

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 4, 2008

1:31 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. 243

"An Act relating to the Alaska coastal management program."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 243

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): REPRESENTATIVE(S) JOULE

04/26/07	(H)	READ THE FIRST TIME - REFERRALS
04/26/07	(H)	CRA, RES
03/20/08	(H)	CRA AT 8:00 AM BARNES 124
03/20/08	(H)	Moved CSHB 243(CRA) Out of Committee
03/20/08	(H)	MINUTE(CRA)
03/27/08	(H)	CRA RPT CS(CRA) NT 3DP 1DNP 1NR
03/27/08	(H)	DP: CISSNA, SALMON, OLSON
03/27/08	(H)	DNP: FAIRCLOUGH
03/27/08	(H)	NR: DAHLSTROM
03/27/08	(H)	FIN REFERRAL ADDED AFTER RES
04/04/08	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 243.

CHRISTINE HESS, Staff
to Representative Joule
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 243.

RANDY BATES, Director
Division of Coastal and Ocean Management
Department of Natural Resources
Juneau, Alaska

POSITION STATEMENT: Testified that the administration, the Department of Natural Resources, and the Division of Coastal and Ocean Management oppose HB 243.

EDWARD ITTA, Mayor
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Testified in support of HB 243.

BARRETT RISTROPH, Assistant Borough Attorney
Law Department
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Answered questions regarding HB 243.

JOHNNY AIKEN, Director
Department of Planning and Community Services
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Answered questions regarding HB 243.

GORDON BROWER, Land Management Regulation Manager
Department of Planning and Community Services
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Answered questions regarding HB 243.

JOHN CHASE, Community Planner & Coastal Area Specialist
Northwest Arctic Borough
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of HB 243.

CHRIS KRENZ, PhD, Arctic Project Manager
Oceana
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 243.

TERI CAMERY, Planner
Community Development Planning Division
Community Development Department
City & Borough of Juneau (CBJ)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 243.

ACTION NARRATIVE

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at [1:31:34 PM](#). Representatives Seaton, Roses, Wilson, Gatto, and Johnson were present at the call to order. Representatives Guttenberg, Edgmon, Kawasaki, and Fairclough arrived as the meeting was in progress.

HB 243-COASTAL MANAGEMENT PROGRAM

[1:31:45 PM](#)

CO-CHAIR JOHNSON announced that the only order of business would be HOUSE BILL NO. 243, "An Act relating to the Alaska coastal management program." [Before the committee was CSHB 243(CRA)]

CO-CHAIR JOHNSON stated that his intention is to take testimony on HB 243 and then set it aside until after the regulation review committee meeting tomorrow at which some of these issues will be taken up. He said he will keep the bill before the House Resources Standing Committee in case those issues cannot be worked out by the regulation review committee in a manner satisfactory to the sponsor.

[1:33:01 PM](#)

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, prime sponsor of HB 243, acknowledged that he and Co-Chair Johnson had agreed to hold the bill, but to have the hearing and public comment. He testified that HB 243 would establish a seven-person Alaska Coastal Zone Policy Board consisting of three resource agencies - the Department of Natural Resources (DNR), the Department of Environmental Conservation (DEC), and the

Alaska Department of Fish & Game (ADF&G) - and four regions that cover all of the coastal districts of the state. The seats would be governor appointments. This is in comparison to the old board that used to be in place and consisted of 14 members - 9 from coastal communities and 5 from agencies. The [new] policy board would approve the regulation changes and district policies, thus providing the balance that is needed for the review process and to allow the areas impacted by development to become part of the process again.

REPRESENTATIVE JOULE noted that his district includes Prudhoe Bay, the Arctic National Wildlife Refuge, Point Lay, and Red Dog Mine, and therefore contains much of the state's resource wealth for oil, gas, and coal. Under HB 243 local people will be brought back to the table, he said. Who would know better about how to develop those resources than a partnership between the State of Alaska and the stakeholders? In the history of the Coastal Zone Management Program many projects have come to fruition with a policy board in place, including the Green's Creek Mine, the Red Dog Mine, the Kensington Mine, all Outer Continental Shelf (OCS) oil and gas lease sales, all National Petroleum Reserve-Alaska (NPR-A) lease sales, various other oil and gas leases, cruise ship docks in Juneau, a processing plant in Auke Bay. No projects have been stopped because of local involvement.

[1:37:37 PM](#)

REPRESENTATIVE JOULE said responsible development brings jobs and spreads economic wealth around the state. Even with this policy board, DNR would still retain the authority to determine if the consistence review criteria are met. Alaska's coastal zone includes more than 44,000 miles of coastline and it can extend inland along river drainages as far as 250 miles. There have been some problems with that, he acknowledged, but this is actually a smaller district than what used to be in place. This mirrors what the federal government has done. This would bring back into the arena both the DEC Division of Water Quality and the DEC Division of Air Quality; they would receive consistency reviews, which is important because of proposed development on the OCS.

REPRESENTATIVE JOULE argued that HB 191, passed under the prior administration, has had enough opportunity to see if it works. He said he thinks that what the committee will hear today from coastal communities is that HB 191 has not worked. The

communities are very dissatisfied with the process and have asked that HB 243 be put forward.

[1:39:37 PM](#)

REPRESENTATIVE ROSES asked whether he heard correctly that no projects have been stopped because of local participation.

REPRESENTATIVE JOULE responded correct.

REPRESENTATIVE ROSES inquired about the history since passage of HB 191.

REPRESENTATIVE JOULE explained that having a Coastal Policy Board has allowed the different entities to come to the same table to address all of these issues, as opposed to each doing it in isolation. There was no mediation at any time in the process when the prior board was in place, which was much bigger and which had further-reaching authority. Since the implementation of HB 191, there has been at least three requests for mediation from coastal districts. Each of the agencies is operating in isolation. He said that in his opinion it has been rather exclusive for DNR to take on some of these issues on its own. Bringing the people to the table falls directly into comments that are heard about the constitution and how the state is going to develop its resources to the maximum benefit of all its residents.

[1:42:04 PM](#)

REPRESENTATIVE ROSES asked whether any lawsuits have been filed as a result of decisions that have been made.

REPRESENTATIVE JOULE replied he does not know how to answer this. There has been a lawsuit having to do with OCS issues. He presumed that Representative Roses' question is whether lawsuits can be avoided by including people in the process and, for the most part, he thinks the answer is yes.

REPRESENTATIVE SEATON inquired whether Representative Joule's district includes boroughs.

REPRESENTATIVE JOULE answered his district includes the entirety of the North Slope Borough and the entirety of the Northwest Arctic Borough, as well as Shishmaref.

[1:43:32 PM](#)

REPRESENTATIVE SEATON expressed his concern that the impetus for HB 191 was to streamline things, yet the process of everyone sitting at one table was broken apart. He understood that with this now broken apart, municipalities as boroughs are outside of the consistency review when they have an ordinance or code covering that and those permits have to be settled separately. He inquired whether, prior to the implementation of HB 191, any of Representative Joule's municipalities had adopted into their code any of these areas so that there is now an additional permitting process in addition to the consistency review.

REPRESENTATIVE JOULE responded that in trying to meet the intent of what passed and the changes that were made, he knows there have been efforts by the two coastal communities of both boroughs. They have been very active in developing their local policies and have submitted them to DNR, he said. There are people from both districts that could better answer the question, but he knows that in one of the district's only 1 policy was approved out of the 40 that were submitted to DNR for approval. So, there has not been a lot of success, but there has been a lot of effort. With only one entity in control it has been difficult for the coastal communities to feel like they are making any progress and it has generated a lot of frustration.

REPRESENTATIVE SEATON related that the Kenai Peninsula Borough adopted into municipal code a number of those policies and now if someone wants to get a project they have to go through the consistency review as well as go for a permit for those same things through the borough. So the streamlining process resulted in two sets of permits in those areas. He requested that when the boroughs testify they let the committee know whether they adopted into municipal code or whether they did those policies prior to enactment of HB 191 so that they are now enforceable on a borough level independently of a consistency review.

[1:46:58 PM](#)

REPRESENTATIVE WILSON asked whether the three cases of mediation were from the same borough or from throughout the state.

REPRESENTATIVE JOULE said he thinks two of the mediation cases are in the northern part of the state and one is in Southeast.

REPRESENTATIVE FAIRCLOUGH inquired whether [CSHB 243 (CRA)] still includes the transfer of grant management responsibilities to a policy board versus an actual department.

REPRESENTATIVE JOULE deferred to his aide.

CHRISTINE HESS, Staff to Representative Joule, Alaska State Legislature, replied yes, that provision is still in the bill.

REPRESENTATIVE FAIRCLOUGH asked why having a policy board, which has a conflict of interest because it has a vested interest, is a good thing.

MS. HESS answered the coastal district representatives would be representing all the coastal districts and the best interest of all the coastal areas. Also, those representatives would be in the best position to know how the grant money could be used in the unique circumstances of each of their districts.

[1:49:32 PM](#)

REPRESENTATIVE FAIRCLOUGH referenced Section 46.40.040 (E) in Version C [labeled 25-LS0896\C, Bullock, 2/22/08] of the bill which, according to testimony in the [House Community and Regional Affairs Standing Committee], would create confusion amongst the departments. She asked Representative Joule to address this as the bill moved out of that committee before questions could be asked in this regard. In response to Co-Chair Johnson, Representative Fairclough said Version C is what passed out of the House Community and Regional Affairs Standing Committee and she is unsure where Version E [labeled 25-LS0896\E] came from.

REPRESENTATIVE JOULE deferred to the people online for addressing this issue.

CO-CHAIR JOHNSON stated he is not prepared to adopt Version E at this point because this is primarily a discussion.

[1:51:15 PM](#)

REPRESENTATIVE EDGMON noted he is a co-sponsor of HB 243 and is supportive of the prime sponsor's efforts. He requested the sponsor's viewpoint of subsistence and the importance of having a local voice weigh in regarding development.

REPRESENTATIVE JOULE explained that subsistence is included in this bill to get the issue out there. Subsistence has always been a big issue in any development that has occurred, especially in rural Alaska. The state agrees with why these companies are here - they want to invest a lot of money to make money, provide jobs, and get the resources to market. He said the reason this needs to come back to local folks is because when the companies are all done all of Alaska is going to need the renewable resources that are going to remain - the fish, the berries, and the animals. For those who choose to make Alaska our home, that is the magic of this state. There is nobody better able than the local people to find the balance for how development can occur and still provide for safeguards of subsistence. The North Slope and Red Dog Mine are excellent examples of forging ahead with those things in mind. He related that, outside of the coastal zone in the Red Dog Mine, the agreement with NANA Regional Corporation is that they have a subsistence committee and that this committee has the option to close down the mine if things run awry.

REPRESENTATIVE EDGMON pointed out that his district has the largest sockeye fishery in the world, the billion dollar ground fishing center in Unalaska, the Pebble Mine, a potential offshore lease sale, and a crab fishery in St. Paul. He stressed to the committee how important this local voice can be if properly utilized.

[1:55:05 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether the version of HB 243 that is labeled 25-LS0896\E is the version that passed out of the House Community and Regional Affairs Standing Committee.

CO-CHAIR JOHNSON understood that Version C was a work draft that became Version E, and Version E is what passed out of the House Community and Regional Affairs Standing Committee.

REPRESENTATIVE FAIRCLOUGH clarified she does not know what passed out because she did not approve it passing out. She said she had a "C" working document that she made all her notes on, but she had "an A, a C, and an M" so she does not know if "E" is what the committee passed out.

CO-CHAIR JOHNSON stated his staff indicates that "C" was a work draft that became "E" and the House Resources Standing Committee is working off of "E".

[1:56:27 PM](#)

CO-CHAIR GATTO said the fiscal note of \$1.3 million is big.

REPRESENTATIVE JOULE responded that the fiscal note in front of him is for \$117,200 and the fiscal notes being referenced by Co-Chair Gatto are news to him.

CO-CHAIR GATTO related there is one fiscal note for [\$1.184 million from DNR], one for \$10,000 [from DEC], and one for [\$117,200 from DEC] for a total of [\$1.3] million.

REPRESENTATIVE JOULE replied he had not been made aware of those fiscal notes and those fiscal notes would ensure that the bill would go to the House Finance Committee if passed out by this committee. So, this is by no means done, he said.

[1:58:57 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources, thanked the committee on behalf of the administration, the department, and his division. He stated he is providing testimony on Version E of CSHB 243(CRA) and that he will address three topics: an overview of the Alaska Coastal Management Program (ACMP), the Department of Natural Resources' scheduled program re-evaluation, and comments on the proposed legislation.

MR. BATES drew attention to the division's written overview of the ACMP and specified:

The ACMP, or the Alaska Coastal Management Program, is a federally authorized state program. Resource development projects located within or affecting the coastal zone of the state and that require certain state or federal permits are subject to the ACMP. This means the projects - resource development projects - must comply with the enforceable policies of the ACMP, the state regulations, and the coastal district enforceable policies. The ACMP is a networked program, and that involves and balances the state resource agencies, local government, applicant, and public interest in the review of these resource development projects. The ACMP serves as the state's voice on activities requiring federal agency permits and on federal agency activities that affect the coastal uses and resources in the state's coastal

zone. This is a critically important program. It is critically important especially when you realize that it is ... one of the state's only formal entrées into the decision making that occurs on federal lands, be it the vast Outer Continental Shelf or the expansive federal lands that are within the coastal zone. There were statutory and regulatory changes that were made in 2003 that substantially affected the coastal program. It is these changes that have frustrated and distanced the coastal districts. Some of the statutory changes made in 2003, among other things, required a rewrite of the ACMP implementing regulations and required that all coastal districts revise their coastal management plans to comply with the new rules. As of today, there are 28 coastal districts participating in the coastal management program. There are 18 of those 28 plans that are in effect. There are two plans that have been through the DNR and the federal review and approval process but they are pending local adoption, meaning the assemblies or councils of the governing body of the coastal district must adopt those plans.

[2:02:47 PM](#)

MR. BATES, in response to Co-Chair Gatto, reiterated: "[Eighteen plans] are in effect, meaning projects that are proposed within the areas of the coastal districts must comply with those enforceable policies."

MR. BATES continued his testimony:

There are four plans that are pending federal review. That means we have submitted them to our federal granting agency who has federal oversight and approval authority. The response from federal agency is due April 21 [2008]. There is one plan that is in the final mode of revision - it has been through DNR review and approval and it is pending submission for federal review. There are three coastal district plans that are still under mediation. Representative Joule mentioned that process.

MR. BATES, in response to Co-Chair Johnson, stated the coastal districts that remain under mediation are the North Slope Borough, the Northwest Arctic Borough, and the Bering Straits Coastal Resource Service Area. In further response to Co-Chair

Johnson, Mr. Bates reiterated that, as of today, the plans of 18 of the 28 districts are in effect, 2 are through departmental and federal review, 4 are pending federal review, 1 is pending submission, and 3 are subject to mediation.

[2:05:14 PM](#)

MR. BATES continued:

It is the coastal district frustration with these coastal plan rewrites that has led us to this CSHB 243 and the companion bill on the senate side.

The second topic I would like to talk quickly about is the Department of Natural Resources' scheduled program evaluation. You should have a letter in your packet from me dated February 22 [2008]. DNR does ... recognize the frustrations of the coastal districts and the distance that has been created in the partnership, and we know that the coastal districts' pain and anger is real. In response to these questions and requests and others to make additional ACMP changes, I did issue that letter on February 22 which outlines a proposed re-evaluation of the coastal management program. It lays out the re-evaluation, what we intend to accomplish, the steps we intend to take, and the timelines in which to accomplish this re-evaluation of the rules. At a minimum, the re-evaluation will address the following three topics: (1) the DEC carve out, (2) the coastal district authority and ability to write enforceable policies to address coastal uses and resources important to the coastal district, and (3) the scope of the project that is subject to the consistency review under the ACMP. Also contained within the letter is the timeline we intend to accomplish these. This re-evaluation ... is aggressive, but here is what it looks like. July 2008 we intend to initiate a 30-day public comment period to solicit input on the suggested statutory and regulatory revisions. Following that, in August to October of this coming year, we intend to develop a statutory package for your review. In November and December we will be holding workshops with the interested participants to go over those revisions. We will initiate another public review and comment period, finalize it in December of this coming year. I will be back

hopefully before all of you in January 2009 to introduce the bill and work it through ... the various committees. We expect it to ... be done in March, passed and signed into law, and we can embark on the regulation revisions that will be necessary as a result of the statutory revisions.

[2:07:57 PM](#)

CO-CHAIR JOHNSON surmised that HB 191 has not been effective and the division cannot work within the statutes laid out in that legislation and therefore the division must come back before the legislature to enact new statutes.

MR. BATES responded [the division] has implemented to the best of its ability the provisions of HB 191. As the committee will be hearing today, and as has been heard for the past couple of years, there are challenges and difficulties and differences of opinion about how effective HB 191 was. The division originally wanted to finish the program changes mandated under HB 191, which will occur in June or July 2008, and then take a year, implement the program, evaluate its effectiveness, and identify tweaks that may be needed. Based on the current legislation and the desires heard from the various districts and other participants, [the division] upped the timeframe for that re-evaluation. [The division] recognizes there are tweaks to the statutes that it may recommend the legislature make to have a better balanced and more robust coastal program that is effective for all the participants.

[2:09:30 PM](#)

CO-CHAIR JOHNSON inquired whether any federal participation is being jeopardized by the state's timelines.

MR. BATES replied no. The existing plan put in place under HB 191, with the subsequent revisions that were made in SB 102 and SB 46, has full approval and remains approved. The federal evaluation of the state program that was done this summer found it to be preliminarily compliant. It has been [the division's] desire to re-evaluate the program recognizing that it could maybe do better business. [The division] just wants to have that open forum to make this evaluation and have this discussion. If there are no changes [the division] will come back with no changes and an overview of where it is at. If there are changes, which [the division] fully expects, it will come back with justification for those.

2:10:37 PM

REPRESENTATIVE EDGMON estimated the real timeline - given the scheduled program evaluation, getting a bill through the legislature, writing regulations after the bill, and going to the federal government for approval - will be 2010 or later. He said the minutes from past committee hearings show a real sense of disenfranchisement among the coastal communities and boroughs. He questioned whether the timeline outlined by Mr. Bates will be conducive to having strong local participation.

MR. BATES acknowledged the timeframe is aggressive. He said he thinks the legislation before the committee is representative of what many of the coastal districts might suggest as the changes already. What [the division] wants to be able to do with this re-evaluation is make sure that all of the participants are heard from, which includes the division's sister agencies within the state, the federal agencies that participate, the industry that is affected by these changes and the coastal program, and the interested public. It is incumbent upon his division, the department, and the administration to run a good open forum process to make sure that what the division does come back with in statutory proposals is unified and has the buy-in, as much as possible, from the parties that are involved; otherwise [the division's] timeframe is jeopardized, as is moving the coastal program forward in unity.

2:13:07 PM

REPRESENTATIVE GUTTENBERG stated that HB 191 did not make sense to him at the time. He asked whether Mr. Bates remembers what the fiscal note was for HB 191.

MR. BATES answered no, not off the top of his head.

REPRESENTATIVE GUTTENBERG noted that one of the key things HB 191 did was to take out all the councils, which were the place where all the districts came together to move forward for federal approval through the state. Is the federal government now just accepting what is given to it by the state without having the councils and districts as actively involved as they were before, he asked.

MR. BATES answered that the structure of the coastal management program, whether it is Alaska, Texas, or any of the other 35 coastal states, is dependent upon what the state needs. Very

few of those states have a policy council or similar governing body overseeing their program. He said he believes there has been a move recently by some states to move away from a council and go back to a single agency managing the program. The federal agency review of the state's changes in 2003, which eliminated the Coastal Policy Council, was thorough. The agency conducted the process for the National Environmental Policy Act of 1969 (NEPA) and created an Environmental Impact Statement. Thus, the state's changes were evaluated rigorously against federal law. The federal agency's approval of the state's coastal program, as amended, was based on the fact that the state was still managing comprehensively all of the resources identified as necessary for management within the coastal zone. It is a voluntary program. [The division] puts forward what it believes is the right program and the federal agency responds, making sure that the program meets certain criteria in federal law.

[2:16:17 PM](#)

REPRESENTATIVE GUTTENBERG inquired what the \$890,000 under contractual expenditures is for in DNR's 3/20/08 fiscal note.

MR. BATES responded that convening a coastal policy board, council, or entity takes money for per diem, travel, and various expenses. Specific to contractual, HB 243 affords the coastal districts the opportunity to continue to revise their district plans. Based on information from the last round of coastal plan revisions, [the division] believes that this money would be necessary to afford and assist the coastal districts in making those revisions. He said he does not know if it would cover everything that [the division] needs to do, but it would go a distance toward affording the districts the money to make the changes they would like.

[2:18:26 PM](#)

REPRESENTATIVE SEATON related that the federal government was denying this plan until the governor and Mr. Bates' agency said the coastal plan for Alaska would be entirely terminated if the federal government did not adopt it. Therefore, he contended, this was not approved by just a strict analysis.

MR. BATES said he does not know that at any time the federal granting agency of the Office of Ocean and Coastal Resource Management (OCRM) threatened denial of the program changes that were promulgated under HB 191. There was a review process that

was rigorous, and both the state and federal sides spent a lot of time evaluating those changes and determining whether the changes were compliant with federal law.

2:19:38 PM

REPRESENTATIVE SEATON surmised Mr. Bates is not aware of the statement made by [Governor Murkowski] and Jim Clark [Governor Murkowski's Chief of Staff] that the state would pull out of the ACMP if these changes were not approved.

MR. BATES replied he is certainly aware of the situation where the state believed it had an approvable program as it existed under HB 191. According to federal law, he noted, it is a voluntary coastal program and OCRM is there to assist the state in putting together a program that is best for the state. "We believed at the time that the federal government was trying to dictate from the 'Beltway' what was best for Alaska," he said. "There was a difference of opinion about what was approvable. We went through the process to work with OCRM, evaluate compliance. We ultimately created matrixes for each law, how we met it, and in the end OCRM, through no strong arming I don't believe, came out with an objective evaluation approving the coastal program. There were high stakes, absolutely."

2:20:57 PM

REPRESENTATIVE SEATON commented that press reports from that time would verify exactly how that went. He expressed concern in regard to Mr. Bates' statement about wanting to wait to come forward with a different bill even though HB 243, which is an open process, contains what would be proposed by the local districts. He asked whether Mr. Bates is saying his sister agencies have not had the ability to come testify and provide input on HB 243.

MR. BATES acknowledged that this is an open process. He continued:

What we want to assure in our re-evaluation is that we take the time, we have the discussions, we have the workshops, we have some amendments that we float back and forth, and that we come out with a plan, statutory revisions of basic structure that is reflective of all participants' needs in the program. We intend to do that through time and through an ... open discussion. DNR Commissioner Irwin, at a press conference when

asked about our timeframe, made the statement that, We have all the time to get it right, we don't want to rush to get it wrong. And that is certainly our feeling at this point ... coastal management is critical. We want to make sure we get it right. We want to take the time to work with the participants and bring it back to next session with a package that should fly through.

[2:22:46 PM](#)

REPRESENTATIVE SEATON inquired whether [the Division of Coastal and Ocean Management] or its sister agencies have brought forward amendments to HB 243.

MR. BATES answered the administration, the department, and the division oppose this bill.

REPRESENTATIVE FAIRCLOUGH informed Representative Seaton that the House Community and Regional Affairs Standing Committee had questions, but she was outvoted as the chair and the bill moved out before the committee could look at the considerations that were brought up. She said she supports Representative Joule in his effort to involve the communities, but there are big issues that need to be handled appropriately. As far as process, the process that she has been involved in so far has been hurried.

[2:24:19 PM](#)

CO-CHAIR GATTO asked whether the \$284,000 each year [in the DNR fiscal note] for travel includes per diem.

MR. BATES responded yes. It should include per diem, travel, hotel, and necessary costs. In further response to Co-Chair Gatto, he said he believes per diem is \$60 per day, but is not positive what it is for boards. He said he thinks it is statutorily regulated.

[2:25:25 PM](#)

EDWARD ITTA, Mayor, North Slope Borough, noted he is a whaling captain, a hunter, and a very active subsistence user, along with his job representing the Iñupiaqs of the North Slope Borough. He spoke from the following written testimony [original punctuation provided]:

I appreciate this opportunity to speak with the committee today, and I thank you for considering HB 243, which deals with what used to be one of Alaska's most successful examples of federal, state and local co-management - the Alaska Coastal Management Program. The previous administration pushed for wholesale changes in the ACMP, and while I believe their intentions were honorable, the effect was to strip meaningful local involvement out of the process. The original ACMP was brilliantly conceived, in that it brought together the interests of developers with the concerns of local residents, resulting in development that had local buy-in. Using the original ACMP, on the North Slope, the overwhelming majority of projects went through without a hitch, and they had the local seal of approval when they went forward. It was a recipe for stability in the development process.

This version of House Bill 243 helps to recapture parts of the original program's success, so I want to express our support for the bill before you today. It would solve many of the problems we have faced under current ACMP regulations. I recognize that it may be tough to get all the way back to the original program, but this bill does fix some of the most troublesome aspects of the current law.

The Borough supports responsible resource development, and for over 20 years the ACMP was an important way to find a balance between development and protection of coastal resources and uses. But as changes have been implemented in recent years, that balance has been lost. Almost all of our proposed enforceable policies have been denied by the State, so we have had to rely on our Title 29 planning and zoning process for local input. While the permit process is an effective tool, we miss the opportunities provided by the former coastal management program to work cooperatively with state and federal agencies in developing compatible permit stipulations.

The bill before you would help restore a meaningful ACMP. Most importantly, it would make it clear that coastal districts may establish meaningful enforceable policies. We believe HB 191, passed in 2003, would have allowed us to do this, but the regulations

adopted by the last administration have eliminated this possibility.

[2:30:08 PM](#)

MR. ITTA continued:

26 of the 31 policies we proposed for our coastal plan revision were denied, including all important habitat designations and some of the important subsistence use areas, and we have been informed that the 5 remaining policies must be changed significantly before they will be approved.

The bill also puts air and water quality permits back into the ACMP process. Since the Department of Environmental Conservation permits have been removed from the consistency review process, there has been a lot of confusion. For example, we have been told that we can no longer comment on the effects of a potential oil spill on habitat or subsistence.

The Borough also supports the provision in the bill to reestablish the Coastal Policy Council. The former council was effective in approving coastal district plans and establishing policy because it was composed of both state government staff and locally elected officials.

Finally, HB 243 makes it clear that all Outer Continental Shelf activities affecting coastal resources or uses would be considered in ACMP reviews. Currently, as a result of changes to the program, certain effects from offshore oil and gas activities are no longer considered.

I want you to know that I have the greatest respect for Tom Irwin and have appreciated his willingness to work with us on a number of other issues. About Coastal Zone Management, however, I am very encouraged by this bill, and I hope the committee will approve it.

[2:33:15 PM](#)

MR. ITTA, in response to Representative Roses, confirmed that 26 out of the 31 plans submitted by the borough had been denied.

REPRESENTATIVE ROSES requested an example of one of those plans and what the contentious issue was that caused the denial.

MR. ITTA deferred to his staff to give the specifics.

BARRETT RISTROPH, Assistant Borough Attorney, Law Department, North Slope Borough, replied the mayor spoke correctly, although he used the word "plan" instead of "policy". No policy was approved as a whole. They were denied and some of them were partially approved. Subsistence is very important to the North Slope Borough. The original guidance from DNR suggested the borough could have a general subsistence policy and a subsistence use designation, she related. The borough made a policy saying when there are potentially conflicting uses, subsistence use of plants, fish, and wildlife, including marine mammals, shall be the highest priority use of the lands and waters in the coastal areas. This was disapproved for being not clear or enforceable and for conflicting with the state's subsistence standards. This is one of the policies the borough seeks to address through the mediation process.

[2:35:39 PM](#)

REPRESENTATIVE ROSES inquired how many of the 26 denied policies were denied for similar reasons and had subsistence statements in them.

MS. RISTROPH answered many of the policies were directly related to subsistence. However, most of the policies were denied under general statements that said the policies did not comply with state or federal law or that they conflicted with the state's subsistence standard. The reasons for denial were pretty similar for each policy - they were not given a lot of individual consideration.

[2:36:19 PM](#)

REPRESENTATIVE FAIRCLOUGH requested a list of all 31 policies and why the department denied or approved them.

MR. ITTA agreed to do so.

[2:37:09 PM](#)

REPRESENTATIVE GUTTENBERG commented that when HB 191 was passed, Mayor Itta's concerns were exactly the ones heard five years

ago. He asked what is in mediation, what are the conflicts, how is that process going, and what is the borough's working relationship with the state departments over these issues.

JOHNNY AIKEN, Director, Department of Planning and Community Services, North Slope Borough, stated the policies that the borough can use during a consistency review are important because it gives the borough the ability to steer development in a way that the people are more comfortable with the project or development. The coastal management program was an important and useful tool for the North Slope Borough until the last administration revised [the state's] program. This is why the borough has been working towards having the policies that it wants in its program - it is a seat at the table for the districts. He said the borough is going into mediation because it has been unable to get the policies it wants into the program. The rules change constantly when the borough tries to get a policy approved. There have been six or eight meetings with the Department of Natural Resources to work on trying to get the borough's policies approvable. It has been three to five years since the borough has been working on its coastal management program, he said. So, he is very leery of going into the re-evaluation process and the mediation process because of what the borough has gone through thus far. He fears it will be business as usual and things will not change.

[2:41:31 PM](#)

MS. RISTROPH added that the mediation is scheduled to take place April 15, or at least that will be the first date for meeting together. The main area the North Slope Borough is planning to focus on is the disagreement with DNR as to whether the borough's policies are consistent with the state and federal law. She related DNR suggests that because one agency has the authority to make regulations on a certain area, this precludes any local district from making any regulations on that area of policy. The borough disagrees with that. The borough is also in disagreement about the scope of the regulations and how they have strayed somewhat from legislative intent. Additionally, the guidance of DNR has changed over time. Initially, DNR put sample policies on the website, such as one allowing the borough to have a subsistence priority. Then those were removed from the website and the guidance has changed over the past couple of years. She said the borough thinks that without DNR's approval of its plan and the absence of any specific state law providing for important habitat and subsistence use in the borough, there

is simply inadequate protection of the resources upon which the people depend.

[2:43:09 PM](#)

REPRESENTATIVE SEATON inquired how the borough is using its Title 29 planning and zoning functions and whether that requires a developer to come forward for separate permitting outside of the ACMP process.

MR. AIKEN responded the borough has its own planning and zoning processes within the North Slope Borough where it has its own policies. Whenever the borough issues any permits it uses this title as its guideline in stipulating the project.

GORDON BROWER, Land Management Regulation Manager, Department of Planning and Community Services, North Slope Borough, added that the borough implements its Title 19. Currently, the borough has numerous policies that were incorporated into Title 19 that came from the original North Slope Borough Coastal Management Program which stopped existing on September 1, 2007. But the borough still uses those policies even though those particular policies in the borough's old plan have gone away. He said the one thing he worries about is the borough's ability to reach outside of its three-mile boundary, which is one of the things resulting from the DEC carve out. The borough does try to submit some of the Title 19 policies on the coastal management review and sometimes that is not very effective.

[2:46:26 PM](#)

REPRESENTATIVE SEATON asked whether the borough is able to use its Title 29 planning and zoning functions and whether it is forced to do that in order to incorporate those subsistence and habitat policies. Also, he asked, does this require a separate permitting process since they are not allowed currently under the coastal zone management plan.

MS. RISTROPH stated that Title 29 of the Alaska statutes sets forth the limitations on the powers of the home rule boroughs and 29.35.180 is what allows the borough to regulate land use and is its source of authority. Within the borough's own municipal code, the title is Title 19 and that is what sets forth these limits. They were a part of the old coastal management plan and are the basis for the borough's permits. As of right now, the borough has no coastal management plan whatsoever, so the borough is relying on its Title 19 to send

developers through the permitting process. The borough is relying on its Title 19 policies to put stipulations to protect habitat and subsistence use in all of the permits. This is a source of friction because once a developer has gone to the trouble to get a state permit and a federal permit they have to come back to the borough and get a local permit.

[2:48:23 PM](#)

REPRESENTATIVE EDGMON asked whether the North Slope Borough prefers DNR's timeline or having something happen faster.

MR. ITTA replied that in all due respect to Commissioner Irwin, he supports this approach [HB 243] over [DNR's] proposed process mainly because at a minimum the process will be two to three years. He shares Director Aiken's frustrations and anxieties, and this bill would give the borough better reassurance and better opportunity for meaningful input into doing it right.

[2:50:10 PM](#)

JOHN CHASE, Community Planner & Coastal Area Specialist, Northwest Arctic Borough, stated that like Mayor Itta, he is a hunter. He presented the following testimony:

The Northwest Arctic Borough supports HB 243 and we urge you to pass this bill out of committee today. Our proposed coastal management plan is currently in mediation. We requested mediation because only 1 of the 50 proposed enforceable policies we proposed was approved by the Department of Natural Resources, and almost all of the designated areas were disapproved. ... Without approved subsistence uses designations, our impacts to subsistence uses cannot be [adjusted] during an ACMP review. ... Earlier this year DNR testified to the Senate Community and Regional Affairs [Standing] Committee that the ACMP regulations are more stringent than what was intended by legislation passed in 2003. Since DNR has made no effort to revise that non-complying regulations we believe it is important that the legislature pass HB 243. This bill would clarify the approval criteria for district plans and ... would establish a Coastal Policy Board with members from coastal districts and state agencies. We believe these ... changes would fix the problems we have experienced with the plan approval. Thank you for the opportunity to testify in support of HB 243.

Again, the Northwest Arctic Borough urges you to pass this bill out of committee today.

2:52:40 PM

REPRESENTATIVE FAIRCLOUGH requested Mr. Chase to provide the committee with a copy of the 50 enforceable policies submitted by the Northwest Arctic Borough. The committee will then ask for clarification on why they were rejected.

MR. CHASE agreed to do so.

REPRESENTATIVE SEATON suggested the committee have DNR submit a listing of all of the policies that were rejected instead of having them sent in individually by the districts.

CO-CHAIR JOHNSON agreed with the suggestion.

MR. BATES nodded yes in this regard.

REPRESENTATIVE GUTTENBERG requested that the details also be included as to what was and was not approved and why. He said this illustrates what was wrong with the changes that [the legislature] did.

2:54:59 PM

CO-CHAIR JOHNSON, in response to Representative Edgmon, stated this is the one hearing on the bill, but he is holding it open pending what happens in regulation review and he is not closing public testimony.

REPRESENTATIVE SEATON asked Mr. Chase what a designated area is.

MR. CHASE answered he just started his job four weeks ago and is unsure, but his supervisor Tom Okleasik could answer. Out of those designated areas, only one was designated.

CO-CHAIR JOHNSON suggested the committee get that information from DNR.

2:56:38 PM

CHRIS KRENZ, PhD, Arctic Project Manager, Oceana, stated Oceana is an organization that is dedicated to protecting the world's oceans. He supported HB 243. With global climate change and an increasing world population adding pressures on natural

ecosystems, he said Oceana feels it is of critical importance that local communities have a voice in the way that the resources they depend on are developed. This will ensure that those resources are developed in a sustainable way. Local coastal communities used to have the major deciding voice in how responsible coastal development could happen in Alaska, and that system worked. It worked in protecting and maintaining the health of Alaska's marine ecosystems and the opportunities for a subsistence way of life. Two-thirds of Alaskans, representing more than 250 communities, live on Alaska's coast. Local communities should have the ability to protect the state's natural resources, existing uses of coastal waters, and way of life.

[2:58:32 PM](#)

DR. KRENZ, in response to Representative Fairclough, said he is not positive how many members Oceana has in Alaska, but worldwide the organization has over 300,000 members. In further response, he guessed the number of members in Alaska to be in the hundreds. He said he would find out exactly and get that information to the committee. In response to further questions from Representative Fairclough, Dr. Krenz said someone can register online to become a Wavemaker and that is where the 300,000 [membership] figure comes from. He stated that the organization's web site address is www.oceana.org and he has resided in Juneau for two years.

[2:59:55 PM](#)

TERI CAMERY, Planner, Community Development Planning Division, Community Development Department, City & Borough of Juneau (CBJ), noted she has been part of the coastal management program since 2000, so she is very familiar with the changes that have taken place. The City & Borough of Juneau (CBJ) supports HB 243, she related. She said the borough believes the bill's measures would go a long way to restoring the integrity of the program and it would clarify the confusion regarding what types of district policies can be allowed. The borough believes that the bill's provisions would have eliminated the most serious problems that Juneau has had for the last four years. The City & Borough of Juneau went through the mediation process to defend the policies of the Juneau Wetlands Management Plan, which was successful. However, even after that successful mediation, the borough's original 1999 policy plan is down to 12 policies.

MS. CAMERY testified that HB 243 addresses concerns that districts have raised repeatedly over the years. She said the borough believes it is important to restore the Coastal Policy Council and it is certainly important to bring DEC back into the review process. In Juneau, the DEC carve out has caused significant problems and delays in the reviews, and it certainly has not made it any easier for the developers. For Juneau the ACMP has always played a critical role in facilitating development, she related. A number of controversial projects were located in sensitive habitat and the ACMP served the very important role of bringing all of the reviewing agencies together to work with the developer and find a compromise solution that would allow the development to go forward and still protect the most critical habitat in the area. She said the Auke Bay seafood processing plant, the CBJ major docking development next to the seafood processing plant, and all of the city's cruise ships docks are examples where the ACMP played a critical role.

MS. CAMERY stated that HB 243 represents a major difference between the former administration which was quite adversarial to a local role in the program versus the Palin Administration which appears to be a more bottom-up approach to local government. The Alaska Constitution calls for maximum local governments and this bill is important to restoring that proper balance. While DNR's efforts to launch its own re-evaluation are appreciated, the issues that have been raised have been brought up repeatedly by the districts since the very beginning of [HB] 191's passage. She said she does not see the purpose of revisiting and continued delay because these concerns are very well documented in countless letters and it does not serve anyone's interests, particularly the development community.

[3:04:26 PM](#)

MS. CAMERY addressed Representative Seaton's earlier question regarding policies and local code. She said it was the decision of the CBJ Assembly and Planning Commission to keep the policies in local code that the state rejected in the coastal management program. So, the borough's 99 policies remain in code. There is sparse or no review through the coastal management program as far as local policies adopted into that program. But the borough's whole former program is in place in local code and that creates a whole separate review process for the developers, so streamlining has not been accomplished for the developers.

CO-CHAIR JOHNSON pointed out that the administration is on record opposing HB 243.

MS. CAMERY said she misspoke.

[3:05:27 PM](#)

REPRESENTATIVE FAIRCLOUGH referenced page 8, lines 16-20, in Version E of HB 243 and asked Ms. Camery to address testimony that was given in the House Community and Regional Affairs Standing Committee regarding DEC's management under current law.

MS. CAMERY said she is not qualified to pick apart the words in the bill, but she can give an example instead that she has brought up over and over again and that DEC is well aware of: The City & Borough of Juneau has five impaired water bodies, and DEC has specific authority over those impaired water bodies. There have been a number of developments right along those impaired water bodies and there was a case this last year where the CBJ went through the entire coastal management program review process and issued a consistency review in favor of that project. Then, after that review was completed, DEC issued a denial. She said she is not seeking to blame DEC as DEC has done nothing wrong, it just speaks to the problems with the process. The Department of Environmental Conservation is not an active participant in the coastal management program reviews, so all the other agencies were actively working out major concerns with this development - a gravel mine in a salmon stream - and when the process was finished DEC issued its denial. Everything would have changed had DEC been part of the process and able to work with the other agencies and the developer during the course of that review.

[3:08:15 PM](#)

REPRESENTATIVE FAIRCLOUGH said she would wait and ask DEC because someone on the record [in the House Community and Regional Affairs Standing Committee] said that DEC already manages those. However, she understood that Ms. Camery is saying there is collision in how that management is happening.

MS. CAMERY nodded yes.

[3:08:32 PM](#)

REPRESENTATIVE EDGMON inquired whether the program, pre-HB 191, would have been able to facilitate the Kensington Mine project.

MS. CAMERY replied she has never been involved in the mining reviews in her department as those have always been elevated to a higher level. She said she knows that under HB 191 local districts are not allowed to write local enforceable policies regarding mining because that was completely taken out. While the CBJ has a section regarding mining in its local code, that is not part of the coastal management program. In the past, that would have been part of the coordinated review.

3:09:39 PM

REPRESENTATIVE GUTTENBERG asked whether there was any theme that ran through the denials for the CBJ's [proposed policies].

MS. CAMERY answered that many policies were cut out because of the DEC carve out. Anything that even indirectly addressed water or air quality was immediately cut out, she said. That does not make sense because local communities have a strong interest in air and water quality. Districts could not have policies that were addressed by state and federal law. That was interpreted in many different ways by DNR and that is part of the confusion that HB 243 would help clear up. Anything that state and federal agencies had authority over was eliminated. The district had to show that it was addressing something that state and federal agencies did not look at at all and this was a very tough test to meet and it was also subject to varying interpretations.

3:11:02 PM

REPRESENTATIVE SEATON understood that previously under ACMP, things like eel grass habitats could be designated as a policy of concern. He inquired whether this was one of the things that was denied under the new regime.

MS. CAMERY responded that the City & Borough of Juneau did not specifically address any eel grass issues, although it could have because it comes up a lot. She said Representative Seaton is correct in that the program does not allow the designation of any type of habitat across the board; instead, very rigorous mapping requirements and documentation must be done for each unit. The designated areas has been a huge issue for all the districts and that was one of CBJ's biggest problems with getting approval of the Wetlands Management Plan, even though that plan has vast scientific documentation and has been in place since 1992. In further response to Representative Seaton,

Ms. Camery explained that in order for a district to have a habitat policy it must first have a designated area. A district cannot have any general habitat policies. A district must lay out the designated area with all its scientific backup as well as thorough mapping. That designated area has to be accepted before a district can develop a habitat policy that applies to it and then habitat policies have their own set of requirements. But a district cannot even look toward a habitat policy until it has a designated area.

CO-CHAIR JOHNSON kept public testimony open.

[3:14:42 PM](#)

REPRESENTATIVE JOULE said he thinks the committee is beginning to get an idea of the breadth of frustration that coastal communities are feeling and their lack of being able to participate in their futures by being able to address some of the issues that are near and dear to them. One thing that was proven by the prior ACMP is that people want to be part of a process - coastal communities would like to be a part of the process of resource development. It is necessary that agencies be working together and not in isolation because that isolation can actually slow things down.

REPRESENTATIVE ROSES stated he hopes the concerns that have been expressed today will be taken into account when the regulations are reviewed. There is no wonder at the frustration when so few policies have been approved. He said he will be awaiting a report on that review.

[3:17:05 PM](#)

REPRESENTATIVE SEATON noted he is the house vice chair for regulation review. He said the bill should be kept hot because the courts have ruled that the only way regulations can be overturned is through a bill. He expressed his opinion that the individual agency and the sister agencies should be coming forward with amendments to HB 243 and justifications for those amendments instead of saying not to do anything and requesting more time. There has been ample frustration. The way to come out with the best possible bill is to have the administration identify the specific areas of concern and provide specific amendment language.

CO-CHAIR JOHNSON added he hopes that no one misinterprets the committee not hearing the bill as not keeping the bill hot as it

is something that does need to be addressed. He said he is very pro-development, but he believes that communities need to have a say. He encouraged the department to work on regulations before the 2010 presentation that might soften some of this and might result in a better piece of legislation when it is brought before the House Resources Standing Committee in the future. He said there are a couple of years to write regulations under the law and there is some softening that can be done there as well.

[HB 243 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:19 p.m.