

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

February 17, 2009

10:16 a.m.

MEMBERS PRESENT

Representative Bryce Edgmon, Chair
Representative Wes Keller
Representative Charisse Millett
Representative Cathy Engstrom Munoz
Representative Robert L. "Bob" Buch
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Craig Johnson

OTHER LEGISLATORS PRESENT

Representative Kyle Johansen

COMMITTEE CALENDAR

OVERVIEW(S): ALASKA DEPARTMENT OF FISH & GAME, SUBSISTENCE
DIVISION

- HEARD

OVERVIEW(S): ALASKA DEPARTMENT OF FISH & GAME, HABITAT DIVISION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to report

WITNESS REGISTER

CRAIG FLEENER, Director
Division of Subsistence
Alaska Department of Fish & Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Presented the Division of Subsistence
overview for the department.

JENNIFER YUHAS, Director
Public Communications; Legislative Liaison

Office of the Commissioner
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Presented a recent publication by the Alaska Department of Fish & Game.

KERRY HOWARD, Director
Division of Habitat
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Presented the Division of Habitat overview for the department.

ACTION NARRATIVE

[10:16:29 AM](#)

CHAIR BRYCE EDGMON called the House Special Committee on Fisheries meeting to order at 10:16 a.m. Representatives Munoz, Kawasaki, Buch, Keller, Millett, and Edgmon were present at the call to order. Representative Johnson was excused.

[10:17:17 AM](#)

OVERVIEW(S): ALASKA DEPARTMENT OF FISH & GAME, SUBSISTENCE DIVISION

[10:17:52 AM](#)

CRAIG FLEENER, Director, Subsistence Division, Alaska Department of Fish & Game (ADF&G), informed the committee that as a recent appointee to the department, he holds the staff at the ADF&G in high esteem. Mr. Fleener began the Division of Subsistence overview with a brief history of the division and said that it was created in 1978 by the enactment of AS 16.05.090. This legislation recognized it was in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources, and recognized the needs, customs, and traditions of Alaska's residents. The department was slightly different than the U. S. Department of the Interior, Department of Fish and Wildlife Service, in that the Alaska National Interest Lands Conservation Act (ANILCA) requires a rural priority for subsistence uses on federal land. Under ANILCA, a system must be in place to provide scientific support data to management and advisory bodies as the Division of Subsistence provides to the Alaska Board of Fish (BOF) and the Alaska Board of Game (BOG). Primary duties of the Division of Subsistence

are: compile subsistence user data; quantify subsistence hunting and fishing amounts; make information available to the public; assist in determining customary and traditional uses; evaluate the impact of laws on subsistence hunting and fishing; make recommendations regarding subsistence regulation; and participate in management planning to incorporate subsistence needs. Under AS 16.05.258, which passed in 1986, board responsibilities are: identify stocks customarily and traditionally taken or used for subsistence; identify amounts reasonably necessary for subsistence; and jointly determine whether or not there will be nonsubsistence areas.

[10:21:53 AM](#)

MR. FLEENER pointed out the Alaskan subsistence way of life is truly unique in the U.S. More than 100,000 Alaskans live in small communities in which dependence upon subsistence is the principal characteristic of the economy, culture, and way of life. He explained the mixed cash subsistence economic system sustains thousands of Alaska families by high levels of wild food production, small scale efficient harvesting, cash from part-time or summer jobs to pay for subsistence technologies, and extensive sharing of harvested food.

[10:23:42 AM](#)

MR. FLEENER stated the Division Mission: To scientifically quantify, evaluate, and report information about customary and traditional (C&T) uses of Alaska's fish and wildlife. This was accomplished by conducting human dimensions research using systematic methods, analysis, and reporting; and by employing high ethical standards including adherence to tribal consultation policies, extensive community involvement, and confidentiality. Mr. Fleener stressed the importance of confidentiality when agencies are surveying households. In addition, he explained that the Division of Subsistence gathers research, but does not manage resources. One definition important in understanding the duties of the division was that "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for uses with gill net, seine, fish wheel, long line, or other means defined by the BOF.

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REPRESENTATIVE KAWASAKI asked whether "rural area" was defined in the subsistence statute.

10:27:03 AM

MR. FLEENER said yes, and clarified that within AS 16.05.940(31) the original definition exists; however, it was no longer effective. In further response, he opined the courts had ruled against the clause "by a resident domiciled in a rural area of the state," thus he would provide the committee with a specific definition of "rural" after researching the question.

10:27:49 AM

MR. FLEENER stated the definition of "subsistence hunting" was the taking of, or hunting for, or possession of game for subsistence uses by means defined by the BOG. The definition of "subsistence uses" was the noncommercial, customary and traditional uses of wild, renewable, resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for handicraft articles, and for the customary trade, barter, or sharing for personal or family consumption. Slide 9 provided a map of the routes of exchange of subsistence foods in Northwest Alaska. The Division of Subsistence provides two core services that are: to provide research on C&T uses to the public; and to provide scientifically-based information for fisheries and wildlife management programs to the BOF and the BOG for their use in evaluating reasonable opportunities for C&T uses.

10:30:08 AM

MR. FLEENER informed the committee that the "heart" of the duties of the Division of Subsistence was the fulfillment of its "measure" responsibilities. The first measure was to compile and analyze existing data, and to conduct research on subsistence hunting and fishing with a target of conducting a minimum of five studies in at least three of the six regions of the state. The division conducts field studies and gathers harvest survey information from communities using special project funding that was obtained through a competitive proposal process. The division strives to obtain balanced information and to represent each region annually; however, an important concern in one part of the state may cause the division to focus on one region over another. The division's second measure was to publish current subsistence use information with a target of producing scientific reports, related updates, and materials for the general public. In fiscal year 2008 (FY 08), the division completed and released twenty-two new technical reports and

related updates; this total exceeded the 1997 to 2007 average of seven and the 2003 to 2007 average of eleven. As a matter of fact, the division's technical paper series was the cornerstone of technical detailed scientific reporting of harvest and C&T uses information to the public, and to the boards of fish and game. There are more than 300 technical reports in the series, many of which have been published on an average of fifteen per year for the past three years. The third measure was to publish current subsistence use with a target to update and maintain the online Community Subsistence Information System (CSIS) database. For an example of the information provided on the CSIS website, Mr. Fleener displayed slide 13 that illustrated a pie chart of the 2003 subsistence harvest in Cordova.

MR. FLEENER said the division's fourth measure was to [research] current C&T information, with a target to evaluate all proposed regulatory actions regarding reasonable opportunity for C&T uses. This is the division's highest priority; in fact, in the past 5-year period, 118 to 235 proposals were annually reviewed. In addition, the division reviews proposals that are not directly related to C&T regulations. All BOF and BOG proposals that impacted C&T uses and subsistence were reviewed before action was taken by the boards.

[10:36:16 AM](#)

REPRESENTATIVE KAWASAKI asked Mr. Fleener to comment on the pending [Alaska Fish and Wildlife Conservation Fund and Chitina Dipnetters Association Inc., v State of Alaska, Alaska Board of Fisheries, and Alaska Department of Fish & Game] lawsuit.

MR. FLEENER said he was present at the board meeting when the decision was made to not make a change to the Chitina status at this time.

[10:37:26 AM](#)

MR. FLEENER continued to explain that the division's fifth measure was to assist boards, other than the BOF and the BOG, during the evaluation of C&T uses and subsistence with a target to review regulatory proposals and to provide information. Other boards and organizations assisted include the North Pacific Fishery Management Council (NPFMC), the International Pacific Halibut Commission (IPHC), and the federal subsistence boards. Measure six was to assist managers to incorporate C&T uses into management plans with a target to incorporate C&T uses and harvest information into fish and wildlife management plans.

He pointed out that in FY 09 the division produced eight special publications and staff presentations that addressed board proposals. Detailed analysis provided by the division was used by wildlife managers and the BOG to provide hunting opportunities for Alaskans consistent with the sustained yield principles. Furthermore, detailed analysis on at least 200 subsistence proposals was provided on an annual basis.

[10:39:06 AM](#)

REPRESENTATIVE MILLETT asked whether the Division of Subsistence participated in extending the hunting season in Emmonak and Kotlik.

MR. FLEENER explained the division does not make management decisions; however, all proposals are evaluated by the division to determine whether there would be negative impacts on subsistence or C&T uses. In further response to Representative Millett, he said that all of the information after a hunting season was available. Moreover, if harvest tickets come in outside of the normal season, they would be readily accessible.

[10:41:11 AM](#)

MR. FLEENER continued his presentation and addressed the final measure, which was research on customary and traditional uses with a target to conduct face-to-face surveys in communities on a five-year average. Between 2004 and 2008, an annual average of 30.4 community surveys was conducted; however, during FY 08 only 21 surveys were completed. The division conducts studies on C&T harvest and the use of Alaska's fish and wildlife, analyzes data, and reports results. This information was used to provide hunting and fishing opportunities for Alaskans by fish and wildlife managers and the boards of fish and game. The target objective was to collect and report this scientific information on C&T uses. Beginning in the mid 1990s, the division focused on resource-specific questions related to fisheries and wildlife management concerns regarding sustained yield and the allocation of resources. Increasing operational costs have led to the reduction in the frequency of studies; however, Alaska's changing demography demands frequent updates within communities and regions.

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MR. FLEENER turned to the subject of the division's budget. Slides 18 and 19 indicated the FY 09 and FY 10 budget amounts

are very close at \$5,229.5 million, and \$5,218.2 million, respectively. Funding streams include large contributions from the general fund (GF) and federal receipts, followed by interagency and statutory contributions.

[10:44:21 AM](#)

CHAIR EDGMON asked whether program receipts for surveys through private sector partnerships are included in the funding sources.

[10:44:48 AM](#)

MR. FLEENER said he was unsure of all of the previous funding sources; however, the division would continue to partner with other entities.

[10:45:32 AM](#)

CHAIR EDGMON surmised private partnerships would be entered into on a year-to-year project basis, and would not add up to a large part of the overall funding package.

MR. FLEENER concurred. He then presented slide 20 that displayed the division's office locations and staffing.

[10:46:35 AM](#)

MR. FLEENER identified five challenges for the division: salmon harvest database accessibility and integrated web-interface for the public, managers, boards, and law; monitoring and reporting of Alaska subsistence salmon fisheries; assessment and evaluation of fish harvests and trends; technical and scientific reporting and database integration; and maintaining the capacities for staffing and information management, and for joint state and federal fisheries management.

[10:48:39 AM](#)

REPRESENTATIVE KAWASAKI asked how the division works with other agencies regarding research.

[10:48:56 AM](#)

MR. FLEENER answered that an effort was being made to consolidate information into one accessible and searchable database. The internet technology section of each department was working together to post new and archived data.

Additionally, presentation styles are being coordinated in order to be more user-friendly.

[10:50:55 AM](#)

REPRESENTATIVE KAWASAKI asked whether the division works closely with the federal subsistence management board.

[10:51:19 AM](#)

MR. FLEENER opined that partnering with the Office of Subsistence Management (OSM) and the Federal Subsistence Board (FSB) was important; in fact, there are a few agreements between ADF&G and the OSM to streamline management applications. Furthermore, a connection between these agencies would limit confusion for members of the public. Mr. Fleener concluded that a final challenge for the division was to maintain staffing in order to provide the information required by the boards. Typically, staff felt they are unable to provide the best information on, for example, the Chitina dip net controversy. A thorough research project often takes two years unless there is existing data with which to begin.

[10:55:15 AM](#)

CHAIR EDGMON stated the importance of understanding how subsistence affects community members around the state.

[10:55:46 AM](#)

REPRESENTATIVE MUNOZ asked whether rural communities are satisfied with the state status of management, or was there still a desire to be consistent with federal law.

[10:56:18 AM](#)

MR. FLEENER acknowledged the importance of Representative Munoz's question. As a village resident, he served on a regional advisory committee for 10 years, and from his experience he opined that there are parts of both the state and federal management systems that villagers support. The federal management system provides for the priority status and the regional advisory structure favored by villagers; however, the dual management system can be cumbersome and difficult. Many people would like to see one system, or to have the dual system streamlined.

[10:58:53 AM](#)

JENNIFER YUHAS, Director, Public Communications; Legislative Liaison, Office of the Commissioner, Alaska Department of Fish & Game, presented the ADF&G publication, "Sustaining Alaska's Fisheries: Fifty Years of Statehood" that commemorates statehood and gives a brief history of Alaska's commercial fishing heritage.

[11:00:18 AM](#)

OVERVIEW(S): ALASKA DEPARTMENT OF FISH & GAME, HABITAT DIVISION

[11:00:36 AM](#)

KERRY HOWARD, Director, Division of Habitat, Alaska Department of Fish & Game (ADF&G), gave a brief background of her diverse employment history with the ADF&G, private business, and other state and federal agencies. She then provided a handout entitled 2008 Overview, and reminded the committee that the Office of Habitat Management and Permitting was recently moved from the Department of Natural Resources (DNR) back to the ADF&G. Ms. Howard assured the committee that the division was settled in and doing its job. She stressed that the statutory responsibilities of the division are unchanged by the transition. Ms. Howard called the committee's attention to the core services of the division and indicated that it was the one division at ADF&G that played a direct role in permitting activities for resource development in the state, such as fish habitat permits for activities that cover fish passage in resident fish streams, fish habitat issues, and cataloged anadromous fish streams. In fact, the division issues about 3,600 permits each year. The division also represents the state in the Coastal Management Program, coordinates review of multiple agency permits, and participates with DNR in the coordination of the Large Project Team. The division has direct responsibilities for implementing the Alaska Forest Resources and Practices Act of 2003, and was responsible for updating the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes that defines the statutory authority to issue fish habitat permits.

[11:04:10 AM](#)

MS. HOWARD turned the committee's attention to the ADF&G, Division of Habitat handout provided in the committee packet. Included in the handout was information from the department's

web site that listed further responsibilities of the division and a list of activities for which it issues permits, such as stream diversions, stream bank disturbances, gravel removal, and stream crossings. The division has developed "general permits" for routine activities that do not require site-specific review. In addition to up-front review and the permitting of projects, the division was also responsible for monitoring at the completion of a project. Project monitoring may result in publications and technical resources that are also available on the website. One result of the division's return to the ADF&G was having the lead responsibility for permitting in 32 legislatively designated Special Areas that have been deemed important habitat or fish value, such as the Mendenhall Refuge, the Palmer Hay Flats, and Potter Marsh. This responsibility includes writing management plans for those areas, in addition to permitting activities. The following pages of the handout included an organizational chart of the division and the location of the three regional offices in Juneau, Anchorage, and Fairbanks, and the area offices in Petersburg, Soldotna, and Palmer. Ms. Howard noted that the remainder of the handout was a PowerPoint presentation for committee members' review. She stressed that her first priority was for her biologists to be out in the field working with other agencies, and applicants, in order to make the best decisions for resources.

[11:08:10 AM](#)

MS. HOWARD turned to the division budget and pointed out there has been an increase in the FY 09 budget, largely due to the move back to the ADF&G. General funds (GF) provide 68 percent of the budget and interagency receipts provide 19 percent. Finally, she referred to the handout page entitled Performance and said, "the overall habitat mission is to protect Alaska's valuable fish and wildlife resources and their habitats as the population and economy continue to expand." The mission statement was followed by the list of core services mentioned earlier in her testimony. Ms. Howard explained that the division does not control its work load; however, it must have the capacity to respond to applicants who wish to conduct a development activity. The priority performance measurement was for the division to review every application, and that every permit issued is in compliance with statutory requirements. She pointed out the graph entitled Performance Detail and noted that between 2004 and 2008, the number of permits processed has doubled with no increase in staff. This is possible by issuing "over the counter" permits for routine activities.

[11:11:51 AM](#)

MS. HOWARD, in response to Representative Buch, continued to explain that pre-approved permits have standard conditions for activities such as winter stream or lake crossings. For the Coastal Management Program, there are "minimus" activities that are routine and predictable and that do not need additional review by the division. Another reason for the division's efficiency was that the staff was experienced and productive; however, she expressed her concern that 34 percent of the staff was eligible for retirement in three or four years, and big projects are expected in the future.

[11:13:38 AM](#)

REPRESENTATIVE BUCH asked who was responsible for data collection and retention for aquifer baselines.

[11:14:08 AM](#)

MS. HOWARD responded that anytime there was a large development project, such as the Pebble [Mine] prospect, there are baseline requirements that have to be met for many regulatory agencies. The entity responsible for collecting the data was the applicant, or its designee. Regarding aquifers, she advised that the division would not have a direct role in gathering or keeping data; however, when data was made available the division and other agencies would study the data as part of their project review of the environmental documents.

[11:15:43 AM](#)

REPRESENTATIVE BUCH re-stated his question and pointed out that this was Alaska's land, and a lack of information has been a problem in the past. He recalled Canada has a mechanism to make data public information after a certain point. Representative Buch opined that the aquifer baseline study at the Pebble project was extensive; however, he was unsure when the data would become available to the state.

[11:16:48 AM](#)

MS. HOWARD recommended that this question should be asked of the Pebble partnership. The collected data has not been presented broadly to state or federal agencies for review; however, this information would become public when [the Pebble Partnership] makes the application for permits.

11:17:58 AM

REPRESENTATIVE BUCH observed that there was very little data and material that the state has collected during 40 years of [resource development] in the state. He asked who should be responsible for accumulating and storing public information such as this.

11:19:02 AM

MS. HOWARD offered that the Office of Project Management & Permitting (OPMP), DNR, was the office that coordinated state agency involvement for all large project reviews, beginning with the initial contact with the developer, and through to any monitoring and follow-up on an approved project.

11:20:52 AM

REPRESENTATIVE MILLETT asked whether there was a mechanism within the state to buy or acquire data on a large project, even though the project may not be built.

11:21:15 AM

MS. HOWARD deferred the question to OPMP.

11:21:25 AM

MS. HOWARD returned to the measurement graph and noted that the number of fish habitat Title 16 permits has doubled in the last five years, but the high level of compliance has been maintained; in fact, the average number of days needed to complete review for projects has decreased from 14.4 in 2004 to 8.4 in 2008. She then referred to a graph entitled Average Number of Days To Complete Reviews For Projects In a Coordinated Review Process and explained that these projects require multiple permits, not just those issued by the habitat division. An example of this would be a project that requires a land use permit, or an oil spill contingency plan, from the Department of Environmental Conservation (DEC). It was the goal of the division, once approval was received from the Division of Ocean and Coastal Management, "to have quick turn around on our associated permit once that review is completed." The final graph entitled Percentage of Projects Reviewed During a Coordinated Review Process indicated that the division participated in 94.6 percent of the coordinated reviews in 2008.

[11:24:50 AM](#)

REPRESENTATIVE KAWASAKI asked whether the general permit process was a response to a shortage of staff. He further asked for Ms. Howard's comments on the effectiveness of the division now that it was returned to ADF&G.

[11:26:08 AM](#)

MS. HOWARD related that general permits are a tool that has been utilized for decades at both DNR and ADF&G. She opined any state regulatory agency issues general permits for routine activities, and she gave several examples. In response to the second question, Ms. Howard advised that the years the division was housed at DNR were valuable to develop a rapport with the agencies in that department. This rapport is important because project reviews are not done in a vacuum and involve interaction with other departments. She advised that colleagues in various divisions depend on each other to help make the best permitting decisions.

[11:28:32 AM](#)

REPRESENTATIVE KAWASAKI asked whether the scope and size of projects given general permits has increased with the number of permits over the last four years.

[11:29:03 AM](#)

MS. HOWARD acknowledged the number of activities that qualify for general permits has increased, such as small "ma & pop" mining operations. She offered to provide a comparison of the number of general permits issued before and after the division moved to DNR.

[11:29:36 AM](#)

REPRESENTATIVE KAWASAKI further asked how projects that are given general permits are monitored.

MS. HOWARD emphasized that a staff field presence during the review of projects, and for follow-through, was her high priority. Clearly, there are limitations, and with only 45 staff not every project was reached. However, in the case of a project that required a permit from another agency, both of the

departments' field staffs can work together to accomplish a common need.

11:31:28 AM

REPRESENTATIVE EDGMON asked whether the division has any opportunities to work with the private business sector.

11:31:56 AM

MS. HOWARD referred to the FY 10 budget funding sources and noted that 5 percent of the budget comes from Statutory Designated Program Receipts (SDPRs). She explained that these are monies that come through the OPMP and directly fund staff to work on large projects.

11:32:33 AM

REPRESENTATIVE EDGMON further asked whether there was no advantage to being housed with a department whose mission statement was to "protect" resources, instead of one whose mission statement was to "develop" resources.

11:34:22 AM

MS. HOWARD said habitat is an interesting division in that it was unique in ADF&G as the only division that issues permits for activities. This created some advantages to being located at DNR, in that it was easier to permit. The habitat division does have a foot in both worlds, in that it was required to protect and to develop resources. She pointed out the commonality in the mission statements of the habitat division and of both departments. She expressed her confidence that the division would continue to work successfully at ADF&G, as it did at DNR.

11:37:31 AM

REPRESENTATIVE EDGMON observed there was proposed legislation affecting the Alaska Coastal Management Program. He asked how changes to this program would change the division's role.

11:38:47 AM

MS. HOWARD reiterated that she worked for the coastal management plan for 13 years prior to its reorganization in 2003 and 2004. The role of the habitat division has always been that of a review agency; in fact, under Title 16, the division has very

broad authority in a narrow area and would do whatever staff felt was necessary to protect fish and habitat regardless of changes with the coastal management program. Ms. Howard concluded that, although the administration opposes the proposed legislation, the division would implement whatever program was put in place.

[11:40:27 AM](#)

REPRESENTATIVE EDGMON expressed his gratitude to the presenters.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:41 a.m.