

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 29, 2008

1:07 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Bob Roses

COMMITTEE CALENDAR

EXECUTIVE ORDER 114

Transfer Habitat Division from Department of Natural Resources
to Department of Fish & Game

- MOVED EO 114 OUT OF COMMITTEE

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."

- MOVED CSHB 370(RES) OUT OF COMMITTEE

HOUSE BILL NO. 352

"An Act relating to the appointment of members of the Board of
Game; and providing for an effective date."

- BILL HEARING CANCELED

HOUSE BILL NO. 367

"An Act relating to the sale of raw milk and raw milk products."

- BILL HEARING POSTPONED TO 3/3/08

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
02/27/08	(H)	Heard & Held
02/27/08	(H)	MINUTE(RES)
02/29/08	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

KERRY HOWARD, Executive Director
Office of Habitat Management & Permitting
Department of Natural Resources
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding Executive Order 114.

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

POSITION STATEMENT: Answered questions regarding Executive Order 114.

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

POSITION STATEMENT: Presented an amendment to HB 370 on behalf of the sponsor, Representative Kelly.

MR. 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 "CHRIS" MAISCH, Director, State Forester
Division of Forestry
Department of Natural Resources

Fairbanks, Alaska

POSITION STATEMENT: Provided information regarding HB 370.

ACTION NARRATIVE

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at [1:07:17 PM](#). Representatives Seaton, Guttenberg, Kawasaki, Gatto, and Johnson were present at the call to order. Representatives Fairclough, Wilson, and Edgmon arrived as the meeting was in progress.

EO 114-TRANSFER HABITAT DIV FROM DNR TO DFG

[1:07:28 PM](#)

CO-CHAIR JOHNSON announced that the first order of business was Executive Order 114 which would transfer the Office of Habitat Management & Permitting from the Department of Natural Resources to the Alaska Department of Fish & Game. He explained that an executive order is like a confirmation hearing. The only thing the committee can do is reject it, at which time the committee would ask Legislative Legal and Research Services to draft a concurrent resolution that would go before the full body.

[1:09:10 PM](#)

REPRESENTATIVE KAWASAKI understood that Executive Order 114 (EO 114) transfers the [Office of Habitat Management & Permitting] from the Department of Natural Resources (DNR) back to the Alaska Department of Fish & Game (ADF&G). Were any changes or modifications made along the way, he asked.

KERRY HOWARD, Executive Director, Office of Habitat Management & Permitting, Department of Natural Resources, explained that executive orders are only able to change assignment of statutes, not the substance of statutes. So, no, there are no changes in the statutory authority. There were a few amendments in who was assigned what when it came to DNR and those are being changed and replaced when it goes back to ADF&G.

[1:10:01 PM](#)

REPRESENTATIVE KAWASAKI surmised that EO 114 would basically just undo everything that was done when the habitat division was originally moved from ADF&G to DNR.

MS. HOWARD responded correct.

[1:10:16 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to what exactly is [the committee's] role and responsibility in dealing with an executive order.

MR. KEVIN SAXBY, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, said Co-Chair Johnson stated the procedure correctly - the legislature has the ability to reject an executive order.

[1:11:07 PM](#)

REPRESENTATIVE FAIRCLOUGH directed attention to Governor Palin's 2/12/08 letter to Speaker Harris, page 2, last paragraph, which states: "Section 39 of the Order adds a section to the uncodified laws of the State of Alaska to protect the retirement status of certain former Department of Fish and Game employees who were transferred by Executive Order 107 to the Department of Natural Resources, and who may now be transferred back to the Alaska Department of Fish and Game." Is the state incurring additional costs to its retirement system by making the move back, she asked.

MR. SAXBY noted that he drafted EO 114 as well as EO 107, which was the original transfer under the Murkowski Administration. The language being discussed was present in EO 107 in the first place, so, in essence, this is the standard provision for this particular topic. When Governor Murkowski transferred the division to DNR, there were a number of ADF&G personnel who were peace officers and had rights under a certain retirement system and they would have lost those rights had this uncodified section of the laws not been included. In EO 107 this maintained the legal status quo. In EO 114 this language again assures that the status quo is maintained. There is no increase in costs, it is just keeping the few remaining people, who have now gone through this twice, in the same status they were in before it ever happened the first time.

[1:14:01 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired why the provision is needed as a new section if it is returning things to the way the old statute was originally.

MR. SAXBY pointed out that this is uncodified law, so it is not in the statutes anywhere. The reason it was done the first time is because people would have lost retirement status had the state not maintained that. The legislature had the opportunity to reject that particular change but did not. Now, because these employees are again shifting between departments, they again might lose some kind of retirement status. This ensures that will not take place.

1:15:30 PM

CO-CHAIR JOHNSON stated there is no public testimony for EO 114.

1:15:44 PM

REPRESENTATIVE WILSON requested an explanation of the language on page 1, lines 7-[11], of the EO which states: "To restore the statutory balance between stream preservation and forest stewardship, the role currently assigned to the state forester in the division of forestry, Department of Natural Resources, is transferred back to the commissioner of natural resources under AS 41.17 (Forest Resources and Practices Act)."

MR. SAXBY explained that when the Forest Resources and Practices Act was originally adopted it had a statutory balance between the commissioner of ADF&G who had certain assigned functions and the commissioner of DNR who had other assigned functions. When the habitat division was transferred to DNR under EO 107, the statutory balance between those two co-equal officials would have been altered had a new position not been created, which was the deputy commissioner at DNR, just for the purposes of absorbing the former duties that the ADF&G commissioner had. For the purposes of administration of habitat division functions, that deputy commissioner was essentially equal to the DNR commissioner. Because that position is no longer necessary with the restoration of these functions to the authority of the ADF&G commissioner, the normal DNR authorities are being transferred back to the DNR commissioner.

1:18:16 PM

REPRESENTATIVE WILSON understood that when the transfer took place originally, an extra person was needed.

MR. SAXBY responded, "Exactly."

REPRESENTATIVE WILSON asked why not get rid of the extra person.

MR. SAXBY replied, "We are, but the statutory language has to be changed to reflect that that is what we are doing."

[1:18:45 PM](#)

REPRESENTATIVE SEATON inquired whether the EO would just stay in committee if no action was taken to forward it on.

CO-CHAIR JOHNSON said that is his understanding.

MR. SAXBY confirmed that this is his understanding as well.

CO-CHAIR JOHNSON stated it is his intention to move EO 114 out of the committee.

[1:19:35 PM](#)

CO-CHAIR GATTO cited the procedural memorandum from Chief Clerk Lowell which states that unless EO 114 is disapproved by a special concurrent resolution, it becomes effective in 60 days.

CO-CHAIR JOHNSON said this is also his understanding, but he would like to move the order out of the committee.

CO-CHAIR GATTO, in response to Representative Guttenberg, confirmed there is no floor action on the order.

CO-CHAIR JOHNSON clarified that no floor action is the case unless there is a concurrent resolution to disapprove the order.

[1:20:58 PM](#)

REPRESENTATIVE WILSON moved to report EO 114 out of committee with individual recommendations and the accompanying fiscal notes.

CO-CHAIR JOHNSON objected for further discussion purposes.

[1:21:12 PM](#)

REPRESENTATIVE SEATON asked where the order goes after it is moved out of the House Resources Standing Committee.

CO-CHAIR JOHNSON answered it goes to the possession of the clerk unless some other committee or individual wishes to object

through a concurrent resolution. It would become law on April 12 [2008].

REPRESENTATIVE SEATON inquired what the appropriate way is for committee members to signify that they do not wish for the order to be overturned.

CO-CHAIR JOHNSON said the committee report would either approve, disapprove, or attach a concurrent resolution.

REPRESENTATIVE SEATON asked whether the motion should then be one of the three aforementioned actions.

CO-CHAIR JOHNSON responded the language suggested by Legislative Legal and Research Services is: "I move the House Resources Standing Committee approve Executive Order 114."

[1:23:34 PM](#)

REPRESENTATIVE SEATON requested a restatement of the motion.

REPRESENTATIVE WILSON withdrew her previous motion. There was no objection.

REPRESENTATIVE WILSON moved that the House Resources Standing Committee approve Executive Order 114. There being no objection, EO 114 was approved.

HB 370-PROTECTION OF FORESTED LAND

[1:24:40 PM](#)

CO-CHAIR JOHNSON announced that the final 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."

[1:24:59 PM](#)

DEREK MILLER, Staff to Representative Mike Kelly, Alaska State Legislature, reminded the committee that HB 370 would allow the Department of Natural Resources, [Division of Forestry], to consider cabins, lodges, and other private structures when suppressing fires. The bill would also change the term "forest fire" to the more modern term "wildland fire". The committee

had previously asked the sponsor to either delete the term "**other destructive agents**" or define it. The amendment before the committee is the sponsor's attempt to define the term.

MR. KEVIN SAXBY, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, in response to Co-Chair Johnson, noted he helped with the [amendment] language.

[1:26:14 PM](#)

MR. MILLER recounted the committee's concern regarding how far the term "**destructive agents**" went and whether it was too vague and whether defining it would be too strict. He said this amendment tightens it up a little bit by defining the parameters of what the term includes in order to not have the risk of unintended consequences. The preference is to define the term with the language that is before the committee. The concern is that if the term is taken out of the bill, the department could lose its current authority to enter private or other property to suppress destructive agents.

[1:27:23 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 1, labeled 25-LS1359\C.1, Bullock, 2/28/08, as follows [original punctuation provided]:

Page 3, line 19, following "(2)":

Insert "**destructive agent**" means an insect,
pathogen, or other environmental agent that causes
damage to a forest resource;
(3)"

Page 3, line 21:

Delete "(3)"

Insert "**(4)**[(3)]"

CO-CHAIR GATTO objected to Amendment 1. What would the term "**forest resource**" include, he asked.

MR. SAXBY responded it certainly includes wood. There is some discussion in Title 41, the Forest Resources and Practices Act, about the various forest resources. Some of those other resources include other types of vegetation and less tangible things like recreation or watershed protection.

[1:28:50 PM](#)

CO-CHAIR GATTO inquired whether a cabin is a "forest resource".

MR. SAXBY replied no, a cabin would not be interpreted to be a "forest resource". What is trying to be gained under some of the earlier changes in that section is the ability to consider cabin protection.

[1:29:17 PM](#)

CO-CHAIR GATTO said he sees having the right to enter upon private property to protect manmade resources as beneficial. However, he is having a difficult time in regard to protecting against destructive agents. Would the term "environmental agent" be natural only or also include manmade, he asked.

MR. SAXBY replied he is unsure what the final language before the committee is because he has been out of the loop today. However, when he left the discussion, the effort was to be dealing with largely natural agents, not directly with humans. The attempt was to exclude some of the concerns raised during the last hearing about regulating humans. Some of the environmental agents that could be destructive of forest resources might include things that are created by humans, for example pollution.

CO-CHAIR JOHNSON read Amendment 1 to Mr. Saxby.

MR. SAXBY said that was the language he was dealing with when he left the discussion.

[1:31:12 PM](#)

CO-CHAIR GATTO expressed his concern that if a "forest resource" were to include some manmade object and an "environmental agent" included a man, then it could include things like vandalism, avalanche, floods, and bugs. He said he does not think the state should get itself actively involved in a lawsuit because this language could be interpreted by a person who has some interest in protecting whatever he or she brought into the forest and is now insisting upon some activity by the state that creates a legal issue if the state does not do it. If he knew exactly what was wanted in this bill - that is the ability to enter upon land to protect natural resources that were already there - then he does not mind putting in that language, he said. However, he sees too much more here.

MR. SAXBY answered that he thinks what was just stated is exactly what the goal of that language is. The word "environmental" was inserted so people would not be able to claim that the state would be regulating vandals or humans. The terms insect, disease, and other environmental agents make it clear that what will be regulated are things that are already there that are threatening the forest and products derived from the forest. There is not any intent to enter land to protect a structure or a building under the particular authority that is being looked at, except in the course of protecting natural resources in circumstances like fighting a fire.

MR. MILLER said this is updated terminology and it is not an attempt for DNR to become police or to consider hunters as a "destructive agent". According to testimony at the last hearing [2/27/08] people would not be considered a "destructive agent". This is modern terminology that is trying to be incorporated, as it relates just to forest pests and diseases.

[1:34:27 PM](#)

CO-CHAIR GATTO said he is concerned the state could end up buying a house for a cabin owner who successfully asserts that fire fighting efforts resulted in adjacent forest or stream destruction. Fire suppression efforts could result in bringing in an agent that is not natural to the forest. Somebody will be affected and make a demand from the state, he said, and he is trying to get past that. If the state only wants to enter private or other land for the purpose of protecting the land, then that can be put into the bill.

[1:36:23 PM](#)

JOHN "CHRIS" MAISCH, Director, State Forester, Division of Forestry, Department of Natural Resources, explained that insects and pathogens are a portion of the Forest Resources and Practices Act, the statute addressed by HB 370. He said he looks at this definition as two parts when read in context with the language on page 3, line 2, which states, "from wildland fire and other destructive agents". The [first part] is that the state has authority to enter private land for "wildland fire" purposes to either suppress initial starts or to provide protection from wildland fires. The planning process guides the Division of Forestry on whether any given structure will be protected. The second part is in regard to "other destructive agents" and a "destructive agent" could be bark beetles or a

number of pathogens such as invasive insects or invasive plants. The purpose of this second portion is to provide some latitude to the division for something that cannot be anticipated, Mr. Maisch said. Another example of a "destructive agent" could be drought with the subsequent result of trees dying and creating a fire hazard that a landowner refuses to do anything about. In this case, the division could take action to reduce that risk. It is difficult to pin down all the circumstances that might be encountered, so the idea is to provide enough latitude to address the issues that are encountered, yet still provide clear direction under this statute that it is forest resources.

[1:38:53 PM](#)

CO-CHAIR JOHNSON surmised that HB 370 would give the Division of Forestry additional authority because now it could enter private property for things other than a fire.

MR. MAISCH responded no, it is not additional authority because the division has the authority right now under the forest practices portion of this statute.

CO-CHAIR JOHNSON asked why, then, does it matter if "destructive agents" is taken out.

MR. MAISCH replied, "Because it refers to 'destructive agents' in that portion of the statute." This is the portion of the statute that gives the division the authority to enter both for fire and other destructive agents. Destructive agent would have to be deleted from the forest practices section of the statute which then could cause problems from the forest practices statute. Water quality and fish habitat are two of the key things that the Forest Resources and Practices Act regulates, he said. The act gives the division the authority to enter onto private lands to ensure that the best management practices are being put in place. This is where the division has the authority to enter private land for both aspects that are being discussed - fire and forest practices.

MR. SAXBY provided an example: If a shipment of logs infested with gypsy moths was to come in right now, DNR would have the right under existing authority to enter private property to protect against other destructive agents and can go in and do whatever is necessary, such as setting fire to the logs. If the other destructive agent language is removed, DNR will no longer have that authority.

[1:41:05 PM](#)

CO-CHAIR GATTO inquired whether torching the logs with the purpose of eliminating a pathogen is an issue that would require the state to defend itself.

MR. MAISCH answered that someone can always file a claim, but under the statute providing this authority there is a process that must be gone through. He used Mr. Saxby's aforementioned example to explain that the landowner would be notified that there is an issue and asked to correct the situation. There would be a process and the last resort would be for the department to actually enter and take care of the problem and for which the department would bill the landowner. He said that in his years of working for the division and the years he has been in this profession in Alaska, he is not aware of any case being successfully brought against the state for damages.

[1:43:09 PM](#)

CO-CHAIR GATTO asked why not just change [forest] fire to wildland fire if there has never been a problem.

MR. MAISCH clarified that he meant the state has never had a problem in terms of actually losing a case that has been brought against the state for damages. There have been problems where the state had to enter lands to take care of situations like those being discussed.

[1:43:39 PM](#)

REPRESENTATIVE KAWASAKI inquired whether a destructive agent can cause damage to something other than a forest resource, such as a cabin.

MR. MAISCH responded that, as it is defined here, a destructive agent is targeted at a forest resource. In the aforementioned example of drought, the trees died, became a fuel risk to a structure, and the structure was then threatened as part of the effect of the destructive agent. Another example might be an insect that breeds in logs that have been brought into a property and then fly to other private property or public lands and create damage to crops or trees.

[1:44:57 PM](#)

REPRESENTATIVE KAWASAKI noted that HB 370 has been described as providing the ability in the decision-making process to put resources where there are homes in the case of fire. Would that be prevented if the term "and other destructive agents" is added in Section 3 but not defined until Section 5, he asked.

MR. MAISCH commented it is unfortunate that both forest practices and wildland fire are being addressed at the same time because it is hard to keep the two completely separate. For the fire aspect, HB 370 would definitely give the state the authority to include human development - structures, roads, bridges, and whatever it might be - in the pre-planning decision-making process that would allow the state to say this structure should be protected should there be a wildland fire that threatens it. However, there is always operational considerations from a fire fighting standpoint that may prevent the protection of that structure. There will frequently be times when structures cannot be protected from wildland fire, he advised, and he does not want to give the false impression that this gives the department the authority to protect structures anywhere and everywhere from wildland fire because that it is not what it does. It does give the department, in the decision-making process, a stronger ability to include that as part of the criteria for why a structure would be protected.

[1:46:50 PM](#)

CO-CHAIR GATTO contended the department has the authority, but is simply making the decision to not exercise the authority.

MR. MAISCH replied that under the narrow read of the statute right now, the department does not have the authority to actually protect a structure. However, through the Alaska Interagency Fire Management Plan and the planning process, [the division] protects communities and other resources. The issue is when it gets into limited and modified protection zones where there are often structures or groups of structures around a lake. [The division] would like to update its atlases to show where those structures are and, through the planning process, determine whether there is something that [the division] can or should protect depending on the circumstances. However, the way the statute currently reads, [the division] cannot do that right now. Because planning cannot be done ahead of time, [the division] finds itself trying to do this at the time of the fire. One of the first things considered in that process, is whether human life is threatened. In the case of the Wild Lake fire, people got the idea that if they went to their cabins the

cabins would then be protected. [The division] would like to design a process so that everyone is treated exactly the same way as far as structures in limited and modified areas.

[1:49:02 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired whether it is standard forestry or wildland fire practice to notify landowners prior to entering their property in those cases where it is known that the property owner is susceptible to damage.

MR. MAISCH answered yes, in forest practices there is a process called Notice of Violation. There are different levels of that depending on how much risk or damage is being done to a resource and it can range all the way up to a stop-work order with heavy civil fines. [The division] also has citation authority and has undertaken criminal prosecution for habitat damage to fish streams.

[1:49:51 PM](#)

REPRESENTATIVE FAIRCLOUGH spoke in favor of Amendment 1 because "destructive agents" is not a new term and already exists in current statute, AS 45.15.040, so this conversation regarding "destructive agents" has already occurred before. What is being changed is still in Chapter 41, AS 41.15.010, which is the intent. For example, in Anchorage there are many out-of-state homeowners who own large parcels of land that have been infested and killed by a destructive agent, the spruce bark beetle, and neighboring homeowners do not have the authority to cut down this fire hazard because it would be trespassing. This would provide the department the opportunity to save someone else's house if someone chooses not to address the issue on their property, she surmised.

MR. MAISCH said he followed Representative Fairclough's chain of logic and it is correct. However, the division does not have the resources to usually go to that level of service to the public. It would be only in very drastic situations where there is a great risk of public safety. In further response to Representative Fairclough, he confirmed that the aforementioned example of logs coming in is a good example. Another example is when utilities clear a right-of-way and leave the slash without properly treating it, the beetles infest it, then exit, and then go to standing green timber.

[1:53:18 PM](#)

REPRESENTATIVE FAIRCLOUGH commented that the issue of wildland fire is acceptable to her, but the right of entry onto someone else's property or using the environmental agents or damaged resource to somehow stop other things is troublesome. However, she said she believes the history of the department has been well represented in trying to protect people's property and now [the division] is asking to plan for that.

MR. MAISCH responded, "Correct, we are asking for the ability to do better planning with regard to the fire aspect of this, not the destructive agents aspect, so to speak."

[1:54:06 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether Mr. Saxby believes there is any other unintended consequences that this committee is concerned about in regard to access to somebody's personal property versus the risk.

MR. SAXBY replied no, he does not think so.

[1:54:28 PM](#)

CO-CHAIR GATTO said he does not have a problem with [the division] entering upon private property for the purpose of extinguishing a fire or removing a threat. Is there a situation where it would be better for the legislature to allow [the division] to do it, he inquired. He said he is concerned that if a statute does not simply say allow, a person could then be able to demand.

MR. SAXBY answered the current statute is a discretionary statute and Representative Fairclough just referred to the authority that already exists to enter onto private property. It is an allowed type of situation, not a mandate to do so.

[1:55:27 PM](#)

CO-CHAIR JOHNSON asked whether other destructive agents exists in other areas.

MR. SAXBY said yes, he believes so. In further response to Co-Chair Johnson, Mr. Saxby confirmed it does exist in current statute and Representative Fairclough just pointed the committee to some of the language.

CO-CHAIR JOHNSON clarified he meant that [destructive agent] does not exist in AS 41.15.010.

MR. SAXBY responded correct, in that one section it does not exist and it does exist in two other sections in Chapter 15.

[1:55:57 PM](#)

CO-CHAIR JOHNSON inquired how not including [destructive agent] in this chapter would negate the other places that it exists since it does not exist there now.

MR. SAXBY replied he may have misunderstood what was being talked about before. He said he thought the committee was talking about eliminating [destructive agent] from everywhere in AS 41.15. If the committee is just talking about eliminating [destructive agent] from the very first section in AS 41.15, then the department would be prevented from planning ahead of time what it might need to do in the face of a destructive agent. [The division] is asking for planning authority, it already has the right-of-entry authority.

[1:56:50 PM](#)

CO-CHAIR GATTO asked whether [the division] would be disallowed from planning unless a change is made.

MR. SAXBY answered that the intent language is what DNR relies on when it engages in its fire planning, for example. It would be the same situation if DNR were to engage in planning for means of addressing "**other destructive agents**" like pests or diseases.

[1:57:24 PM](#)

CO-CHAIR GATTO read Amendment 1 aloud and asked whether "**insect**" and "**pathogen**" would be included in "**environmental agents**".

MR. SAXBY said correct, that is why the term "**other**" is used.

CO-CHAIR GATTO inquired whether there could be a non-environmental agent that could be excluded by using this language.

MR. SAXBY responded that Co-Chair Gatto is correct that the term "**agent**" or "**environmental agent**" would cover the preceding two terms. However, it was sensed from the last hearing that the

committee wanted a fairly specific definition that would provide guidance on the types of areas where this authority would be extended to, while limiting it to areas that seemed a bit off-the-wall. The wishes of the committee were trying to be met by setting forth two specific examples at the beginning - "insects" and "pathogens" - which are clearly not human, and then giving a catch-all phrase at the end that was still somewhat limited and was also intended to not cover humans.

[1:59:22 PM](#)

CO-CHAIR GATTO asked whether the word "environmental" excludes anything.

MR. SAXBY replied the term "environmental" was used because it was not intended to convey the impression that humans might be the type of agents that would be controlled, so the term environmental was used. He supposed the term non-human could have been used, but seemed a bit much.

[1:59:58 PM](#)

CO-CHAIR JOHNSON surmised that no planning was currently being done for destructive environmental agents.

MR. MAISCH said in some circumstances, like the bark beetle outbreak on the Kenai Peninsula, there was response planning done, but no pre-planning. Efficiency is improved with pre-planning over reacting to a given situation.

[2:00:33 PM](#)

CO-CHAIR JOHNSON inquired how there could be pre-planning for someone bringing in a bunch of logs with insects.

MR. MAISCH explained that a response plan could already be put together in terms of who would need to be notified if there are any special permits that needed to be obtained before taking action. It could involve insecticides or a number of different ways to potentially treat and deal with the issue. Essentially, it would be a response plan similar to what would be written for an oil spill or other man-caused disasters. [The division] does not typically engage in a lot of that work right now for things other than fire, but it is not out of the question.

[2:01:11 PM](#)

CO-CHAIR JOHNSON asked why additional planning has a zero fiscal note.

MR. MAISCH answered he does not anticipate that [the division] would take on additional planning functions for destructive agents because those are usually dealt with as a response plan. However, if [the division] had the resources and the manpower, this would give the authority to do that.

[2:01:34 PM](#)

CO-CHAIR JOHNSON inquired whether the resources are not money.

MR. MAISCH responded it would be a position that would eventually translate into money, but [the division] is not proposing as part of this to undertake separate planning functions for destructive agents.

[2:01:52 PM](#)

REPRESENTATIVE FAIRCLOUGH noted that federal money was made available at different points in time for the state to combat the spruce bark beetle, but there is not an opportunity for the state to use that grant money for planning purposes under current state statute. She surmised that right now the funding is not available for determining where cabins are located.

MR. MAISCH replied that large urban areas and boroughs have active programs as a result of property taxes and good land records, but in rural areas it is very difficult to track structures because there are no recording requirements when someone subdivides or sells a piece of property. During a fire season [the division] flies different sections of a fire zone at which time any new structures that are seen are mapped. Under HB 370 [the division] would then be allowed to pre-plan and decide whether those structures would potentially merit protection. The fire aspect of this is what [the division] really wants to undertake as part of this statute change, he stressed. [The division] already has the staff that does this and HB 370 would essentially provide the statutory authority to do [the pre-planning].

[2:04:11 PM](#)

CO-CHAIR JOHNSON stated the committee is wrapped around the destructive agent aspect, not the fire aspect. No one is saying

[the division] should not be allowed to catalog cabins and structures.

REPRESENTATIVE SEATON discussed the blow down in a small area near Cooper Landing where spruce bark beetles started to invade. The process took so long and there was no plan and the beetles spread so far they could not be contained. There was a large contingent of Alaskans who felt that needed to be addressed in a hurry, and without any pre-planning it did not get addressed in a hurry. He pointed out that the committee recently passed a bill regarding invasive weed control [HB 330]. However, if there is no authority to deal with "other environmental agents" which includes invasive weeds, then it seems like the committee is expressing its concern by passing one statute while not giving the [Division of Forestry] the authority to take care of invasive weeds before they spread. He said he is satisfied with Amendment 1.

CO-CHAIR JOHNSON stated there was a fiscal note for [HB 330], but no fiscal note for HB 370.

REPRESENTATIVE SEATON said correct, but HB 370 gives [the Division of Forestry] the authority to operate under the other statute that was passed [HB 330], it does not say the division has to do something.

[2:07:08 PM](#)

CO-CHAIR GATTO asked whether there is any mechanism in place for checking the source of wood products and whether they come from a pest- or pathogen-infested area, such as cabin logs from areas in British Columbia that are infested with the mountain pine beetle.

MR. MAISCH answered not that he is aware of, unless there is inspection under an agricultural program. Generally, the logs for kit structures are kiln dried, a process that takes care of pathogen and insect issues. But, it would be a different story for green logs, and this is what Mr. Saxby was talking about in his earlier example of insect-infested logs shipped into Alaska and [the division] having the authority to deal with that. In the case of mountain pine beetles, it would not be an issue for Alaska because Alaska has spruce, not pine. However, the mountain pine beetle is all across the Rocky Mountain states and is a disaster worse than the Kenai Peninsula.

[2:09:08 PM](#)

CO-CHAIR GATTO moved that the committee adopt an amendment to Amendment 1 to strike the word "environmental".

REPRESENTATIVE FAIRCLOUGH objected to the amendment to Amendment 1.

REPRESENTATIVE SEATON objected to the amendment to Amendment 1.

MR. SAXBY, in response to Co-Chair Johnson, said he does not see a problem with the amendment to Amendment 1.

MR. MAISCH, in response to Representative Fairclough, informed the committee that two definitions had been considered. One had the word "environmental" in it and one had that word struck. As explained by Mr. Saxby earlier, the thinking was that the word "environmental" helped frame what was interpreted to be the committee's intent that there be sideboards on what was meant by destructive agent in reference to this statute. He could live with Amendment 1 being either way, he said.

[2:10:54 PM](#)

REPRESENTATIVE FAIRCLOUGH commented that she objected because in the committee's previous discussion the thought was that it would be too broad. Without the word "environmental", a lawsuit could come in that is outside of what is being talked about as an insect or a pathogen or something that is attacking the forest. She said she likes the tighter language so snow machines or something else that is motorized cannot be interpreted as attacking the forest.

REPRESENTATIVE SEATON said he had asked for a specific definition to make it clear that the committee is not talking about hunters walking along the pipeline or people riding snow machines or four-wheelers. He said he wants to ensure that the DNR police force for human activities cannot be considered part of this statute and that is why he objects to removal of the term "environmental". The intention of this is not to regulate people activities, it is strictly looking at insects, pathogens, noxious weeds, and those kinds of agents.

REPRESENTATIVE WILSON stated she wants to leave in the word "environmental" because it narrows it down; otherwise it is just too broad.

[2:13:12 PM](#)

CO-CHAIR GATTO inquired whether the ability is wanted to close a trail that is eroding into a stream because of four-wheelers.

MR. SAXBY responded DNR has those authorities in other titles.

CO-CHAIR GATTO withdrew the amendment to Amendment 1, and withdrew his objection to Amendment 1.

There being no further objection, Amendment 1 was adopted.

CO-CHAIR JOHNSON announced the bill is now before the committee.

[2:14:45 PM](#)

REPRESENTATIVE WILSON directed attention to the language on page 3, lines 9-10, which states, "to prevent, control, or suppress **a fire** [FIRES] or a destructive **agent** [AGENTS]", and to the language on page 3, lines 13-14, which states, "preventing, suppressing, or controlling **a wildland fire** [FOREST FIRES] and a destructive **agent** [AGENTS]." She asked if the word "and" should be changed to "or".

CO-CHAIR JOHNSON agreed.

MR. SAXBY, in response to Co-Chair Johnson, confirmed he did not have any trouble with making that change.

[2:15:44 PM](#)

REPRESENTATIVE WILSON moved that the committee adopt Amendment 2 as follows:

Page 3, line 14, after "[FOREST FIRES]":
Delete "and"
Insert "or"

There being no objection, Amendment 2 was adopted.

CO-CHAIR JOHNSON announced the bill is now before the committee.

[2:16:00 PM](#)

REPRESENTATIVE KAWASAKI asked what types of protection would be provided as directed under the intent language on page 3, lines 1-2.

MR. MAISCH responded protection could mean a number of things, but in context with wildland fire it could be simply protection of life, which is usually the first consideration, so it could be an evacuation from a remote or urban location. Circumstances could mean protection of structures, which in turn is protecting life that might be on site.

[2:17:09 PM](#)

REPRESENTATIVE KAWASAKI specified he meant prevention of a wildland fire.

MR. MAISCH said a prevention activity might be the Firewise Program where [the Division of Forestry] works with a landowner, visits the residence, and makes recommendations to do certain things with the fuels that might be around the structure, and other recommendations that would make it easier to protect the structure if it was threatened by fire. It is often difficult to take an engine into many locations because there is no turn around at the end of a long, narrow driveway that has heavy fuels on both sides.

[2:18:06 PM](#)

REPRESENTATIVE KAWASAKI inquired about prescriptive burns.

MR. MAISCH replied prescribed fires go through a lengthy planning process and are usually used in more remote areas of the state. Mechanical fuel treatments are used in areas of the state where there is higher risk due to proximity to high concentrations of structures.

REPRESENTATIVE KAWASAKI asked whether selective timber sales would be considered one method of providing protection.

MR. MAISCH answered yes, there is a wide array of things such as mechanical fuels treatment. Timber sales can also reduce fuels. Public education can provide protection and [the division] does a lot of this.

[2:19:16 PM](#)

MR. MAISCH, in response to Co-Chair Gatto, stated the spruce tree is not a host for the mountain pine beetle, so it does not attack the spruce tree. There are several different types of spruce beetle in Alaska.

CO-CHAIR GATTO asked whether a standing dead tree loses its value as a timber product after three years.

MR. MAISCH said it depends. Trees are still being harvested from the 1990 Tok fire. When kept on the stump value is actually added because the tree dries out and does not have to be kiln dried. The salvage opportunity is much longer in the Interior than it is in a wetter climate. Rapid decay begins once the tree is cut into shorter pieces or breaks off the stump and falls to the ground, like what is happening on the Kenai Peninsula right now. Fairly quickly, it could be used for fiber, wood chips, or a wood fuel, but not for a solid wood material. In further response to Co-Chair Gatto, Mr. Maisch stated that three to five years is a rough rule of thumb for the length of time for mills to use [the standing dead trees] for lumber. He said [the Division of Forestry] has special authorities to significantly shorten the planning process for beetle-kill salvage sales.

REPRESENTATIVE WILSON noted that with only 11 inches of rainfall, Tok is considered an arid region and that is why [standing dead timber] lasts a lot longer there.

[2:22:43 PM](#)

REPRESENTATIVE KAWASAKI stated he does not have a problem with destructive agents. However, he does have trouble with "values" in the intent language on page 3. He understood it is supposed to be broad, but said it is too vague in his opinion. He inquired whether the language should state "the value of resources and structural improvements" because land improvements are defined in the statutes.

MR. MAISCH responded that the division tries to avoid narrowly defining "values" because it can quickly become a judgment call about a particular value. The fire management plan gives some broad guidance into how pre-planning for response should be done. [The division] has always shied away especially from monetary values because the cost of suppression versus the potential return must be kept in mind. An unimproved structure in a very remote location may not have much of a monetary value to someone, but it might have great value at 50 degrees below zero when someone falls into a river and needs a warm place to dry out and survive. He said "values" is not an easy term to define, and there is no tight definition for it in his profession.

[2:25:48 PM](#)

REPRESENTATIVE KAWASAKI said the previous term, "VALUE OF THE RESOURCES", might not have been inclusive enough to include structural improvements as HB 370 attempts to do, and that is why the term "resources and land improvements" seems inclusive to him.

REPRESENTATIVE EDGMON appreciated the point that Representative Kawasaki is making, but said this is advisory, non-binding language and, to him, the term "values" gets the department where it needs to go.

REPRESENTATIVE FAIRCLOUGH stated she thinks Representative Kawasaki's point is valid, but she associates her comments with Representative Edgmon in regard to whether a power line would be considered a structure. The committee could be exclusive by limiting the verbiage.

[2:27:53 PM](#)

REPRESENTATIVE SEATON moved to report HB 370, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 370(RES) 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 2:28 p.m.