

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

May 4, 2007

1:11 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Co-Chair  
Representative Craig Johnson, Co-Chair  
Representative Bob Roses  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Bryce Edgmon  
Representative David Guttenberg  
Representative Scott Kawasaki

**MEMBERS ABSENT**

Representative Vic Kohring

**COMMITTEE CALENDAR**

HOUSE BILL NO. 128

"An Act relating to allowable lease expenditures for the purpose of determining the production tax value of oil and gas for the purposes of the oil and gas production tax; and providing for an effective date."

- MOVED CSHB 128(RES) OUT OF COMMITTEE

HOUSE BILL NO. 94

"An Act relating to fishing, hunting, and trapping in marine park units of the Alaska state park system, amending the area within designated marine park units of the Alaska state park system, and adding marine park units to the Alaska state park system."

- MOVED CSHB 94(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 21

Opposing the designation of any area in the state as a world heritage site, biosphere reserve, or any other type of international designation without the consent of the Alaska State Legislature and affected local governments; and urging the United States Congress to enact legislation to require congressional approval before an area in the United States may be considered for an international designation.

- MOVED CSHJR 21(RES) OUT OF COMMITTEE

HOUSE BILL NO. 241

"An Act creating the Stampede State Recreation Area."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 128

SHORT TITLE: OIL & GAS PRODUCTION TAX: EXPENDITURES

SPONSOR(S): REPRESENTATIVE(S) OLSON

02/12/07	(H)	READ THE FIRST TIME - REFERRALS
02/12/07	(H)	O&G, RES, FIN
02/22/07	(H)	O&G AT 3:00 PM CAPITOL 124
02/22/07	(H)	Heard & Held
02/22/07	(H)	MINUTE(O&G)
03/01/07	(H)	O&G AT 3:00 PM CAPITOL 124
03/01/07	(H)	Moved CSHB 128(O&G) Out of Committee
03/01/07	(H)	MINUTE(O&G)
03/05/07	(H)	O&G RPT CS(O&G) 3DP 1NR
03/05/07	(H)	DP: DOOGAN, RAMRAS, OLSON
03/05/07	(H)	NR: SAMUELS
03/19/07	(H)	RES AT 1:00 PM BARNES 124
03/19/07	(H)	Heard & Held
03/19/07	(H)	MINUTE(RES)
03/21/07	(H)	RES AT 1:00 PM BARNES 124
03/21/07	(H)	Heard & Held
03/21/07	(H)	MINUTE(RES)
03/23/07	(H)	RES AT 1:00 PM BARNES 124
03/23/07	(H)	Heard & Held
03/23/07	(H)	MINUTE(RES)
03/26/07	(H)	RES AT 1:00 PM BARNES 124
03/26/07	(H)	-- MEETING CANCELED --
03/28/07	(H)	RES AT 1:00 PM BARNES 124
03/28/07	(H)	Heard & Held; Assigned to Subcommittee
03/28/07	(H)	MINUTE(RES)
05/01/07	(H)	RES AT 9:00 AM BARNES 124
05/02/07	(H)	RES AT 1:00 PM BARNES 124
05/02/07	(H)	Failed To Move Out Of Committee
05/02/07	(H)	MINUTE(RES)
05/04/07	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 94

SHORT TITLE: MARINE PARKS ADDITIONS/HUNTING ALLOWED

SPONSOR(S): REPRESENTATIVE(S) KERTTULA, CISSNA

01/16/07 (H) PREFILE RELEASED 1/12/07  
01/16/07 (H) READ THE FIRST TIME - REFERRALS  
01/16/07 (H) RES, FIN  
04/30/07 (H) RES AT 1:00 PM BARNES 124  
04/30/07 (H) Scheduled But Not Heard  
05/04/07 (H) RES AT 1:00 PM BARNES 124

BILL: HJR 21

SHORT TITLE: OPPOSE UN LAND DESIGNATIONS IN ALASKA  
SPONSOR(S): REPRESENTATIVE(S) THOMAS

04/26/07 (H) READ THE FIRST TIME - REFERRALS  
04/26/07 (H) RES  
05/04/07 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

KEVIN BANKS, Acting Director  
Central Office  
Division of Oil & Gas  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of HB 128, answered questions.

JONATHAN IVERSEN, Director  
Anchorage Office  
Tax Division  
Department of Revenue  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of HB 128, answered questions.

AURORA HAUKE, Staff  
to Representative Beth Kerttula  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 94 on behalf of Representative Kerttula, one of the joint prime sponsors.

MIKE EBERHARDT, Superintendent  
Southeast Area  
Division of Parks & Outdoor Recreation  
Department of Natural Resources  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 94, answered questions.

IAN FISK, Staff  
to Representative Bill Thomas  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HJR 21 on behalf of the sponsor, Representative Thomas.

STEVE BORELL, P.E., Executive Director  
Alaska Miners Association, Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HJR 21.

BOBBY FITHIAN, Executive Director  
Alaska Professional Hunters Association Inc. (APHA)  
Copper Center, Alaska

**POSITION STATEMENT:** Testified in support of HJR 21.

#### **ACTION NARRATIVE**

**CO-CHAIR CARL GATTO** called the House Resources Standing Committee meeting to order at [1:11:45 PM](#). Representatives Gatto, Kawasaki, Wilson, Seaton, Roses, Guttenberg, and Edgmon were present at the call to order. Representative Johnson arrived as the meeting was in progress.

#### HB 128-OIL & GAS PRODUCTION TAX: EXPENDITURES

[1:11:53 PM](#)

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 128, "An Act relating to allowable lease expenditures for the purpose of determining the production tax value of oil and gas for the purposes of the oil and gas production tax; and providing for an effective date." [Before the committee is CSHB 128(O&G), as amended at previous hearings.]

[1:12:12 PM](#)

REPRESENTATIVE SEATON referred to an amendment labeled 25-LS0561\K.4, Bullock, 5/3/07, which read:

Page 4, line 1, following "equipment":  
Insert "i

(20) costs related to the maintenance of oil and gas facilities, equipment, and infrastructure that are incurred as a result of a violation of a regulation adopted by the person in the Department of Natural Resources who is the lead person for exercising oversight over the maintenance of oil and gas facilities, equipment, and infrastructure in the state"

Page 4, lines 4 - 5:

Delete all material and insert:

"APPLICABILITY. (a) AS 43.55.165(e)(19), as enacted in sec. 1 of this Act, applies to oil and gas produced after March 31, 2006.

(b) AS 43.55.165(e)(20), as enacted in sec. 1 of this Act, applies to oil and gas produced after the effective date of the regulations described in sec. 5 of this Act."

Page 4, line 20:

Delete "Section 1 of this Act"

Insert "AS 43.55.165(e)(19), as enacted in sec. 1 of this Act,"

Page 4, line 21:

Delete all material and insert:

"\* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT; NOTICE. (a) AS 43.55.165(e)(20), as enacted in sec. 1 of this Act, takes effect only if the person in the Department of Natural Resources who is the lead person for exercising oversight over the maintenance of oil and gas facilities, equipment, and infrastructure in the state adopts regulations related to the maintenance of oil and gas facilities, equipment, and infrastructure in the state.

(b) The commissioner of natural resources shall notify the revisor of statutes of the effective date of the regulations described in (a) of this section.

\* **Sec. 6.** If AS 43.55.165(e)(20), as enacted in sec. 1 of this Act, takes effect, it takes effect on the effective date of the regulations described in sec. 5 of this Act.

\* **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect immediately under AS 01.10.070(c)."

REPRESENTATIVE SEATON explained that the aforementioned amendment is Don Bullock's [version of] Conceptual Amendment 4, which was adopted unanimously [at the May 2, 2007 hearing]. Therefore, K.4 has already been incorporated into the legislation. He explained that Conceptual Amendment 4 added a new subsection, which read:

costs incurred as a result of an action or inaction in violation of regulation or procedures adopted by the pipeline safety integrity organization (PSIO) or other appropriate agency.

REPRESENTATIVE SEATON pointed out that the PSIO isn't included because it is to be under the Department of Natural Resources (DNR). "So, they identified the agency or any subsidiary agency such as PSIO that would be adopting these regulations," he said.

[1:14:03 PM](#)

CO-CHAIR GATTO then turned attention to page 3, paragraph (19), which he said is the only issue keeping CSHB 128(O&G) from being forwarded to the next committee of referral. He related his understanding that if paragraph (19) is maintained, then the next committee of referral is the House Judiciary Standing Committee. However, if paragraph (19) is deleted, no referral to House Judiciary Standing Committee is necessary and it could be forwarded to the House Finance Committee. He acknowledged that the administration says paragraph (19) needs to be included in the legislation.

[1:15:13 PM](#)

CO-CHAIR JOHNSON noted his agreement that with the inclusion of paragraph (19) a House Judiciary Standing Committee referral is necessary.

[1:15:44 PM](#)

REPRESENTATIVE SEATON related that in conversations with the administration he has come to understand that it's uncomfortable with the language of paragraph (19). Therefore, he expressed the need for some better definitions if the will of the committee is to "do something retroactively."

[1:16:24 PM](#)

REPRESENTATIVE GUTTENBERG pointed out that HB 128 originally included paragraph (19) and didn't receive a House Judiciary Standing Committee referral. He opined that if the House Finance Committee, the next committee of referral, believes a House Judiciary Standing Committee referral is appropriate, then it can be referred to that committee at that point. He related his desire to leave the legislation on its current path.

[1:17:08 PM](#)

REPRESENTATIVE KAWASAKI clarified that paragraph (19) was changed a lot in the House Special Committee on Oil and Gas. Therefore, he opined that a referral to the House Judiciary Standing Committee is probably appropriate if paragraph (19) remains.

[1:17:32 PM](#)

REPRESENTATIVE SEATON moved that the committee delete paragraph (19) on page 3, lines 19-23.

CO-CHAIR JOHNSON objected.

REPRESENTATIVE GUTTENBERG stated a point of order. He then related his understanding that in order to take action on HB 128, the committee would need to vote to bring the legislation back before it.

[1:18:16 PM](#)

CO-CHAIR GATTO related his understanding that when the motion to report legislation from committee fails, the legislation remains with the chair.

[1:18:37 PM](#)

CO-CHAIR GATTO moved to bring HB 128 back before the committee. There being no objection, HB 128 was before the committee. [Representative Seaton's earlier motion to delete paragraph (19) was treated as withdrawn.]

[1:19:10 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 6, as follows:

Page 3, lines 19-23 through page 4, line 2:

Delete all material

CO-CHAIR JOHNSON objected. He then asked if there is a representative from the administration who could shed some light as to why the administration has some problems with the language of paragraph (19).

[1:20:25 PM](#)

REPRESENTATIVE SEATON related his understanding that the commissioner of the Department of Revenue agrees with the language in the amendment [labeled 25-LS0561\K.4, Bullock, 5/3/07] regarding going forward with regulations. If the legislature wants to go back and try to put in standards, the [department] needs something for standards if the desire is to go back to 2006 and have a standard other than the standards included in the legislation. He said that paragraph (20) in the amendment [labeled 25-LS0561\K.4, Bullock, 5/3/07] doesn't cover retroactively a standard lower than gross negligence, other than the other partners in the oil field rejecting the bill.

[1:21:40 PM](#)

CO-CHAIR GATTO furthered that the [commissioner of DOR] said that he couldn't write regulations without the authority in statute to write the regulations that allow the refusal of the deduction that's submitted.

[1:22:07 PM](#)

CO-CHAIR JOHNSON inquired as to the problems the [department] had with the language.

[1:22:22 PM](#)

REPRESENTATIVE SEATON clarified that the amendment the committee adopted was the statutory portion necessary for [creating] regulations. He further clarified that the regulations wouldn't be writing retroactive regulations, but rather [the regulations] would provide a standard to sue against. [The department] did have problems, he related, with regard to the effect this might have throughout the current language on the incentives in the petroleum production profits tax (PPT).

[1:23:17 PM](#)

CO-CHAIR GATTO reminded the committee that the amendment labeled 25-LS0561\K.4, Bullock, 5/3/07, has been adopted and will be in the forthcoming committee substitute (CS).

[1:23:56 PM](#)

REPRESENTATIVE GUTTENBERG related his understanding that the retroactivity remains, although it looks different than in previous legislation.

REPRESENTATIVE SEATON related his agreement. He the pointed out that two applicability subsections were necessary because the regulation section would begin at the effective date of the regulations, which is different than the March 31, 2006, effective date in paragraph (19).

[1:25:06 PM](#)

CO-CHAIR GATTO, referring to paragraph (19), related his understanding that there was a reduction in corrosion inhibitor as a way to save money. Although it saved money in 2006, it cost money in 2007. The aforementioned is the reason for allowing the commissioner to go back and say that the state doesn't want to pay for expenses related to negligence.

[1:26:02 PM](#)

REPRESENTATIVE ROSES, referring to paragraph (20) in the amendment labeled 25-LS0561\K.4, Bullock, 5/3/07], asked if regulations that govern how the producers are supposed to maintain oil and gas facilities, equipment, and infrastructure are currently in place.

[1:27:22 PM](#)

KEVIN BANKS, Acting Director, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), related his belief that there are regulations that govern how DEC reviews the facilities. The intention was to have a gap analysis over the next several months in order to determine whether new regulations need to be added. There could also be regulations from the Department of Transportation & Public Facilities (DOT&PF) and other agencies.

[1:27:49 PM](#)

CO-CHAIR GATTO questioned then if the legislation is necessary to go back and deny maintenance costs, if their regulations exist.

MR. BANKS explained that the regulations DNR would be reviewing aren't focused on whether it relates to an exception for the Trans-Alaska Pipeline System (TAPS). The intent of this language seems to address a situation in which a regulation in place that addresses maintenance or proper care of the facilities is violated, then costs related to that are subject to a disapproved allowance. Mr. Banks opined that the amendment is trying to disallow those costs incurred as a consequence of violating some regulation related to maintenance.

[1:29:34 PM](#)

REPRESENTATIVE ROSES surmised that paragraph (20) captures most of what is specified in paragraph (19), and therefore he questioned whether paragraph (20) is redundant. He then asked if the deletion of paragraph (19) would eliminate the redundancy.

MR. BANKS said that when paragraph (19) was first proposed, he read it as creating a setting in which DOR begins to question whether a cost is related to improper maintenance and could then turn to DNR for advice as to whether that was true or not. Then language was developed to guide that kind of advice. Therefore, it seems that by including [paragraph (20)], a circumstance in which a regulatory violation constitutes an improper cost is being selected. Paragraph (20), he opined, seems to be slightly more specific than paragraph (19).

[1:31:59 PM](#)

CO-CHAIR GATTO related his understanding from the commissioner that paragraph (19) allows [the retroactivity].

[1:32:13 PM](#)

CO-CHAIR JOHNSON asked if yet to be written regulations can be applied retroactively.

REPRESENTATIVE ROSES remarked that was his question.

[1:32:42 PM](#)

REPRESENTATIVE WILSON asked if DNR has regulations that would cover [what is referred to in paragraph (20)].

MR. BANKS said that he doesn't believe that DNR, at the moment, has articulated maintenance and requirements in regulation. The department relies on the lease contract and the general scope of the lease stipulations to govern whether activities conducted on the lease are appropriate. [This legislation] seems to expand those concepts into a more regulatory framework.

[1:34:11 PM](#)

REPRESENTATIVE SEATON related his understanding from conversations with the administration that going forward the amendment is vital. Although the [department] can go back now, it would have to do so for one of the existing standards: gross negligence, wilful misconduct, or because the partners rejected the bill because it wasn't performed as a prudent operator would do. He related his further understanding that the lease agreements at Prudhoe Bay include clauses regarding items for which they don't pay. As of today, the other partners have not been billed for the BP spill, shutdown, and pipe replacement. The purpose of paragraph (19) is to have a different standard that's lower than gross negligence and will only apply if the other partners accept the bills. He noted that improper maintenance is not necessarily the negligence standard, and in fact it may be lower than that in some cases. "If you want them to go back and look at a standard that's lower than those that are incorporated in here ... then [paragraph] (19) is needed," Representative Seaton opined.

[1:36:44 PM](#)

JONATHAN IVERSEN, Director, Anchorage Office, Tax Division, Department of Revenue, characterized Representative Seaton's comments as an accurate summary. He then said that he didn't know whether BP has billed the aforementioned costs to the other working interest owners in the unit or if any requests for payment have been approved or denied. Paragraph (19) fills the gap between where gross negligence stops and the costs denied between the working interest owners, he opined.

[1:37:45 PM](#)

REPRESENTATIVE ROSES asked if the state has the ability to exempt those costs under the gross negligence definition. If the answer is no and the desire is to reduce the standard to

simple negligence, then it's probably important to understand the difference between gross negligence and simple negligence. Black's Law Dictionary specifies that "gross negligence is a lack of slight diligence or care; a conscience voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party who may typically recover exemplary damages." Representative Roses opined that the gross negligence standard isn't going to be that difficult to prove.

[1:39:09 PM](#)

CO-CHAIR GATTO inquired as to the definition of the term "legal duty." He further inquired as to whether the injection of a corrosion inhibitor is smart or a legal duty.

[1:39:25 PM](#)

REPRESENTATIVE WILSON opined that Alaska statutes include definitions for gross negligence and negligence, which she surmised would be followed over what is specified in a dictionary.

[1:39:48 PM](#)

CO-CHAIR GATTO suggested that since Representative Roses was reading from Black's Law Dictionary that would be the [definition] to which to refer.

[1:40:03 PM](#)

CO-CHAIR JOHNSON remarked that the aforementioned discussion exemplifies why HB 128 should receive a referral to the House Judiciary Standing Committee. He said that although he agrees that [paragraph (19)] should be included, it needs to be appropriate language and language with which the administration can "live with."

[1:41:12 PM](#)

CO-CHAIR JOHNSON maintained his objection.

[1:42:43 PM](#)

A roll call vote was taken. Representatives Wilson, Roses, and Seaton voted in favor of the adoption of Amendment 6. Representatives Edgmon, Kawasaki, Guttenberg, Johnson, and Gatto

voted against it. Therefore, Amendment 6 failed to be adopted by a vote of 3-5.

[1:43:52 PM](#)

CO-CHAIR GATTO informed the committee that the next committee of referral for HB 128 is the House Finance Committee. He reminded the committee that on a previous motion to report this legislation from committee, it failed on a 4-4 vote. Unless someone is willing to change from that previous vote, the result is unlikely to change. Therefore, he said, "So what I'm going to do is say, 'Let it go to Judiciary; I hope that will change one vote.'"

[1:44:21 PM](#)

CO-CHAIR JOHNSON interjected that he believes HB 128 is good legislation that needs to pass [out of this committee] and go to the House Judiciary Standing Committee.

[1:44:29 PM](#)

CO-CHAIR JOHNSON moved to report CSHB 128(O&G), as amended, out of committee with individual recommendations and the accompanying fiscal notes as well as a recommendation that the legislation receive a referral to the House Judiciary Standing Committee.

[1:45:12 PM](#)

REPRESENTATIVE GUTTENBERG suggested dividing the motion such that there is a motion to report CSHB 128(O&G) from committee and a second motion to refer the legislation to the House Judiciary Standing Committee.

[1:45:43 PM](#)

CO-CHAIR JOHNSON moved to rescind his prior motion.

[1:45:53 PM](#)

REPRESENTATIVE SEATON opined that if the question is divided as stated, then whether there's a House Judiciary Standing Committee referral will influence whether the legislation is reported from committee. Therefore, he suggested first taking a vote as to whether the committee wants to recommend a referral to the House Judiciary Standing Committee.

1:46:32 PM

REPRESENTATIVE GUTTENBERG noted that although everyone has the ability to go to the speaker and offer recommendations regarding referrals, the speaker isn't required to follow the recommendations.

CO-CHAIR GATTO related that he would take the message from the committee to the speaker.

1:47:17 PM

CO-CHAIR JOHNSON moved that the committee take a sense of the body as to whether the committee would recommend that HB 128 receive a House Judiciary Standing Committee.

CO-CHAIR GATTO objected.

1:47:57 PM

A roll call vote was taken. Representatives Seaton, Roses, Edgmon, Kawasaki, Wilson, Gatto, and Johnson voted in favor of recommending that HB 128 be referred to the House Judiciary Standing Committee. Representative Guttenberg voted against it. Therefore, the sense of the committee regarding whether to recommend that HB 128 receive a House Judiciary Standing Committee passed by a vote of 7-1.

1:48:51 PM

CO-CHAIR JOHNSON moved to report CSHB 128(O&G), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SEATON objected. He then clarified that he isn't opposed to having a standard, but he expressed concern that the standard in paragraph (19) inserts uncertainty and risk into the PPT and could result in not sanctioning projects in Alaska by the oil companies. He then removed his objection.

1:50:10 PM

There being no further objection, CSHB 128(RES) was reported from the House Resources Standing Committee.

HB 94-MARINE PARKS ADDITIONS/HUNTING ALLOWED

1:50:35 PM

CO-CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 94, "An Act relating to fishing, hunting, and trapping in marine park units of the Alaska state park system, amending the area within designated marine park units of the Alaska state park system, and adding marine park units to the Alaska state park system."

1:50:53 PM

AURORA HAUKE, Staff, to Representative Beth Kerttula, Alaska State Legislature, paraphrased from the following sponsor statement:

House Bill 94 adds 13 islands in Lynn Canal and additional land on Shelter Island to the state's marine park units of the Alaska state park system. HB 94 would protect recreational and economic opportunities for Alaskans and visitors alike.

The islands are popular locations for fishing, hunting, trapping, kayaking, camping, and picnicking. Transferring these state-owned lands to the marine park system will ensure they are kept open to the public. Additionally, House Bill 94 ensures that hunting and fishing will not be prohibited within the marine park.

The islands included in HB 94 are important to Southeast Alaska's economy. The incredible scenic beauty and abundant wildlife viewing opportunities make the waters around the islands a popular passageway for whale watching tour boats. In addition, the waters around these islands are a vibrant fishing ground for our important commercial fisheries. Adding the islands to the marine parks will ensure that they remain the natural gems that make them so important to local industry.

I urge your support of House Bill 94.

MS. HAUKE informed the committee that HB 94 has received support from the Alaska Outdoor Council, Territorial Sportsmen, Inc., Southeast Alaska Land Trust, Juneau Audubon Society, Southeast Alaska Conservation Council (SEACC), Goldbelt Incorporated,

private inholders on one of the islands, Juneau State Parks Advisory Board, and the City & Borough of Juneau. Ms. Hauke submitted the written testimony of Gary Miller, Juneau State Parks Advisory Board, to the committee.

[1:52:35 PM](#)

REPRESENTATIVE SEATON moved to adopt CSHB 94, Version 25-LS0377\E, Kane, 4/30/07, as the working document. There being no objection, Version E was before the committee.

[1:52:51 PM](#)

MS. HAUKE explained that the two changes encompassed in Version E can be found in the intent language. Page 2, lines 1-3, adds language stressing the importance of fishing in the Lynn Canal area. On page 2, lines 16 and 30, the 20 fathom bathymetric line apron around the islands is changed to the 10 fathom bathymetric line. The 10 fathom bathymetric line is clearly delineated on charts and allows the space necessary to make improvements, should they choose to do so.

[1:53:39 PM](#)

CO-CHAIR GATTO asked if "marine parks" are designated by the state, including federal designations. He opined that the word "park" usually has a fairly significant definition.

[1:54:12 PM](#)

MS. HAUKE deferred to the Department of Natural Resources (DNR). However, she pointed out that HB 94 includes protections for hunting and fishing so that those activities can continue in marine parks.

[1:54:43 PM](#)

MIKE EBERHARDT, Superintendent, Southeast Area, Division of Parks & Outdoor Recreation, Department of Natural Resources, began by informing the committee that he is in charge of all the parks within Southeast Alaska. There are approximately 32 marine parks, which is a bit different designation due to the statutory designation. [The division] is very different from the National Park Service in that a park designation doesn't mean hunting, fishing, or use are prohibited. The division's mission statement is for the use and enjoyment of the land by the people of the state. He related that there is the desire by

the user groups that some active management take place within these islands.

[1:56:00 PM](#)

CO-CHAIR GATTO asked if scuba divers with compressed air and a scuba gun can hunt within the marine park waters.

MR. EBERHARDT replied yes, adding that the restrictions basically only apply to resource damage. [The division], he related, is to prevent resource damage for the purposes set forth in statute.

[1:56:54 PM](#)

REPRESENTATIVE ROSES related his experience with Kachemak Bay State Park, which has never been closed to fishing or hunting prior to or following its designation as a state park.

[1:57:40 PM](#)

CO-CHAIR GATTO asked if the harvesting of kelp to obtain herring eggs would be considered a destructive behavior.

MR. EBERHARDT said that in such instances [in which the issue is harvesting] the division would defer to the Alaska Department of Fish & Game (ADF&G) to determine whether it's destructive behavior. However, he noted that within all of the [marine park] units in Sitka the harvest of herring roe is allowed.

[1:59:23 PM](#)

CO-CHAIR JOHNSON asked if this legislation actually expands the size of this park.

MR. EBERHARDT replied yes, the legislation adds islands to the marine parks system. In further response to Co-Chair Johnson, Mr. Eberhardt specified that the actual expansion in acreage is 12.1 square miles of land and 11.5 square miles of water.

MS. HAUKE clarified that the 11.5 square miles of water refers to the 10 fathom bathymetric line rather than the 20 fathom bathymetric line.

[2:00:52 PM](#)

CO-CHAIR GATTO inquired as to how many miles of beachfront is being added.

MR. EBERHARDT answered that although it's an addition of a lot of beachfront, it isn't substantial in comparison to what is currently held. In further response to Co-Chair Gatto, Mr. Eberhardt confirmed that there are some inholdings within the park units. However, the vast majority are only uplands to which the marine park system would receive the tidelands. For instance, there is a small private inholding on Shelter Island for which the tidelands in front of that private inholding weren't exempted. Therefore, the tidelands in front of those inholdings would be transferred to park management.

[2:03:07 PM](#)

MS. HAUKE, in response to Co-Chair Gatto, said that she hasn't heard any objections to doing what's proposed in HB 94. She noted that she has a letter from a private inholder who supports HB 94.

[2:03:27 PM](#)

MR. EBERHARDT interjected that the important thing to know about that inholder is that he is currently developing that parcel for commercial recreation. The division has worked with that inholder to establish that parcel for that use.

[2:03:46 PM](#)

CO-CHAIR JOHNSON recalled that there are several private inholdings within the marine park, and asked if those are in the expanded park or in the entire park.

MR. EBERHARDT specified that within the units that the division is asking to expand he knows of three, possibly four, inholdings. He noted that they are small inholdings. In further response to Co-Chair Johnson, Mr. Eberhardt said that [the division] hasn't received objections from the other inholders who have been notified of this.

[2:04:53 PM](#)

REPRESENTATIVE WILSON related her understanding that this legislation merely ensures that all the existing designations that allow hunting, fishing, and etcetera to continue.

MR. EBERHARDT replied yes, adding that once it's a statutory mandate the division no longer has the opportunity to do a lease or other things that could restrict hunting and fishing.

[2:05:32 PM](#)

REPRESENTATIVE ROSES asked if the individuals who currently have sites within the park own the land.

MR. EBERHARDT replied yes. In further response to Representative Roses, Mr. Eberhardt confirmed that the designation of the land only goes to the mean mean high water mark and thus any land outside of that would be a state park, regardless. Mr. Eberhardt further confirmed that this legislation doesn't really impact any land but rather the land underneath the high tide mark.

[2:06:08 PM](#)

CO-CHAIR JOHNSON inquired as to the type of public notice required before this is enacted. He further inquired as to whether the inholders have been notified and if there's an opportunity for the inholders to respond to this proposal.

MR. EBERHARDT informed the committee that this has been proposed since 1991 and he has been in personal contact with all of the landholders. He indicated that the only [difficulty] could be if the land has changed hands within the last 15 years.

[2:06:59 PM](#)

REPRESENTATIVE GUTTENBERG reviewed the various letters of support in the committee packet.

[2:07:21 PM](#)

REPRESENTATIVE WILSON moved to report CSHB 94, Version 25-LS0377\E, Kane, 4/30/07, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 94(RES) was reported from the House Resources Standing Committee.

HJR 21-OPPOSE UN LAND DESIGNATIONS IN ALASKA

[2:07:41 PM](#)

CO-CHAIR GATTO announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 21, Opposing the designation of any area in the state as a world heritage site, biosphere reserve, or any other type of international designation without the consent of the Alaska State Legislature and affected local governments; and urging the United States Congress to enact legislation to require congressional approval before an area in the United States may be considered for an international designation.

[2:07:59 PM](#)

IAN FISK, Staff, to Representative Bill Thomas, Alaska State Legislature, began by informing the committee that HJR 21 is a resolution that was sponsored by the late Representative Elkins in the Twenty-Fourth Alaska State Legislature. That original resolution passed the House and Senate unanimously, but unfortunately it was caught in the end of session chaos. Mr. Fisk explained that HJR 21 is about local, state, and federal sovereignty over land use designations, particularly as related to United Nations (UN) designations known as World Heritage sites and Biosphere Reserves. World Heritage sites are intended to protect and preserve places of cultural and natural significance around the world that are considered to be of outstanding value to humanity. Included in World Heritage sites are the Great Wall of China, Independence Hall, and the Statute of Liberty as well as national parks. Mr. Fisk related from UN materials the following: "What makes the concept of World Heritage exceptional is its universal application. World Heritage sites belong to all the peoples of the world irrespective of the territory on which they are located."

[2:09:59 PM](#)

MR. FISK explained that part of the problem with these designations is that they can be made without any congressional oversight. Therefore, the critical resolve in this resolution is the clause requesting that Congress pass and the president sign legislation that would mandate congressional approval of any sites nominated by the U.S. Secretary of Interior prior to the sites being approved by the UN. Part of the difficulty with these land use designations is that they can be used in land use conflicts for the purposes of preventing development. In summary, Mr. Fisk said that HJR 21 doesn't seek to dispute the value of these programs in some areas of the world where nations may need more UN support to do basic conservation of parks. The resolution, he specified, in no way seeks to end the World

Heritage or Biosphere Reserve programs as it merely says that congressional approval of such designations should be required. The resolution further states that Alaska's local and state governments should be consulted in these matters.

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MR. FISK then pointed out that the committee packet should include an amendment that clarifies the locations in Alaska of the World Heritage and Biosphere Reserve sites.

[2:12:47 PM](#)

CO-CHAIR GATTO moved that the committee adopt Amendment 1, as follows:

Page 2, lines 25-30:

Delete all material

Insert "**WHEREAS** the United Nations Educational, Scientific and Cultural Organization (UNESCO), with the collaboration of the U.S. Department of Interior, has recognized the Wrangell-St. Elias/Glacier Bay/Kluane/Tatshenshini-Alsek World Heritage Site in Alaska, and has listed the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, the Arctic National Wildlife Refuge, Denali National Park, Gates of the Arctic National Park, and Katmai National Park on the Tentative List of areas nominated for full status; and

**WHEREAS** the United Nations Man and the Biosphere Program has identified the Glacier Bay - Admiralty Island, Noatak, Denali and Aleutian Islands Biosphere Reserves in Alaska; and"

There being no objection, Amendment 1 was adopted.

[2:13:31 PM](#)

STEVE BORELL, P.E., Executive Director, Alaska Miners Association, Inc., noted that the committee packet should include a letter of support from the Alaska Miners Association, Inc. Mr. Borell said that most of the sites that he is aware of are ones in which World Heritage sites were used to block and harass mining projects. However, there are other areas of concern such as the impact a World Heritage or Biosphere Reserve site would have on drilling in the Chukchi Sea or subsequent sea

floor oil or gas pipeline. Another concern is the impact such designations would have on commercial fishing, whaling, or the harvesting of other marine mammals. These aren't abstract fears as around the world such designations have been used against projects, he related. Therefore, he urged the passage of HJR 21.

[2:14:57 PM](#)

BOBBY FITHIAN, Executive Director, Alaska Professional Hunters Association Inc. (APHA), said APHA agrees with Mr. Borell's comments. This resolution represents a long-needed sideboard for international designations of Alaska's lands. He questioned how many Alaskans knew in [1978] when the Wrangell-St. Elias National Monument was created that in less than a year it would be submitted and accepted to the UN World Heritage Committee in Cairo, Egypt. Other areas of Alaska, including the Denali National Park and Preserve and the Glacier Bay National Monument, were similarly impacted under the World Heritage and Biosphere Reserves programs. Mr. Fithian informed the committee that the mission statement of this UN subcommittee is to protect natural and cultural properties of outstanding universal value against the threat of damage in a rapidly developing world. He pointed out that worldwide several of these World Heritage and Biosphere Reserves sites are being actively managed by UNESCO. Some of those management activities include controlling human population densities, access to sites, and water shed and ecological concerns as well as agricultural and industrial guidelines.

MR. FITHIAN related that there are 22 World Heritage sites in the U.S. Additionally, World Heritage nominated sites in Alaska includes areas in the Aleutian Islands, the Arctic National Wildlife Refuge, Denali National Park, and Katmai National Park. At all of the 26 sessions of the World Heritage Committee, the U.S. Department of Interior has had a full contingent of representatives. He said that those who have followed Alaska Board of Game issues and concerns for the past decade and a half know how much the U.S. Department of Interior's management values differ from the [state's] constitutional mandates. Mr. Fithian related that APHA would like to be involved and have a say with the decisions creating these designations of public lands upon which the [professional hunting] industry is dependent. He furthered that the way of life of APHA members and a substantial part of the \$200 million annual revenue APHA members generate for Alaska within these areas could be jeopardized by these designations. In conclusion, Mr. Fithian

opined that HJR 21 addresses the oversight that Alaska and its residents need with regard to these types of designations. Therefore, APHA encourages the committee's support of HJR 21, he said.

[2:18:25 PM](#)

CO-CHAIR GATTO, upon determining no one else wished to testify, closed public testimony.

[2:18:41 PM](#)

CO-CHAIR JOHNSON moved to report HJR 21, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHJR 21(RES) was reported from the House Resources Standing Committee.

[2:19:05 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:19 p.m.