

HOUSE FINANCE COMMITTEE
January 26, 2010
1:36 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Mike Doogan
Representative Anna Fairclough
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

None.

ALSO PRESENT

Representative Lindsey Holmes, Dan Sullivan, Attorney General, Department of Law; Doug Vincent-Lang, Special Projects Coordinator, Department of Fish and Game; Brad Meyen, Staff Attorney, Department of Law; Taqulik Hepa, Director, Department of Wildlife Management, North Slope Borough; Andrew Mack, Special Assistant to the Mayor, North Slope Borough

PRESENT VIA TELECONFERENCE

George Vakalis, Manager, Municipality of Anchorage;

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SUMMARY

^OVERVIEW ON ENGANGERED SPECIES ACT

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Co-Chair Stoltze discussed housekeeping.

DAN SULLIVAN, ATTORNEY GENERAL, DEPARTMENT OF LAW, testified that cooperation and mutual understanding between the executive and legislative branches was an important aspect of the state's overall strategy concerning the Endangered Species Act (ESA). He discussed the agenda to be covered in the meeting and introduced his support staff.

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Mr. Sullivan stated that the Department of Law has four main objectives:

- Protecting Alaskan's safety, physical and financial wellbeing.
- Creating the conditions for economic growth and responsible development of natural resources.
- Protecting the fiscal integrity of the state.
- Promoting and defending good governance.

Mr. Sullivan continued. He explained that for DOL and other agencies, ESA related work was important in creating economic growth and responsible development. The department has witnessed an enclave of ESA petitions that could threaten future economic opportunity, economic development, and natural resource development in the state. Certain environmental groups use the ESA to impede development in large areas of the state without regard to reliable scientific research, actual benefit to the species, or the economic effects on residents. The department contends that the state can both responsibly develop resources and create economic opportunity, while protecting endangered and non-endangered species.

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Mr. Sullivan believed that the management of the Polar Bear on the North Slope was an ideal example of successful coexistence. He felt that state officials had a constitutional duty to drive economic development, while simultaneously protecting wildlife. To address the challenge, the department has created a five part plan. First, action would be taken to prevent unwarranted listings of species in Alaska. Several elements compose this action:

- Litigation to challenge unwarranted listings.
- Intervene when necessary to protect the interest of the state.
- Undertake pre-listing agreements, such as; candidate conservation plans and other conservation agreements.
- Focus on research and monitoring of scientific data.

Mr. Sullivan continued. Secondly, the department would work to deepen cooperation and information exchange with the federal government. He cited a recent agreement with the National Marine Fisheries Service (NMFS), as an example. He added that the federal government does not consistently reciprocate the department's request for information exchange. For example, the federal government had not asked either the Department of Fish and Game (DF&G) or the Department of Law for an opinion on the issue of critical habitat for the Polar Bear. Third, the department would work to shape habitat designation and a recovery plan for species that have been deemed endangered. The department has encouraged the federal government to use the 4D rules, which are an ESA mechanism for protecting threatened, as opposed to endangered, species. The fourth part of the strategy was to work to move to delist species from the endangered list when appropriate. For example, the department believes that the Easter Stellar Sea Lion has met every objective in the federal recovery plan and should be considered for delisting. Finally, the fifth part of the plan was to engage in public education on ESA issues, and to invite a dialogue nationwide. A letter had been drafted for distribution to the 49 other Attorney General's in the country, that listed the state's concerns in regard to ESAs, and included the reminder that the issue of ESAs could have repercussions nationwide.

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Mr. Sullivan informed the committee that the issue would be presented in March 2010, to the National Association of Attorney Generals. Currently, general fund dollars allocated to the Department of Fish and Game furnish the department with one attorney to focus solely on ESAs. The budget includes the request of \$200,000, to hire another ESA attorney, and an additional \$800,000 to continue to employ outside council. The Department of Fish and Game had requested \$386,000, in increments, of general funds, and \$450,000 in federal receipt authority, to focus on ESA issues and ESA related research.

Co-Chair Stoltze wondered if the department could create a chart illustrating the spending risk versus the benefit for the state. Mr. Sullivan replied that the department would work to provide any information requested by the committee.

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Mr. Sullivan continued. The department believed that the costs associated with listing a species under an ESA, contribute to economic uncertainty throughout the state. Also, due to the ESA listing, the ultimate decision making authority concerning in-state species was transferred to

federal courts. It was illegal to kill, capture, or otherwise harm the species on purpose or accidentally once it was listed. Every federal funded permitted or licensed activity must undergo a consultation process with federal agencies to determine whether the proposed activity would jeopardize continued existence. During the consultation process certain environmental groups undertake litigation which the department believed increased the cost of doing business in Alaska, and bred uncertainty among possible investors.

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Mr. Sullivan discussed the legal theory concerning the Polar Bear and Ribbon Seal debates. The legal theory stated that climate change was altering the habitat for species in the arctic environment. Although the population of the species might be increasing, or at a high historic level, species were being listed because environmental groups charged that the changes in habitat could put species at risk in the future. He warned that the employment of that legal theory could lead to unnecessary species listings. The federal government had rejected the theory in the Ribbon Seal case and the department had requested to intervene and support the decision. The Federal Fish and Wildlife Service and National Marine Fisheries have chosen opposing sides on the issue.

Mr. Sullivan offered another example of the misuse of legal climate change theory in Montana, which had been acceptable to the federal government, but that the department believed was speculative.

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Mr. Sullivan said environmentalists argued that Grizzly Bears should not be delisted because the White Bark Pine Nut, which the Grizzly Bear eats, could be affected by climate change which would put the bears at risk. The department believed that this was an improper reading of the ESA and could contribute to unnecessary additional listings. He gave more examples of the misuse of ESA by environmental groups.

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Mr. Sullivan said that the environmental groups often have considerable financial backing and aggressive tactics. He mentioned the importance of departmental intervention. Environmental groups claim that they are acting in the public interest of Alaska; the department does not. The department protects wildlife, as well as economic growth and resource development opportunities. He contended that it was important that the department intervene when the federal

government and environmental groups have settlement discussions. He shared that the department had requested to intervene in the Ribbon Seal case, but had not received a reply. The case was brought by an environmental group out of Arizona, and was heard in a federal court in San Francisco. The state's intervention in the case was currently being opposed by the environmental group.

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Mr. Sullivan stressed that the conservation of genuinely endangered species was important to DOL and DF&G. The department maintained opposition against unwarranted listings based on speculation, overbroad critical habitat determinations that did not take Alaska's economic interests into account, misuse of ESA to shut down resource development, and the use of ESA to regulate climate change.

DOUG VINCENT-LANG, SPECIAL PROJECTS COORDINATOR, DEPARTMENT OF FISH AND GAME, informed the committee that the state did not question the protection of definite endangered species, especially when the endangerment was a result of human activity. He cited North Pacific Right Wales as a genuine ESA listing. The department had concerns over the recent application of ESA in the state. Specific areas of concern include how far into the future species viability can be accurately predicted; 10 years, 50 years, 100 years, or 300 years. Rarely do DF&G biologists assess species viability beyond 10 years. The department had seen an increased reliance on models being used to predict out 100 to 300 years, as was the case of Beluga Whales in Cook Inlet. The department had asked what the reasonable level of risk to be considered before listing a species are; 1 percent, 10 percent, 20 percent, or 50 percent, and should the risk levels increase as longer timeframes are used. He said that in Cook Inlet, the decision was made to list the Beluga Whale based on a probability of extinction greater than 1 percent, and at time periods of 100 to 300 years. At the 50 year time horizon, the probability of extinction was less than 1 percent, which meant that the wale had a 99 percent chance of not going extinct within 50 years. The department questioned how critical habitat should be defined. Should it represent the occupied area as purposed for critical habitat, independent of the primary threats that the species faces, or should it represent a more narrowly defined geography, that focused on addressing the primary threats facing the species. For instance, with the Polar Bear, the ESA regarded the entire occupied range as critical habitat, irrespective of the fact that the primary threat, as identified in the listing decision, was loss of sea ice. The ESA citing that refuge from Killer Whales was the primary threat to Northern Sea Otters was an example of a more narrowly defined geography of critical habitat. He expressed concern for the definition of recovery objectives, should they be defined to remove the risk of extinction, or to

recover the species. He said that there were currently 45,000 to 60,000 Stellar Sea Lions in Western Alaska and that it could be argued that the risk of extinction had been removed. He added that another argument was that the population had not been sufficiently recovered to the historic population number of 103,000. He suggested that replenishing the species back to 103,000 might be impossible given current ocean conditions.

Mr. Vincent-Lang stated that DF&G was currently tasked with coordinating the states ESA related activities. The base, unrestricted, general fund budget provided funding for a state attorney, and two state biologists. Given the increase in listings and proposals for listings, the department was requesting \$236,000, in general funds dollars, to improve the department's ability to coordinate ESA activities and respond to increased listings. The funds would also be used to work with other states facing similar concerns regarding recent implementation of the ESA.

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Mr. Vincent-Lang described the species that the department had involvement with under ESAs:

- **Polar Bears**
- **Cook Inlet Beluga Whales**
- **Pacific Walrus:** The species has been petitioned by the environmental groups for listing under the ESA and is currently under a 12 month review by the U.S. Fish and Wildlife Service.
- **Southeast Alaska Herring:** Attempts to list began with a proposal by a local environmental group to designate Lynn Canal Herring as a distinct population segment. The state successfully provided comments that stated the Lynn Canal Herring were not a distinct population segment. The National Marine Fisheries Service expanded the listing to include all Southeast Alaskan Herring.
- **Ribbon, Spotted, Bearded and Ring Seals:** All are in various staged of the ESA process. The Ribbon Seal was recently cited to not warrant a listing, and is in litigation. The Spotted Seal was also cited as not warranting a listing, litigation is expected. The Bearded and Ring Seals are both undergoing a 12 month status review by the National Marine Fisheries Service.
- **Kittlitz's Murrelet**
- **Marbled Murrelets**
- **Northern Sea Otters**
- **Red Knots**

- **Goss Hawks**
- **Spectacle Eiders**
- **Stellar Eiders**
- **Stellar Sea Lions**
- **Yellow Billed Loons:** Recently decided by the Fish and Wildlife Service to be warranted for listing, but precluded due to agency resources.

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Mr. Vincent-Lang stated that the priority was to help residents of Alaska navigate the ESA. Under Section 6 of the ESA, the department had entered into agreements with the Fish and Wildlife Service, and the National Marine Fisheries Service, in order to collect more information on the needs of at-risk and enlisted species. An increment had been identified in the budget that would provide \$150,000 of general funds as a match to \$450,000 in federal dollars that would enable the department to improve understanding of certain marine mammal issues. The department was also conducting research using existing Section 6 monies to examine species listed under the United States Fish and Wildlife Service Endangered Species Program. Finally the department was examining ways to leverage existing funds in order to collect the information necessary to delist certain species.

Representative Gara asked about the hourly rates paid to outside counsel hired to litigate on the states behalf. BRAD MEYEN, STAFF ATTORNEY, DEPARTMENT OF LAW, replied (I think) recalled that the range was from \$230 to \$480 per hour. He added that the work was allocated at the most efficient level possible. Mr. Sullivan interjected that outside council brought additional expertise. He added that retaining outside counsel was advantageous when cases were litigated out of state. He stated that funding for an additional expert attorney within the DOL had been requested.

Representative Gara thought that in-state counsel could do the work for a significantly lower cost to the state. If the state paid an outside attorney \$350 per hour, full time for one year, it would result in a total cost of \$700,000. The same attorney, in-state, would cost \$200,000. He believed such spending was wasteful and hoped that the department would work to eliminate the unnecessary.

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Representative Gara believed that qualified attorneys could be found at the Attorney General's office, which would negate the need for outside counsel. Mr. Sullivan agreed

that DOL had first-rate attorneys working for salaries that did not match the private sector. He maintained that the combination of outside and in-state expertise was best when litigating ESA cases.

Representative Gara understood the political pressure of hiring outside rather than creating a new state employee position. He hoped that DOL could overcome the system prejudice and work to create new positions, rather than hiring out-of-state. He hoped that, in cases where the state acts as an Amicus curiae; a phrase that literally means "friend of the court", someone who was not a party to the litigation, but who believes that the court's decision may affect its interest, that the motivation was sincere, and not to "put on a show".

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Mr. Sullivan rebutted that the state had not been involved enough on a federal level. He reminded the committee that the state intervened in the litigation involving the Kensington Mine. Had the state not applied for certiorari, and taken the case to the Supreme Court, the mine would have been shut down. He asserted that when state territory and jobs were at stake, as was the risk in most ESA cases, it was necessary for the state to become aggressively involved.

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Vice-Chair Thomas commented that he felt it was important that the department gather its own information on herring stocks to compare and contrast with research gathered by the National Oceanic and Atmospheric Administration (NOAA) and NMFS. Mr. Vincent-Lang replied that the department was working with NMFS as it went through its 12 month status review. The department had a research program and management plans in place and considered itself the managers of Southeast Alaskan herring. Herring stocks fluctuate and migrate over time. He felt that the most informative information was available in order to make the decision as to list or not list the species.

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Vice-Chair Thomas was interested to see how much the department had budgeted for herring research.

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Mr. Vincent-Lang responded that the department often differs with other agencies as to whether or not a species should be listed. He said that the department would challenge information that it believed had been misinterpreted, and any ruling made as a result of the interpretation, but

providing the information to the agencies was the main objective.

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TAQULIK HEPA, DIRECTOR, DEPARTMENT OF WILDLIFE MANAGEMENT, NORTH SLOPE BOROUGH, read from a prepared document (copy on file):

Thank you, Mr. Chairman and members of the Committee. I appreciate this opportunity to speak to you today on behalf of the North Slope Borough and Mayor Edward Itta. I would like to share our views on the listing of the polar bear and other species under the terms of the Endangered Species Act and its effects on our local government, our communities and our subsistence hunting practices.

The borough has been involved in the management of polar bears on a daily basis since 1988, when Alaskan and Canadian subsistence users established the Inuvialuit-Inupiat Polar Bear Management Agreement. Since then, Native hunters have managed the aboriginal harvest of polar bears along the Arctic coast based on annual quotas recommended by polar bear scientists and the traditional knowledge of experienced Inuit hunters.

This co-management program has emphasized protection of denning bears, females and cubs, and it relies on continuous harvest monitoring. As a result, the polar bear take has remained below established quota levels on average for the past 20 years. The North Slope Borough has embraced this conservation effort and continues to do so, because we care about the polar bear as a resident Arctic species and we consider it essential to the cultural and nutritional wellbeing of our people.

But hunting is not the primary interaction we have with polar bears. As the human population increases on the North Slope and polar bears spend more time onshore because of receding sea ice, the borough has found it necessary to establish a polar bear deterrence program for the protection of both bears and people. With authorization from the U.S. Fish & Wildlife Service, our Department of Wildlife Management operates polar bear patrols to prevent human/bear encounters in the coastal communities of Kaktovik, Nuiqsut, Barrow, Wainwright, Point Lay and Point Hope. These patrols require staff, vehicles and deterrence equipment, and the borough has always been expected to cover the costs, despite the federal responsibility for polar bear protection.

So my first point is that if the federal government is concerned about polar bears, they should talk to us. North Slope people have a subsistence interest in the conservation of polar bears; we have centuries of traditional knowledge about the habits and health of the polar bear population; and the North Slope Borough has done more in recent decades to protect the species than any other governmental entity. We know how to manage the interaction of polar bears and people to limit harm to the bears while protecting the safety of a growing North Slope population. And I guess we're wondering why that doesn't seem to count for anything when it comes to setting policy on polar bears.

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The North Slope Borough is very troubled about the expanding application of the Endangered Species Act as a way to protect polar bears and other listed species. The blunt force approach of the ESA is likely to have severe implications on our residents and communities - in terms of our continuing efforts to manage wildlife, our subsistence hunting practices (including such basic activities as coastal travel by snow machine or boat), and even routine infrastructure development.

Our concern is not only based on the sweeping nature of the ESA, but also on our recent experience with the U.S. Fish & Wildlife Service. In late 2008 in an effort to conserve Stellar Eiders, the North Slope Borough hammered out a MOA with the Service setting local conservation measures in place. Our hope was that the Service would focus on the biological needs of the species, outreach, and educational efforts. Unfortunately, the result was a season of intensive law enforcement activity. This is this punitive approach to wildlife management that first comes to mind as we consider the possibilities for an ESA management plan.

We don't know what specific restrictions the Feds will come up with. But having designated 200,000 square miles of critical habitat that includes our hunting grounds and travel routes and surrounds some of our communities, any restrictions are likely to compromise our freedom of movement through the area or our ability to improve our communities. For example, it is not hard to imagine that prohibited activities could include construction of the new runway that the village of Kaktovik so desperately needs. If a polar bear den is identified near the community, the village may not be able to move their runway to higher ground in order to avoid being routinely swamped by storm surges, as it has been in recent years. That's just one example of a

very justifiable public need that stands a good chance of getting derailed in the wake of this listing and the enormous critical habitat designation.

If polar bears were going to be hugely benefited by these restrictions on our daily lives, we could at least understand it. But the federal action on polar bears is based on rapid disappearance of the sea ice the bears depend on as a feeding platform. Unfortunately, there is nothing we can do on the North Slope to counteract that problem. Restricting our activity in a 200,000-square-mile area will not help the polar bear at all. It will only make life more difficult for people, local governments and commercial concerns.

If the federal government really wants to protect the polar bear, it needs to address the issues of ocean warming and climate change. Nothing will be accomplished by restricting the ability of our communities to go about normal daily life. We are clearly not the cause of any serious threat to these species, and yet we could face civil and criminal liability under the ESA for any harm to a single polar bear, even though we are not having any effect on climate change or sea ice. This is not right.

In 2007, the North Slope Borough filed comments opposed to the listing of the Polar Bear under the ESA. We did so because - although we are very concerned about sea ice retreat - we didn't think there was enough data on polar bears to justify a listing, and we don't think the ESA is the right tool to deal with climate change issues.

As we noted in our 2007 comments, we have observed the effects of the warming Arctic for many years. Sea ice is forming later in the fall, it is not as thick as it used to be, and it thaws earlier in the spring. Violent storms are now more frequent and more intense and they're happening both earlier and later in the year. So we are experiencing the effects of climate change. But as we wrote in our comments to Secretary Kempthorne, "the causes of a changing northern climate lie outside our region, and we firmly believe that any action to counter the warming trend must focus on those causes at their sources."

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Unfortunately, it looks like the polar bear listing is going to be the wave of the future. For the first time

in history, there is now the likelihood of a large number of other North Slope species being listed. The federal government has already listed at least 5 species on or near the North Slope and is considering at least 7 more. Based on our long experience with bowhead whales, cooperative management agreements for polar bears, and work with bird species such as spectacled and Steller's eiders, we believe most species can be managed best under the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and - for the polar bear - our international conservation agreements. There are also state and federal wildlife laws and other international treaties that can be used as additional tools. We don't need ESA listings to create the best possible conservation programs along the Arctic coast. And as I said before, no management plan in the Arctic is going to get at the source of receding sea ice, which is the specific problem.

We are also concerned that management under the ESA is driven by litigation, and ESA litigation is targeted at the federal government, ignoring any local consequences. Any person can bring litigation under the "citizen suit" provisions of the ESA, and local communities are little more than collateral damage in these actions. Our ability to participate in traditional activities gets thrown under the bus in the wake of broad federal actions resulting from this kind of litigation. It is not only unfair, it's completely unreasonable.

We are exploring ways to limit the risks to our communities. The Polar Bear Special Rule under section 4d of the ESA gives the federal government an opportunity to shield us from some liability. This special rule protects against liability for incidental takes authorized by the Marine Mammal Protection Act, and for self-defense and deterrence. We are worried, though, that litigations - to which we are not a party - in federal court could strike down the 4d Rule and the protection it provides.

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Finally, I want to reiterate that in considering actions under the ESA, the Federal Government hasn't recognized the value of local and traditional knowledge. We know species such as polar bear and arctic seals better than anyone. We pay close attention to these animals and interact with them almost daily. They are part of our culture, our food supply, and our way of life. We have worked with federal agencies on

many Arctic species, and we've had notable successes, including the Alaska Eskimo Whaling Commission managing the endangered bowhead whale and the Alaska Nanuuq Commission managing polar bears.

Even so, our knowledge is often ignored in federal planning, and it was not fully considered in formal consultation before the polar bear listing. Mayor Itta testified at hearings, wrote letters, and spoke to Administration officials. Yet it's fair to say that the final analysis did not consider the experience and knowledge of the people most familiar with the species. So we don't believe there has been an adequate weighing of local and traditional knowledge in the early ESA decisions.

The North Slope Borough is glad to know that you are reviewing new and potential listings under the ESA, and we are grateful for the chance to speak on our behalf. There's no question in our minds that the ESA tackles complex problems with a giant hammer aimed in the wrong direction. It creates tremendous uncertainty for people in our isolated communities, and it may well lead to legal liability even though we are causing no harm to the species. There has to be a better way, and we are eager to work with you toward a more sensible solution.

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Co-Chair Stoltze asked if the North Slope Borough had been involved in meaningful conversation with DOL concerning ESAs.

ANDREW MACK, SPECIAL ASSISTANT TO THE MAYOR, GOVERNMENT AND EXTERNAL AFFAIRS, NORTH SLOPE BOROUGH testified that the attorney general had recently visited the North Slope Borough. He said that the listings had been coming in at a rapid pace and had been difficult to manage. He hoped that conversation with DOL would continue. The Department of Fish and Game has also been in contact.

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Co-Chair Stoltze wondered if DOL had been overly aggressive in the pursuit of certain cases. Mr. Mack replied that it was difficult for a local government to evaluate the challenge faced by the attorney general each day, on whether or not to intervene or file an Amicus curiae brief. The borough had concern for decisions being driven by litigation of which the borough had not been a party. For instance, the deadline for establishing a critical habitat rule was by consent decree in a federal court, and the borough had not

been involved in the discussion. He felt that the borough would need to defer to the state on larger issues because engaging in the litigation was out of the scope of what the local government could carry out.

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Representative Gara inquired if there was a way for the borough to become a party to litigation at the state's expense. Mr. Mack replied that the issue was one of the uncertainties of ESA cases. He cited the proposed runway for Kaktovik Airport, located on Barter Island, which has been identified as critical habitat. He anticipated litigation and opined that the groups promoting the critical habitat litigation in federal court had little sympathy for the community. He expounded that the groups had stated directly; if the choice must be made between the community and the endangered species, the movement would be to protect the species. If the runway plans are stifled, the borough may be forced to engage in litigation, in which case state involvement would most likely be necessary.

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Representative Gara asked if the federal government had indicated that it would stop construction of the airport based on the critical habitat consideration. Mr. Mack replied no.

Representative Gara understood that the borough was concerned that an outside group could intervene and file a lawsuit. Mr. Mack yes.

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Representative Joule hoped that the voices of communities directly impacted by wildlife issues would continue to be at the forefront of the conversation.

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Co-Chair Hawker recalled a meeting involving committee members in December 2009, at which Mayor Edward S. Itta of the North Slope Borough established a dialogue with legislators concerning ESAs. He hoped, through honest communication with effected communities, to maintain a mutual understanding of the issue. Representative Fairclough echoed the sentiments.

GEORGE VAKALIS, MANAGER, MUNICIPALITY OF ANCHORAGE (via teleconference), he spoke to the impacts of the ESA listings, specifically as it related to the Cook Inlet Beluga Whale, and the proposed critical habitat designation. In May of 2007, NOAA and NMFS proposed listing Beluga Whales

as endangered under the ESA. In October 2008, the whale was listed as endangered. The municipality supports the science as the basis for mitigation measures that have a positive effect on the recovery of the species. The ESA listing required designation of critical habitat at the time of the listing. Federal agencies must consult with NOAA and local agencies to prevent projects that would endanger the critical habitat. NMFS had proposed designating 3016 square miles of the Cook Inlet as critical habitat. Comments were being solicited by NMFS concerning the proposal. A request was made by the mayor of Anchorage for an extension of the comment timeframe, which was granted. Comments would be accepted through March 3, 2010. Additionally, NMFS had announced that public hearing will be held in Soldotna, Homer, Wasilla, and Anchorage. The Anchorage hearing was scheduled for February 12, 2010. He could not provide an estimated cost to the municipality as a result of the proposed listing. However, he was certain that the Port of Anchorage would be significantly impacted. The port was undergoing a major expansion and extension project to better facilitate statewide military deployments and cargo handling. He said that the port was designated as a vital strategic national asset. He added that 80 percent of goods coming to, and moving through the state, pass through the Port of Anchorage. The Anchorage water and wastewater treatment facility at Point Woronzof could be affected by the critical habitat designation. The facility uses primary discharge and meets all existing regulatory and water quality standards. Environmental monitoring has shown that the discharge has had no significant impact on the marine environment. During the previous renewal of the discharge permit, the Environmental Protection Agency (EPA) determined that Cook Inlet Beluga Whales would not be adversely impacted by the discharge. Currently, the municipality was in the process of permit renewal and was concerned about the financial consequences of moving from a primary facility, to a more restrictive discharge system, which would cost \$400 million, and may have no meaningful environmental impact.

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Mr. Vakalis shared that the city has hired a team of scientists to assist with the permit process. The hope was that scientific data would prove that there was no impact. He revealed that storm water drainage permits that the municipality had obtained would need to be reviewed because of the critical habitat issue. Mr. Vakalis said that the municipality was aware of its surrounding communities. The mayors of the surrounding communities were collaborating to address concerns. Mr. Vakalis declared that exploration and development of the Cook Inlet Region was necessary to solve current energy issues. He stressed the importance of quality science and encouraged the legislature to fund science that created valuable baseline data that could be used to assist

communities going through the required consultation process to mitigate issues pertaining to the recovery of the Beluga Whale in Cook Inlet.

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Representative Kelly queried the cost to Anchorage for the required consultation process.

Mr. Vakalis replied \$1 million would be spent to gain the scientific data. Many operations associated with the port had given federal agencies concern in regard to the Beluga Whale. Several examples include; noise pollution, water depth, Beluga feeding sources, and the movement of ships through the channel. The cost was unknown as neither the impact or required measures were known at this point.

Representative Fairclough pointed to a handout, "Endangered Species: Can We Afford Them?" by Henry Springer (copy on file).

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Representative Kelly queried existing statute related to endangered species. He wondered whether opportunities were being missed to quell environmental groups. Mr. Sullivan replied that the problem was once a listing was made the precedent was set. He opined that environmentalists were very adept at manipulating the law.

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Representative Kelly requested that the department examine the issue further.

Representative Austerman asked if the funding for outside legal counsel could be used to pay existing staff for the same work. Mr. Sullivan reiterated that DOL was requesting an additional in-house attorney in the budget. The current position was paid for by Fish and Game. Representative Austerman felt that the committee should work to draft intent language that would address the issue.

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Co-Chair Hawker responded that the DOL budget was arranged into three appropriations; administrative, criminal division, and civil division. Once the money was appropriated into civil or criminal, the department had the latitude to move the money where it was needed within the division. The strongest move that could be made would be to create a separate appropriation with clear intent language.

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Representative Gara informed the committee that last year DOL reported that outside council had not always been necessary. He hoped that in order to save the state money the department would abstain from hiring outside council.

Mr. Sullivan concluded that the deepening engagement with other effected entities would prove to be beneficial. He stated that the issue was daunting and that the proclivity going forward should be that the state be present in federal discussions in order to promote the public interest.

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Representative Kelly was encouraged by the urban and rural Alaskan unity concerning the issue.

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ADJOURNMENT

The meeting was adjourned at 3:18 PM