

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 10, 2009

8:01 a.m.

MEMBERS PRESENT

Representative Bob Herron, Co-Chair
Representative Cathy Engstrom Munoz, Co-Chair
Representative John Harris
Representative Wes Keller
Representative Charisse Millett
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 74

"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 74

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(s): REPRESENTATIVE(s) JOULE, EDGMON, BUCH

01/20/09	(H)	PREFILE RELEASED 1/16/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	CRA, RES, FIN
02/10/09	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as one of the prime sponsors of HB 74.

ELIZABETH HENSLEY, Intern

Representative Reggie Joule
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Representative Joule,
presented HB 74.

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

POSITION STATEMENT: Testified in opposition to HB 74.

TOM OKLEASIK, Planning Director
Northwest Arctic Borough
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of HB 74.

STEVE de ALBUQUERQUE, Director
Health and Safety Environment
ConocoPhillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 74.

JOHNNY AIKEN, Planning Director
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Testified in support of HB 74.

CAROL SMITH, Coastal Coordinator
City of Valdez
Valdez, Alaska

POSITION STATEMENT: Related support for various aspects of HB
74.

TERI CAMERY, Planner
Planning Division
Office of Community Development
Department of Community Development
City & Borough of Juneau
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 74.

MARILYN CROCKETT, Executive Director
Alaska Oil and Gas Association (AOGA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 74.

CARL ANDREW, Chair, Cenaliulriit Coastal Resource Service Area
Tuntutuliak, Alaska

POSITION STATEMENT: Testified in support of HB 74.

KAROL KOLEHMAINEN, Program Coordinator
Aleutians West Coastal Resource Service Area
Wasilla, Alaska

POSITION STATEMENT: Testified that Aleutians West CRSA is largely in support of HB 74.

GARY WILLIAMS, Coordinator
Kenai Peninsula Borough Coastal District
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 74.

MILLI MARTIN
Homer, Alaska

POSITION STATEMENT: Speaking on her own behalf, encouraged passage of HB 74.

ANDREW DEVALPINE, Director
Bristol Bay Coastal Resource Service Area (BBCRSA)
Dillingham, Alaska

POSITION STATEMENT: Expressed concerns with aspects of the existing ACMP and related support for various aspects of HB 74.

KAREN KEESECKER, Planner
Coastal Zone Planning
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 74.

TOM LOHMAN, Environmental Resource Specialist
Department of Wildlife Management
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Testified in support of HB 74.

ACTION NARRATIVE

[8:01:02 AM](#)

CO-CHAIR BOB HERRON called the House Community and Regional Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Herron, Munoz, Keller, and Gardner were present

at the call to order. Representatives Harris, Millet, and Cissna arrived as the meeting was in progress.

HB 74-COASTAL MANAGEMENT PROGRAM

8:02:05 AM

CO-CHAIR HERRON announced that the only order of business would be HOUSE BILL NO. 74, "An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board."

CO-CHAIR HERRON informed the committee that HB 74 would be held over today.

8:02:33 AM

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, speaking as one of the prime sponsors of HB 74, began by sharing a photo map entitled "Oil Development in Alaska's Arctic." The photo illustrates the amount of oil development from 1968 when oil was first discovered in Prudhoe Bay and there was a single well to 1977. In 1977 coastal zone management began. In 1989 [development] began [to reach into] the coastal areas of the North Slope and around Prudhoe Bay. By 1999 there was much activity in the North Slope region. In 2003 how coastal zone management was done in the North was changed. The point, he emphasized, is that at that time coastal zone management with the involvement of local communities was very successful in exploration and development of the state's resources. This legislation attempts to return the coastal zone management process to one in which there is local involvement. The notion that local community involvement would stop development is inaccurate because much development successfully occurred when local communities were involved in the coastal zone management plan. He recalled only in one or two instances that projects were slowed down and to his knowledge no project was halted because of the coastal zone management in place. Representative Joule opined, "One of the brags we have in this state with development is that we do it right."

8:06:49 AM

ELIZABETH HENSLEY, Intern, Representative Reggie Joule, Alaska State Legislature, explained that HB 74 seeks to amend Alaska Coastal Management Plan (ACMP) statutes to accomplish four objectives. She then turned to the history of the ACMP, which

was created pursuant to the 1972 federal Coastal Zone Management Act. The intent, in part, of the aforementioned act is:

to preserve, protect, develop, and where possible, to restore and enhance the resources of the nation's coastal zone for this and succeeding generations; to encourage the participation and cooperation of the public, state, and local governments as well as of the federal agencies; to provide for the coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources; and to give opportunities for public and local government participation in coastal management decision making.

MS. HENSLEY reminded the committee that in 1977 the Alaska State Legislature enacted the Alaska Coastal Management Act, which created the ACMP. The program was federally approved in 1979. Although originally a 17-member board oversaw the program, in 2003 the Murkowski Administration concentrated much of the decision-making power in the Department of Natural Resources (DNR). This legislation, HB 74, has four objectives with the first being to restore the Alaska Coastal Policy Board, which would be composed of nine members. Of those nine members, five would be appointed by the governor to represent the public representing coastal districts and the remainder would be the commissioners of the state's resource agencies. The board would be responsible for approving district coastal programs, grant programs, and regulations pertaining to the ACMP. She then pointed out that the process in HB 74 would frontload dispute resolution by encouraging districts to resolve issues with DNR prior to the plan being reviewed by the Coastal Policy Board. The process would also involve all three resource agencies in pre-decision appeals. Furthermore, DNR would maintain all day-to-day management of all ACMP matters and retain responsibility for project consistency reviews. The second objective of HB 74 is to streamline the ACMP consistency review process and to promote agency cooperation related to issue resolution. Ms. Hensley highlighted that one of the main ideas behind ACMP is to have a one-stop shop for those who want to conduct activities by the coast. Therefore, HB 74 returns the Department of Environmental Conservation (DEC) permitting to the process. This legislation also streamlines the consistency review process by encouraging coordination of municipal Title 29 with the ACMP process, which reduces the chances of conflicts between state, federal, and local permit conditions.

MS. HENSLEY then specified that the third objective of HB 74 is to restore the role of coastal districts by allowing them to establish local, enforceable, and meaningful policies. This legislation would empower coastal districts without giving them veto authority, which is critical to building partnerships and engaging in responsible development. Ms. Hensley opined that HB 74 recognizes that local people have local knowledge that is of importance when managing coastal resources. Furthermore, the federal law upon which the ACMP is based emphasized coastal districts, which was also the case in Alaska law prior to 2003. The fourth objective of HB 74 is to restore state's rights by reinstating certain provisions eliminated by the 2003 legislation. For example, HB 74 allows for an extension of the 90-day review limit for those consistency reviews that include permits from federal agencies. The aforementioned allows for more input from the state and the public during the review period. The legislation also allows review of projects inland of coastal zones if there may be coastal impacts. The legislation, she pointed out, also allows for review of individual oil and gas lease sales in federal Outer Counter Shelf (OCS) waters. She noted that there is no other mechanism for the state to have such extensive input in what occurs in the OCS.

[8:12:56 AM](#)

REPRESENTATIVE GARDNER, recalling that the legislation empowers local communities, inquired as to the limits of the power local communities would hold under HB 74.

MS. HENSLEY related that currently coastal districts have difficulty in obtaining approval of their enforceable policies, which has limited their ability to have a say in their own communities. This legislation, she explained, would allow communities to write enforceable policies that become part of the review process. However, the local communities wouldn't be responsible for determining whether the project is consistent with the standards as that responsibility lies with DNR.

[8:14:16 AM](#)

CO-CHAIR MUNOZ inquired as to what the new timeframe would be for federal projects.

MS. HENSLEY offered to obtain that answer for the committee.

[8:14:49 AM](#)

REPRESENTATIVE HARRIS asked if the sponsor has formulated any answers to the issues raised in the letter from ConocoPhillips Alaska, Inc. ("ConocoPhillips"). He pointed out that ConocoPhillips requests that the existing [ACMP] program stay in place.

MS. HENSLEY, regarding the DEC carve out and ConocoPhillips' desire to maintain two separate processes, opined that generally the streamlining effect is more beneficial to developers.

[8:18:54 AM](#)

REPRESENTATIVE JOULE directed the committee's attention back to the map he presented earlier, which illustrates the activity [on the North Slope] from the implementation of the ACMP to 2003. He, again, told the members that much of the time the map illustrates was a time when much of what HB 74 proposes was in place. During that time when local communities were involved in the process, development was successful, with a minimum of intrusion.

[8:21:12 AM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources (DNR), related that DNR doesn't support HB 74 as the department has two substantive concerns. First, HB 74 creates a new oversight body that has the ability to override agency authority, which effectively renders the legislative establishment of laws relative to resource management and protection moot. The second substantive concern of DNR is that HB 74 doesn't balance or represent all the ACMP participants and stakeholders, but rather is specific to the issues of a group of ACMP participants. Mr. Bates mentioned that he had additional concerns that he could detail if the committee saw fit. He then noted that DNR has attached a fiscal note to HB 74.

[8:22:47 AM](#)

REPRESENTATIVE GARDNER inquired as to who isn't represented in the legislation.

MR. BATES explained that DNR views the ACMP as a stool with four legs that consist of the following: coastal districts, state agencies, interested public, and industry. This legislation primarily represents the interests of the coastal districts in

coastal management. The concern is that a change to one leg of the stool makes the stool unstable.

REPRESENTATIVE GARDNER then asked whether the department believes the existing ACMP is stable.

MR. BATES related that DNR has been evaluating changes to the ACMP because the department realizes that for many participants the program has been challenging since 2003. The department, he further related, is trying to find ways to stabilize the program. However, the department hasn't reached consensus on what those changes could be.

[8:24:20 AM](#)

REPRESENTATIVE GARDNER inquired as to the ways in which DNR believes the ACMP is currently unstable.

MR. BATES pointed out that HB 74 illustrates how some participants would like to see the program stabilized, such as through the creation of the Coastal Policy Board, the expansion of districts' ability to write enforceable policies, and the expansion of the coastal zone inland.

REPRESENTATIVE GARDNER surmised then that one of the ways in which the status quo is unstable, from the department's view, is the opportunity for coastal zone districts to make decisions regarding inland areas.

MR. BATES said the aforementioned has been represented through HB 74. The department believes that the ACMP is relatively functional and stable to the point of being able to implement it. Although DNR recognizes the desire to change the program, the department hasn't reached a conclusion as to what that change could or should be or even the form in which the change would be.

[8:25:57 AM](#)

REPRESENTATIVE GARDNER asked if there are areas of the ACMP that DNR believes is unstable or does DNR acknowledge the view of some stakeholders that the ACMP is unstable while DNR believes the program is stable.

MR. BATES explained that a year ago DNR committed to reevaluate the ACMP statutes and regulations, and that process was initiated in July 2008. The goal was to evaluate whether the

program is stable and whether there is change that could result in a more stable program. He reiterated that to date, DNR hasn't come to consensus regarding whether change is necessary and what the change could look like. Mr. Bates said, "I wouldn't put forward the idea that the program is unstable at this point. Certainly, I know that there is a desire for change on certain participants' parts."

8:27:29 AM

REPRESENTATIVE HARRIS inquired as to what the administration, in general, and DNR is doing to sit down with those who desire change and want local issues to be taken into consideration within the ACMP.

MR. BATES specified that the department engaged in a fairly robust public process to engage all participants in the ACMP; that process began in July 2008. Comments and public input were solicited in regard to what changes could be accomplished generally with the program. To that end, DNR put out draft statutes/regulations to gather input, garner ideas, and engage participants in what the ACMP is and how it could be improved. A number of meetings were held over the months of July through December during which issues were discussed in depth. Still, the department hasn't come to consensus with the participants at the table regarding what changes could be achieved. Mr. Bates pointed out that the ACMP is a complicated program that represents many factions, and therefore there is a difference in opinion as to what is best and how to effectively implement a coastal program.

8:32:11 AM

REPRESENTATIVE HARRIS surmised then that the department has ongoing dialogues with the impacted parties. Referring to the map of the North Slope presented by the sponsor, Representative Harris inquired as to [what is going on within the ACMP process] in other areas of the state where there is development or possible development.

MR. BATES specified that the coastal program goes around the coast of Alaska. There are 28 coastal districts that are actively participating in coastal management. From his perspective, the department has a good dialogue with those coastal districts. In fact, a representative from Valdez sits on the working group with whom the department communicates. That representative from Valdez communicates with the South

Central Region. He noted that the department has held ongoing meetings over the past six months and a full coastal conference is scheduled for March.

[8:34:03 AM](#)

REPRESENTATIVE CISSNA recalled the development of coastal management in the early 1970s. She further recalled that it took a long time for all communities to develop a plan that achieved balance and brought in all the stakeholders, in comparison to a six-month process. The current time in Alaska is unparalleled in terms of trauma on communities. She then expressed the need to be more thoughtful with the process. For instance, choosing times to meet or obtain comments from communities when the residents are able to participate.

MR. BATES pointed out that the six-month process he described wasn't the only process DNR went through. In fact, since the 2003 changes to the ACMP there has been regular dialogue with all participants, particularly the coastal districts. Furthermore, there was a district planning process with all 28 districts in which they revised their plans according to the 2003 changes. He noted that the three remaining districts that haven't secured approval of their plans are the North Slope Borough, the Northwest Arctic Borough, and the Bering Straits Coastal Resource Service Area. The first two boroughs requested mediation of their plans almost two years ago. As part of that mediation, the department traveled to those coastal districts and other areas of the state. Therefore, the department has been discussing whether coastal districts can secure approval of enforceable properties, what topics they can address, and what's important to the communities. Mr. Bates emphasized that this process has been ongoing, not just in the last six months. However, in the last six months the department has formalized its effort to evaluate the coastal zone management program and determine if change is possible. He acknowledged that this is a critical time in the state's history and local governments would like greater involvement and say in the permitted activities in their region. He highlighted that under the existing program, local communities have the ability to have enforceable policies and have the opportunity to participate in the state's permitting process and comment on those activities through the state agencies or the coastal zone management program. "The issues are not lost even if a district does not have an enforceable policy to apply to a project," he remarked.

[8:40:04 AM](#)

REPRESENTATIVE GARDNER inquired as to the changes DNR proposed in the statutes and regulations it put out for public comment and whether those address any of the matters addressed by HB 74.

MR. BATES clarified that DNR didn't engage in regulation promulgation through the Administrative Procedures Act, rather input from the participants was solicited from which potential statutory changes were crafted. In order to illustrate how those statutory changes would be reflected in the regulations, the department put out amended regulatory language as an example of the possible comprehensive change to coastal management. Mr. Bates commented that there are some statutory changes that could be made to the regulations in order to accomplish some of the issues coastal districts and others have raised.

REPRESENTATIVE GARDNER remarked that she is very interested in knowing what kinds of changes are being contemplated by DNR.

[8:42:27 AM](#)

CO-CHAIR MUNOZ pointed out that one of the concerns with HB 74 is that it could lead to costly delays and litigation. She asked if there are examples prior to 2003 in which the involvement of the coastal districts added cost to or delayed the projects.

MR. BATES said that he doesn't have an answer. Part of coastal zone management in Alaska, as a voluntary program, has been to include local communities in the decision-making process. He opined that local communities have always been a valuable participant in the process and had the ability to influence the outcome of projects. He said he didn't believe the department has ever reviewed whether local community involvement/coastal district involvement is costly. The aforementioned may be best addressed by an industry representative. Any time a coastal district raises a legitimate issue that needs to be addressed through the state permitting process or through coastal management, the department addresses it and brings it to satisfaction, he stated.

[8:45:17 AM](#)

REPRESENTATIVE GARDNER inquired as to who determines what is legitimate.

MR. BATES clarified that all issues are legitimate. He explained that if an enforceable policy or statewide standard is implicated, it's considered under coastal management. If the issue isn't implicated under coastal management, the issue is shared with the agency that has responsibility or expertise with the issue. Therefore, if the issue falls under the jurisdiction of the department, it addresses the issue otherwise the issue is shared with [those under whose jurisdiction it falls].

[8:46:47 AM](#)

TOM OKLEASIK, Planning Director, Northwest Arctic Borough, related the Northwest Arctic Borough's support for HB 74, which would really restore the coastal districts' ability to effectively participate in the ACMP. Since Alaska is a large and unique state, local input for statewide programs is important. The best way to accomplish the aforementioned is with a board of Alaskans, as proposed in HB 74, to oversee the major aspects of the ACMP. The board, he opined, would restore effective public engagement in the program. As mentioned earlier, the Northwest Arctic Borough has been involved in mediation over its plan, which is still yet to be approved. He noted that the plan is in year five or six of the process. The borough, he related, believes the mediation has been one-sided and very frustrating. Despite all the efforts of the [borough], the plan was denied by the state. This legislation would fix some of the mediation process by providing a fair review. Currently, the only recourse is to go to the commissioner of DNR for a decision that has already been made. There is no ability to obtain a third party review, he pointed out. In the way of background, Mr. Okleasik informed the committee that during mediation the coastal district was required to provide its analysis of state statutes and regulations and interpret those and their application by the legislature. In fact, during that five-year period, the borough's plan may have been rewritten 10-15 times and policies continued to be rewritten during mediation, and still no resolution. He related that often when the state was asked to explain its position, it refused with no explanation or interpretation of regulations. The aforementioned was frustrating because there is no recourse. Therefore, the situation is before the legislature to address and provide state staff clear criteria and direction for approval of district policies and ensure there is involvement of a board. The Northwest Arctic Borough also approves the addition of subsistence to the ACMP objectives. Until the changes of the Murkowski Administration, the ACMP program was a very effective tool in balancing resource development and

protecting coastal resources to support healthy subsistence. When development comes forward the reality of subsistence should be recognized and there should be a process through which local coastal districts can be involved. The aforementioned is why local policies are so important. With regard to whether local involvement slows down a project, Mr. Okleasik related his experience that the more a company can work with a community to avoid long-term adverse impacts the better the relationship with all parties involved. Furthermore, local involvement would likely result in the project being designed to be more effective. In closing, he said that the borough encourages responsible resource development of its natural resources as illustrated by the Red Dog Mine, the world's largest zinc mine. He related that the borough recognizes the economic importance of development, but emphasized that local coastal districts need to have a role in voicing valid concerns in order to ensure resource development is performed appropriately.

[8:52:51 AM](#)

STEVE de ALBUQUERQUE, Director, Health and Safety Environment, ConocoPhillips Alaska, Inc., related that ConocoPhillips Alaska, Inc. (ConocoPhillips) is opposed to HB 74. ConocoPhillips doesn't believe that ACMP legislative reform is necessary at this time and questions the significant changes proposed by HB 74. During the hearing of the Senate companion legislation, there was testimony that the proposed changes would streamline the permitting process and save the applicant time. As the person in charge of permitting for ConocoPhillips, the state's largest oil and gas explorer, developer, producer, Mr. de Albuquerque opined that's not the case.

MR. de ALBUQUERQUE then addressed the existing ACMP process. Alaska, he stated, is one of the most complex and rigorously regulated permitting and business environments in the world. ConocoPhillips closely works with local, state, and federal agencies as well as private land owners, Native villages, regional corporations, communities, and the public on a daily basis to seek input on all of ConocoPhillips' permit activities. Furthermore, ConocoPhillips can't point to any of its projects in which any coastal district's input or concerns weren't adequately addressed in the project decision. Moreover, he said he couldn't think of an instance during his four years as the permitting director with ConocoPhillips in which ConocoPhillips and the coastal districts weren't able to satisfactorily resolve an issue. He highlighted that in 2003 the legislature concluded that the ACMP is intended to function with a minimum of delay

and avoid regulatory confusion, costly litigation, and uncertainty regarding the feasibility of new investment in the state. The legislature also specified that the standards must be clear, concise, and provide the needed predictability as to the application, scope, and timing of the consistency review program. The aforementioned resulted in the existing streamlined process. He opined that from the applicant's perspective the existing ACMP process provides the assurance of an efficient permitting process. Existing statewide standards are clear and concise and ConocoPhillips is able to establish relatively firm timelines for its projects. Still, coastal districts have the ability to propose enforceable policies that conform to the district plan approval criteria and requirements. Coastal districts, he related, can also propose enforceable policies that aren't duplicative, don't restate existing state or federal policies, and don't redefine, replace, or modify existing standards. However, HB 74 would allow districts to restrict selected activities within the coastal district. These activities would involve uses of state concern, matters already adequately addressed by existing regulatory programs. Decision-making authority concerning the management and use of state resources is vested with the state, the current approach avoids enforceable policies that may be conflicting between the districts, state and federal agencies, and could result in a loss of conformity of district policies that currently exist. Mr. de Albuquerque stated that ConocoPhillips desires a clear and concise permitting process in order to accurately estimate project timelines. He reminded members that resource development in Alaska is already burdened with many seasonal constraints and uncertainties due to weather and environmental protections.

[8:57:54 AM](#)

MR. de ALBUQUERQUE turned the committee's attention to the creation of the coastal policy board, which ConocoPhillips believes to be unnecessary and merely adding another layer of complexity. The existing process provides clear, concise, consistent statewide standards for resource development in Alaska. Therefore, the existing process prevents conflict in the regulatory process and provides applicants and stakeholders with the assurance of an efficient permitting process. The creation of the coastal policy board with approval and decision-making authority could lead to an inconsistent permitting landscape and much uncertainty. He opined that interested stakeholders have ample opportunity to review and comment on proposed projects during the mandated public comment periods

associated with obtaining local, state, and federal permits. Applicants already have to comply with municipal codes, enforceable district policies, statewide standards, and existing state and federal regulations in order to obtain final approvals.

8:59:07 AM

MR. de ALBUQUERQUE then addressed the retention of the DEC carve out. He related that ConocoPhillips doesn't support elimination of the DEC carve out as there seems to be a significant misunderstanding among stakeholders on this matter. Approvals from environmental permits, including air and water permits and oil spill contingency plans, have well-documented and clear public notice and comment requirements. The public notice and comment requirements haven't been negatively impacted by the DEC carve out. Again, he reiterated that the current process works well. He opined that elimination of the DEC carve out would re-introduce conflicting regulatory mandates between DEC and the ACMP. Mr. de Albuquerque emphasized that the ACMP is a process and the permits are received from other agencies. Adequate public participation and opportunity for review by the coastal districts is provided in the existing streamlined program. He highlighted that adequate environmental review and protection is being provided by DEC as part of the consistency review process. In closing, Mr. de Albuquerque reiterated that ConocoPhillips desires a clear and consistent permitting process. ConocoPhillips isn't trying to reduce the level of environmental protection or the subsistence resources upon which so many stakeholders depend. Mr. de Albuquerque questioned why HB 74 is necessary since, as of 2003, the existing consistency review process has ensured that both state and local districts' concerns have been met prior to permits being issued for development of projects in a coastal zone. Therefore, changes to the existing, working program aren't necessary or desirable.

9:01:31 AM

JOHNNY AIKEN, Planning Director, North Slope Borough, related the North Slope Borough's support for HB 74, which he opined would fix many of the problems the borough faced during the amendment process for its coastal management plan. He informed the committee that although the [North Slope Borough coastal district] was recently in mediation with DNR, no agreement was reached and thus there is an impasse. This legislation makes it clear that the coastal districts can establish enforceable policies so long as they are clear and concise, don't restate an

existing law, and don't address a matter preempted by state or federal law. The 2003 changes to the ACMP allowed districts to establish policies for those matters not adequately addressed by state and federal law. Although the administration ensured the legislature that districts would be able to establish reasonable policies concerning such critical matters as subsistence and activities in federal waters, almost all [of the district's] enforceable policies were denied/rejected by DNR. He related that the review process for the plan was frustrating because the rules kept changing. He opined that the reasons DNR put forth to deny the district's policies weren't supported by statutes or regulations. This legislation would establish clear criteria for approving district policies.

MR. AIKEN emphasized that the neither the North Slope Borough nor any other district wants to adopt policies that would obstruct future development. The North Slope Borough is as dependent on oil and gas as the state is, he said. This legislation would bring DEC back into the consistency review process because many coastal resources and uses are directly related to air and water quality, which were removed under the DEC carve out. Additionally, one of the largest concerns for the North Slope Borough is the impact of a potential oil spill on the subsistence resources and uses, which can't be addressed under the existing program. With regard to the coastal policy board created under HB 74, Mr. Aiken pointed out that the board would be composed of coastal district [representatives] and state agency [representatives]. He opined that the proposed coastal policy board isn't intended to be a separate stakeholder group but rather is intended to represent those who implement the program. The 2003 changes to the ACMP concentrated all decision making into a single agency, which is problematic, he opined. This legislation would provide the proposed coastal policy board oversight in the following areas: approval of coastal district plans, approval of major grant programs, and approval of proposed changes to the ACMP regulations. Furthermore, this proposed board would be a streamlined version of the former coastal policy council as it would be smaller and wouldn't be involved in project consistency reviews. He highlighted that nothing in HB 74 gives the proposed board authority to overrule an agency's decision-making power. The aforementioned changes proposed by the legislation would streamline the ACMP because it would encourage stakeholders to work together early in the process to solve problems.

MR. AIKEN acknowledged that the [Department of Environmental Conservation] may state that only three districts don't have

approved programs. However, the reality is that most districts didn't have the funds to fight for a meaningful and useful program; otherwise they would be in the same position as [Barrow]. He opined that most of the districts [with plans] are as frustrated as those without. In fact, he opined that although Juneau has an approved plan, the people of Juneau remain unhappy with the process. Mr. Aiken further opined that [Barrow] has really tried to work with DNR on this process. However, he related that [Barrow's coastal district] doesn't believe in or agree with DNR's interpretations, which are believed to be arbitrary and capricious. The process has been frustrating; therefore he said he is anxious for changes so that [the process] could move forward. Many of the changes proposed in HB 74 would, he opined, restore faith in the state government and the ACMP.

[9:11:34 AM](#)

CAROL SMITH, Coastal Coordinator, City of Valdez, informed the committee that prior to the 2003 regulation changes, the Valdez coastal management plan had 41 enforceable policies. However, that decreased to 14 after the changes. The Valdez coastal management plan was approved after the changes because Valdez felt it was important to remain part of the ACMP, although many of the area's important policies had been lost. The hope, she related, was that new regulations would be introduced, regulations that provided for meaningful local input. With regard to the DEC carve out, Ms. Smith related her support of Section 37, which eliminates the DEC carve out. At the November workshop in Anchorage, DNR and other state agencies related problems with the review process that they attributed to the DEC carve out. The city has also had problems with regard to coordinating and responsibilities for a DEC project. Therefore, Ms. Smith said she supports the legislation making a one-stop shop. Furthermore, Ms. Smith related her support of the elimination of the requirement to update the plan every 10 years. Updating the plan is costly and time consuming, particularly when no changes are necessary. She related support for the proposed coastal policy board. The legislation makes the criteria for district enforceable policies much clearer because districts should be able to write meaningful enforceable policies that address local concerns. The legislation would also allow coastal districts to establish policies so long as they don't duplicate an existing law and don't address a matter by a state or federal agency. Ms. Smith highlighted that the Alaska coastline is vast and different and one size doesn't fit all situations. For instance, there is a gap with regard to the

Clean Air Act, and although the city wanted to implement a policy to address the gap, the regulations didn't allow for such.

[9:16:31 AM](#)

TERI CAMERY, Planner, Planning Division, Office of Community Development, Department of Community Development, City & Borough of Juneau, informed the committee that she has been working with the ACMP for approximately eight years now. Ms. Camery related her support for HB 74. The ACMP, she emphasized, is a management program not a regulatory program. Furthermore, most district coastal management plans include a variety of policies that promote development and the protection of sensitive areas. In fact, Juneau has a series of policies for special water front areas. Juneau has used the coastal zone management program to develop the city's cruise ship ports, marine facilities, and various loading areas. The ACMP is the way in which local priorities are carried through the review process with state and federal agencies. As mentioned earlier, the coastal district role was drastically reduced in 2003. In the case of Juneau, its 99 policy plan was reduced to 16 after a lengthy course of mediation.

MS. CAMERY, in response to the earlier comment that HB 74 represents a specific group, highlighted that districts represent 27 coastal districts throughout the state. The policies presented through the coastal management review process begin with local participation. Therefore, she opined that it's a misrepresentation to say that the public and the districts are separate. Districts represent local government; districts represent the public and work constantly with industry. Therefore, she said coastal districts aren't a separate leg, as represented by DNR. Ms. Camery related that when Juneau lost its policies through the review process, the city decided to maintain those policies within the local land use code. The aforementioned resulted in a separate review process rather than a coordinated review process, and therefore added time and expense for the developer. This proposed legislation would restore an integrated review process.

MS. CAMERY then informed the committee that when Juneau first developed its coastal management program in the 1980s, the focus was on the Wetland Management Program. The Wetland Management Plan was the result of very restrictive permitting by the Corps of Engineers. That program, she explained, was developed to promote scientifically supported development on low value

wetlands versus the single brush review the Corps of Engineers has to do. Later on the Corps of Engineers took a lax role in permitting wetland fill. Ms. Camery suggested that under the current federal administration, the pendulum is likely to return to tighter regulation. Coastal management is the way in which districts can bring their local concerns forward and ensure that those are heard throughout the federal and state review processes, which is why she opined that HB 74 helps all the stakeholders. Ms. Camery noted that this legislation, while not perfect, would seem to work toward the concerns expressed during a recent three-week meeting of all the stakeholders.

[9:23:03 AM](#)

MARILYN CROCKETT, Executive Director, Alaska Oil and Gas Association (AOGA), reminded the committee that AOGA is a private nonprofit trade association whose member companies account for the majority of oil and gas operations in the state. Since virtually all of the state's oil and gas operations take place adjacent to or within Alaska's coastal zone, AOGA is actively engaged in the Alaska Coastal Management Act and the subsequent program since its inception in 1979. Over the past 30 years, there has been a significant evolution in federal and state environmental laws and regulations. In the late 1990s and early 2000s, it became clear that the ACMP had become unmanageable in terms of process and scope. The aforementioned led to confusion, misinterpretation, and significant delays in the processing of permits, which was largely due to the evolution of environmental laws. The 2003 revisions resolved these challenges and transformed the program into one that provides certainty for the state, local districts, and regulated community, she opined. Unfortunately, HB 74 eliminates the certainty provided by the 2003 changes.

MS. CROCKETT provided the following testimony regarding the DEC carve out, which she characterized as one of the most problematic aspects of HB 74. She said:

This provision in existing law implements the original intent of the ACMP, that being that the air, land, and water standards and permits administered by the state are inherently consistent with the Coastal Zone Management Program, and therefore the additional step of securing a consistency determination isn't necessary. These standards were developed over years of technical input and are implemented through permits that are comprehensive and time consuming, carrying

with them statutory and regulatory requirements for extensive public comment period falling outside of the ACMP review schedule. As in the previous program, elimination of the carve out will result in consistency determinations on projects being held up until permits with the long lead times are issued and finalized; resulting in considerable delays in projects moving forward and a tremendous amount of certainty in terms of final approval for applicants to move forward. Our second concern relates to the coastal policy ... board. We're very concerned about the re-establishment of this board and the extent of responsibilities that will be vested with it. The bill empowers the board to approve all district programs and enforceable policies, changes to the boundaries, statewide standards, and changes to the program. The Department of Natural Resources may still adopt regulations, but only after approval of the board, which will result in endless back and forth as DNR attempts to ... mesh its requirements under the Administrative Procedures Act with board approval. We are concerned about the predictability and timelines being eliminated. One of the most challenging aspects of any permitting program is the ability to rely on timelines for decision making and this is ... obviously true in Alaska where we're often faced with operating during ... limited seasons. Unfortunately, HB 74 eliminates the decision timeline activities ... for activities proposed by a federal agency or permitted by a federal agency with no end timeline identified. Virtually, every project requires at least one federal permit for the impact of this provision is dramatic and frankly, will not affect just only oil and gas activities, but many other development activities including homebuilding given the breadth of wetlands coverage in the state, which will require a permit from the Corps of Engineers. Finally, I'd like to talk about expansion of the coastal boundaries. The bill would expand the reach of activities not only to the coastal zone but also to inland of the coastal zone if the activities would cause direct and significant impacts to a coastal use or resource. At last week's hearing, we heard a representative from one of the coastal districts state that it's their desire to weigh in on projects adjacent to their district, even if it means over the mountain. Such an expansion of the boundary was never

envisioned by the federal program nor in the state program, and is another example of the uncertainty that faces project applicants in determining when their project is in or out of the coastal zone. At the end of the challenges facing all of us is achieving the necessary balance between development of state-owned resources for the benefit of all Alaskans while protecting important coastal resources. We believe the program in place today strikes that appropriate and important balance.

[9:28:31 AM](#)

CARL ANDREW, Chair, Cenaliulriit Coastal Resource Service Area, informed the committee that the local coastal district covers the Yukon Kuskokwim Delta and includes about 40 villages. He then related that Cenaliulriit Coastal Resource Service Area (CRSA) supports HB 74. Although Cenaliulriit CRSA's plan was approved last August, it wasn't very helpful and HB 74 would be helpful in fixing many of the problems experienced during the years it took to get the plan approved. He then informed the committee that he is a volunteer and no funding has been received from DNR over the past few years. The Cenaliulriit CRSA has no paid staff and the former program director left the program due to frustration with how state was treating the [district] in terms of its enforceable policies. He emphasized that consistency is the most important concern. Although the previous plan [prior to 2003] allowed for the discussion of the impacts of development on subsistence, under the existing plan a district can't comment on subsistence during project review. Before comment on potential impacts on subsistence, DNR requires the designation of areas for each type of subsistence use. He related that the former program director went to every village and developed detailed GIS maps specifying the location of subsistence uses. However, DNR didn't approve the maps and denied the seven enforceable policies related to subsistence. Therefore, subsistence can't be discussed at all during consistency reviews. This legislation would allow policies on subsistence so long as those policies don't address something addressed by the state. The legislation also establishes a coastal policy board, which is necessary since it hasn't worked for DNR to make all the decisions. He concluded by expressing the hope that the committee would forward HB 74.

[9:33:05 AM](#)

KAROL KOLEHMAINEN, Program Coordinator, Aleutians West Coastal Resource Service Area (CRSA), related that Aleutians West CRSA is largely in support of HB 74. She informed the committee that Aleutians West CRSA represents the entire western Aleutian area, an area with a wealth of natural resources. She further informed the committee that Aleutians West CRSA became effective in 2007 and only 10 of the 44 enforceable policies it held at the beginning of the revision process remain. There are no longer any habitat policies, mitigation policies, or policies that mention air, water, or land quality. Furthermore, although there are designated subsistence use areas, there are no enforceable subsistence use policies. Many of the previous enforceable policies have been relegated to an unenforceable appendix and classified as advisory policies. Prior to [2003], the ACMP was a network program in which local reviewers were on par with federal and state reviewers. Although the centralization of the program in DNR has resulted in silencing the local voice and creating a disconnected program, she said she didn't believe that to have been the intent. Passage of HB 74 will return the [coastal districts] to a more meaningful position within a network program. She then related that the Aleutians West CRSA is in support of the coastal policy board that incorporates the positive aspects of the former coastal policy council. The proposed policy board would include representation from the coastal district, resource agencies, and DCCED. She noted agreement that the board's mission should include the approval local district plans, program-related funding, and program and regulatory changes. The Aleutians West CRSA also agrees, she related, that the board wouldn't be responsible for consistency review. The new board, she opined, would serve as a public forum that should result in more public involvement and a more equitable decision-making process, while providing an outreach component that is sorely lacking now. Ms. Kolehmainen said that the DEC carve out has confused the consistency review process, especially when the scope of the project requires permits from more than one agency. The removal of the DEC carve out has been interpreted as the removal of any matter relating to air, water, or land quality through the program implementing regulation. As stated earlier, it became impossible to craft acceptable policies related to air, water, or land quality or that even mentioned the words air or land. The aforementioned negated policies clearly within the regulation of DEC, but also policies related to habitat that might touch on water issues. "The return of DEC to the coordinated ACMP program is integral to a meaningful program and the AWCRSA supports the inclusion of DEC in network ACMP," she opined. However, the AWCRSA doesn't support the change in AS

46.40.190 relating to cooperative administration as the proposed language totally reverses the meaning of the paragraph and has the potential of undermining the existence of CRSAs. Ms. Kolehmainen related appreciation to the sponsor for addressing the problems in the existing ACMP. Passage of HB 74 will go a long way to restore the role of coastal districts in the ACMP, increase public involvement and oversight, and bring consistency reviews back into a coordinated network program.

[9:38:11 AM](#)

GARY WILLIAMS, Coordinator, Kenai Peninsula Borough Coastal District, testified in support of HB 74. He characterized the reinstatement of a board to offer a modest level of oversight to the ACMP as a positive step. Without an oversight board there is no opportunity for coastal districts to appeal agency decisions when there is disagreement over the interpretation of statutes and regulations, which was a common problem in the rewrite of coastal district plans. The proposed language on page 13, lines 9-11, is extremely important in the implementation of a resource management program. The language calls for consideration of the impacts of activities that "would cause direct and significant impacts to a coastal use or resource." However, under current law a coastal district can't consider the cumulative impact of activities that would cause damage to a resource if the activity occurs outside of the boundaries of coastal resources. Therefore, an activity in an upland that could damage a nearby wetland couldn't be considered in a district consistency review. "The proposed language in this section must be part of any rational management program," he said. Mr. Williams then pointed out that the Kenai Peninsula Borough Coastal program is part of the Kenai River Center, which is a multi-agency one-stop permitting entity with borough, state, and federal resource managers working together to process permit applications and manage compliance. The aforementioned is a process and relationship that works. Through the aforementioned process it's evident that bright lines of authority and responsibility don't always exist, and therefore it's valuable to have a certain amount of overlap and regulations. Furthermore, it's important that the legislature require the [coastal districts] to be inclusive in interagency and intergovernmental relationships and to communicate their common concerns and understandings regarding resource issues. If, in crafting HB 74, local and state agencies are encouraged to work together to ensure that development and resource protection are in balance, this will be fine legislation. Mr. Williams opined that HB 74 is a step in that direction.

[9:41:14 AM](#)

MILLI MARTIN, clarified that although she is the president of the Kenai Peninsula Borough Assembly, she is speaking on her own behalf today. Ms. Martin recalled her concern when the Murkowski Administration "literally gutted what had been a very good program for Alaska's coastal zones." She opined that the program wasn't broken and didn't need fixing at that time, although it does now. She emphasized that the various regions of the state differ, and therefore local oversight is critical. Ms. Martin related her support of the idea of a coastal policy board as it seems to reinstate what existed prior to the 2003 changes. With this board, coastal districts can appeal when there are differences of opinion or interpretations of DNR's decisions, among other things. Furthermore, the board restores the voice of the local communities. She then pointed out that Section 9 would allow districts to adopt policies that more clearly reflect their needs, local conditions, and science. She suspected that the aforementioned may be controversial and require compromise. She expressed the hope that the trend toward more local input and control can be preserved. Section 19, she highlighted, would restore the consistency review process for those projects inland of the coastal zone if there is significant impact to the coastal uses. Ms. Martin related her concern with regard to any impact to the rivers, which she characterized as the [state's] economic engines. She opined that restoration of this section as vital. Ms. Martin noted her support of many of the previous speakers' testimony and requested passage of HB 74.

[9:43:52 AM](#)

ANDREW DEVALPINE, Director, Bristol Bay Coastal Resource Service Area (BBCRSA), pointed out that [BBCRSA] is not a borough, and thus [BBCRSA] relies heavily on its own enforceable policies as they can be made locally relevant to the program. The current program has devastated local programs because it doesn't allow local, relevant policies. Therefore, [coastal districts] are reliant on statewide standards that are one-size-fit-all standards. Furthermore, BBCRSA believes the proposed coastal policy board is a good idea because it decentralizes authority. Mr. DeValpine then highlighted the case in which the 9th Circuit Court of Appeals decided that Mineral Management Corporation didn't meet the requirements of the National Environmental Policy Act of 1969 partially because it didn't adequately take into account subsistence whaling of the local people. If the

program had worked as it should, such that local communities had the necessary input, the aforementioned lawsuit would've likely not have happened and exploration would've occurred. The lawsuit also illustrates the instability of the existing ACMP program because the local district wasn't heard regarding its concerns on subsistence.

[9:48:19 AM](#)

KAREN KEESECKER, Planner, Coastal Zone Planning, Municipality of Anchorage, testified in support of HB 74 as it would resolve some of the issues [the Municipality of Anchorage] has had with the ACMP since the 2003 revisions. The Municipality of Anchorage received approval for its coastal management plan revision in December 2007 after a rather lengthy process. The revision reduced the over 100 enforceable policies to 5. One of the largest problems after the 2003 revision to ACMP was approval of the proposed enforceable policies. Prior to the 2003 revisions coastal districts could develop policies to address effects for unique coastal resources. However, the 2003 regulations made it practically impossible to establish well-crafted enforceable policies based on local knowledge. The new criteria [embodied in HB 74] would also allow the Anchorage coastal district to construct meaningful policies reflective of local conditions and management intent. This legislation would also create the Alaska coastal policy board, which would be a streamlined version of the previous coastal policy council. She applauded the efforts to bring back third party oversight with the proposed board, which would provide broad agency and district representation. The legislation would also return DEC to the ACMP. She echoed earlier testimony with regard to the difficulty of the removal of air and water quality issues under the existing program. In closing, Ms. Keesecker thanked the [sponsor's] efforts to rectify this important program for Alaska.

[9:50:59 AM](#)

TOM LOHMAN, Environmental Resource Specialist, Department of Wildlife Management, North Slope Borough, informed the committee that the North Slope Borough's local district plan was approved in 1988, his second year with the borough. He related that the ACMP isn't like other regulatory schemes and not intended to be like other regulatory schemes. The ACMP is a voluntary partnership and any party that opts to become part of the program expects to benefit from their participation. States that opt into the national program agree to meet certain general

conditions and in return receive federal dollars. [The program] provides a unique federal commitment to make federal activities consistent with the terms of local programs and in return the federal government receives the protection of coastal resources and uses. Mirroring the federal approach, the state, in crafting its program, adopted a unique approach 30 years ago such that the authority was transferred down to the local district level. The approach adopted by the state recognized the uniqueness of Alaska in regard to the size and diversity of its resources and uses. The plan also recognizes that the historic grant of real authority from the state and local communities is important for everyone. Mr. Lohman then noted his agreement with Ms. Camery that the districts are the residents of the state. This legislation, HB 74, attempts to correct some of the damage to the program since the 2003 regulation revisions. Although there were assurances at the time of the revisions that districts would be able to adopt meaningful local enforceable policies dealing with a broad range of coastal resources and uses. The aforementioned simply didn't happen, but rather the districts have been left with a greatly diminished role in the program. Mr. Lohman opined that no one should be frightened of the local districts' strong participation in the program as was the case for most of the history of the program. He pointed out that during that time local plans weren't used to halt otherwise good projects. Mr. Lohman said that [the North Slope local coastal district] has been and will continue to be pro-development on the North Slope. Furthermore, it's been frustrating that despite a couple of years of good faith effort and expense on the part of districts, the current administration has been slow to restore the program. At the statewide district meeting in April 2007, Commissioner Irwin assured everyone that DNR would fix the program. Only when ACMP legislation was filed last year did DNR announce that it would begin a formal re-evaluation of the program, which would begin in July. Department officials acknowledged at a June meeting that legislation caused them to act. Again, in good faith many local districts put a lot of effort into participation in the re-evaluation. Mr. Lohman related that [the North Slope Borough local coastal district] submitted extensive written comments in August, attended four full-day meetings in September and October, and an intense three-day meeting in early December to discuss proposed DNR legislation. Over the holidays, the [districts] scrambled to prepare extensive comments after being told the goal was for DNR to file legislation at the start of this session. He recalled that at the December meeting, DNR urged everyone to work together and pointed out that success in the legislature requires simplicity

and consensus. The North Slope Borough coastal district along with other districts asked for the opportunity to meet with DNR as it processes all the input received prior to the introduction of legislation. However, there has been no communications from DNR since the three-day meeting and no legislation from the administration has been introduced. He noted that DNR has argued that there are legal constraints on the executive's ability, either through the agency or a newly created coastal policy board, to approve district policies that are stricter or more specific than laws passed by the legislature. The aforementioned is ridiculous, and therefore [the districts] have asked for a more detailed briefing on this issue; no such briefing has been provided. No district is looking to adopt policies that conflict with or are pre-empted by state or federal law, and furthermore none of the districts are anti-development or used the programs as such prior to 2003. The districts merely want the ability to shape the development that does occur to meet local needs and concerns. In closing, Mr. Lohman related strong support for HB 74.

[9:57:37 AM](#)

CO-CHAIR HERRON announced that he and Co-Chair Munoz would work with Representative Joule until the next meeting at which time the committee will consider amendments.

[9:58:19 AM](#)

REPRESENTATIVE JOULE highlighted that the testimony from across the state today illustrates the wide interest in HB 74 since people simply want meaningful input restored. Representative Joule related that his job as a legislator is to represent the people not the state or the industry. He further related that sometimes healthy tension is appropriate. In closing, Representative Joule said that he looked forward to working with the co-chairs until the next hearing.

[HB 74 was held over.]

[9:59:24 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:59 a.m.