

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 24, 2005

8:03 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Carl Gatto, Vice Chair
Representative Jim Elkins
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

Representative Bob Lynn

OTHER LEGISLATORS PRESENT

Representative Beth Kerttula
Senator Kim Elton

COMMITTEE CALENDAR

OVERSIGHT: ALASKA COASTAL MANAGEMENT PLAN

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

BILL JEFFRESS, Director
Office of Project Management and Permitting
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified to the disagreement between the federal Office of Ocean and Coastal Resource Management (OCRM) and the state of Alaska.

TOM IRWIN, Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Testified to the future of the Alaska Coastal Management Program.

RANDY BATES, Deputy Director
Office of Project Management and Permitting
Department of Natural Resources
Juneau, Alaska

POSITION STATEMENT: Described the implementation process of House Bill 191.

TOM LOHMAN
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Described frustrations with the state regarding the Alaska Coastal Management Program, including changing mandates and taking away local control.

PETER FREER
Planning Supervisor
City and Borough of Juneau
Juneau, Alaska

POSITION STATEMENT: Testified against the administration's new Coastal Management Program, saying it takes the heart and soul out of it with a severe curtailment of enforceable policies.

GLEN ALSWORTH, Mayor
Lake and Peninsula Borough
King Salmon, Alaska

POSITION STATEMENT: Testified against the administration's new Coastal Management Program, because DNR excludes fresh water lakes out takes away local control and input.

DAN BEVINGTON, Former Coastal District Coordinator
Kenai Peninsula Borough

POSITION STATEMENT: Testified that the administration's new Coastal Management Program is confusing and limits local pro-active involvement.

JOHN OSCAR, Program Director
Cenaliulriit Coastal Resource Service Area
Yukon-Kuskokwim Delta

POSITION STATEMENT: Testified against the administration's new Coastal Management Program because DNR eliminated mining projects from the ACMP, and the local people who are the most affected will lose their influence.

THEDE TOBISH, Senior Environmental Planner/Coastal District Coordinator

Department of Community Planning and Development
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified to the problems of the implementation of House Bill 191, including the exclusion of Anchorage's extensive wetland management program.

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

POSITION STATEMENT: Testified in opposition to the administration's position on the Alaska Coastal Management Program because it is inconsistent and there appears to be no place for local policy.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at [8:03:05 AM](#). Present at the call to order were Representatives Gatto, Elkins, Gardner, and Seaton. Representatives Ramras and Gruenberg arrived as the meeting was in progress.

OVERSIGHT HEARING: ALASKA COASTAL MANAGEMENT PROGRAM

[8:04:00 AM](#)

CHAIR SEATON announced that the only order of business was the oversight hearing on the Alaska Coastal Management Program (ACMP).

CHAIR SEATON said the purpose of the meeting is to overview the implementation of a statute signed into law in 2003, House Bill 191. There have been reports of problems, he said, and the committee is not rehashing the bill, but wants to look at its implementation. There are a couple of bills currently being addressed to consider this matter, he added, and the legislature needs to know some background to determine if this new legislation is necessary.

[8:07:00 AM](#)

BILL JEFFRESS, Director, Office of Project Management and Permitting, Department of Natural Resources (DNR), said the governor wrote a letter and a press release responding to a

letter to the state of Alaska from the Office of Ocean and Coastal Resource Management (OCRM). The letter from OCRM, which is under the National Oceanic and Atmospheric Administration (NOAA), was dated January 28, 2005. The governor's response highlights the frustration that the administration has encountered in negotiations with OCRM regarding its approval of the state's amended Alaska Coastal Management Program (ACMP). He said, "After months of negotiation at a continuously moving target presented by OCRM, we have unfortunately reached a point where the state of Alaska can no longer subrogate state sovereignty in our ability to manage our natural resources through a federal agency such as OCRM for a voluntary program."

MR. JEFFRESS referred to the letter [included in the committee packet] saying OCRM contends that Alaska's environmental laws and regulations are inadequate to protect coastal resources. He said that OCRM also contends that other federal resource agencies have laws and regulations that do not meet the standards of OCRM, "which cascades far beyond the authority granted by the federal Coastal Zone Management Act." The OCRM letter requires the Department of Natural Resources (DNR) to add redundant regulations and complexity to a program without a corresponding environmental benefit, he said. "This is a state's rights issue." He noted that there was an OCRM statement recently received by the state that he hasn't reviewed. He said, "This is indicative of our relationship with NOAA, rather than responding to the administration - or even copying the administration with this document - it was sent directly to the House of Representatives." The opinion of OCRM is neither valid nor supported by the federal enabling legislation, he opined.

[8:10:54 AM](#)

CHAIR SEATON said there is joint responsibility between the House State Affairs Standing Committee and the House Resources Standing Committee for this overview, and the two committees decided that the House State Affairs Standing Committee should do it.

[8:11:23 AM](#)

TOM IRWIN, Commissioner, Department of Natural Resources, noted his appreciation that Kurt Fredriksson, Acting Commissioner of the Department of Environmental Conservation, is in the audience. Commissioner Irwin directed attention to a letter [included in the committee packet], which he said was sent to

all Alaskans and was written by four commissioners. He highlighted a portion of the letter, which read as follows [original punctuation provided]:

The State of Alaska is committed to ensuring that resources of the state are adequately managed and protected. As part of that commitment, the State has been implementing the Alaska Coastal Management Program (ACMP) since 1979. The ACMP, a voluntary program funded and authorized in part by the National Oceanic and Atmospheric Administration (NOAA), had broad authority to address a variety of resource management issues. While the ACMP served an important purpose when it was created, it has languished in the past several years without the needed updates to its purpose and policies. This resulted in the ACMP becoming fragmented in its implementation, subjective in its application, and an additional regulatory burden within an already comprehensive resource management system. As a result, projects have been unnecessarily delayed without a corresponding environmental benefit.

To modernize the ACMP, the Alaska State Legislature and Administration passed House Bill 191 in 2003. This directed State agencies to amend the ACMP in a manner that simplified and clarified the 25-year old program. The State agencies have worked hard toward developing a program that meets the priorities and needs of Alaska while still comprehensively and responsibly managing Alaska's coastal uses and resources. Unfortunately, NOAA, the federal approving agency, has in their January 28, 2005 letter, mandated that the ACMP expand its broad regulatory authority, regardless of its duplication and increased complexity, and refuses to acknowledge the State's rights in developing a program that works for Alaska. NOAA's mandate and attempt to further expand federal control over Alaska through coastal management is not acceptable. Without a change in NOAA's current position, the ACMP will expire in the summer of 2005 by operation of law.

[8:13:31 AM](#)

COMMISSIONER IRWIN said DNR clearly understands its accountability to the legislature. The department had a clear

directive to proceed and has worked hard "in that direction." He added that his staff has been spending nights and weekends responding to letters and jumping through hoops to meet timelines to honor the wishes of the legislature and the administration.

COMMISSIONER IRWIN stated the four commissioners feel strongly that Alaska is protected. He said, "We can and do protect the resources of this state and certainly the environment." He added that DNR, as a business accountable to the legislature, has worked hard getting oil companies and mining companies to the state and helping the timber industry survive. He said, "Adding to the duplication that NOAA is asking us to do is exactly the wrong message that you folks told us to go do when this bill was passed." Commissioner Irwin asked the committee to keep in mind the real message that is being sent.

[8:15:33 AM](#)

MR. JEFFRESS said:

The implementation of [House Bill] 191 is linked to the OCRM federal approval process, and it has been greatly influenced by the directives and guidance provided by OCRM under the umbrella of program "approvability." DNR and OCRM maintained a very open and continuous dialogue once House Bill 191 was introduced and EO [Executive Order] 106, and that communication continued through March and May. OCRM reviewed House Bill 191 and provided edits related to ACMP "approvability," so they have been part of this process from day one. The effective date of EO 106 was April 15, 2003; that effectively transferred the coastal program and the staff from the Office of the Governor to DNR. This is where some of the hurdles really started.

MR. JEFFRESS noted that the employees within the governor's office were exempt and, once they moved to DNR, it was a classified system, thus, new position descriptions had to be written, and staff had to reapply for the positions that they currently held. Through attrition and cuts there was a vacancy rate of 47 percent, he said. It took quite awhile to get the department re-staffed, he stated, but very few projects missed their timeline.

[8:18:02 AM](#)

MR. JEFFRESS said due to staffing shortfalls the regulatory revision process required by House Bill 191 was delayed until October 2003 when DNR hired a contractor to revise 6 AEC 50, 6 AEC 80, and 6 AEC 85. The department also established a work group with several of the coastal districts, many state agencies, and OCRM staff, the latter of which provided a comprehensive review of the revised regulations, he added. DNR held two coastal work groups in December 2003, one in Anchorage, and one in Juneau.

[8:19:23 AM](#)

MR. JEFFRESS said during meetings with OCRM a three-step process for program approval was created: to submit EO 106, House Bill 191, House Bill 86, and House Bill 69 to OCRM for review; to submit the revised regulations; and to submit the coastal districts' revised plans, which must first be approved by DNR. Staffing shortfalls didn't allow DNR to complete phase one until January 2004. In February 2004 DNR's revised regulations went out for public notice, he said, and OCRM made the decision to wait until the regulations were implemented and then go through the review process of both the regulations and the legislation together. The department didn't want that, but they proceeded, he said. The revised regulations had a 45-day comment period, and they became effective on July 1, 2004, he noted.

[8:21:53 AM](#)

CHAIR SEATON asked if that was "the communication from the federal government that said that this could not be considered a minor plan amendment and had to be a major revision of the plan."

[8:22:06 AM](#)

MR. JEFFRESS answered yes, with the legislation combined with the revised regulations "they then considered that as a major amendment, where previously they had said that if we submitted them in the three steps they would be reviewed and approved as routine program change." He added that DNR found areas needing clarification after the revisions were made, including Section 112 of the revised regulations, which went out to notice for comment on August 9. On October 29 the regulations became effective. During this period, DNR was preparing amendment packets for submittal to OCRM, and OCRM told DNR not to submit them until the final revisions to the packet were complete and

adopted. So, on September 30, 2004, DNR submitted the revisions, the amendment, and the new project descriptions, he said. It was still not decided whether an environmental impact statement or an environmental assessment would be required.

[8:24:12 AM](#)

MR. JEFFRESS said since September 30, DNR has gone through two revisions and worked endless hours to revise the program to fit the mandates established by OCRM. These negotiations continued up until a week before OCRM's January 28 letter, he added, and DNR was surprised by the letter, because DNR had thought it had made substantial progress. The letter informed DNR that the OCRM rescinded some of its agreements with DNR. He said, "So, we actually lost ground, and they're expanding the program beyond where it was even prior to [House Bill] 191." Mr. Jeffress said DNR is still trying to keep communication with OCRM and is surprised that it chose to respond to the committee and not even "copy the administration on this." He added, "But this is ... an indication to you how they've been dealing with us."

[8:25:56 AM](#)

MR. JEFFRESS said House Bill 191 did not require a comprehensive rewrite of the coastal district plans. The department sent a letter to the districts advising them that if they didn't have the time or resources it was their decision whether to do a comprehensive rewrite or just address the issues of local concern that would allow them to submit their plan for approval by DNR, he stated. He added that there is nothing in DNR's regulations or House Bill 191 that would prevent them from future revisions of their plans to include additional enforceable policies. One of DNR's frustrations in giving guidance to the districts is the "ever-changing landscape that OCRM has provided us," he concluded.

[8:27:06 AM](#)

CHAIR SEATON said the committee is not here to say the department has not worked hard; the question is with the changing landscape that DNR has been faced with and if House Bill 191 gives adequate timelines to the districts for rewriting their plans.

[8:28:37 AM](#)

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, asked about the districts being able to submit "something" to meet deadlines, but if it is just a list or a stop gap measure, won't it leave the status of the program in limbo and be confusing for people getting permits?

8:29:47 AM

MR. JEFFRESS said the districts were allowed time to develop enforceable policies, and there have been numerous amendments to those plans over the years through the regulatory body. House Bill 191 called for no duplication or redundancy in existing laws. He noted that since 1979 there has been a huge increase in the number of environmental regulations at the federal and state level. Many areas weren't adequately covered in 1979 that are now, including: air, land, and water quality. He stated, "All the federal agencies have matured and implemented [the National Environmental Policy Act of 1969 (NEPA)] - in some cases to the extreme - so that the resources are adequately covered." He continued as follows:

Now, if there is an area ... [where] a local district feels ... there is inadequate coverage and [the district] can demonstrate to DNR - on the criteria that's set forth in [House Bill] 191 - that there is a hole there and that there's an enforceable policy that meets local concern, or they have the scientific evidence to demonstrate this needs to be covered, then those are the areas that we ask them to focus on first. If it's a question of a resource not being protected -- I mean, this is one of the things that you mandated with [House Bill] 191, that it not be redundant. And even before [House Bill] 191, there was Senate Bill 308 that was passed in 2002 that also mandated that the districts revise their plans so that they don't duplicate or restate state or federal policies.

MR. JEFFRESS said that DNR directed the districts to either do a comprehensive rewrite or just pick the areas most vital to their own district and address those issues. Later, after July 1, 2005, if additional resources are available, they can do further rewrites. However, the districts must demonstrate to DNR that there isn't an existing state or federal regulation that adequately addresses their area of concern. He said, "That's what we're all looking for is a simple area that we can point

somebody to comply with this federal or state law and the resources protected."

[8:33:35 AM](#)

REPRESENTATIVE KERTTULA asked how many districts have done this.

[8:33:48 AM](#)

MR. JEFFRESS said Randy Bates can provide details.

[8:34:06 AM](#)

REPRESENTATIVE GATTO asked Mr. Jeffress if he had said that DNR asked the federal government to point to an area that lacked regulation.

[8:34:29 AM](#)

MR. JEFFRESS clarified that DNR asked the districts not to duplicate existing regulations when writing their enforceable policies.

REPRESENTATIVE GATTO asked if it wouldn't be easier to point to and address the law or regulation that already exists, instead of finding an area where the law doesn't exist.

MR. JEFFRESS said the Campbell Group put together a matrix. He remarked that there has been a plethora of regulations since 1979, and he thinks it is very easy to determine whether it's a water quality issue and if there's a standard involved. He said there are laws with broad coverage like the Marine Mammal Protection Act, and if a district sees a specific point of local concern that the act doesn't address, the department leaves it up to that district, "because they know their situation." Staff is always available to direct districts while writing their enforceable policies, he said.

[8:38:36 AM](#)

RANDY BATES, Deputy Director, Office of Project Management and Permitting, Department of Natural Resources, said he will briefly explain DNR's process of the implementation of House Bill 191. He said DNR has taken steps to involve all interested parties. In October 2003 it hired the Campbell Group to draft regulations, and DNR put together the Regulations Review Team with representation from state agencies, coastal districts,

industry, and the environmental community. The team had weekly meetings for two months. He said that DNR also held conferences in Juneau and Anchorage to engage dialogue with coastal districts. DNR created draft regulations for discussion with the districts, took comments, and went back and created a formal packet. It then went out for a 45-day public review, and a lot of comments came in. After considering comments, DNR submitted the revised regulations that went into effect in July 2004.

[8:43:22 AM](#)

MR. BATES said DNR held a three-day district conference in Anchorage to go over the regulations and then held eight teleconferences since July to offer assistance in writing policy.

[8:44:14 AM](#)

CHAIR SEATON said the committee wants to focus on the problems that the districts are finding, and it has no issue with how much effort DNR has made.

[8:45:30 AM](#)

MR. BATES said that of the 35 coastal districts in Alaska, 33 have coastal district plans in effect, and 27 of those have committed to revising their coastal plans to comply with House Bill 191. Of that 27, 25 have hired consultants to do the plans for them. DNR has currently reviewed draft plans for the Aleutians West coastal resource service area, the Ketchikan Gateway Borough, the City of Craig, and the City of Valdez - 4 of the 27 that DNR expects to receive.

[8:47:38 AM](#)

TOM LOHMAN, North Slope Borough, said the people at DNR have worked hard taking on the task of House Bill 191, but the districts felt DNR's timeline was "unreasonable from the get-go, largely because the state was pushing the change in the program as a routine program change, and on its face it was clearly something more than that." He added that it was obvious the process for approval was going to be longer than envisioned by House Bill 191.

MR. LOHMAN said that the North Slope Borough started its coastal zone management process in 1983, and it was passed in 1988. It is not an easy process to get a plan approved. There are eight

villages in the North Slope Borough, and the oil industry does not sit on the sidelines when a resource plan is created, he noted. The borough got one of the bigger grants to do the revision, but it's still not enough, he stated.

[8:50:44 AM](#)

MR. LOHMAN said the reason the borough exists is to protect the Inupiat subsistence culture, and all policies reflect that. The borough wants to know whether it can craft policies dealing with subsistence, including the land and water where it takes place. House Bill 191 was the administration's bill, and "the initial drafts did away with the program altogether - did away with the ability of local communities to craft any policies at all." It was legislative hearings like this that put back some ability of the communities to craft policy, he noted. The borough asked the administration directly if it could craft policies on subsistence and for the outer continental shelf (OCS), and the administration said absolutely yes. Then, as showed on DNR's web site, those policies were no longer approvable.

[8:52:44 AM](#)

MR. LOHMAN said the issue of federal lands and waters involves a wrinkle that deals with designations. He said in order to apply a state policy, an area needs to be designated as a subsistence area or special habitat area, and OCRM has said that federal lands and waters cannot be designated. Areas available for subsistence, like bowhead whaling, cannot have a policy, he noted. There is no clarity in the districts, and they have no idea how to deal with it. He said they need more time; the North Slope Borough is not going to meet its deadline. The borough cannot go out to the villages and get public input, and the ACMP is very important, he stressed. Mr. Lohman added that the language in the bill is unclear, and it is ludicrous that the intent of the bill is to create clarity.

[8:56:28 AM](#)

MR. LOHMAN said the consultants were under pressure, and there was not the give-and-take that the districts would have liked. There are countless issues that the consultants don't have time to address. "If there is clarity today - and I don't think there is - we've got four months before July 1, and we have internal processes that back up three or four or five months off of that." He said, "We love the oil industry, we just want to make sure they do their job in a way that allows the subsistence

culture, the Inupiat people, to be preserved." Working with the oil industry is not a quick process because they have very strong concerns and opinions, he said.

[8:57:53 AM](#)

MR. LOHMAN remarked on the governor's letter where he said "Alaskans should make these kinds of decisions for Alaskans," but apparently that philosophy stops in Juneau, he opined. "This added hurdle of having to designate an area - which we can't do on federal lands or waters - in order to apply the state subsistence standard and write policies on subsistence-- we're not sure what's left," he said.

[8:59:02 AM](#)

CHAIR SEATON asked if the North Slope Borough is unsure whether it can write an enforceable policy dealing with subsistence and habitat.

[8:59:25 AM](#)

MR. LOHMAN said he is unsure regarding federal land or water. There are people who believe we cannot extend our land management regulations, Title 29, to federal lands or waters.

[9:00:17 AM](#)

CHAIR SEATON said that the old ACMP allows districts to comment and create enforceable policies for federal lands and waters.

[9:00:37 AM](#)

MR. LOHMAN said it does but the program is not perfect. He said the vagaries of the program turned out to be one of its strengths because it brings the industry to our table very early in the process. He said [the industry] wants to know: "How are you going to interpret this when we come down to a review? Let's work it out now."

[9:01:56 AM](#)

REPRESENTATIVE GARDNER asked how much time would be adequate.

[9:02:05 AM](#)

MR. LOHMAN answered that there needs to be clarity before the approval process begins. Absent that, he said he would like to see a one-year delay.

[9:03:38 AM](#)

PETER FREER, Planning Supervisor, City and Borough of Juneau, said he supervises staff who work directly with ACMP. Juneau's coastal management plan was adopted in 1987, after several years of development, because Juneau took it seriously and wanted it to accurately reflect areas to be protected and areas to be developed. Two important parts of Juneau's plan include the identification of special waterfront districts that received pre-approval for development, and the wetlands management program.

[9:05:34 AM](#)

MR. FREER said there is a severe curtailment of the kind of enforceable policies Juneau can write, which are the heart and the soul of the plan. Juneau's current plan has about 80 enforceable policies, and the most important are the habitat and coastal development policies. Juneau believes it would be severely cut back, he said. This is an important local control issue, and it gives districts a seat at the table. He stressed the benefit of coordinating with other interested parties during the ACMP review process.

[9:07:27 AM](#)

MR. FREER said Juneau is being rushed and the whole public participation component is circumscribed. He said he agrees with Mr. Lohman regarding a one-year delay for the submittal of district plans, because, "Why do this twice?"

[9:09:19 AM](#)

CHAIR SEATON said the committee is concerned about the disruption of coordinating elements of the consistency review, and he asked if Juneau has adopted the enforceable policies into ordinance for the borough.

[9:09:53 AM](#)

MR. FREER answered yes.

[9:10:14 AM](#)

CHAIR SEATON asked if that would make it an extra step for a developer to get approval from the City and Borough of Juneau if it is no longer covered under ACMP.

[9:10:36 AM](#)

MR. FREER answered yes.

[9:10:50 AM](#)

REPRESENTATIVE KERTTULA suggested it is a difficult task to rewrite the ACMP, and she asked if OCRM has been changing its guidance to the districts.

[9:11:23 AM](#)

MR. FREER said he has observed from the district level that the guidance from DNR has been evolving and changing "to the point where the time we have gotten to prepare a plan has collapsed." He said he hasn't dealt directly with OCRM, but his impression is that the January 28 letter from OCRM to DNR was simply OCRM's assessment of DNR's submittal and not a factor of changing guidance.

[9:12:20 AM](#)

GLEN ALSWORTH, Mayor, Lake and Peninsula Borough, King Salmon, said, as an example, the disposal of dredge spoil policy under the current ACMP will be significantly watered down with the changes, and it is taking away local control. The borough is comprised of 18 communities and all are on either lake or salt-water shoreline. Mr. Alsworth also gave an example of losing control over navigation obstructions.

[9:16:37 AM](#)

MR. ALLSWORTH stated that ACMP has been very helpful to the borough, and it spent five years writing the last program, holding meetings in all 18 communities. Public process and local input is important, he said. A critical concern, he stressed, is that the revised regulations exclude fresh water lakes, which are vital to the citizens' subsistence lifestyle; removal of fresh water is the same as removing the Great Lakes, he said, and there would be no local input on the development of these important shorelines. The current coastal management program provides a vital tool for managing our resources, he

said, and many policies are interwoven through the borough ordinances.

[9:21:18 AM](#)

MR. ALLSWORTH agrees with delaying the deadline by a year.

[9:22:21 AM](#)

DAN BEVINGTON, Former Coastal District Coordinator, Kenai Peninsula Borough (KPB), said KPB has written 12 ordinances and 25 resolutions in support of the ACMP over the years. A significant enforceable policy affected by the revision is the mitigation policy, in which KPB has been very successful. The revision eliminates that policy. He said, "It really reflects the management intent of the state's changes" to limit local pro-active involvement.

[9:24:47 AM](#)

MR. BEVINGTON said the current program brings KPB to the table and ensures that local concerns are considered. The state doesn't have that comprehensive view, he said. He gave an example of a boulder removal project on the shoreline in which the state did not factor in local concerns.

[9:26:44 AM](#)

MR. BEVINGTON said his main problem is confusion, and it's been disheartening to hear the administration saying, "You do it our way or get out." He stated that the districts have been faithful to the state and they are being painted as holding up the bus. He said the timeline was not provided with much forethought, and he agrees that the deadline should extend beyond the OCRM approval so that it will be known exactly what the process is going to entail.

[9:29:36 AM](#)

JOHN OSCAR, Program Director, Cenaliulriit Coastal Resource Service Area (CCRSA), said the CCRSA serves 38 villages in the Yukon-Kuskokwim Delta. He said the district is more dependent on renewable resources than anywhere in the United States. Subsistence is essential to the Yupik people, and they fervently believe in the wise use of the resources for future sustainability, but the new requirements make it uncertain. Mining policies were taken out in these regulations, and there

are several mining projects in the region. He asked what this would mean to the potential impact of mining or large sand and gravel extractions near subsistence resources, and how much influence the [new] regulations would provide "those most affected in the decision-making." House Bill 191 leaves an unpredictable future for the people, and, he said, the ability of local people to comment on mining "has been taken away and is no longer our concern." Cenaliulriit has only one first class city, twenty-five second class cities, and twelve tribally run communities. These communities use the ACMP to address resource protection and subsistence because they do not have ordinances relating to those issues, he stated. The ACMP is their only avenue.

[9:32:44 AM](#)

MR. OSCAR said locals have had very little influence on the new plan. He also noted that the new regulations are not well defined, and he must translate them in Yupik and share them with the 38 villages. He said the people are also concerned about decisions that are "bases on bias" and made behind desks that are hundreds of miles away. He added that he would have to travel over "5,000 air miles in my district to explain the project and acquire support to the new regulations that may not sit well with them." The short timeline guarantees failure because of the vastness of the region, he said.

[9:35:12 AM](#)

MR. OSCAR quoted his uncle as follows:

My learning and knowledge was handed down by your ancients' ancients, where the whole group was as important as one person's fate. Your children's children - preservation for the long term. Yet today, we're threatened by the pervasiveness of the human nature. We live in a hurried world of technology - the clock, and the (indisc.) thought for self-gain - and forget who holds our lives. We are faced with written laws and regulations that change instantly the next day from a far-off land, from a few who offer promises and good words; but in the end, you are forgotten when the true face of hidden misdeeds and false words is revealed in their crafty law.

[9:36:43 AM](#)

THEDE TOBISH, Senior Environmental Planner/Coastal District Coordinator, Department of Community Planning and Development, Municipality of Anchorage, said he supports much of what has been said. He said Anchorage was optimistic when House Bill 191 passed, because its plan was written and adopted in 1980 and was used as an example of a plan that needed work and clarity. He said the best example of an enforceable policy that will be damaged by the ACMP revision is Anchorage's wetlands management plan, which covers approximately 200 individual wetland areas. "We have been variously told off and on over the past year that we can or cannot include these policies, and it is very clear to me that the regulations now preclude the incorporation of these policies in our plan revision." He added that the effective enforcement of these policies has been through the ACMP consistency review process. He said that the policies evolved through the consistency reviews and led Anchorage to obtain general permits from the Army Corps of Engineers which allowed the city to issue wetland permits. He said it is unclear what the loss of these policies will mean.

MR. TOBISH stated that Anchorage is willing and ready to use its Title 29 authorities to implement elements of the existing and new ACMP plan, but sorting it out in the remaining time may not be possible. "We want to get this correct once, but we doubt we can with the current timeframe," he said. The task is complex and the state's regulations are a moving target, he added. Anchorage currently has three major plans under the approval process and the effort required to do the revisions is vast. He said he wants more time and wants the deadline to be triggered by the final adoption of the new regulations.

[9:41:23 AM](#)

CHAIR SEATON asked about Anchorage's enforceable policies being adopted in ordinance and if a developer would have to go through an approval process in addition to the consistency review.

[9:42:12 AM](#)

MR. TOBISH answered yes.

[9:42:21 AM](#)

KAROL KOLEHMAINEN, Program Director, Aleutians West Coastal Resource Service Area (AWCRSA), stated that AWCRSA will be distributing its amended plan today, beginning the 30-day review period. Prior to the complete revision of the ACMP, AWCRSA had

just finished a substantial revision as part of its ten-year review cycle, she said, and that is part of the reason why AWCERSA could attempt to complete the amended plan on time. To fulfill the requirements of DNR, most of the policies had to be deleted and many more were considered wrong by DNR.

[9:44:43 AM](#)

MS. KOLEHMAINEN said that aside from the ACMP consistency reviews AWCERSA participates in, it is an active political subdivision of the state. She said this year AWCERSA is working with the Aleutian Pribilof Island Association and the Department of Commerce, Community, & Economic Development to complete a mapping project for the communities of Atka and Nikolski. She said those maps are going to be used by state agencies and applicants to reduce costs when planning projects in these remote communities. She stated, "I think in light of the governor's letter that the program would go away, it's particularly significant to recognize that the CRSA is a viable part of the state network."

[9:45:50 AM](#)

MS. KOLEHMAINEN said inconsistency is the biggest issue. "Prior to the October workshop we had a different understanding where we were headed then we did at the conclusion of the workshop and in the months that followed," she said. She noted that the state has created an impossible threshold for local coastal districts to address this matter of local concern and to write local policy. Ms. Kolehmainen said there appears to be no place for local policy and that testimony by the state during the House Bill 191 hearing was misleading. She noted that seven months ago it was understood that districts could develop policy where it could be demonstrated that state policies either did not address the issue or were not adequate to meet local needs, and then later, DNR turned around and said the districts could not write policy that was more stringent than state or federal standards.

[9:48:06 AM](#)

MS. KOLEHMAINEN said it is important that the coastal policies apply to resources and not just a designated area. Designation is problematic in a district as big as AWCERSA without Title 29 authority. She indicated that the AWCERSA has grave concerns about the loss of due deference and [the] decision-making process.

[9:48:43 AM](#)

MS. KOLEHMAINEN said the new process will result in uncertainty for developers, and AWCERSA has serious doubts that the 19 remaining policies will survive DNR's upcoming review. Ms. Kolehmainen said citizens of AWCERSA will receive little notice for projects that impact them, and will be unable to provide a coordinated response, and any response will not be afforded due deference. Citizens will lose their status as local experts, and the state will lose its ability to call upon local expertise to understand local needs. Beneficial projects, like community mapping, may be jettisoned. She concluded that the revision of ACMP needs to occur in partnership and retain the important elements. She said AWCERSA has acted in good faith, but is reluctant to continue to invest time and resources in an effort that may not result in a viable program with local involvement.

[9:52:00 AM](#)

CHAIR SEATON asked Ms. Kolehmainen to send the draft policy to the committee to review, and he stated his understanding that her area does not have Title 29 authority and thus has no alternative way to adopt enforceable policies.

[9:52:43 AM](#)

MS. KOLEHMAINEN answered that's correct. She said the city of Unalaska has a city code, but it relies on the ACMP to address those issues.

CHAIR SEATON asked if Unalaska would adopt the enforceable policies if they were lost through the ACMP.

MS. KOLEHMAINEN said she can't answer that for the city; however the city of Unalaska is a very small part of the Aleutians West area, which extends 1,000 miles.

[9:54:32 AM](#)

CHAIR SEATON observed that districts seem to be expressing confusion.

[9:55:12 AM](#)

MR. JEFFRESS said he heard that the districts want additional time on issues "where we have not had clear guidance from OCRM

to pass on to the district." He said subsistence is the large issue, and it is not going to be resolved through ACMP. He noted that DNR can't get OCRM to acknowledge that other state and federal agencies "have a hand" in subsistence issues. The department has requested guidance from OCRM on subsistence, and their response may make ACMP reviews consider areas beyond the coastal zone, which Mr. Jeffress did not think was the intent of ACMP. He again expressed frustration that OCRM won't acknowledge that there are other federal agencies working on subsistence. Mr. Jeffress concluded:

Aside from those, there's a number of other areas that we've given guidance to the districts that they can write enforceable policies and submit their plans. And then - when this becomes clear to us, through additional guidance or policy that we can agree to with OCRM - ... they can address these other issues of concern.

[9:57:38 AM](#)

CHAIR SEATON offered his understanding that DNR's frustrations are similar to those of the districts; the districts frustration is related to "not wanting to write, and rewrite, and revise each time there's a new interpretation."

[9:58:22 AM](#)

REPRESENTATIVE GATTO quoted the governor's letter: "Therefore if OCRM does not immediately abandon the new requirements ... the ACMP will expire by operation of law in the summer of 2005." Representative Gatto asked, "Is that what we're on track to do?"

[9:58:56 AM](#)

MR. JEFFRESS replied:

The old standards - 6 AAC 80 - were extended until the federal approval of our program. Without those new standards being approved - 11 AAC 112 - we don't have federally approved standards that can be implemented in federal consistency. Eighty-five to ninety percent of our consistency reviews concern a federal activity or a federal authorization. And this is where we have the problem with a major portion of our program; our consistency reviews would sunset. What we're trying to do, again, is we made provisions with our

negotiations to modify some of our regulations at their request - and in some cases verbatim their wording. But they went beyond that in the letter of January 28 to the point where they are dictating how the state is to implement and regulate all of our coastal resources, well beyond what we feel they are authorized [to do] through the Coastal Zone Management Act.

[10:00:27 AM](#)

CHAIR SEATON asked about the termination of ACMP as matter of law, and asked if the entire program goes away or if the standards aren't going to be there to enforce. He told DNR to let the legislature know if legislation is required to terminate ACMP.

[10:01:40 AM](#)

REPRESENTATIVE GATTO said his understanding is that the federal government contributes \$2.5 million to "the \$4.5-million program." He indicated his concern regarding funding

[10:02:06 AM](#)

MR. JEFFRESS said one of the points in the letter signed by four commissioners is that the resources are adequately addressed.

[10:02:29 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:02:36 AM](#).