extent possible, provide compliance with water quality standards.
4. There must be an end point so that this interim arrangement is of limited duration and not for all time.

He concluded, "So the bill that you have in front of you reflects and meets these four conditions in our opinion. We

consequently support the bill. We have provided a zero fiscal note."

CHAIR STEDMAN recapped that this addresses small already built cruise ships in state waters that aren't large enough to have waste treatment facilities aboard. He then asked for an explanation of what these vessels do with gray and black water when they are underway as well as when they are in port or at anchor.

MR. EASTMAN told him that cruise industry representatives might be better able to describe their current practices.

SENATOR GARY STEVENS asked if he is comfortable that new vessels are capable of carrying sewage and gray water treatment systems to make themselves compliant.

MR. EASTMAN said that based on their discussions with the industry, new vessels can be designed to comply with water quality standards in the 2001 cruise ship legislation.

SENATOR GARY STEVENS asked if the bill has a date for when new vessels have to be built to compliance.

MR. EASTMAN thought it was for vessels whose keels were laid as of January 1, 2004.

SENATOR GEORGIANNA LINCOLN asked if it was correct that older vessels wouldn't have to comply with the same standards as the new vessels.

MR. EASTMAN replied, "The limit in the bill is that we couldn't require physical changes to the vessels such that it would require that the vessels undergo new stability testing by the Coast Guard." Short of requiring major structural changes and through best management practices that are promulgated as regulations, they would require that the industry do everything that is feasible to improve wastewater quality.

SENATOR LINCOLN said that didn't really answer her question because she couldn't tell what would prevent someone from purchasing an old vessel that didn't require wastewater discharge compliance instead of having a new vessel built. Regardless of the fact that "best management practices" are defined on page 3, lines 24-26, those practices call for protecting the environment "to the maximum extent feasible." The meaning of that, she said, is in the eyes of the beholder. Why

wouldn't you take the easy and less expensive way out and buy an old vessel rather than face a retrofit?

MR. EASTMAN replied:

Vessels with their keel laid before January 1, 2004 that aren't currently in service could be put into service. It's important, I think, to understand though that we would promulgate by regulation best management practices. It's not a free ticket, it means that we will regulate the vessels in a way that doesn't require substantial retrofitting or changes - physical changes to the vessel that are either currently in service or the older vessels that would be put into service.

As to your second point - the maximum extent feasible - I agree is in the eyes of the beholder, but as the beholder, in this case, it's always difficult to draw a line in terms of use of words such as "practicable." This was a compromise. It seemed to work to us. It incorporates the two concepts: One, the maximum extent - as much as possible, and then feasible with some sort of practical limitations. The judgment basically leaves it to the agency to define that phrase in regulation.

CHAIR STEDMAN said his understanding is that the older ships would have to be in Alaska already. He asked if it is correct that, "They couldn't, in two or three years, bring in a ship out of California or Florida that didn't comply."

MR. EASTMAN acknowledged that he didn't know and said that would be a good question for the sponsor.

SENATOR KIM ELTON recalled that when the cruise ship legislation was passed, the assumption was that it would spark technology changes on large cruise ships that could then be adapted to smaller cruise ships. That didn't work as planned though because instead of adopting new technologies, they elected to discharge 3 miles off shore and he questioned whether that isn't why there isn't more new technology.

MR. EASTMAN didn't agree entirely. The technology is there for the larger cruise ships, but the problem is that it hasn't been scaled down for smaller vessels.

SENATOR ELTON said:

So it's not necessarily the case that the technology isn't being employed because they're discharging elsewhere. You're saying they do have the technology. Are you then saying that they are discharging within state waters using the new technology?

DENISE KOCH, commercial passenger vessel program manager with DEC, told him:

The majority of large ships have installed what I broadly refer to as advanced wastewater technology. So technology beyond typical marine sanitation device that employs technology such as reverse osmosis or ultra filtration and for large vessels, the majority of those vessels have, as of 2003, and we expect this trend to continue - that most vessels have installed advanced technology and they do discharge in Alaska waters - for large vessels.

SENATOR ELTON asked how many ships fall into the small passenger vessel category compared to the total number of cruise vessels in Alaska.

MS. KOCH replied it's probably in the 5 to 10 percent range.

CHAIR STEDMAN restated her answer saying that is for the small ships versus the small and large combined.

MS. KOCH conferred with Mr. Eastman then said, "5 to 10 percent."

SENATOR LINCOLN made the point that more operators could potentially enter the state as a result of SB 361 and questioned how many ships comprise the current 5 to 10 percent and whether there was a projected number in the near future.

MS. KOCH said that as of 2003, there were 5 state ferries and 14 small cruise ships.

SENATOR LINCOLN asked again whether she anticipated an increase in the numbers of cruise ships as a result of this legislation.

MR. EASTMAN told her they have no information on that, but they don't anticipate this legislation having a great impact on the small cruise ship market.

SENATOR GARY STEVENS said the point Senator Lincoln brought up regarding additional old vessels coming into the state is

interesting. He then asked if the same vessels operate in the state from year to year.

MS. KOCH said that's correct, DEC hasn't seen much turnover in the small cruise ship industry since 2003. The Cruise West and Lindblad Expedition vessels are substantially the same.

SENATOR GARY STEVENS asked if there's anything she's identified in the bill that wouldn't allow different older vessels to enter the market in Alaska.

MS. KOCH said she saw nothing in the bill that would prevent a new older small vessel from coming up to Alaska.

SENATOR ELTON said he was going to pull on that string a bit more and asked:

If in fact a new old vessel does enter the market, would they have to ... meet that three-year requirement that they have a permitted wastewater discharge regime or recipe?

MR. EASTMAN replied they would have to comply with best management practices for the three-year approval.

CHAIR STEDMAN told Mr. Eastman to speak up.

MR. EASTMAN repeated his answer saying:

That's correct Senator Elton. The premise that a new old vessel - older vessel - arriving newly or being placed newly in service would still have to comply with the best management practices that we would promulgate by regulation and get approval for a three year period to operate using [indisc.] best management practices from DEC.

CHAIR STEDMAN reconfirmed that they must get approval from DEC to not comply with the large ship requirements.

MR. EASTMAN said that's basically correct; instead they would have to comply with the regulations established as best management practices.

SENATOR ELTON asked for verification that these are vessel based rather than fleet based provisions.

MR. EASTMAN replied the best management practices would apply to the fleet and then continued to say, "there may be parts of the

regulations that provide for vessel specific practices, but generally the regulations would be developed and promulgated for the fleet."

SENATOR LINCOLN continued to question best management practices because of the latitude in defining those practices. She also questioned the language stating that the department may adopt regulations arguing that it doesn't say the department shall or will adopt regulations to implement the subsection. She opined that the permissive language would allow the commissioner to decide whether there will be regulations.

MR. EASTMAN conceded that he hadn't considered that point, but DEC's intent is to draft regulations.

SENATOR ELTON read from page 3, lines 15-17 and opined that the sentence sounds as though the requirements are vessel specific rather than fleet specific.

MR. EASTMAN agreed with his interpretation and clarified that the regulations are broadly written to be fleet specific, but the actual plans that are submitted are vessel specific.

CHAIR STEDMAN announced that he would take testimony from two off-net sites then return to the committee room for additional testimony before bringing the matter back before the committee.

BRICE BROCKWAY, vice presidents of operations for Cruise West, described the two New World Ship Management/Clifford Cruises ships. The first is a 300-foot vessel that carries 204 passengers and crew in the Bering Sea and the other is a 237-foot vessel that carries 170 passengers and crew in Southeast waters. Next he described Cruise West as a company that has been conducting tours in Alaska since 1946. Currently they operate six vessels in the state that carry from 70 to 114 passengers.

He emphasized that the wastewater these vessels process and discharge meets the national/international standards. They discharge while underway at 6 knots and DEC has determined that this meets Alaska standards. What is at issue in this bill is stationary discharge because the best management practices include no discharge when stationary. It is vessel specific because each vessel has different tankage ability.

To accommodate the vessel differences and adhere to best management practices they limit the use of certain facilities and carefully schedule their time in port. In addition they

limit time at anchor because they don't discharge while stationary.

He noted the letters in the packets addressing the concern about the stability change issue. The letter from the Elliott Bay Design Group naval architects should answer why the cruise companies don't want to undergo new stability tests or re-licensing and certification.

CHAIR STEDMAN asked Mr. Brockway:

Why would you pump out your holding tanks and bring your boats empty into the harbor? Why not stop your discharge, bring you ships into the harbors and then pump out your holding tanks?

MR. BROCKWAY said that would be ideal, but the problem is that there aren't pump-out stations in Alaska. "So what we do is we'll process through our type II equipment as we're under way and then shut things down," he said.

CHAIR STEDMAN said he understands that a number of these ships aren't moored very far from municipal sewer systems.

MR. BROCKWAY replied he was probably referring to the larger communities, but there are no such facilities in smaller villages and towns.

CHAIR STEDMAN said he was thinking of Petersburg, Wrangell, Ketchikan and Juneau.

MR. BROCKWAY said correct.

SENATOR LINCOLN asked if they use the pump out facilities in those larger communities whenever they are available.

MR. BROCKWAY said, "No we're not. But we are looking into them and we're actually suggesting that maybe some more of the towns and so on look into this." Their vessels don't tie up in small yacht basins, which is more typically where pump stations are located.

SENATOR LINCOLN remarked that she would encourage them to do that. She then asked what it would cost to retrofit one of their vessels.

MR. BROCKWAY explained that retrofitting is very involved. To add more tankage, the vessels would have to be lengthened and

widened. "So you're going to be running into millions of dollars in some cases." Changing a vessel to this extent would entail adhering to other cruise ship construction regulations. "At that point I think you would either opt to not run them in Alaska or try to build new."

SENATOR GARY STEVENS indicated he had a number of questions on the operations. He asked what the vessel lifespan is, the age of the fleet, and whether the company favors running older vessels or purchasing new compliant ones.

MR. BROCKWAY replied the average age of their fleet is 23 years and they are exploring the option of new construction.

SENATOR GARY STEVENS asked how many years they plan to use their vessels.

MR. BROCKWAY told him that when vessels are maintained and are inspected regularly they could be used indefinitely. The limiting factor is guest preference and they're finding that their guests prefer new ships.

There were no further questions for Mr. Brockway.

CAPTAIN MICHAEL JONES, director of marine operations for Lindblad Expeditions, testified via teleconference in support of SB 361. His company has operated in Alaska since 1982 conducting natural history cruises throughout Southeast Alaska. The Sea Lion and Sea Bird are 152-foot sister-ships that carry 70 passengers and 24 crewmembers.

He noted that economic impact statements for both Lindblad Expeditions and Cruise West were included in the bill packets as background material. They give some idea of the companies' Alaska marketing and money spent on fuel provisions and docking.

Referring to the discussion about technologies that have been developed since the 2001 legislation, he pointed out that most of it is designed for much larger ships and the footprint of the wastewater treatment systems are typically larger than can be accommodated by the smaller vessels. In addition, the larger vessels have been able to convert their ballast tanks to solid waste holding tanks, but the smaller vessels don't usually have ballast tanks and therefore don't have that capability.

As part of the best management practices, Lindblad Expeditions is working with communities to explore waste pump out options.

In particular, their agents have been in contact with the ports in Sitka, Juneau and Petersburg to discuss the different alternatives. They are also adjusting times in port or at anchor and they are limiting laundry schedules so that the ships spend less stationary time since that is when wastewater disposal is at issue.

Lindblad Expeditions continues to work with the manufacturer of their existing equipment and others to try to improve and/or downsize new wastewater technology to fit the systems into existing smaller vessels. They are trying to meet the standards without having to reconstruct the vessels and that's quite a challenge, he said. Recent estimates indicate that it would cost \$1 million to modify the Sea Bird, the vessel would be out of service for three to four months, and after the refit it would accommodate six fewer guests.

CHAIR STEDMAN asked him to elaborate on the procedures for handling wastewater discharge when at anchor in restricted bays for daytime excursions and also for overnight moorage.

CAPTAIN JONES explained that the idea is to discharge all the wastewater when they are cruising offshore at six knots. When at anchor, their ships have the capability of remaining stationary for about six hours before they have to get underway again to pump. The boat is anchored while guests go on day excursions, which seldom last longer than four hours and they are often underway during the night. He said he couldn't think of any small bays that they anchor in overnight.

There were no further questions for Captain Jones.

CHIP THOMA, representing himself, informed members that he served as a citizen representative on the 2001 cruise ship initiative. DEC, the Coast Guard, and citizens collaborated and eventually came to a consensus on cruise ship discharge testing.

Giving some background, he told members that according to onboard pilots, the approximately 25 large ships operating in Alaska were targeting donut holes to legally discharge sewage in inside waters. "Some of those existed right down here in Fredrick Sound, some in Icy Strait at Point Adolphus. These were areas that were three miles away from shore so they were legally outside state jurisdiction."

These large ships were discharging large amounts of sewage in these donut holes and as a consequence, Senator Frank Murkowski

sponsored federal legislation to test the ships' discharge of black and grey water. He described the levels as "through the roof" due largely to the fact that the onboard treatment systems were not maintained. Since then the larger ships have gotten new treatment systems and use their ballast tanks as wastewater holding tanks. When the legislation was passed the small ships were given a three-year exemption. Mr. Thoma said this was justified because the ships were all U.S. built and crewed.

Although SB 361 is an effort to address the gap in coverage, he is concerned with the statements saying that the vessels can't feasibly comply with the program to eliminate the unacceptably high levels of grey and black water because of technology limitations. Referring to the letter from marine engineer John Waterhouse, he said he appreciates the concerns about adding volume to the vessels, but the letter didn't address replacement with new treatment systems of equal or comparable weight. There shouldn't be a problem with that concept he said, but the bill doesn't encourage such replacements. "I personally believe that technology can cure the ships' discharge problems without adding any weight or volume or stability problems," he declared.

He suggested the following changes:

- Page 3, line 20 - change "protecting the environment" to "safeguarding public health and protecting important wildlife habitat"
- Page 3, line 21 - change "may" to "shall"
- Page 3, lines 21-24 - the sentence is too permissive, it may preclude DEC from talking to small ships about replacing or retrofitting their systems because you could get a marine engineer to say that there will be testing or re-licensing.
- The technology is changing quickly and extending the exemption until 2016 isn't necessary. Change the date to 2010 and if an extension is needed at that time then revisit the issue then.
- Page 6, lines 1-10 - Subsections (1)-(4) are important and without specific identification, they are referring to the donut holes. The small cruise ships are targeting these areas because they are wildlife rich, but they are also able to dump their sewage there. Under this bill, there is no opportunity to change that for 10-12 years. He recommended that DEC reference some of the

sensitive areas in the bill and designate them and stay 2-3 miles away when discharging.

SENATOR ELTON referred to the suggested change in wording on page 3, line 20 and argued that "protecting the environment" is broad language and the substitution might make it too specific and more difficult for the department to regulate wastewater discharge.

MR. THOMA said his interpretation was the opposite.

SENATOR ELTON contended that "protecting the environment" is a large umbrella and "protecting important wildlife habitat" is a smaller one and could be construed too specifically.

He then asked DEC about the suggestion that it might be possible to shop for a marine engineer to receive an exclusion from retrofitting.

MR. EASTMAN admitted to knowing little about Coast Guard stability testing regulations, but he did know that retesting is triggered by a 2 percent change in vessel displacement. That being said, he pointed out that others knew more than he about stability testing. He asserted that he certainly didn't know whether it is possible to shop around for a marine architect who would say that most any change would require new stability testing.

SENATOR LINCOLN asked where the information sheet came from that began, "Small Cruise Vessel Alternate Compliance Program is not an exemption from environmental laws." She commented that point (2) specifically refers to just 12 older vessels built before 2003.

CHAIR STEDMAN remarked that it is his understanding that this is a specific list of the ships and ferries that were identified earlier and under these rules the ability of bringing in a new older vessel doesn't exist.

SENATOR LINCOLN pointed to page 2, line 8 of the bill and read (b). She agreed with the Chair and interpreted that as including just those existing 12 vessels, but she wanted to make sure that was the case. She asked DEC to interpret the subsection.

MR. EASTMAN said the department didn't author the bill, but "There is nothing in the bill that I see that would prohibit a company from taking a vessel whose keel was laid before January

1, [indisc.] vessel not currently in Alaska's small cruise vessel market and putting it into service in Alaska. There's nothing in the bill that I'm aware of that would prohibit that."

SENATOR LINCOLN repeated, "So that portion, 'to continue to operate in Alaska waters,' on page 2 - you wouldn't interpret it that way?"

MR. EASTMAN said just in a broader sense, "not the specific vessels would continue, but that older vessels generally could continue to operate in Alaska waters."

SENATOR ELTON asked for his opinion as to whether the "protecting the environment" terminology in Section 6 was too vague because he thought it accommodated broader regulatory authority than the suggested change.

MR. EASTMAN told Senator Elton he agreed with his comments and interpretation.

SENATOR WAGONER noted Senator Lincoln's first question asking who wrote the document hadn't been answered.

RAY GILESPIE, lobbyist representing the Small Cruise Vessel Association, came forward and said he authored the document as an outline for his clients to use in discussions with vendors. When he stated that 12 older vessels would remain in the program, he used that number because it was the number that was given to him. However, "I don't know that that is precisely the number that the department would say because I think from year to year it might vary by one or two vessels," and "You'll notice that's a parenthetical, it wasn't meant to limit - in my estimation it wasn't intended to limit the scope of this legislation."

SENATOR WAGONER asked him if that means it's just a working document that he provided for his clients.

MR. GILESPIE replied that's correct, but in their discussions with the department the issue was raised that if you were to restrict other competitors from operating on the same basis, significant anti trust questions would arise. The department wasn't interested in that occurring.

SENATOR LINCOLN referred to page 2, line 8 and asked if he would interpret the sentence to mean those existing vessels and not new older vessels coming into Alaska.

MR. GILESPIE replied, "My interpretation of that, based on our discussions with DEC is that new older vessels would be allowed to come into the Alaska trade because the impact of interpreting it the other way is you implicate some sort of restrictive anti trust measure that limits your existing tourist vessels, and I think it would probably raise some real significant issues in terms of federal anti trust as well as state anti trust laws."

SENATOR LINCOLN asked whether the same anti trust issues would arise if a cutoff date were inserted for older small vessels to enter the Alaska market.

MR. GILESPIE thought there would be significant anti trust implications if the number of small vessels were limited to those existing in the trade.

SENATOR GARY STEVENS asked if it's true that older vessels have to comply at some point and if so, where that is mentioned in the bill.

MR. GILESPIE explained that under the legislation the Alternate Compliance Program expires in 2016. "In the meantime, the vessel operators intend to, and are required under this bill, submit three year best management practice programs," and if there are technology developments, the department can certainly require them as a best management practice. So if a smaller wastewater system were developed prior to 2016 that didn't implicate the 2 percent stability, the department would be empowered to require that.

SENATOR ELTON said the 2 percent stability testing seems to draw a rather bright line and he wondered whether Mr. Gillespie agreed or did he think that you could shop for a surveyor that would give you different opinions.

MR. GILESPIE said that Mr. Brockway or Mr. Jones were better able to answer the question than he, but he thought the 2 percent figure came from Coast Guard regulation.

CHAIR STEDMAN asked whether Senator Elton wanted one of the men to respond.

SENATOR ELTON replied he would like either of them to respond.

CHAIR STEDMAN asked Mr. Brockway to answer Senator Elton's question.

MR. BROCKWAY said it would be difficult for a naval architect to write a letter stating that you're into a situation of 2 percent. Providing further explanation he said that when a modification is done, everything that's taken off the ship is weighed then everything that is put on is weighed as well to determine whether there is a net change. If the change approaches 2 percent then the Coast Guard will require incline and stability testing and additional buoyancy might be required.

There was no further testimony.

CHAIR STEDMAN asked Senator Lincoln if she had an amendment to offer.

SENATOR LINCOLN offered the following amendment: On page 3, lines 15 and 21 change the word "may" to "shall."

CHAIR STEDMAN asked if there was objection and Senator Elton said he would object for the purpose of getting a reaction from DEC.

MR. EASTMAN advised that the department had no objection to changing may to shall on line 21 because it simply reflects their plans, but he wasn't so sure on the change on line 15. AS 46.03.462 (e) offers one of three ways that a vessel can comply with the cruise ship legislation. He continued to say:

A vessel, small or large, can comply by simply complying with the standard terms - that would be 462 (b) [AS .03.462 (b)]. It can comply through submission of something we call interim protective measures but it's another form of alternative compliance so that would be 462 (c) [AS 46.03.462 (c)]. And then (e) - this new provision (e) [AS 46.03.462 (e)] would be a third way that a vessel could comply. And by making this a mandatory submission, I would I guess just want to make sure that this recognizes that a vessel may not choose 462 (e) at all, it may decide to go with prior subsections. So it's the only reason I can see to keep the permissive may in there.

SENATOR LINCOLN responded that it just says that the owner operator shall submit a plan for alternative terms and conditions for vessel discharges if a keel is laid before January 1, 2004. "They may do all of these other things as well, but in addition they would have to have a plan submitted to the

department." What would be the harm of making that "shall" she asked.

CHAIR STEDMAN asked Mr. Eastman whether he wanted to respond.

MR. EASTMAN said he really didn't want to respond because he really wasn't sure.

SENATOR ELTON reasoned that if the first may were changed to shall and you decided to comply with either the first or second option the use of "shall" would make it sound as though you would still have to comply with the third alternative (e) as well. "But if they're complying with the law by not asking for an exemption, why should they have to apply for an alternative way of discharging. I think that's what Dan was saying," he said.

SENATOR GARY STEVENS asked Mr. Eastman to restate the three ways to comply and point them out in the bill.

MR. EASTMAN told him that the bill doesn't specifically speak to the first two options.

SENATOR GARY STEVENS asked him to restate the first two compliance options.

MR. EASTMAN referred to the statute book and said:

The first one is simply to comply with the standard terms and conditions established in the legislation. The second is - and I'll point out this is in [AS] 46.03.462 (c) it says the department may - and there's a may here not a mandatory shall - the department may establish alternative terms and conditions. So the second is an existing alternative terms and conditions provision. There's a third (d) it says [AS] 46.03.462 (d) provides another alternative terms and conditions provision again. And then there's the new (e), which is the last alternative terms and conditions.

MR. EASTMAN questioned whether he confused everyone with that explanation, but the idea is that there are three ways to comply. His concern is that if you have a choice and one choice says you shall submit a plan, which doesn't seem like a choice.

SENATOR WAGONER understood that any of the three ways are acceptable to DEC so you don't want to force doing all three. "Does that kind of sum it up," he asked.

MR. EASTMAN said it does then added, "Or at least certainly not one of the three."

CHAIR STEDMAN asked Senator Lincoln if she wanted to modify her amendment.

SENATOR LINCOLN said she would split the amendment. She motioned to adopt amendment 1, which would be to change "may" to "shall" on page 3, line 21.

CHAIR STEDMAN announced that the original amendment was off the table and this was a modified version. He asked if there was objection and there was none.

SENATOR LINCOLN said she wouldn't offer the second amendment at that time. The bill was referred to the Resources Committee next and she would do more research and perhaps offer it in that committee. She said look at page 3, line 27 where it says, "A plan submitted under (e)." That's the subsection that says they "may" and that places a cutoff on December 31, 2015. She said, "I want to make sure, if they have a choice and they're not going to submit a plan and they go through these other two then does that mean that they can extend beyond 2015?" She agreed with Mr. Thoma and didn't want vessels exempted too many years out.

MR. EASTMAN said, "In the current existing other ways to comply, using alternative terms and conditions, there is no sunset provisions.... But they are also more restrictive.... They set a higher standard to execute compliance through alternative terms and conditions." An example of that would be a request for alternative terms and conditions because the vessel is using experimental technology. The other options are more specific than the new proposed subsection (e). He said, "I assume that the Legislature decided they were specific enough that they didn't see fit to actually end it on a date certain and was comfortable in allowing it to continue basically forever."

CHAIR STEDMAN asked Senator Lincoln if that was satisfactory or would she like to hear from DEC between now and the Resource hearing.

SENATOR LINCOLN said, "I would love that."

CHAIR STEDMAN asked Mr. Eastman to clarify that with Senator Lincoln's office.

SENATOR ELTON asked for leeway to expand on that request and ask DEC to distribute their comments to the Resource Committee regarding whether the language on page 3, lines 21-24 may preclude DEC's ability to discuss replacement of MSD systems with small ships.

SENATOR LINCOLN added one more request. She wanted the department to review page 2, line 8 and comment on the federal and state anti trust implications that were previously discussed.

There was no further discussion.

CHAIR STEDMAN asked for a motion.

SENATOR WAGONER motioned to move CSSB 361(CRA) from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

CHAIR STEDMAN adjourned the meeting at 3:00 pm.