

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

January 29, 2008

3:41 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Gary Stevens
Senator Joe Thomas
Senator Thomas Wagoner

MEMBERS ABSENT

Senator Albert Kookesh, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 161

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

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 161

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): SENATOR(S) OLSON

04/25/07	(S)	READ THE FIRST TIME - REFERRALS
04/25/07	(S)	CRA, RES, FIN
10/23/07	(S)	CRA AT 3:30 PM BELTZ 211
01/17/08	(S)	CRA AT 3:30 PM BELTZ 211
01/17/08	(S)	-- Meeting Postponed to 1/22/08 --
01/22/08	(S)	CRA AT 3:30 PM BELTZ 211
01/22/08	(S)	-- Meeting Postponed to 1/29/08 --
01/29/08	(S)	CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

GINNY AUSTERMAN, Staff
to Chair Olson
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented SB 161 on behalf of Chair Olson.

RANDY BATES, Director

Division of Coastal and Ocean Management (DCOM)
Department of Natural Resources (DNR)
Juneau AK

POSITION STATEMENT: Spoke in opposition to SB 161.

TERI CAMERY, Planner
City and Borough of Juneau

POSITION STATEMENT: Spoke in favor of SB 161.

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

POSITION STATEMENT: Spoke in favor of SB 161.

GORDON BROWER, Land Management Regulations Manager
Planning and Community Services
North Slope Borough

POSITION STATEMENT: Spoke in favor of SB 161.

TOM OKLEASIK, Planning Director
Northwest Arctic Borough (NWAB)
Kotzebue AK

POSITION STATEMENT: Spoke in favor of SB 161.

BUD CASSIDY, Planning Director
Kodiak Island Borough

POSITION STATEMENT: Spoke in favor of SB 161.

GARY WILLIAMS, Coordinator
Kenai Peninsula Borough Coastal District

POSITION STATEMENT: Spoke in favor of SB 161.

LINDSAY WOLTER, Assistant Attorney General
Department of Law
Anchorage AK

POSITION STATEMENT: Said she had two concerns with SB 161.

ACTION NARRATIVE

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [3:41:11 PM](#). Senators Olson, Stevens, Thomas, and Wagoner were present at the call to order.

SB 161-COASTAL MANAGEMENT PROGRAM

CHAIR OLSON announced the consideration of SB 161.

[3:41:59 PM](#)

GINNY AUSTERMAN, Staff to Chair Olson, Alaska State Legislature, said in 2003, HB 191 instituted significant changes to the Alaska Coastal Management Program (ACMP). The bill was sponsored by governor Murkowski, and it restricted participation by local communities in coastal activities, including the review of permitted activities. The Alaska Department of Natural Resources (DNR) then adopted regulations that severely limited the ability of coastal districts to establish enforceable policies to address impacts of projects on coastal resources. Those changes stimulated a formal review by the federal Office of Oceans and Coastal Resource Management (OCRM) as to its compliance with the National Environment Policy Act (NEPA). Final acceptance of the new ACMP did not occur until December, 2005. Since then, Alaska's coastal districts have faced continuous controversy and confrontation with the Office of Program Management and Permitting (OPMP) in the DNR in achieving suitable management plans. The DNR regulations go beyond the intent of HB 191. The OPMP interpretations have inhibited some coastal districts from getting approval of their plans. Disputes used to be amicably resolved by the Coastal Policy Council, a body made up of state and coastal district representatives. HB 191 disbanded the council and now all decision-making powers are concentrated in a single agency. SB 161 is an attempt to correct the inadequacies of the sweeping changes. "I do not wish to turn back the clock to what was before; instead this bill retains the program in the DNR while resolving some of the major problems with the changes to the coastal program." It will achieve a better balance and a better relationship between coastal communities and the state.

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SENATOR STEVENS moved to adopt the committee substitute (CS) for SB 161, version 25-LS0883\C, Bullock, as a working document. Hearing no objections, Version C was before the committee.

[3:45:22 PM](#)

SENATOR STEVENS said he was a fan of the Coastal Policy Council that was disbanded by HB 191. How does SB 161 resolve that?

MS. AUSTERMAN said SB 161 will bring back the council. It is a starting point to repair some of what has happened since the council was disbanded.

SENATOR STEVENS asked if the council will be like it was before.

MS. AUSTERMAN said it remains to be seen.

[3:47:02 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management (DCOM), Department of Natural Resources (DNR), said his division is newly established.

The committee took a short recess.

[3:48:37 PM](#)

MR. BATES said he has worked ten years in the Alaska Coastal Management Program (ACMP) and was the deputy director of the agency implementing the ACMP for over four years. He referenced a letter to Chair Olson from DNR Commissioner Tom Irwin. Mr. Bates will discuss the challenges of implementing ACMP changes; ways to improve the program; and DNR comments on Version C.

MR. BATES said in February 2003, Governor Murkowski introduced Executive Order 106, which moved the ACMP out of the Governor's office and into the DNR, and it created problems. Exempt employees were reclassified into the unionized system. "We had to interview for our own positions; in many cases those of us had been in those jobs for 4, 5, 10, 15 years. We had to compete with everybody else for our jobs. Interestingly, we had to integrate into DNR." He said it was a very good move. There is synergy created through the ACMP and the divisional structure of DNR. "We are pleased to be there, but it certainly took some happening - new letterhead for example." HB 191 was enacted in May of 2003, SB 102 in 2005, and SB 46 in 2007. All called for some form of reform of the ACMP. In a very short timeframe the statutes and three chapters of regulations were revised. The revisions mandated district plan revisions and amendments. Two of the bills gave extensions for district plan deadlines. Revisions to the ABC list were mandated and a 2011 sunset provision for the ACMP was included. Amongst all of that, the federal granting agency, the Office of Ocean and Coastal Resource Management (OCRM) in NOAA, had final approval over any changes in the program. That review and approval process included an environmental impact statement. Amazingly, the federal agency was able to do it in six months. It moved the program forward at that point.

[3:52:57 PM](#)

MR. BATES said that magnitude of programmatic changes caused a variety of problems. The turmoil caused a 95 percent turnover in staff since 2003. There were more than 100 recruitments for 30 staff. For three years, every third desk and workload had two employees. It was difficult to recruit and retain people and

have them embrace the revisions while working with the coastal districts and federal government. He is pleased with his staff because it was a herculean effort.

[3:54:24 PM](#)

SENATOR STEVENS asked for an organization chart. He asked if OPMP is part of his group.

MR. BATES said he will provide charts. The challenge that SB 161 addresses are the district plan revisions. There was a very short timeframe to write the guiding regulations for the districts. The regulations had to be overhauled while helping the districts in preparing the mandated amendments to their programs. The ACMP regulations ended up more stringent than what was intended under HB 191. Coastal districts were limited in their ability to craft enforceable policies that address coastal uses and resources that were important to the local residents. This limitation manifested itself into severely strained relationships between OPMP [Office of Project Management and Permitting], DCOM, and many districts. This also resulted in district apathy toward the program. The revisions were an enormous workload for him. "It was done to the best of our ability given the staff that we had at the time." There are 28 coastal districts participating in coastal management, and that means that 28 complied under HB 191 to submit revisions. Of those, 16 have been through the DNR and OCRM review and approval process and are in effect. Activities that occur in those municipalities of coastal districts must be compliant with the district enforceable policies.

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MR. BATES said there are four plans that should have approval by early February. There are five plans pending submission to OCRM, and there are three outstanding plans whereby the districts have elected to mediate the commissioner's decision on their plans.

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MR. BATES said he has four suggestions. With the approval of Governor Palin, Commissioner Irwin split the OPMP into two. One became the Division of Coastal and Ocean Management (DCOM) and the other division remains the OPMP. Within the original OPMP, there were two budgetary components. One was for large resource development projects. The other component was the ACMP, and that was moved into its own division called Coastal and Ocean Management (DCOM). DCOM implements the ACMP, the Coastal Impact Assistance program (a \$3 or \$4 million grant to the state), the coastal and estuarine land conservation acquisition program that

is run through NOAA, and it tracks and addresses initiatives that affect Alaska's oceans.

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MR. BATES said the ACMP is elevated within the divisional structure to its level of importance. Coastal districts can talk directly to the director, and it provides an easier chain of command to the commissioner. Mr. Bates said his office is working on stabilizing staffing and the workloads. Out of 35 positions, 32 are filled. Many staff are brand new, so training is ongoing. He is working with other state agencies so that the ACMP is implemented uniformly and consistently.

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MR. BATES said relationships with the coastal districts are improving and not as conflicted. The third way of trying to improve the program is the legislatively mandated revision of the ABC list. It is a list of expedited consistency reviews under the ACMP. It houses routine and de minimus projects that qualify based on standard "stips." It allows the program to focus on more complex, controversial projects. The quicker that is done, the better off everyone is.

MR. BATES said the reevaluation of the ACMP regulations is substantive to this hearing. There have been challenges and he recognizes that the regulations are more stringent than HB 191 intended. DNR will look at what was done to see if the promulgation of the regulations governing district plans was appropriate and what can be done to improve the program. Commissioner Irwin intends to formally and openly reevaluate the regulations, and he will include the coastal districts, public, industry, agency, and applicants. There will be an open dialogue to re-craft the regulations and improve the program.

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MR. BATES said, "We have recognized this as a high priority." It is built into a five-year document in order to have funding. "We are committed to this" so that the regulations work for everyone. Regarding SB 161, much of it was recommended by the coastal districts. These issues that the districts have raised are legitimate and important, and DNR is taking them seriously and addressing many of them. "We look forward to making progress with the coastal districts to improve the ACMP." SB 161 will address issues by amending statutes, but some of the issues should be dealt with through regulation revisions - that DNR is contemplating -- and through dialogue with the districts.

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MR. BATES said he is concerned that parts of the bill will "derail the progress that we're making." He generally understands what is proposed in the bill, but he wants to understand the sponsor's intent for each section. "I would also appreciate a specific example that led to the crafting of the amendment." He asked for the logic behind it.

CHAIR OLSON asked what amendment he is speaking to.

MR. BATES said any of the proposed changes within the CS. There are no amendments on the table; he is talking about the proposed changes in the bill.

[4:09:02 PM](#)

CHAIR OLSON said the bill was put forward because it was evident that after HB 191 people had no say. Progress from the department was lacking. It was not just his district, but throughout the state. People say the rules keep changing. "If that is not clear to you, I will state it again." He asked about the 28 districts and the 16 that have been approved.

MR. BATES said 16 are approved through DNR and OCRM. Three are under mediation. Once a district got through the submission of their district plan amendment, DNR evaluated its compliance with the ACMP standards and district enforceable policy rules. He developed a recommendation for the commissioner, and the commissioner signed off on the DCOM recommendation. For these three districts, DNR approved some of the enforceable policies in designated areas and disapproved others. At that time, each coastal district has the regulatory option of selecting mediation to resolve the issue with a mutually agreed upon mediator. He gave examples of two successful mediations: Juneau and Bristol Bay Coastal Resource Service Area.

MR. BATES said the mediator sets the ground rules. It is not typical mediation as under a labor dispute. They talk about the requirements under the ACMP and what the coastal district wants. For Juneau and Bristol Bay, a compromise was reached. He explained that districts have to comply with certain requirements and gave the example of mapping issues and how big a legend needs to be or what colors are used. Regarding enforceable policies, if a policy was adequately addressed by another law, a coastal district cannot write a policy. For example, the coastal districts cannot manage wetlands because the Army Corps of Engineers does.

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MR. BATES said, "To the extent we were able to come to a compromise for the coastal districts on their mapping issues and their district policies, we craft that compromise, come to an agreement, and we finalize their plan, and then we both sign off on it." That happened in Juneau and Bristol Bay, he said. The state viewed the mediation a success, and the coastal districts certainly got more than what they originally had. He hopes the coastal districts found it to be successful as well. There are three districts: North Slope Borough, Northwest Arctic Borough, and the Bering Straits Coastal Resource Service Area that have requested mediation. As soon as everyone can get together, "we'll make progress."

CHAIR OLSON asked how long until a final outcome.

MR. BATES said, by regulation, the mediation can last no longer than 90 days, and that will start from the date the mediator convenes the first session. The mediator has a busy schedule, so everyone needs to find the right time.

[4:15:51 PM](#)

MR. BATES said it doesn't have to take as long as 90 days.

SENATOR STEVENS asked if OPMP has been divided in two.

MR. BATES said yes, both OPMP and DCOM are divisions.

SENATOR STEVENS asked about the Coastal Policy Council being reinstated.

MR. BATES said DNR doesn't have a position on that. There are some provisions in the CS that concern him, including technical flaws. He doesn't know why the sponsor wants to reconvene the council.

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SENATOR THOMAS said the Interior doesn't have these problems. He asked what criteria are used to rate projects to lessen the workload.

MR. BATES said Fairbanks has a watershed that drains into the coastal zone. There are two types of projects that are on the ABC list. One is the A list, which are projects with no coastal impacts, like burning garbage in a certain sized drum. The next set of projects includes routine ones that can be made consistent with standard alternative measures or stipulations.

Ice roads in the Arctic, for example, are routine even though they have coastal effects. Certain stipulations can be applied so that the projects don't have to go through the 50-day consistency review. They can get it done the day they walk in the door; the ACMP process is streamlined.

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SENATOR STEVENS asked what regulations are more stringent than HB 191 called for.

MR. BATES agreed the regulations are more stringent. The administration had testified about the possibility of enforceable policies with regard to subsistence, habitat, and other issues important to the coastal districts. DNR fully expected that these types of enforceable policies could be written by the coastal districts. The regulations themselves became tighter, such that those enforceable policies were no longer allowed. "They did not comply with the rules that were written guiding the development of district enforceable policies. So, particularly, the chapter of regulation 11AAC114 is the chapter that tightened up the district policies." DNR wants to reevaluate the state standards to see if they can let the districts write more policies, without duplicating state or federal law. HB 191 was designed to get rid of duplication and overlap between district policies and agency policies. Who do you give deference to? It is probably the agency with the authority. [The regulations] got rid of the duplication that was out there. He wants the districts to be able to address what is important to them, but it needs to "be considerate of what some of the important issues were under 191."

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CHAIR OLSON asked when the regulations will be rewritten.

MR. BATES said the sooner the better, but the commissioner wants experience with implementing the reform of the ACMP first. This June, DNR will take a break from revisions and implement the program for a period of time "just to get some experience implementing it the way it was designed under HB 191. We know there's flaws, but let's get experience -- be able to identify the gaps so that when we come back, we're able to clearly and articulately define what we have to do to change the program." He referred to the letter from Chair Olson to the commissioner.

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MR. BATES noted that Chair Olson doesn't want to wait that long for the reevaluation. Mr. Bates doesn't have a timeframe in

mind, but he wants to finish the ABC list, and that will be in June. Staffing is a problem for coordinating with the districts and getting their input. He wants to dedicate them as he needs to in order to be successful. Waiting a year after June is not good enough, but it is workload dictated. "We have a good plan in place." The CS and the creation of a Coastal Policy Council will take his focus away from what he is working on.

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CHAIR OLSON said he can empathize, but there are coastal districts that are confused. He noted that Mr. Bates said he didn't have a timeframe, but Chair Olson understands it to be a year after June 30, and that is unworkable. That is one reason for SB 161. [The timeframe] is uncalled for.

SENATOR WAGONER said this seems like a recurring nightmare. All the districts agreed that if they were given an extension they could all have the plans in.

[4:27:55 PM](#)

MR. BATES said SB 102 and SB 46 were sponsored by Chair Olson, and they extended the district deadlines. It is important to know the deadline was the submission of the plan, not the final approval, which is where we are now. Most districts met the deadline. The remaining three did not meet it.

SENATOR WAGONER said that he is being asked to make changes again. "I've never been one to put something in place and before it gets finalized, want to start changing it again."

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TERI CAMERY, Planner, City and Borough of Juneau, said she has been involved in the coastal plan since 2000. There have been changes and drama in the last few years. She supports HB 161 and appreciates Senator Olson's work on it. The changes are a positive step in solving a lot of problems created by the Murkowski administration. The Palin administration is willing to work with local governments. The coastal program is a key element in providing a coordinated review process and facilitating involvement among all the reviewing entities. It puts the permitting processes in one package and reduces time for everyone. It is of great value. The major changes in SB 161 make a lot of sense. Putting DEC back into the process is foremost. Taking DEC out in 2003 mystified her. Removing air and water quality from the review creates a whole range of problems. A person can't even determine the scope of the project. "If you

can't include air and water quality issues how can you tell what's under review in the first place?"

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MS. CAMERY said it is confusing for coastal districts and DNR staff in determining what is under review. How are the other reviewing entities able to separate out air and water quality from their review? There are no habitat issues that do not affect water quality in some form or another. She said it has screwed up the review process. Juneau has five impaired salmon streams, and DEC is required to put together a TMDL [total maximum daily load] document to determine how that impaired water body is managed. Development along that stream clearly requires the TMDL document for the ACMP review. There was a recent case about a controversial project that was going to have a direct impact on such a salmon stream. It was approved through the full ACMP process, and then DEC denied the project with good reason. It threw a wrench into the process and did no favors to the applicant. She sees that problem on a regular basis.

MS. CAMERY said the Coastal Policy Council is critical because it provides broader representation in the program. If there is controversy, it doesn't make sense to consolidate all authority in a single agency. The Murkowski administration wanted to consolidate that power and authority, but Governor Palin is taking a very different perspective. Reinstating the council is an important part of that. SB 161 will give it the same representation as the former council, including district representation, agency members, and the DNR commissioner. It will give a much more balanced view on controversial topics, but it won't change the day-to-day implementation of the ACMP, which should stay in the hands of the agency. The changes regarding district policy approval are important. Clarifying that districts can have policies that don't specifically duplicate state and federal law is in the current plan, but there is a whole bunch of other language that muddies that.

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MS. CAMERY said DNR had a bad bill followed by bad regulations, and they were charged with implementation. It is very hard to come up with consistent interpretations, but the changes in SB 161 go a long way toward clarity. In Juneau, the simple statement of "districts may have policies that don't duplicate state or federal law" in combination with illuminating the very, very strict requirements on designations would have taken two years off of the plan approval process. Juneau did go through mediation successfully, but it was a difficult process. It was

unnecessary because the case was there from the very beginning, but everyone was suffering from a badly written law and badly written regulations. These changes are too important to be left for regulations and need to be put into statute immediately for the benefit of the applicant, reviewing agencies, and districts.

4:37:58 PM

CHAIR OLSON asked her opinion on the mediation process, other than her view that parts of it were unnecessary. He asked if she understands what is happening with the other three districts.

MS. CAMERY said it was challenging and took a long time just to get the mediation set up in the first place. She was pleased with the mediator, but there was a lot of frustration. The changing interpretations continued through the mediation process. The issues that Juneau started out with were not the issues they debated at the end. "We did not have the same reasons for denial of our policies that we started out with. So it was difficult and frustrating." It worked out in the end. She is not familiar with the other districts. Juneau was very specific on focusing on the Juneau wetland plan.

4:39:49 PM

SENATOR STEVENS said the policy council seems critical as a forum and not a power over DNR. If it were reinstated would it be a threat to DNR or just be more of a forum?

MS. CAMERY said she believes the council would have a critical role in plan approval, but the DNR commissioner is still involved, so it is not taking away the commissioner's authority so much as having broader democratic representation on areas that may become controversial.

SENATOR STEVENS said he looks forward to hearing more about the council, and he would not see it as a threat to DNR.

4:41:43 PM

JOHNNY AIKEN, Director, North Slope Borough, Department of Planning and Community Services, provided the following:

The North Slope Borough supports this draft of SB 161. It would solve many of the problems we have faced during the past few years as the Murkowski Administration implemented changes to the Alaska Coastal Management Program. While it may not restore everything in the original program, this draft fixes

some aspects of the ACMP that fall far short of the program's intent.

The Borough supports responsible resource development, and for over 20 years, the ACMP helped to establish a balance between development and protection of coastal resources. The program was useful in gaining local support for development projects, because it gave local communities a forum for their concerns about potential impacts.

Since the changes were implemented, the ACMP has lost its balance and its ability to generate local support. Almost all of our proposed enforceable policies have been denied by the State, so we have been forced to rely on our Title 19 planning and zoning processes. While this permitting process is an effective tool, it does not allow us the opportunities in the former coastal management program to work cooperatively with the state and federal agencies in developing compatible permit stipulations.

The work draft before the committee would help restore a meaningful ACMP. Most importantly, it would make clear that coastal districts can establish meaningful enforceable policies. We believe HB 191, passed in 2003, would have made this possible, but the regulations adopted by the previous administration eliminated this possibility. Only 4 of the 37 policies we proposed for our coastal plan revision were approved, and we were told that remaining policies must be changed significantly before they could be approved.

[4:46:15 PM](#)

The work draft also puts air and water quality permits back into the ACMP process. Since the Alaska Department of Environmental Conservation permits have been removed from the consistency review process, there has been a lot of confusion. I appreciate Teri's comments on this. 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 work draft to reestablish the Coastal Policy Council. The former council played a big role in achieving a policy

balance, because it was composed of both state government staff and locally elected officials.

Finally, the work draft makes it clear that all Outer Continental Shelf activities affecting coastal resources or uses would be considered in ACMP reviews. As a result of changes to the program in recent years, some effects of offshore oil and gas activities are no longer considered.

I am very encouraged by this work draft, and I hope the committee will look favorably on it. Again, I appreciate the chance to speak with you today. Thank you, Mister Chairman. I look forward to a fair and positive change.

4:48:00 PM

CHAIR OLSON asked if Mr. Aiken knows that DNR intends to start its formal evaluations of ACMP a year after June 2008.

GORDON BROWER, Land Management Regulations Manager, Planning and Community Services, North Slope Borough, said it doesn't make sense to test what DNR has done already. He said Mr. Bates has been steering this "since back then," and the bar keeps changing. "It changed the regulations on us." He said he would really frown on waiting, and he suggested making legislative changes that DNR will have to act on. From his experience, if it is left up to regulations, it is easily altered.

4:50:40 PM

TOM OKLEASIK, Planning Director, Northwest Arctic Borough (NWAB), Kotzebue, said the NWAB supports SB 161 because it will resolve most of the problems the borough has had in getting approval of its coastal management plan. The NWAB submitted its draft in September 2006, but only 1 of 51 proposed enforceable policies were approved, and all areas proposed for historic designations were denied. Only one small subsistence use area was approved. The borough is supportive of resource development, but it needs to be in due consideration of issues and standards of subsistence as well as other uses and resources. The people are dependent on subsistence, and most of the subsistence areas were denied, so the NWAB felt it had no choice but to ask for mediation, which has not been approved. "We have been waiting for two years." The bill will also fix three important problems related to the implementation of the ACMP. It will make it clear that the coastal districts can make meaningful enforceable policies. The bill will also reinstate the formal Coastal Policy

Council and bring air and water quality issues back into the ACMP consistency review process.

[4:53:51 PM](#)

CHAIR OLSON asked about mediation being the only way to appeal some of these decisions.

MR. OKLEASIK said it is the first time the mediation process is being used, "and that should tell you about the changes that happened to the program under the last administration - there was never a mediation before." The process is new, and it is very time consuming. Consistency reviews don't wait and the work piles up despite this additional process that is very slow.

[4:55:02 PM](#)

BUD CASSIDY, Planning Director, Kodiak Island Borough, said the borough would support any bill that tries to achieve a more balanced and cooperative relationship between the state and the borough, which is rare now. Our role under the current plan will be limited. Kodiak will have a seat at the table but will have very little say except to quote state regulations and regulations interpreted by the state, not the borough. He said the local planning and zoning codes will serve better. The ACMP program has become centralized. There are administrative advantages for a one-size-fits-all program, but there are miles of diverse coastline with diverse communities in Alaska, so it does not work. "We want an opportunity to comment on projects." The borough has local experts like Natives and fishers who need to be consulted. He said Mr. Bate's comments about reevaluating the program are heartening, but a timeline is needed. Kodiak has a plan on its way to OCRM, but it is concerned about what is really in the plan. "Our goal was to have a seat at the table."

[4:57:24 PM](#)

SENATOR STEVENS asked if the Coastal Policy Council is an efficient way to get local input and to find balance.

MR. CASSIDY said the council will consist of a diverse group of individuals that would mediate conflicts. The less centralized the program is, the better. That is where the Coastal Policy Council fits in.

[4:58:52 PM](#)

GARY WILLIAMS, Coordinator, Kenai Peninsula Borough Coastal District, said he supports SB 161. He appreciates the challenges that the division director and his staff faced with HB 191, "but it was a product of HB 191, which we are here to try and correct

in its essence and in its unanticipated consequences." Any set of policies that have not been revised for 15 years, like Kenai's coastal program, needs to be reconsidered. For that, HB 191 was good, but what was not good was how it dictated the process. "Leaving aside the issue of the reasons the governor and key legislators set out to eviscerate the ACMP, I'll just focus on a couple of issues I found most difficult in the process." The legislation gave the staff too little guidance on what is precise and enforceable language. It is particularly one-sided when the terms are not negotiable and more particularly problematic when the language was more precise than DNR would allow. HB 191 doesn't allow a district to have a policy that is adequately addressed in state or federal law, and "adequately" is the key word.

[5:01:42 PM](#)

MR. WILLIAMS said what someone in the DNR thinks is adequate may differ from someone who is trying to write a policy for a specific issue of local concern. "The word 'adequately' meant only what DNR said it meant." Anyone who thinks HB 191 was a fix for problems, needs to consider that the ACMP revisions still haven't taken place. Despite having submitted the Kenai's amendment in September of 2006, there is still no approved program. It is pending at OCRM. The bill addresses these problems and would create a Coastal Policy Council to manage the ACMP. He said he supports the sponsor statement and the statement of the Alaska Coastal District Association on September 2007.

[5:02:57 PM](#)

LINDSAY WOLTER, Assistant Attorney General, Department of Law, Anchorage, said her read of the bill is that the duties of DCOM are moved to the Coastal Policy Council. It is composed of nine members of the public and five from state government, but it doesn't say anything about the staff. Previously "the staff would be what DCOM does. They were the ones that did the reviews and wrote regulations, and it would be sort of filtered through the council." The bill doesn't set it up that way but says the commissioner will appoint the public members to the council. "The council's going to be writing regulations and that sort of thing, as currently written under the draft. Those appointments need to be made by the governor not a commissioner." She said there's never been any board or council that has public members writing regulations unless they were appointed by a governor.

[5:04:59 PM](#)

CHAIR OLSON said he will look at that. People should realize that Mr. Bates has superiors giving him directions, so he is in a precarious position.

MR. BATES said he appreciates the testimony by the coastal districts. He has heard it before and he has heard the pain. What they address and what is being addressed in the bill is real, but the agency is committed to looking at them. He said there are challenges in the bill and unless he can work with the committee, DNR can't have a position. He applauded the chair for representing his constituents, creating this bill, and staying interested.

[5:07:09 PM](#)

CHAIR OLSON said there will be staff time to fine tune it.

SENATOR STEVENS said he really likes the Coastal Policy Council; it is a great forum to get communities involved. He wants to make sure the bill accomplishes that because is a critical element. It is a forum and is not meant to be a threat to DNR. It is not his intention that the council would take over the job of DNR, but it should play an important role. It allows for balance and gives the communities a seat at the table. It provides local knowledge and expertise. He doesn't want the council picking up the duties of the staff, and he asked for Mr. Bates to look at a way the council can return.

[5:09:05 PM](#)

MR. BATES said he will look at it, but Ms. Wolter brought up two important points. There was a provision in the old statutes to identify the former Division of Governmental Coordination as the staff to the council, and without that, the council will meet to decide the fate of each and every project. "I don't think that's your intent." He said he knows how the councils did work and how successful they were. He will look at it.

CHAIR OLSON held SB 161 in committee.

The meeting was adjourned at [5:10:35 PM](#).