

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

January 23, 2006

01:05 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Co-Chair  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Harry Crawford  
Representative Mary Kapsner

**MEMBERS ABSENT**

Representative Ralph Samuels, Co-Chair (excused)  
Representative Jim Elkins (excused)

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

Board of Fisheries

Jeremiah Campbell - Seward

- CONFIRMATION(S) ADVANCED

Chair, Commercial Fisheries Entry Commission

Bruce Twomley - Juneau

- CONFIRMATION(S) ADVANCED

Commissioner, Department of Natural Resources

Michael Menge - Juneau

- CONFIRMATION(S) HELD

**PREVIOUS COMMITTEE ACTION**

No previous action to report

**WITNESS REGISTER**

JEREMIAH CAMPBELL, Appointee  
to the Board of Fisheries  
Seward, Alaska  
POSITION STATEMENT: Testified as appointee.

BRUCE TWOMLEY, Appointee  
to the Alaska Commercial Fisheries Entry Commission  
Juneau, Alaska  
POSITION STATEMENT: Testified as appointee.

MICHAEL MENGE, Commissioner  
Department of Natural Resources  
Juneau, Alaska  
POSITION STATEMENT: Testified as appointee.

#### **ACTION NARRATIVE**

**CO-CHAIR JAY RAMRAS** called the House Resources Standing Committee meeting to order at [1:05:57 PM](#). Representatives Gatto, Olson, Seaton, Ramras, Crawford, LeDoux and Kapsner were present at the call to order. Representative Bill Thomas was also in attendance. Representative Elkins and Co-Chair Samuels were excused.

#### CONFIRMATION HEARING(S)

##### Board of Fisheries

CO-CHAIR RAMRAS announced that the first order of business would be to consider the appointment of Jeremiah Campbell to the Alaska Board of Fisheries.

JEREMIAH CAMPBELL, Appointee, Board of Fisheries, said he owns a sportfishing and sightseeing business and has recently purchased a commercial fishing tender and plans to participate in commercial fisheries in Togiak and Bristol Bay. He noted that he is on the Seward Charter Boat Association and was previously on the Fish and Game Advisory Committee.

REPRESENTATIVE LEDOUX asked Mr. Campbell of his knowledge of Gulf of Alaska groundfish rationalization.

MR. CAMPBELL said he is only "a little bit familiar" with the issue.

REPRESENTATIVE LEDOUX asked if he has a position on it.

MR. CAMPBELL said he does not have a formal position, but he is "not a huge fan of rationalization." He said Alaska fisheries are changing, but stakeholders are looking for stability. He said that safety is a concern too, but he believes that "once you go to rationalization...the turnover is just going to be very, very small," even more so than limited entry. He said he does not want to see any Alaskan fisheries become investment fisheries.

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REPRESENTATIVE SEATON said the state philosophy is that access to the fisheries is for participating fishermen, and federal programs give access to vessel owners and investors. He asked which side Mr. Campbell might take on that issue.

MR. CAMPBELL answered that it is important to have stability for stakeholders so they can plan their futures. He said there are a lot of Seattle and foreign interests in the federal fisheries, and he doesn't want to see that in state waters. "You would definitely need to be an active participant." He said he doesn't know how it will shake out with rationalization, but a key component is dedicated access privilege, where the fishermen are leasing from the state. He said he doesn't want what happened in federal fisheries to happen in state waters.

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REPRESENTATIVE GATTO asked Mr. Campbell if stability is better for the industry than a changing free market system.

MR. CAMPBELL said many fisheries are processor driven, and what he meant by stability is for fishermen to be sure that they can sell their fish for a reasonable price and make a good living. He said there are a lot of permit holders who would love to fish in some of the salmon fisheries, but the processors won't take on any more fishermen.

REPRESENTATIVE GATTO said he heard that Ford Motor Company laid off workers, and the company would like the stability of people always buying its cars, but that may not happen in a free market. He asked Mr. Campbell about reserving the resource for people who are already participating and not allowing new users.

MR. CAMPBELL said as a charter boat owner he can relate to what Representative Gatto said. There has to be room for growth and

for other people. He said his concern with an investment fishery is the lack of opportunity for new Alaskans, including "my children, your children." He added, "You have to have stability but there has to be room in all of the fisheries programs to allow for new entrants."

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REPRESENTATIVE LEDOUX asked Mr. Campbell if he is familiar with the issue of mixing zones.

MR. CAMPBELL said he has read a lot about it, and he knows it is a hot topic. He said the state stresses the quality of the resource, "but suddenly we have this mixing zone issue...putting a lot of our quality issues in jeopardy."

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MR. CAMPBELL concluded that he is learning, and he looks forward to serving all the interests of all the user groups. He said it ultimately comes down to protecting the resource and keeping things balanced.

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REPRESENTATIVE SEATON moved to advance the name of Jeremiah Campbell for confirmation. Hearing no objection, it was so ordered.

#### Commercial Fisheries Entry Commission

CO-CHAIR RAMRAS announced that the next order of business would be to consider the appointment of Bruce Twomley for Chair of the Alaska Commercial Fisheries Entry Commission.

BRUCE TWOMLEY, Chair, Alaska Commercial Fisheries Entry Commission, said he was first appointed to the commission by Governor Jay Hammond in 1982, and he has been reappointed by governors elected under three political parties. He said he used to sue Alaska for a living as a lawyer with Alaska Legal Services. That gave him a good sense of being on the receiving end of agency actions, he noted, but it also helped him learn how to keep the agencies out of trouble. Mr. Twomley said his job is challenging because it is a difficult area of law. The limited entry law has been called arcane, he noted.

MR. TWOMLEY said the primary duty of the commission is limiting entry into fisheries when doing so would help prevent economic distress among fishermen and help promote the conservation of the fisheries. He said he has to determine a maximum number for a fishery, which would be the highest number of units of gear in one of the four years prior to limitation. That is the target number for the commission, but lots of people come and go, so when the commission limits a fishery, there are many more applicants for the limited opportunities. The statute directs the commission to rank the applicants by the level of their dependency on the fishery. It is a heavily legal process, he noted. Many rejected applicants get evidentiary hearings, and some of them then go before the commissioners who are all administrative law judges. If the applicants are not happy with the commissioners' decision, they can take the case to court.

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MR. TWOMLEY said there are 68 fisheries under limitation, and the commission has a duty to limit entrants when there is a basis for doing so. There are 75 supreme court cases addressing limited entry, he added.

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REPRESENTATIVE LEDOUX noted that Mr. Twomley visited Kodiak and asked how he would look at rationalization now.

MR. TWOMLEY said the visit to Kodiak dealt with SB 113, but the commission has always tried to operate where "we actually have real live fishermen come to us seeking something. If we can do it under the limited entry program...we would try to do what we could; if it's something that required legislation, we would try to facilitate those real live fishermen going to their legislators." He said his experience in Kodiak chilled him on the idea of dealing with task forces instead of fishermen. He stressed that limitations come from fishermen petitioning the commission.

REPRESENTATIVE LEDOUX asked if Gulf of Alaska groundfish problems can be solved through traditional limited entry instead of rationalization as defined by the federal government.

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MR. TWOMLEY said each fishery is different. There may be fisheries that would be well served by a license limitation

system within the Gulf of Alaska, but, he said, that system was designed for salmon fisheries and works less well in quota fisheries. The state should consider some form of individually assigned shares to help manage a quota fishery, he stated. It doesn't have to be the same as the federal system, "and it can't be, because we've got a constitutional provision that makes it clear that if we're going to do limited entry in any form, you've got to be serving conservation and you've got to be benefiting real live fishermen." For fisheries managed by quota, like the Gulf of Alaska, he recommends the additional tool.

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REPRESENTATIVE LEDOUX asked him to explain "some sort of a quota system."

MR. TWOMLEY said, "It would be the ability to limit entry, and you have a fishery managed by one overall quota, if the state could have the power to assign shares of that quota to individual participants, according to their past participation so that the shares related to past participation." In the federal system, some shares automatically go to vessel owners or investors, but in Alaska the constitution requires participant fishermen to get shares. "You might be able to find, create, an opportunity for vessel owners as well, but I think that, clearly, the system would have to be directed to the benefit of individual participants if it were going to meet the standards set in the Alaska constitution and survive any legal challenges."

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REPRESENTATIVE LEDOUX asked about the fate of parallel fishermen if the resource goes to the people on the vessels. "The people who have been fishing in the federal fishery, but they've been fishing in state waters during that federal fishery. And so, if the state gave the IFQ [individual fishery quota] based upon who was actually fishing on the boat, and then the Feds gave the IFQ based upon who owned the boat, then you've got a class of parallel fishermen who thought that they were fishing in a federal fishery, who are going to end up, maybe, actually, with nothing."

MR. TWOMLEY said the state has managed the parallel fishery and if the state were to set up limitations through legislation, the state would be constitutionally required to benefit the fishermen and not exclude anybody. No one should be a "complete

loser," he added. He said it should be possible to craft a program where people take shares out of a fishery that represent the shares they now take. There are owners, operators and crew currently taking shares, and it ought to be possible to construct a program where "everyone can share in roughly the fashion they're sharing now." The program would need to make sure that fishermen are the primary beneficiaries, he noted.

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REPRESENTATIVE GATTO asked about someone inheriting a commercial fishing vessel, and asked if it was Mr. Twomley's job to protect the "existing fishermen" and prevent any new entrants to a fishery.

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MR. TWOMLEY said there is another constitutional dimension to limited entry which prevents a closed-class system. "People have to be able to come and go. You have to preserve entry-level opportunities in a fishery." Transferability of the privileges needs to be protected, and the commission has a duty to put more "permits into the water" if a fishery becomes too exclusive.

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REPRESENTATIVE THOMAS said he came to the meeting because the previous witness "made some comments I didn't agree with." He told Mr. Twomley that [the commission] has never increased permits in two fisheries that Representative Thomas thinks are lucrative, "and that's Sitka sac roe herring fishery and the Chatham Strait permit, which are in excess of \$400,000 in value, and one is \$250,000." He said he was in a gillnet fishery and "the permits went to 15,000," and he has seen that happening around the state. He asked Mr. Twomley why there hasn't been an increase in permits in those two lucrative fisheries.

MR. TWOMLEY said the commission has not found the need to do that yet, but it has addressed the issue. He said with Chatham Strait black cod, the commission decided on an optimum number, and that decision was upheld by the supreme court in the Simpson case. "Granted, that's a profitable fishery, but our optimum number decision was supported by some very strong testimony of the manager of the fishery, who said that for the sake of being able to manage the fishery and to be able to conserve the resource, that is was critical that we contain the numbers within the limits of the optimum number decision we finally

made." If there had been no compelling conservation interest the results would probably have been different, he added.

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REPRESENTATIVE THOMAS said the black cod fishery has a 25,000-pound quota, and if there are 50 boats and black cod sells for three dollars a pound, that provides \$75,000 per vessel. He said it is a "side" fishery, and it could be reduced to 15,000 pounds per boat to allow more people to participate. He said a "true" commercial fisherman has more than one permit, reducing the impact of the loss of income to each boat currently in the fishery. "I think [the current limits are] wrong," he stated.

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MR. TWOMLEY said the fishery is managed by overall quota, and the commission tried to apply the license limitation system, and it failed. It reached a point where the manager "was afraid to open the fishery because it was too much amassed fishing power. She was afraid she was not going to be able to contain the catch and conserve the resource." The manager prevailed on the Board of Fish to divide the fishery up into equal shares, which has allowed this fishery to open when it wouldn't otherwise do so, he stated. The shares are assigned by the season, and everybody gets an equal share of the harvest, he said. But there is still a race for the fishery. "The manager was running scared. There was some difficulty containing the catch, especially bycatch." He said the big purpose under the constitution is conserving the resource and preventing economic distress to fishermen, so "we thought we had a duty to do that."

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REPRESENTATIVE THOMAS said there were talks about transferring a limited entry system in the shrimp fisheries to an IFQ system. He said he opposes it. He noted that he has a shrimp permit, but he doesn't fish all year round with it. He said, "What they were trying to do is take a limited entry permit and turn it into an IFQ system that benefits the long term fishermen, not the recreational, commercial" fisherman. He asked if anyone has come to the commission regarding that issue.

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MR. TWOMLEY said some of the participants recruited the commission to participate in discussions with the shrimp task

force. He said there are individuals in the fishery who would like to see that change, but the time might not be right.

REPRESENTATIVE THOMAS said, "I would say so. I think when you buy an open-access permit, you were talking about earlier, then close the door on people..." He explained that if he retires and gives someone his permit that he just paid \$30,000 for, that person would not be able to fish because "he doesn't have any quota of his own."

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CO-CHAIR RAMRAS asked about the future of the resource.

MR. TWOMLEY said the big element is world competition. To help fishermen compete, the commission has looked at options for fleet reduction of Alaskan fisheries to make each opportunity more lucrative. He said the commission has limited tools, and he is counting on the resourcefulness of fishermen and the virtue of the wild salmon product, which should be able to compete on the world market. Another big issue will be the Gulf of Alaska fisheries, and he recommends using the additional tool of assigned shares. In assigning shares there are ways of taking into account past participants and new entrants, he said.

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REPRESENTATIVE LEDOUX asked if Mr. Twomley would support a rationalization program in the Gulf of Alaska that treated different fisheries differently.

MR. TWOMLEY said the commission looks at individual fisheries to see what their needs are. He said, for example, if the jig fishery could go on happily without economic distress or conservation problems, the commission would not apply limited entry. But if that fishery is a concern because of spillover effects from limiting at the federal level, the answer may be a license limitation instead of a share system. He said some fishery definitions have not been created.

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REPRESENTATIVE SEATON asked if there may be spillover effect between state and federal fisheries, and if Mr. Twomley would "consider rationalizing certain state fisheries without analyzing the spillover effect that you would have on the other state fisheries from rationalizing that one."

MR. TWOMLEY said all those factors would be considered.

REPRESENTATIVE SEATON said there is a vessel license system for Korean hair crab and scallops. The crab program is not open, and there are only four vessels harvesting all the scallops in the state. "At what point does this...few number of vessels harvesting an entire resource of the state, become such that you would say that you need to expand the number of licenses?" He said that the state restricted the harvest to only four vessels, but because there is no owner-on-board provision, one vessel can harvest many vessels' quota. "At what point does that become a constitutional problem?" he asked.

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MR. TWOMLEY answered that it is a problem at the point at which someone can demonstrate that it is not benefiting fishermen and is harming conservation.

REPRESENTATIVE SEATON asked about changes that need to be made with the limited entry law or the moratorium implementation.

MR. TWOMLEY said there has been consideration of a temporary moratorium to protect the resource prior to studying a problem and enacting legislation. He also promoted the ability to assign individual shares in a fishery managed by quota.

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REPRESENTATIVE SEATON noted that "when the scallop and Korean hair crab proposal went forward, there was an analysis that the number of vessels would constrain the fisheries better, and yet if we look at the numbers by just requiring two years of participation, you had almost the same--in fact it was a couple of fewer permits that would have been issued--you would have required that...for a person to get a permit they would have just had to participate two years in the fishery. Do you have the authority to do that?" He asked, "What were the reasons for not having two years of participation to establish hardship?"

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MR. TWOMLEY said there is some indication that the commission should try to consider at least four years, but that is a guideline. He stated it wasn't the primary reason "we went the way we did." He said there are many more applicants than places

to fill. He said the legislature established vessel limitation systems in the hair crab and scallop fisheries in part because it served conservation. He said the hair crab fishery is a good example because it can't be open despite having a license limitation in place, "and that was exactly the fear. The notion was that if you couldn't limit the number of units of gear from the outset, there would be too much fishing pressure and the fishery would close. Which is exactly what happened." He said the commission was persuaded to go with the vessel limitation system because that was the one tool it had. He continued, "If you went with people, you have this whole array of applicants who had to be ranked. Everyone of those applicants could jump on a new vessel, and you would see more fishing pressure in the fishery than you had ever seen." He said he did not like vessel limitation because it is messy and may not protect participants. "If you had the ability to assign individual shares based on past participation, you wouldn't need to mess with vessels," and he added that each person would have their own limit.

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REPRESENTATIVE SEATON said the federal Fishing Vessel Safety Act requires a signed agreement for the distribution of shares for any large fishing boat prior to leaving the dock. He asked Mr. Twomley if the state needs a similar requirement.

MR. TWOMLEY said that would fill a void in information and be helpful to the commission.

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REPRESENTATIVE KAPSNER noted that Mr. Twomley wrote a paper about keeping Alaska limited entry permits in local rural communities. She said there has been a significant out-migration of permits and wondered what the problem is. The legislature has instituted low interest loans and other measures to help fishermen keep their permits, but "what else can we do?"

MR. TWOMLEY said the commission has advocated the same thing and that the legislature has provide some good tools, but the best tool is the guaranteed loan program within the Alaska Division of Investments. Local groups can help put forward deserving applicants, people who they know can perform, he said, and he is unhappy that very few people have taken advantage of it.

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REPRESENTATIVE GATTO said after looking at Alaska Public Offices Commission reports, he determined that the limited entry commission seems to favor one particular political group over another. He said he is concerned about entrenched people not giving sufficient regard to opposing views. He expressed concern that people who want to compete on a level playing field can't, and that the state is reserving privileges to a very few who are getting very rich. He said both sides should be heard.

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MR. TWOMLEY asked if Representative Gatto was speaking to the dividing line between those who support limited entry and those who do not.

REPRESENTATIVE GATTO said that would be one. He said the government makes people rich by passing legislation making restrictions on competition. He noted that Mr. Twomley has been in his position a long time, and "you certainly have made a great deal of friends who are making their living and need you to help them."

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MR. TWOMLEY said that message is well taken, and the commission does not have a stake in creating entrenched interest or wealthy fishermen. The constitution is strict and reinforces what Representative Gatto is saying, he added.

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REPRESENTATIVE THOMAS said limited entry caused the Lynn Canal fleet to grow from 20 to 50 or 60 vessels. "We had people who hadn't fished for several years selling and buying permits for nothing, and the active fleet got the shaft because all of a sudden there were more permits issued than actual people fishing for several years. At the same time, I halibut fished when it was open access, starting in 1975, and when they went to IFQs I got the shaft on the other end because the bigger boats...displaced the guys who had been fishing longer. So I went from 50-60,000 pounds of halibut" to 13,000. "It has its merits," he said, but it doesn't always work.

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REPRESENTATIVE SEATON moved to advance the name of Bruce Twomley for confirmation. Hearing no objection, it was so ordered.

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Department of Natural Resources

CO-CHAIR RAMRAS announced that the final order of business would be to consider the appointment of Michael Menge for the Commissioner of the Department of Natural Resources.

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MICHAEL MENGE, Commissioner Appointee, Department of Natural Resources (DNR), said he was raised on a cattle ranch and has a degree in geology. He noted that he has respect for working people. His first job out of geology school was on an oilrig in the Gulf Coast, and he stated that lease owners are entitled to a fair share of proceeds. He worked for the United States Geological Survey (USGS) on coal exploration, delineating federal coal reserves in Wyoming and Montana. He noted that he came to Alaska in 1980 with the USGS to map coal reserves, and he worked well with the state. He said the federal government and the state need to work together or developers will suffer.

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COMMISSIONER MENGE said he then worked on the first lease sales on the National Petroleum Reserve-Alaska (NPR-A). Congress passed the Alaska National Interest Lands Conservation Act, and so he went to work for the Bureau of Land Management on the 10-02 area of the Alaska National Wildlife Refuge. He said Representative George Miller worked him up and down during a Congressional hearing, and then Congressman Miller told him not to take it personally. He said he learned that everyone is important and deserves respect.

COMMISSIONER MENGE said he started working at the Trans-Alaska Pipeline System and put together the joint monitoring program. He stressed that it is a powerful tool when federal and state workers work together. He spoke of the Exxon Valdez oil spill and said he learned the valuable lesson of being prepared for the unexpected.

COMMISSIONER MENGE said Governor Hickel offered him the job of the Director of Environment Quality under the Department of Environmental Conservation. He worked on revisions to state water quality regulations and the air quality program where he learned to bring everyone along. The best ideas need consensus

building and communications, he stressed. When Governor Hickel left, Mr. Menge left the state, and then Senator Frank Murkowski hired him a year later to work on the Senate Energy and Natural Resources Committee. He said he appreciates the role of the legislative branch.

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COMMISSIONER MENGE said he will work on concerns of individual members. He noted that the mission of DNR is to develop, conserve and maximize the use of Alaska's natural resources consistent with the public interest. He said that tells him that DNR has a huge responsibility on land resources and has a large role in sea resources. He said he is guided by these tenets: accountability, accessibility, efficiency and partnerships. He said he is accountable to the people, politicians and his own conscience. He said his department will be accessible 24 hours each day, and he tries to answer every phone call by the end of the day. He stated that it is DNR's duty to stretch every dollar from the legislature into "a buck and a half."

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COMMISSIONER MENGE said the budget process is healthy, and he supports defending expenditures to the legislature. He pointed out the importance of partnerships between the private sector and government.

COMMISSIONER MENGE mentioned three programs that are the heart of DNR: large projects, coastal zone consistency and habitat. The world has gotten complex and to get permits an entity runs into a miasma, he opined. Small projects can be infuriating, he said, and it is orders of magnitude more frustrating for large projects. Anyone going through the regulatory process needs help, and he said DNR will carry out that role without cutting anyone a "sweetheart deal."

COMMISSIONER MENGE noted that the gasline is the "800 pound gorilla." He was one of the principle drafters of the federal gasline statutes. The Alaska gasline will be the biggest job in his career. When the contract is presented to the legislature, it will not be simple or easily understood, he said, and "we will have to work you through the pathway of how we got to where we got." He said his goal is to explain the process to the legislature. He stated that oil and gas are the cash register in the state, and DNR does hundreds of approvals, permits and actions daily to facilitate ongoing operations. He noted that

DNR will not forget its underlining responsibilities. He said DNR is doing everything it can to bring new explorers to Alaska. Opening new basins is very important, and there are new basins "that we can get into, and we will work diligently to try and do that."

COMMISSIONER MENGE said, "It's also about getting land from the federal government--fulfilling the statehood compact. It's putting land into the hands of the boroughs so they can build a sustainable tax base." Alaska has a fraction of land ownership in private hands, he added. Mining is the most permit intensive, represents the most impact to the environment, has huge financial benefit to the developers and to the state, and is very emotional. He told the committee that he worked on the AJ Mine project in Juneau which did not work well, and on a Colville project that did work well. The right way always involves consensus between all agencies and the communities, and you can't run over the top of local individuals, he said.

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COMMISSIONER MENGE said it used to be that geologists and operators would begin a project and then think about hiring an environmental engineer. "That doesn't work anymore," he said. Environmental folks need to show up at day one, he said, and DNR will continue to foster that. He noted that State Parks have not had a strategic plan since 1971, and they are floundering and have lost their vision. "We love our parks," he said, and they need to be protected. A strategic plan will let park managers understand what is expected of them. The plan will be born of public meetings across the state, he stated. Forestry is all about getting ready for the fire seasons, he said, and climate change has had a traumatic effect on Alaska's firefighting with longer, hotter seasons and more lightning. He noted the problem of increased development in fire-prone areas, so the state needs to provide more education.

COMMISSIONER MENGE pointed out geological maps and said Alaska has huge mineral potential. He said individuals or small companies are the first to find minerals, so DNR has "seed programs," like flying aeromagnetic and geophysical surveys, which provides free information to the public. He stated that the state gets the money back in the long run.

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CO-CHAIR RAMRAS said he has many questions for Mr. Menge and will continue the hearing on January 25, 2006.

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [2:52 PM](#).