

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 27, 2008

1:03 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 370

"An Act relating to forested land management and protection from wildland fire and other destructive agents; changing the term 'forest fire' to 'wildland fire' where it appears in the Alaska Statutes; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 257

"An Act transferring duties relating to aquatic farming and hatchery operations from the Department of Fish and Game to the Department of Natural Resources, eliminating certain permit requirements applicable to aquatic farming and hatchery operations, and directing the Department of Natural Resources to administer and supervise promotional and marketing work for aquatic farm products; and providing for an effective date."

- MOVED CSHB 257(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 370

SHORT TITLE: PROTECTION OF FORESTED LAND

SPONSOR(s): REPRESENTATIVE(s) KELLY

02/19/08 (H) READ THE FIRST TIME - REFERRALS
02/19/08 (H) RES
02/27/08 (H) RES AT 1:00 PM BARNES 124

BILL: HB 257

SHORT TITLE: AQUATIC FARMING & HATCHERIES
SPONSOR(S): REPRESENTATIVE(S) HARRIS BY REQUEST

05/11/07 (H) READ THE FIRST TIME - REFERRALS
05/11/07 (H) FSH, RES
01/18/08 (H) FSH AT 8:30 AM BARNES 124
01/18/08 (H) -- MEETING CANCELED --
02/11/08 (H) FSH AT 8:30 AM BARNES 124
02/11/08 (H) -- Meeting Postponed to 02/15/08 --
02/15/08 (H) FSH AT 8:30 AM BARNES 124
02/15/08 (H) -- Rescheduled from 02/11/07 --
02/19/08 (H) FSH RPT CS(FSH) NT 1DP 3NR
02/19/08 (H) DP: SEATON
02/19/08 (H) NR: LEDOUX, JOHANSEN, EDGMON
02/27/08 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 370.

DEREK MILLER, Staff
to Representative Mike Kelly
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information regarding HB 370.

JOHN "CHRIS" MAISCH, Director, State Forester
Division of Forestry
Department of Natural Resources
Fairbanks, Alaska

POSITION STATEMENT: Provided information regarding HB 370.

MR. TOM KURTH, Fire Operations Forester
State Fire Operations
Division of Forestry
Fairbanks, Alaska

POSITION STATEMENT: Answered questions regarding HB 370.

GREGORY VICKREY, Executive Director
Tongass Conservation Society
Ketchikan, Alaska

POSITION STATEMENT: Spoke in general support of the concept of
HB 370.

JENNIFER YUHAS, Special Assistant
to Fairbanks Northstar Borough Mayor Jim Whitaker
Fairbanks, Alaska

POSITION STATEMENT: Supported HB 370.

MELANIE LESH, Legislative Liaison, Special Assistant to the
Commissioner
Office of the Commissioner
Department of Natural Resources
Juneau, Alaska

POSITION STATEMENT: Provided information regarding HB 370.

KEVIN SAXBY, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 370.

JOHN BITNEY, Staff
to Representative John Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement on behalf
of Representative Harris for HB 257.

RODGER PAINTER, President
Alaskan Shellfish Growers Association
Juneau, Alaska

POSITION STATEMENT: Testified that HB 257 is necessary because
previous statute modifications inadvertently changed the
definition of products that the Department of Natural Resources
could include under the Alaska Grown program.

AMY PETTIT, Development Specialist
Inspection/Marketing Services
Division of Agriculture
Department of Natural Resources
Palmer, Alaska

POSITION STATEMENT: Answered questions regarding HB 257.

ACTION NARRATIVE

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at [1:03:50 PM](#). Representatives Fairclough, Wilson, Roses, Guttenberg, Edgmon, Gatto, and Johnson were present at the call to order. Representatives Kawasaki and Seaton arrived as the meeting was in progress.

HB 370-PROTECTION OF FORESTED LAND

[1:04:04 PM](#)

CO-CHAIR JOHNSON announced that the first order of business would be HOUSE BILL NO. 370, "An Act relating to forested land management and protection from wildland fire and other destructive agents; changing the term 'forest fire' to 'wildland fire' where it appears in the Alaska Statutes; and providing for an effective date."

[1:04:21 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor of HB 370, said the bill would allow wildland fire control, which is a wording change [of current statute] that will permit the defense of cabins on the land in a formal manner rather than in the current informal manner. It is a "cleanup" in some ways, but it sends the signal that protection will be provided to cabins threatened by fire.

[1:05:48 PM](#)

REPRESENTATIVE ROSES understood that another bill currently before the legislature [HB 326] uses the term "wildfire" as opposed to "wildland fire". He recommended there be consistency in terminology to prevent any unintended conflicts and said he may enter a conceptual amendment in this regard.

REPRESENTATIVE KELLY said that makes sense.

CO-CHAIR GATTO stated that "wildland fire" appears to be the conventional term, based on all [his] years in the fire department.

REPRESENTATIVE KELLY agreed the term should be made right.

[1:07:21 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether HB 370 would address situations like what happened with the [2005] Wild Lake fire.

REPRESENTATIVE KELLY responded yes.

1:07:36 PM

CO-CHAIR GATTO drew attention to the new language on page 3, line 2, and expressed his concern that the term "other destructive agents" is so broad a category that there is no end to what could be included in it.

REPRESENTATIVE KELLY deferred to his staff person [Derek Miller] for an in-depth technical response.

1:08:56 PM

REPRESENTATIVE FAIRCLOUGH asked why there is no fiscal note for the provision on page 1, lines 6-8, to build a public highway from the Yukon River to the Arctic Ocean.

REPRESENTATIVE KELLY explained this is existing statute and the amendment to the statute is the word "wildland" on page 2.

1:10:02 PM

DEREK MILLER, Staff to Representative Mike Kelly, Alaska State Legislature, referred committee members to the two page handout in their packets for further information about the bill. He noted that Representative Kelly was approached to introduce this bill by the Department of Natural Resources, Division of Forestry; and a constituent, Richard Wien, was also involved. Currently, the Division of Forestry is mandated to provide fire protection commensurate with the "value of the resources" at risk. The bill would change that statute to provide protection for just the "values" at risk, he related. "That would include and encumber some of the things that were going on with Mr. Wien with cabins and physical manmade structures to allow the ... Division of Forestry to protect those values as well," he said. This is something that the division is already doing and would also align statute with the 1985 Alaska Interagency Wildland Fire Management Plan. Additionally, HB 370 changes the term "forest" fire to "wildland" fire throughout statute. He said work is being done regarding [HB 326] to have that bill also reflect the term "wildland" fire.

1:12:16 PM

CO-CHAIR JOHNSON inquired whether HB 370 would bring additional liability upon the state for not protecting an asset when decisions are made to protect other areas or assets deemed to be of greater value.

MR. MILLER said he does not believe it would, otherwise the Division of Forestry would not have drafted the language in this way. He deferred to Chris Maisch with the division.

1:13:41 PM

JOHN "CHRIS" MAISCH, Director, State Forester, Division of Forestry, Department of Natural Resources, thanked the committee for its consideration of what the division refers to as a housekeeping item in this statute language. He said the 1985 Alaska Interagency Wildland Fire Management Plan describes the five different categories of protection that the division undertakes: critical, full, modified, limited, and unplanned. Each of those categories allows the division to do different types of activities based on the natural resource values, but the plan also stresses human improvements as one of the decision criteria for the planning process and how to do initial attack.

MR. MAISCH explained that a lot of structures have been built in the limited and modified protection areas since the plan was written over 20 years ago. The Division of Forestry's fire atlases therefore need updating to reflect whether the division would potentially protect a structure. However, he related, a read of the current statute by the Murkowski Administration's attorney general determined that the division is not allowed to actually do that because the statute does not direct the division to protect structures. This conflict between statute and plan has put the division in a difficult position at times about making decisions on whether to provide structure protection in limited and modified areas.

MR. MAISCH said the division's structure protection policy for public and private lands directs that structures in limited areas will receive protection commensurate with the larger land base, which means there are cases where structures would not be protected. The change in statute would allow the division to consider those values as something that might be protected consistent with availability of resources and safety of personnel. So, even with an amended statute there will be cases where structures may not be protected, he advised. The division

wants to have clear, consistent language both in the plan and in the statute that will allow consideration of human improvements - structures - as part of that decision-making process.

1:16:36 PM

CO-CHAIR JOHNSON reiterated his question regarding the possibility of additional liability to the state should the decision be made to not protect a structure.

MR. MAISCH responded no, Alaska has one of the strongest discretionary immunity laws of any of the 50 states. This law provides discretionary immunity for decisions that are made by fire fighters based on the plan, policy, and actual on-the-ground situation. He said in all his years of being involved in the fire program he can think of only one case in recent history where the state was sued in a civil process for damages for fire.

CO-CHAIR JOHNSON asked whether the state won.

MR. MAISCH replied the case was settled without going to court, and then the new discretionary immunity statute went into effect which really strengthened the state's hand.

1:17:36 PM

CO-CHAIR GATTO inquired why the Division of Forestry wants to change its discretionary ability to a requirement that it shall protect a structure.

MR. MAISCH replied this change in the statute would not cause the division to have to protect a structure. It would actually strengthen the division's decision-making authority by allowing it to consider the value of human improvements on the landscape, such as structures, trails, and other things, in the decision-making process. It would not put any sideboards on the division's ability to say yes or no and the division would still have that full range of decision-making authority with this change, he said. Right now, under a strict read of the statute, the division cannot consider homes, cabins, or other human improvements in part of that decision-making process.

1:20:06 PM

REPRESENTATIVE KAWASAKI asked how the division would value a cabin.

MR. MAISCH said the division will not attempt to put a monetary value on individual structures. The values at risk would be considered in the preplanning stages. The statutory change would allow the division to update its fire atlases. Then, when going through a flow chart, if it looks like a structure merits protection because it is a year-round residence or Firewise principles have been applied to the structure or a number of other factors, the division could put an "F" on the map - meaning full protection. Right now, he said, the division does not have a clear process for how someone in a limited or modified protection area would petition for full protection of a structure. Once this statute is changed, it would allow the Division of Forestry to develop clear and concise criteria for that consideration to be made.

[1:21:37 PM](#)

REPRESENTATIVE KAWASAKI inquired whether this change to the statute means the division would fight a fire in a remote state forest with lots of cabins before a remote area with fewer cabins.

MR. MAISCH answered each situation is unique. A plan allows for thinking ahead so that a lot of these decisions do not have to be made on a case-by-case basis in the heat of the moment. The division is constantly prioritizing and assessing fire risk with resources available, so it is difficult to say that state forest resources will always be protected. For example, the 2004 fire season was a record year when almost seven million acres burned, mostly in the Interior. Almost every large fire that year was threatening a community - Tok, Delta, Fairbanks, Bettles - and those are where the priorities were. They are rated critical or full protection areas in the fire management plan. So structures that were in remote areas in many cases received no protection simply because the division did not have the resources available to provide protection. A triage situation can happen quickly, he explained, and money and resources must be spent such that the greatest good gets completed.

[1:23:32 PM](#)

REPRESENTATIVE KAWASAKI inquired how the Division of Forestry would prioritize between a multi-million dollar structure in one area and a tin shack in another.

MR. MAISCH responded it would partly depend on the preplanning determination of whether a structure merited protection based on how much money and effort it would cost the division to protect the structure. A lodge without easy access, a poor water source, and nothing done that would help protect the structure from an approaching fire would likely not get an F on the map. If an owner puts forth effort ahead of time to make it easy for the division to provide protection, then that would be considered, he said. It does not matter what the monetary value is per se, because any action taken by the division will cost a fair amount of money, although the division would not want to do a \$10,000 retardant drop on a bunch of blue tarps in the woods. The fiscal side of this whole discussion is kept in the picture as much as possible, but there is that old adage of one man's castle.

[1:25:13 PM](#)

REPRESENTATIVE GUTTENBERG asked whether there are any additional issues in statute that are in conflict with the 1985 Alaska Interagency Wildland Fire Management Plan.

MR. MAISCH replied he is unaware of any other issues in statute that prevent the division from doing fire management planning in an effective way on the landscape. It is very important, especially in the Interior ecosystems, to maintain fire on the landscape. Fire is an important part of the ecological process for a variety of reasons, particularly wildlife management, he advised. This statute helps the Division of Forestry protect the resources on the landscape while at the same time allowing fire to burn in as many cases as possible.

[1:28:24 PM](#)

REPRESENTATIVE SEATON said he shares the concern about liability. He suggested the Department of Law be requested to provide a fiscal note so there would be a legislative history.

CO-CHAIR JOHNSON said that would be done.

REPRESENTATIVE SEATON inquired whether there is a definition of destructive agent as used on page 3 [line 2].

MR. MAISCH answered destructive agent is a forestry term and usually refers to insect pests such as bark beetles. That terminology is used in other portions of this statute, AS 41, and that is where destructive agent refers to insect and

disease. It may also be a holdover from old terminology and part of this is to update the terminology by changing "forest fire" to the newer and more inclusive term, "wildland fire". He said it does not necessarily have to be there, but he needs to read the whole statute to put it into context and see if there are other places where it might come into play.

REPRESENTATIVE SEATON recommended that destructive agent either be defined under this section or be eliminated.

[1:30:42 PM](#)

CO-CHAIR GATTO agreed destructive agent should be defined in the bill because even if there is a forestry definition for the term a judge could have a different opinion.

CO-CHAIR JOHNSON noted that a lot of fires are fought in conjunction with federal agencies. He asked whether federal agencies would be brought under this same term or do they have a separate code.

MR. MAISCH said there are three agencies in the state that provide fire suppression services - the U.S. Forest Service, a branch of the U.S. Bureau of Land Management called the Alaska Fire Service, and the Division of Forestry. This statute only affects state, municipal, and private lands, he noted, so it does not affect what would occur on federal lands. The division works very closely in this interagency environment and the state is divided into three service areas where each agency is the lead agency for initial fire attack and project management. The Alaska Fire Service manages from just south of the Yukon River and northward, the Division of Forestry manages the middle portion of the state down to the Kenai Peninsula, and the U.S. Forest Service has some of the Kenai Peninsula and Southeast Alaska. Because this is an interagency fire management plan, all the agencies have already agreed on the standard terminology and different types of protection levels.

[1:33:12 PM](#)

CO-CHAIR JOHNSON asked what the policy is for the two federal agencies as far as protecting structures.

MR. MAISCH responded it depends on the agency and its management objectives; for instance, the National Park Service is different than the U.S. Fish and Wildlife Service. They do protect structures, but most of the structures that they would be

protecting would usually be on private land, which this statute would affect. In that case, he said, the federal agency would work essentially as the Division of Forestry's agent and would follow the division's policies and standards. They would have their own set of policies for fires on federal lands. In further response to Co-Chair Johnson, Mr. Maisch said there are sometimes differences in the policies on federal lands and generally there are not as many structures on federal lands.

[1:34:45 PM](#)

CO-CHAIR GATTO inquired what is wrong with the language being deleted under Section 41.15.010 on page 3 [lines 1-5]. He said he is concerned about what is being done and whether it will send the state's liability through the roof.

MR. MAISCH replied the Division of Forestry was able to walk the line on this interpretation of the old language for many years because the term "value of the resources" was somewhat vague. When a particular incident forced the question on whether the division could protect structures in a limited area, the previous administration asked the attorney general for a read on the current language. [The attorney general] considered putting forward a best effort doctrine, but then concluded that the doctrine would open the state to additional liability. Under the narrow read, he explained, the term "natural resources and watersheds" does not allow the division to include human improvements on the landscape as one of the criteria during planning or actual fire suppression. The division is trying to fix this issue so structures can be considered in the decision-making process.

[1:37:29 PM](#)

CO-CHAIR GATTO surmised the term "value of the resources at risk" does not consider a structure as a resource.

MR. MAISCH answered that under the interpretation of the attorney general's office a structure was not considered a resource because of the language, "the natural resources and watersheds", which follows that first term. The attorney general felt this second term trumped the first and explained what resources was intended to be in the original statutory language.

[1:37:59 PM](#)

REPRESENTATIVE KAWASAKI asked what would be included under the term "values".

MR. MAISCH stated that "values at risk" is meant to be a holistic term and the common things that land and resource managers would include under the term are wildlife resource values, recreational opportunities and resources, human improvements, and a whole variety of things. The purpose is not to have a narrow definition that boxes in the division. It is meant to be holistic in how it is defined and the plan itself goes into detail about what is considered. It allows the land managers to determine what the most important values are on their state wildlife refuge or forest or general state land.

[1:40:01 PM](#)

REPRESENTATIVE KAWASAKI described a situation in which a destructive agent is a spruce bark beetle and a value is a job. Under Section 41.15.010, would it be the state's responsibility to provide protection in this scenario, he asked.

MR. MAISCH said this does not obligate the division to actually take an action. It allows the division to consider the range of actions that would be appropriate actions to take under a given set of circumstances. There are separate statutory guidelines on pest infestations that are under the forest practices statutes which are also listed in Section 41, he explained. These specifically address spruce bark beetles and other agents that will cause damage to both public and private forests. Those sections give the Division of Forestry the ability to enter onto lands to deal with infestations that are causing larger public harm, such as spruce bark beetles.

[1:41:22 PM](#)

CO-CHAIR GATTO inquired whether machinery like excavators and gold dredges would be considered differently than a physical structure like a home or business.

MR. MAISCH responded that in some of the policy it depends on whether it is a federal or state claim and whether the claim is converted to private land or still leased. To put it bluntly, he said, the policy gets fairly murky. It takes quite a bit of moxie to be a fire management officer and make these types of decisions. However, the division's goal as an agency is to make consistent, defensible decisions and this statute change will allow the development of criteria for looking at structures in

limited and modified areas and to conduct preplanning. If limited resources require the division to choose between protecting a whole community or the miner's equipment, the choice will be protecting the larger community where there are many more values at risk, he explained.

[1:43:06 PM](#)

REPRESENTATIVE ROSES said he likes the proposed language change because it would allow preplanning and the all-inclusive protection of values like pipelines and electrical interties. He said the term destructive agents gives him some concern, but there is probably an amendment in the making.

[1:44:47 PM](#)

CO-CHAIR GATTO asked whether Mr. Kurth worked the [1996] Miller's Reach fire.

MR. TOM KURTH, Fire Operations Forester, State Fire Operations, Division of Forestry, replied, "Negative." He said he spent his time in Fairbanks doing initial attack, but is familiar with the circumstances.

[1:45:28 PM](#)

CO-CHAIR GATTO inquired whether the state was sued [over the Miller Reach fire] because it did not act fast enough or properly enough.

MR. KURTH noted that the lawsuit was dismissed in the end. In all cases of fire fighting there is a certain amount of second guessing that takes place after the fact. He said he believes the circumstances of the case demonstrated that the Division of Forestry acted to the best of its ability to try to control the fire, and that given the circumstances - particularly the wind and weather - the actions were in the best interests of the division and the values at risk.

[1:46:51 PM](#)

CO-CHAIR GATTO said he is asking about the Miller Reach case because he is trying to determine whether the state is still liable when it tries its best even if that effort is imperfect.

MR. KURTH explained that on the initial attack, and prior to the wind event, the fire was subdued at about 65 acres and had a

containment line around it. However, it only takes a single ignition point and it came out of one side with the wind event. The state was sued over this, but prevailed because the fire fighters did the best job to their ability at the time. In further response to Co-Chair Gatto, he confirmed that the state did not settle and paid nothing.

[1:48:56 PM](#)

REPRESENTATIVE ROSES asked whether there was a distinction for Mr. Kurth between the term wildland fire and wildfire.

MR. KURTH said wildland fire is the accepted term most commonly used today.

REPRESENTATIVE ROSES inquired whether Mr. Kurth saw a potential future conflict if another bill were to use the term wildfire.

MR. KURTH answered that he thinks it should be cleaned up, but he does not see it as a conflict because both terms would be interpreted the same.

REPRESENTATIVE ROSES stated he does not think HB 370 needs to be amended, but that [HB 326] should be.

[1:50:00 PM](#)

GREGORY VICKREY, Executive Director, Tongass Conservation Society, spoke in general support of the concept of HB 370 based on his long conversation with Mr. Maisch as well as individuals in the conservation community. He appreciated the depth and breadth of the committee's concerns and looked forward to hearing the answers. He said he will be personally asking Mr. Maisch further questions and one of those questions is how the Division of Forestry would value a 120-year-old cedar tree. In general, he related, the Tongass Conservation Society supports the concept of responsible forestry practices management and believes this bill is driven towards that goal.

[1:51:19 PM](#)

JENNIFER YUHAS, Special Assistant to Fairbanks Northstar Borough Mayor Jim Whitaker, noted the committee should have in its packet a letter from Mayor Whitaker supporting HB 370. The wildland/urban interface with fire is not new to anyone on this committee - there was the Miller's Reach fire, the 2004 Interior fires, and the Caribou Hills fire on the Kenai Peninsula. She

said she accompanied some folks returning to the site of their recreational cabin on the Kenai where they had spent all of their holidays for the past 20 years. This is a real expectation that is part of the efforts that the Division of Forestry provides and our borough depends on, she said. Alaska is leading the nation in planning efforts for wildland fire and this bill helps keep that going and helps the division do the job it is expected to do.

CO-CHAIR JOHNSON closed public testimony after ascertaining that no one else wished to testify.

[1:53:43 PM](#)

MELANIE LESH, Legislative Liaison, Special Assistant to the Commissioner, Office of the Commissioner, Department of Natural Resources, stated that the Department of Law has reviewed the fiscal note, the history behind the definitions, and the liability issues and is preparing a fiscal note that will be submitted through the governor's legislative office.

CO-CHAIR JOHNSON asked whether the fiscal note will be zero.

MS. LESH related that she spoke to Deborah Behr [Chief Assistant Attorney General, Legislation & Regulations Section, Department of Law] about 20 minutes ago and that Ms. Behr said she is preparing and submitting a zero fiscal note.

[1:54:35 PM](#)

CO-CHAIR GATTO inquired whether the Department of Law had considered the significance of "other destructive agents" during preparation of the zero fiscal note.

MS. LESH advised that the destructive agents language was considered in the version of the bill analyzed by the Department of Law, but the question came up on too short a notice for the department to get to the hearing.

[1:55:11 PM](#)

CO-CHAIR GATTO asked whether destructive agents would include beetle kills in Ms. Lesh's opinion.

MS. LESH stated she believes this has been considered given Mr. Maisch's testimony, but she does not want to speak for the

Division of Forestry. She offered to get someone on line to speak to this directly.

CO-CHAIR JOHNSON said he intends to introduce an amendment to delete "destructive agents" so no calls are necessary.

[1:56:14 PM](#)

REPRESENTATIVE KAWASAKI surmised it would cost more to protect a structure than to dig a containment ditch to prevent the fire from jumping from one place to another.

MR. MAISCH responded that, generally speaking, single point structure protection is quite a bit cheaper than building a line and trying to contain a fire. If the fire is in a zone in which the division plans to do initial attack, the goal is to catch the fire when it is small and less expensive.

[1:57:15 PM](#)

CO-CHAIR GATTO inquired whether the division intends to incorporate fire ecology into its program of dealing with wildland fires.

MR. MAISCH replied fire ecology is already incorporated in great detail in the fire management plan. Even back in the mid-1980s the importance of maintaining fire on the landscape was recognized, especially in Interior Alaska which is a lightning-driven fire ecosystem. Fire is frequent in the Interior, and is important in maintaining the health of that ecosystem.

[1:58:17 PM](#)

CO-CHAIR GATTO asked whether the division might decide to let a fire burn in an area where that is deemed the best policy, even if there are one or two places within that area where this is not the best.

MR. MAISCH answered yes, the fire management plan gives the division that direction in a limited or modified area where it has been preplanned that there are not a lot of resources at risk or there are isolated resources. This statute will give the division more decision-making authority to be able to consider a remote structure in a limited protection area. The goal of limited protection is to allow fire to exist and burn in a natural state. So the division would monitor such a fire, and if it starts approaching a full or critical area, then the

division will take action from a site that makes sense such as along a river.

[1:59:54 PM](#)

REPRESENTATIVE ROSES related that he had just checked the full statutes referenced on page 3, line 1, and there is no mention of destructive agents, only fire, fire suppression, fire management, and fire planning. Liability and compensation directly related to fire are also addressed. He said he therefore agrees with the suggestion of an amendment.

[2:00:57 PM](#)

REPRESENTATIVE EDGMON inquired why line 13 on page 3 includes the prevention of fires but line 17 on that same page does not.

MR. MAISCH said the difference between the two is that [line 17] is qualifying damages because the state often seeks restitution if the fire is negligent, and when the state is seeking restitution the costs incurred would be for suppressing, controlling, or extinguishing. Prevention is a pre-suppression activity that the state undertakes and that would not be included in the damages for a negligent fire.

[2:03:37 PM](#)

REPRESENTATIVE WILSON asked whether it makes a difference when the division is suppressing a fire if the owners of a threatened structure have taken steps to keep brush removed from around the structure versus a structure where nothing has been done.

MR. MAISCH responded that it could potentially make a difference. The division calls this Firewise. Firewise is a statewide program to educate private landowners about ways in which they can improve the odds of their structure surviving a wildland fire, whether or not the division is there. In times of triage, the division will choose to defend a Firewise structure over the one that is not.

[2:05:11 PM](#)

REPRESENTATIVE FAIRCLOUGH requested Mr. Maisch to address how the division would value a 120-year-old cedar.

MR. MAISCH replied that in the heat of the moment the division does not typically get into making decisions about monetary

values. However, in the preplanning process, that is something that is taken into consideration. In regard to forest values from a commodity standpoint, such as a state forest or areas where there are timber sales or planned timber sales, that will be taken into consideration during the preplanning stage and could result in a higher level of protection for that area. Once there are no longer sales in an area, it would be moved back into a lower protection level.

[2:06:30 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired how deleting destructive agent would affect the division and would the rest of the statutes still adequately address pest control.

MR. MAISCH answered he does not see a reason for having other destructive agents in there, it could be from older statute language. Striking it here would probably not cause any problems in any of the other statutes such as the forest practices statutes. He said this term can include disease, such as blight, in addition to insect pests. He said Mr. Kevin Saxby may be better able to address the question.

[2:08:09 PM](#)

CO-CHAIR JOHNSON reiterated the question of whether deleting "other destructive agents" from HB 370 [page 3, line 2] would have any affect.

KEVIN SAXBY, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, said it could. This is language that has existed for a very long time in Title 41.15. It is in two places - under the authority to adopt regulations in 41.15.020 and in the right of entry to control and suppress fires under 41.15.040. If the term is taken out, he explained, the [Department of Natural Resources (DNR)] will lose its current authority to enter onto private or other properties and take action, even without the permission of the landowner, to suppress destructive agents. For example, a shipment of house logs could come in that harbors an invasive species and the landowner could refuse to take action; so DNR could decide to take action before the new pest spreads.

[2:09:57 PM](#)

CO-CHAIR JOHNSON asked how destructive agents relates to the statutes for wildland fire.

REPRESENTATIVE WILSON drew attention to page 3, line 10, and noted that existing statute does include the term destructive agent.

MR. SAXBY stated the term is in two places in existing law.

REPRESENTATIVE WILSON pointed out the second place on page 3, line 14.

[2:10:41 PM](#)

CO-CHAIR JOHNSON inquired whether Mr. Saxby recommends that the term "destructive agent" not be removed.

MR. SAXBY replied this is an authority the legislature gave long ago to the Department of Natural Resources. He said he is not aware that the department has adopted a lot of regulations dealing with other destructive agents, but he is saying it may become necessary in the future and this is something that should be thought about if the committee is going to narrow that authority.

[2:11:20 PM](#)

REPRESENTATIVE SEATON asked whether a hunter along a pipeline right-of-way could be considered a destructive agent. He said he trying to determine the parameters of what constitutes a destructive agent.

MR. SAXBY reiterated that this is existing language so he can tell the committee how it has been interpreted over the years, and it was not interpreted to mean people like hunters. "We would have interpreted it to mean forest pests and diseases, because the whole gist of this is protection of the forested land and its resources," he said.

[2:12:42 PM](#)

REPRESENTATIVE SEATON inquired whether there is a place in statute where destructive agent is defined as a pest or disease.

MR. SAXBY answered there is no definition.

[2:13:02 PM](#)

REPRESENTATIVE KAWASAKI asked whether a "greenie" could construe a destructive agent to be a timber company.

MR. SAXBY said no, because all existing laws have to be construed together and there is a major part of the laws governing the Department of Natural Resources in Title 41.17, called the Forest Resources and Practices Act, that makes it clear the timber industry is vital. In fact, there is statutory intent language in that act that talks about the vital importance of the timber industry and the two laws must be read as being equally applicable.

[2:14:03 PM](#)

REPRESENTATIVE KAWASAKI inquired whether it would be better to use the term "values of the resources and structural improvements" instead of just "values" [page 3, line 3].

MR. SAXBY responded that term might be too narrow. For instance, it could result in the question of whether a golf course or a reservoir should be considered a structural improvement. The idea was to broaden the scope by removing the adjective that limits it to natural resources and look at all resources.

REPRESENTATIVE KAWASAKI surmised the idea was to keep it as broad as possible.

MR. SAXBY replied yes, so that planning can take into account any public input on what local value might need to be protected.

[2:15:41 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether leaving the term "value of the resources" and only removing the term "for the natural resources and watersheds" would alleviate the limitation [page 3, lines 3-4].

MR. SAXBY answered that this could get into some of the concerns alluded to by Representative Seaton where someone could argue that the state is not limiting its focus to just protecting the forest and is supposed to protect some other broader scope. Those terms are what assure that an off-the-wall interpretation cannot occur.

[2:16:43 PM](#)

REPRESENTATIVE SEATON inquired whether there is any definition for destructive agent that could be included here to define the parameters that need to be included without the risk of unintended complications.

MR. SAXBY said he does not have a definition off the top of his head, but it would not be difficult to consult with Mr. Maisch and come up with something.

[2:17:34 PM](#)

CO-CHAIR JOHNSON noted he would like to move HB 370 out of committee today, but the term destructive agents also causes him concern and he would like a definition included if the term is left in the bill.

REPRESENTATIVE FAIRCLOUGH reminded the committee of earlier testimony where it was stated that destructive agents is specifically a forestry term for a destructive pest. Would this term be easily quantifiable in a definition, she asked.

MR. MAISCH explained that the term is used in other professions such as agriculture, and there are commonly accepted definitions based on the profession. In forestry, the term would mean insects and diseases and one could try to list them all, but it would be almost impossible to do that. For example, a few years ago there was the issue of whether the pine wood nematode was coming into Alaska or leaving Alaska in part of the export log shipments and this language gave the Division of Forestry the ability to address that issue. He said it would not be difficult to come up with an accepted definition that would put some sideboards on the destructive agent being restricted to forest and insect disease and pests.

CO-CHAIR JOHNSON held HB 370 to allow the sponsor the time to decide whether to delete or define the term.

HB 257-AQUATIC FARMING & HATCHERIES

[2:20:54 PM](#)

CO-CHAIR JOHNSON announced that the next order of business would be HOUSE BILL NO. 257, "An Act transferring duties relating to aquatic farming and hatchery operations from the Department of Fish and Game to the Department of Natural Resources, eliminating certain permit requirements applicable to aquatic

farming and hatchery operations, and directing the Department of Natural Resources to administer and supervise promotional and marketing work for aquatic farm products; and providing for an effective date." [Before the committee was CSHB 257(FSH)]

[2:21:20 PM](#)

JOHN BITNEY, Staff to Representative John Harris, Alaska State Legislature, explained that HB 257 was changed substantially in the House Special Committee on Fisheries. The issue of aquatic farming has been discussed for a number of years as aquatic farmers and agencies have tried to get this industry up and running, he said. Initially, the bill was an effort to transfer management functions from the Alaska Department of Fish & Game (ADF&G) to the Department of Natural Resources (DNR) because it was felt that DNR would be better able to manage this function. This was opposed by the administration, and in its stead ADF&G has taken some budgetary measures to beef up its management functions and oversight. The sponsor is hoping that those efforts will be successful and help this industry move forward.

MR. BITNEY said the bill was pared down to three sections and the intent of these sections is to qualify these products for the Alaska Grown program that is managed by the Department of Natural Resources, Division of Agriculture. Since these products are grown through mariculture - agriculture under the water - they would not fall under the purview of the Alaska Seafood Marketing Institute which focuses on wild caught seafood. It is hoped that the Alaska Grown program will help in the promotion and marketing of these products.

[2:25:41 PM](#)

MR. BITNEY pointed out that ADF&G's 2/19/08 fiscal note, prepared by Cynthia Pringham, and DNR's 2/19/08 fiscal note, prepared by the commissioner's, speak to the transfer of positions that were in the original bill. Since the sponsor does not want to transfer those functions and the bill no longer transfers those functions, the hope is that those notes can be zero. There is a fiscal note from the Division of Agriculture, he said, and the division would like to address the committee in this regard. If the committee chooses to adopt the Division of Agriculture's fiscal note, the bill will need a referral to the House Finance Committee.

[2:27:13 PM](#)

REPRESENTATIVE WILSON asked whether the sponsor is wanting to delete lines 2-3 on page 2.

MR. BITNEY said the sponsor supports leaving the bill intact as it is. The sponsor is asking to change the fiscal notes to zero because the bill no longer transfers functions between agencies. As currently written, CSHB 257(FSH) would simply qualify mariculture products for the Alaska Grown program. In further response to Representative Wilson, Mr. Bitney confirmed that mariculture would not be transferred to the Department of Natural Resources, only the promotion and marketing of aquatic farm products under the Alaska Grown logo.

[2:29:13 PM](#)

REPRESENTATIVE KAWASAKI inquired why product marketing would not fall under the Department of Commerce, Community, & Economic Development.

MR. BITNEY replied the Alaska Grown promotional marketing program is within the Division of Agriculture, Department of Natural Resources, and has been since he can remember.

[2:30:02 PM](#)

REPRESENTATIVE WILSON asked whether there was another time and bill in which aquatic farming was transferred from the Alaska Department of Fish & Game to the Division of Agriculture.

REPRESENTATIVE SEATON said that was the original HB 257 heard in the House Special Committee on Fisheries. The transfer language was taken out and only the Alaska Grown label designation remains for farmed seafood products.

[2:30:58 PM](#)

RODGER PAINTER, President, Alaskan Shellfish Growers Association, testified that the bill is necessary because statute modifications several years ago inadvertently changed the definition of products that DNR could include under the Alaska Grown program. There were already a dozen [mariculture] farms under the program using the label when DNR discovered it really did not have the authority to promote the products. The department grandfathered those farms in and allowed them to continue using the label, but DNR has prevented additional farms from coming under the program. So, this is really a technical amendment to give back the authority to DNR.

2:32:29 PM

REPRESENTATIVE KAWASAKI inquired whether Mr. Painter thinks the Department of Commerce, Community, & Economic Development would be a more appropriate department for marketing the Alaska Grown label.

MR. PAINTER answered that DNR is responsible for the production of agricultural products until they reach the marketplace. If there is a disease problem on the farms, DNR is responsible for it. Other agencies come into play after the products reach the marketplace. The Division of Agriculture is responsible for ensuring that the production is taking place in Alaska and the products are being produced in a healthy and safe manner.

2:34:03 PM

CO-CHAIR JOHNSON closed public testimony after ascertaining that no one else wished to testify.

The committee took an at-ease from 2:34 p.m. to 2:37 p.m.

2:37:27 PM

CO-CHAIR JOHNSON requested a defense of the fiscal note.

AMY PETTIT, Development Specialist, Inspection/Marketing Services, Division of Agriculture, Department of Natural Resources, stated that, due to staff shortages, the Division of Agriculture cannot serve the needs of this group without additional resources. Most of these farms are in remote areas that the division is not currently going to for other reasons. To verify that the farms qualify for the Alaska Grown program and that they meet the requirements of the program, the division needs to conduct site visits like it does for other members of the Alaska Grown program.

2:38:33 PM

CO-CHAIR JOHNSON asked how often the division would go to a farm in the Matanuska-Susitna Valley to inspect its potato crop.

MS. PETTIT responded that when new producers apply to the Alaska Grown program, the division takes their word that they are complying for the first year. Within a year of the application the division will try to inspect and confirm that a producer is

producing Alaska grown products and only using the Alaska Grown label on Alaska grown products that the producer is selling. The division has U.S. Department of Agriculture (USDA) inspectors on staff that do inspections in stores and on the farms for the division.

[2:39:25 PM](#)

CO-CHAIR JOHNSON inquired why the inspectors could not inspect the mariculture farms when they visit the other markets.

MS. PETTIT replied the division could more fully meet the needs of this industry if it had additional resources. As mentioned by Mr. Painter, at least 12 farms as well as an association had joined the program before, but the division did very little outreach or education with them and little promotion through grants because of discovering that the division did not have that authority. If the division had the resources, there are 40-50 producers just within Mr. Painter's association that could be contacted to join the program. Most of these producers are in remote locations that the division is not already visiting because there is no other agricultural production in that area.

[2:40:23 PM](#)

CO-CHAIR JOHNSON asked whether \$5000 would be enough for such travel.

MS. PETTIT answered she is unsure because her supervisor, Doug Warner, is the person who prepared the fiscal note.

[2:40:45 PM](#)

REPRESENTATIVE EDGMON commented that this is his question as well, given there are two positions in the fiscal note and 40-50 farms to inspect. He said he had interpreted this to be a labeling program rather than an inspection program.

[2:41:32 PM](#)

CO-CHAIR JOHNSON inquired how many inspectors are on staff now.

MS. PETTIT stated the division has two USDA inspectors, but it is not their job to inspect for the Alaska Grown program. That is her responsibility as the Development Specialist and she makes sure that applicants actually qualify for the Alaska Grown program. However, when the division's USDA inspectors are

already on site at a farm or in the grocery store, they also look at Alaska Grown products to make sure that the logo is only being used with qualified products. In further response to Co-Chair Johnson, Ms. Pettit said both she and the division's marketing assistant conduct farm visits, visit the farmers who are selling at farmer's markets, and visit stores to make sure that the logo is being used only on those qualified products that the division has approved the farmers for.

[2:42:30 PM](#)

CO-CHAIR JOHNSON asked how many producers are qualified for the label.

MS. PETTIT replied she just signed a letter today for authorized user number 360.

[2:42:41 PM](#)

CO-CHAIR JOHNSON commented that two employees are currently handling 360 producers and now the request is for one and one-half employees to handle 40 producers.

MS. PETTIT said that is a simplified way of looking at it. Those 360 have come into the program over the past 20 years and inspections are not conducted every single year. "We make sure people are staying within compliance of the logo restrictions as we're there - if we are already on a trip down to the peninsula we stop by and see as many Alaska Grown authorized users as we can while we go."

[2:43:12 PM](#)

CO-CHAIR JOHNSON asked why the fiscal note, which would carry into 2014, does not get any cheaper over the years.

MS. PETTIT reiterated she did not prepare the fiscal note so could not speak to it.

[2:43:26 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired whether the inspections are required by statute or regulation.

MS. PETTIT said the division was in the final stages of developing regulations for the Alaska Grown program when it stopped moving them forward due to the Alaska Grown lawsuit. In

further response to Representative Fairclough, Ms. Pettit confirmed that it is not in statute and it is not yet in regulations.

[2:44:36 PM](#)

REPRESENTATIVE FAIRCLOUGH surmised the statute does not require a mandatory visit. How is the division measuring the fiscal note in the timeframe needed for getting there and to have those in perpetuity as state employees, she asked.

MS. PETTIT said the division thinks the lawsuit is coming to a close at which time it will move forward with the regulations. The division would like to include the mariculture industry in those regulations and in its Alaska Grown promotion program.

REPRESENTATIVE FAIRCLOUGH presumed it is the division's recommendation to verify Alaska Grown in a future regulation and that is what is being based on this current fiscal note.

MS. PETTIT responded yes, if she understands the question.

[2:46:21 PM](#)

CO-CHAIR JOHNSON asked whether these positions were included in the governor's request for budget items.

MS. PETTIT replied she does not know.

CO-CHAIR JOHNSON noted that someone in the audience was vehemently shaking his or her head no. He expressed his concern about inflating the budget through fiscal notes and growing positions.

[2:46:55 PM](#)

CO-CHAIR GATTO understood the lawsuit was between the farmers and the state and the state won the right and obligation to protect the Alaska Grown label. This is what it will cost for the state to protect the label - inspections on all the products that fall under the auspices of the Alaska Grown label. He said it cannot be done for nothing and he is guessing that the fiscal note is because this is what the state wants to do.

MS. PETTIT agreed. The judge ruled in the state's favor on all counts in the lawsuit, she said, and the state is now waiting to see what the damage level will be. Alaska Grown is a 20-year-

old program that has been very successful when measured against programs in the other states. It does cost money to maintain this program. If another industry is added to the program it will cost money to conduct inspections, develop guidelines for the industry, and promote that industry at an equal measure of the other industries.

[2:48:31 PM](#)

REPRESENTATIVE FAIRCLOUGH accepted Co-Chair Gatto's statement about wanting to protect the Alaska Grown label. She said she is certain that if the governor thought the [360] current producers could not be managed inside the present budget the governor would have added something into her new budget or offered a supplemental. This fiscal note is attached specifically for having to visit the shellfish farms. If the division only has to visit a farm once to verify, then what is the issue and why does the fiscal note carry into [2014], asked Representative Fairclough. She said she is not trying to strike the fiscal note, just trying to understand why the numbers and the [staff] positions go forward instead of just a one time visit.

[2:50:08 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether there is a buy-in or fee associated with becoming a part of the Alaska Grown program.

MS. PETTIT answered no, at this time it is a no-cost, no-fee program for the producers.

[2:50:35 PM](#)

REPRESENTATIVE ROSES asked whether shellfish growers are currently required to have periodic tests for quality control and paralytic shellfish poisoning.

MS. PETTIT said she is uncertain about the current tests and inspections for that industry.

MR. PAINTER stated that his association's products are tested for paralytic shellfish poisoning by the Department of Environmental Conservation (DEC). The growing/harvesting waters are tested twice a year for cleanliness by DEC. Shellfish growers are subject to food safety rules under the U.S. Food and Drug Administration that are locally administered by DEC. All movements of shellfish products must be approved by the Alaska

Department of Fish & Game. The Department of Natural Resources has a person overseeing the leases who annually visits the farms. He said he thinks there are many ways of verifying that these products are Alaska grown through onsite verification by the DNR representative and Division of Mining, Land and Water, and a solid paper trail could be created. This could be done at very little cost and travel to the [Division of Agriculture], he said.

2:53:05 PM

REPRESENTATIVE ROSES commented that the Alaska Grown label clearly provides a marketing advantage and therefore has value. The jeopardy of losing that advantage by falsifying documents would encourage producers to stay within the parameters. He said it appears to him that the [mariculture] producers are already buried in paperwork with all the inspections that occur now and adding more paperwork and inspections seems redundant. He recommended the committee deal with just the bill and let the House Finance Committee deal with the fiscal note.

CO-CHAIR JOHNSON agreed with letting the House Finance Committee deal with it.

2:55:35 PM

REPRESENTATIVE SEATON understood that the 12 mariculture producers currently using the Alaska Grown label are already doing their own marketing. There was testimony that there would be promotional marketing of the farms by the state; however, he said he does not believe that is what is being requested here. What is being requested is to be able to use the Alaska Grown label and the producers will do their own marketing. He urged that the fiscal note address this issue as the bill goes forward.

REPRESENTATIVE FAIRCLOUGH inquired whether there would be more impact if the committee struck the position on the fiscal note rather than making a recommendation.

CO-CHAIR JOHNSON said the bill might not go to the House Finance Committee if the fiscal note is zeroed out. He said he will be conversing with the co-chairs of that committee regarding the aforementioned concerns.

2:57:48 PM

CO-CHAIR GATTO moved to report CSHB 257(FSH) out of committee with individual recommendations and the accompanying fiscal notes and forthcoming fiscal notes.

REPRESENTATIVE WILSON objected and suggested that committee recommendations be added to the motion.

CO-CHAIR GATTO moved to report CSHB 257(FSH) out of committee with individual and committee recommendations and the accompanying fiscal notes and forthcoming fiscal notes.

REPRESENTATIVE WILSON withdrew her objection.

There being no further objection, CSHB 257(FSH) was reported from the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:59 p.m.