

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

January 26, 2011

1:02 p.m.

**MEMBERS PRESENT**

Representative Eric Feige, Co-Chair  
Representative Paul Seaton, Co-Chair  
Representative Peggy Wilson, Vice Chair  
Representative Alan Dick  
Representative Neal Foster  
Representative Bob Herron  
Representative Cathy Engstrom Munoz  
Representative Berta Gardner  
Representative Scott Kawasaki

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

OVERVIEW(S): DEPARTMENT OF NATURAL RESOURCES - DIVISION OF  
MINING, LAND AND WATER

- HEARD

OVERVIEW(S): ALASKA DEPARTMENT OF FISH & GAME

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

WYN MENEFEE, Acting Director  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Presented the overview of the Division of  
Mining, Land and Water - Department of Natural Resources.

CORA CAMPBELL, Acting Commissioner

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

**POSITION STATEMENT:** Presented the overview of the Alaska Department of Fish & Game.

**ACTION NARRATIVE**

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**CO-CHAIR ERIC FEIGE** called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Feige, Seaton, Dick, Gardner, and Foster were present at the call to order. Representatives Kawasaki, P. Wilson, Herron, and Munoz arrived as the meeting was in progress.

**Overview(s): Department of Natural Resources - Division of Mining, Land and Water**

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CO-CHAIR FEIGE announced that the first order of business would be an overview of the Division of Mining, Land and Water - Department of Natural Resources.

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WYN MENEFEЕ, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), relayed that the mission of the Division of Mining, Land and Water is to acquire and manage state land, water, and resources for the benefit of present and future Alaskans. Referring to a PowerPoint presentation and associated handout, he noted that the division manages approximately 99 million acres of "uplands" and approximately 65 million acres of tidelands, submerged lands, and lands under navigable waters - for a total acreage roughly the size of California and Oregon combined - and has received an additional 8 million acres over the last five years from the federal Bureau of Land Management (BLM) via the division's land entitlement program. The division provides a foundation for all other land management occurring in the state; provides authorizations crucial for the development of state land; provides revenue to the state; helps provide jobs to Alaskans; and helps ensure a high quality of life for Alaskans.

MR. MENEFEЕ indicated that the division supports many industries, projects, and programs in Alaska: mining, both small and large scale; oil and gas exploration and development,

for example, by authorizing the ice roads on the North Slope; commercial recreation and tourism, such as docks and lodges; alternative energy projects, such as windmills and hydrokinetics; transportation projects; private, commercial, and State construction projects; communications projects; utilities; hunting and fishing guide industry; aquaculture; municipal infrastructure; and personal use infrastructure. The division has six budget components, as illustrated in both the aforementioned PowerPoint presentation and the associated handout, with a total proposed fiscal year 2012 (FY 12) budget of \$23.6 million. The division has 207 positions; is located in three offices - Anchorage, Fairbanks, and Juneau; and maintains 12 sections, the contacts for which are listed in the aforementioned handout.

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MR. MENEFE, referring to the division's Realty Services Section, relayed that it acquires land from the BLM in order to fulfill territorial and statehood Act grants; is close to acquiring 105 million acres of such land; serves as land agent for the State of Alaska; acquires land for public purposes via purchases, exchanges, and settlements; defends state-ownership interests - for example, with regard to navigable waters and easements; makes title determinations to support land management decisions; maintains records of state ownership and defends the state's title; issues deeds and patents on land sold or transferred; reviews all federal Alaska Native Claims Settlement Act (ANCSA) conveyances so as to defend state interests; and provides appraisal and survey services for the DNR.

MR. MENEFE, referring to the division's land Planning Unit, indicated that it sets the policy regarding how the state's land is to be managed; prepares and revises land use plans; identifies future uses of state land, including lands for sale or transfer; and acts as an unorganized borough for the State. There are 18 area plans, and 22 management plans, which are often done for other divisions/departments, and the unit is currently revising the area plans related to Hatcher Pass, and the Susitna and Tanana Basins. Referring to the division's Mining Resources Section, indicated that it manages the land and minerals on state land, particularly that which has been selected for development; acts as the land owner; provides over 35 different types of authorizations; and makes state lands available for public, commercial, and private uses via such authorizations. Some authorizations, though not all, involve

long processes and address complex situations, and some are structured via statute or regulation.

MR. MENEFEER explained that the division is responsive to applications, and that via some programs, the division is actively encouraging development. It is rare, he added, for the division to deny an authorization, though some proposals warrant revision, say, for example, for environmental considerations. There has been an increase in applications, and so the division must now also address an increasing backlog. The division administers mining claims, authorizes the development of mineral resources, has statewide regulatory authority over reclamations, and issues permits for coal exploration/mining. As stewards of state-owned land and resources, the division ensures that the state's land is available for development, that no illegal actions are taking place on the land, and that the state receives a reasonable return for the use of its land. The division also disposes of land via land sales and municipal entitlements. Individuals can acquire state land via subdivision, remote recreational cabin sales, over-the-counter sales, and "preference right" programs. Via the division's municipal entitlement program, municipalities can acquire nearby land.

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MR. MENEFEER, on the issue of water development, noted that the division manages Alaska's water resources - though it does not address water quality issues, which fall under the purview of the Department of Environmental Conservation (DEC) - and this means all water, regardless of land ownership. The division issues water rights and temporary use permits, issues flow reservations to protect aquatic resources, manages conflicts over water use/misuse, approves construction of dams and monitors them for safety, and collects and distributes hydrologic data and assists in evaluating that data. On the issue of litigation support, he explained that there has been quite an increase in litigation over the last several years, though whenever possible, the division attempts to resolve issues without resorting to litigation, such as via the division's Recordable Disclaimers of Interest Program. The division files appeals on faulty BLM decisions, works with the Department of Law (DOL) to address various legal actions, and defends the state's rights against intrusive federal actions. He opined that it can be better to litigate strategically rather than just respond to suits brought by others.

MR. MENEFEЕ relayed that the division's [Technical & Data Management Section] provides technical support, and that the Director's Office provides administrative support.

CO-CHAIR FEIGE asked Mr. Menefee to elaborate on the issue of preference rights.

MR. MENEFEЕ explained that although there are various forms of preference rights, they generally involve situations in which someone either has a right to a disposal of land or has a right to have a preference in the disposal of an interest. For example, if a person "had" land before Alaska became a state, and utilized it and had some sort of federal authorization on it that somehow didn't get recognized during conveyance, that would be considered an error of omission, and so he/she could claim a preference right to that land. The "preference right" terminology is also used in some of the division's other programs. For example, if a person were leasing shore land and decided to build a dock, the division would consider him/her to have a preference right to do so. He explained that the 10 processed preference right applications mentioned in the aforementioned handout dealt with the possible disposal of land to people who either had some sort of pre-existing right to it or were statutorily entitled to it.

MR. MENEFEЕ, in response to questions, indicated that litigation has a significant and detrimental impact on the division because staff must then spend a considerable amount of time - sometimes hundreds of hours - away from their regular duties in order to gather information pertinent to the litigation. He added that the division is in the process of documenting how much staff time is lost in such instances, and so he would be able to provide the committee with those statistics soon. In response to another question, he offered his belief that the type of litigation the division finds itself addressing is never frivolous to those filing it, though sometimes the way they go about proceeding with the litigation can be misconstrued as being excessive in terms of the volume of documentation that must then be compiled by the division.

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MR. MENEFEЕ, in response to comments, indicated that the division's budget includes certain "increments" that would in part address the issue of lost staff time due to litigation; furthermore, future needs could be addressed either via an amendment to that budget or via the supplemental budget. In

response to another question, he mentioned that although some aspects of what the division occasionally does could be considered marketing of a sort, marketing isn't specifically part of the division's mission. In response to a question about acquiring land from the federal government, he explained that the division receives land on a regular basis, that the division requested more land than it was entitled to, that Native allotments and Native corporations get first and second priority, that the process of conveying such land is complex, lengthy, and therefore highly scrutinized and reviewed, and that finalizing such conveyances could still take many more years.

REPRESENTATIVE GARDNER asked how an individual could prevent the development of mineral resources on his/her privately-owned land.

MR. MENEFEER explained that Alaska takes a split-estate approach with regard to land ownership - for example, one person can own the mineral estate, while someone else can own the surface estate - and because the mineral estate takes priority, nothing can be done to prevent access to [and development of] the mineral resources on such land, though the surface-estate owner must be properly compensated. Furthermore, because land has been conveyed via different methodologies, rights and ownership can be challenging for the division to determine.

REPRESENTATIVE GARDNER expressed concern that the division doesn't have the staff necessary to process applications and permits in a timely manner.

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MR. MENEFEER reiterated that the division's budget does contain some items that should the legislature choose to fund them, could help with the application/permit backlog. In response to other questions, he relayed that the division has two engineers, as well as some hydrologists, who are responsible for monitoring dam safety in Alaska; that large dam projects are typically assigned a coordinator to ensure cooperation between the numerous authorizing agencies involved; that the division is responsible for authorizing the laying of fiber optic cable or pipelines under Alaska's waters; that there are several different mining projects - both large- and small-scale - currently occurring in Southeast Alaska; that he would provide the committee with a list of those projects and their current status; that the division has been in contact with the Alaskan Shellfish Growers Association (ASGA) regarding development of

the shellfish industry; and that with regard to geothermal projects, it is the temperature of the water that determines which division would have jurisdiction - specifically, the Division of Oil and Gas has jurisdiction over projects with a water temperature greater than 120° Celsius, whereas the Division of Mining, Land and Water has jurisdiction over projects with a lower water temperature.

MR. MENEFEЕ, in response to further questions, explained that under federal law, the Division of Mining, Land and Water maintains State control over all coal development in the Alaska, and is responsible for the associated leasing, approval, permitting, reclamation, bonding, and authorizing; that in essence, the division is implementing the federal coal development program; that the division addresses leasing and permitting for such projects but doesn't address royalty payments or any delays of such; that by statute, when leasing, the division is required to maximize a return to the state and meet fair-market value; and that although sometimes those leasing and permitting costs can be reduced depending on the situation, they can't be eliminated altogether.

CO-CHAIR SEATON asked Mr. Menefee to provide comparison data between coal leases and mariculture leases.

MR. MENEFEЕ agreed to do so.

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REPRESENTATIVE KAWASAKI asked how often the division initiates litigation.

MR. MENEFEЕ explained that the division rarely files lawsuits on its own, and is very selective about which ones it does file; generally, the division is simply responding to the actions of others. In response to a request, he relayed that the division is very interested in increasing its ability to process applications and permits in a more timely and efficient manner, and so is interested in taking a several-pronged approach towards improvement. For example, the DNR is putting together a task force that will specifically address the issue of possible efficiencies.

MR. MENEFEЕ, in response to questions, explained that the term "active authorizations" as used in the aforementioned PowerPoint presentation refers to all authorizations that haven't been closed, and that some types of authorizations can be considered

to be "active" for many, many years, such as those involving water rights or contracts to buy land. In response to comments and other questions, he additionally explained that temporary water use authorizations are generally addressed by the division as quickly as possible, oftentimes within about two weeks, so that development isn't inhibited, whereas water right [applications], in contrast, are oftentimes set aside for a while, since the water can still be used even though the matter isn't fully adjudicated. Furthermore, water rights are awarded on a first-come-first-served basis, so if there are several applications for water rights for the same water, then the division simply determines who sent in the first application and then awards the water rights to him/her first. With regard to the division's tremendous backlog, he indicated that although the division had recently attempted to address it, staffing and budgetary shortfalls at the time precluded the division from succeeding.

REPRESENTATIVE HERRON asked why the division's positions aren't being filled.

MR. MENEFEE said it used to be because the division wasn't competitive with other employers, and now it's because the division has had to absorb the cost of merit increases and so no longer has sufficient funding for all of its positions.

The committee took an at-ease from 2:05 p.m. to 2:08 p.m.

**Overview(s): Alaska Department of Fish & Game**

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CO-CHAIR FEIGE announced that the final order of business would be the overview of the Alaska Department of Fish & Game.

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CORA CAMPBELL, Acting Commissioner, Alaska Department of Fish & Game (ADF&G), after introducing staff, explained that the ADF&G's mission - based closely on language in the Alaska statutes, Title 16, and in the Alaska State Constitution, Article VIII - is to protect, maintain, and improve the fish, game, and aquatic plant resources of the state, and manage their uses and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle. Referring to page 3 of a PowerPoint presentation, she noted that it lists the department's six core

services. Harvest management - providing the opportunity to utilize fish and wildlife resources - is measured by such things as commercial harvest numbers and the number of hunting and fishing licenses sold. Stock assessment - ensuring sustainability and harvestable surplus of fish and wildlife resources - involves measuring escapement and threshold harvest/catch levels, and can involve conducting wildlife surveys. Customer service - providing accurate and meaningful information to all customers - includes producing publications and sponsoring skills programs. Public involvement - involving the public in management of fish and wildlife resources - ensures that Alaskans are involved with the regulatory process and various boards. State sovereignty - protecting the state's sovereignty to manage fish and wildlife resources - involves participating in federal land-management processes, in Endangered Species Act and critical habitat determinations, and in the federal subsistence board processes. Habitat protection - protecting important fish and wildlife habitat during permit and project review - is primarily accomplished by ensuring that developers are in compliance with their habitat permits.

ACTING COMMISSIONER CAMPBELL, referring to page 4 of her PowerPoint presentation, relayed that it lists some of the various responsibilities of the commissioner's office, including serving as a voting member of the North Pacific Fishery Management Council, thereby providing Alaskans a voice in the management of federal fisheries off Alaska's shores. A number of the items listed on page 4 reflect federal or international treaty responsibilities having to do with the management of resources that cross borders. Referring to pages 5-13 of her PowerPoint presentation, she relayed that the ADF&G is organized into six divisions: the Division of Commercial Fisheries; the Division of Sport Fish; the Division of Wildlife Conservation; the Division of Subsistence; the Division of Habitat; and the Division of Administrative Services. The first three divisions listed are considered to be "management" divisions, the Division of Subsistence is considered to be primarily a research division, and the Division of Habitat addresses habitat protection and permitting functions. Furthermore, in addition to the Division of Administrative Services, the ADF&G also has a Boards Support Section, which provides support to the Board of Fisheries and the Board of Game, and "houses" the Exxon Valdez Oil Spill Trustee Council and the Commercial Fisheries Entry Commission, she added.

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ACTING COMMISSIONER CAMPBELL, referring to the map on page 5 of her PowerPoint presentation, explained that it shows the location of the ADF&G's regional and area offices, and which divisions maintain staff in those offices, but does not show the ADF&G's seasonal field camps or research stations. The Division of Commercial Fisheries is charged with protecting, maintaining, and improving the fish, shellfish, and aquatic plant resources of the state, consistent with the sustained yield principle, for the maximum benefit of the economy and the people of Alaska; conducts stock assessment research and management for commercial fisheries as well as for some subsistence fisheries; is in charge of permitting aquaculture projects throughout the state; and provides support for the Board of Fisheries' processes. The Division of Sport Fish is charged with protecting and improving the state's recreational fisheries resources, and is therefore responsible for managing Alaska's sport fisheries, many personal-use fisheries, and some subsistence fisheries. This division enhances recreational fishing opportunities via the production of hatchery-reared fish, houses within it an element charged with protecting and improving public access to recreational fisheries resources, and is primarily funded with federal excise taxes and matching funds from the sale of fishing licenses and access fees.

ACTING COMMISSIONER CAMPBELL explained that the Division of Wildlife Conservation is charged with conserving and enhancing Alaska's wildlife and habitats and providing for a wide range of public uses and benefits, and thus is responsible for managing wildlife and providing support and information for the Board of Game processes. This division educates and informs hunters via specific programs, and manages wildlife refuges, critical habitat areas, wildlife sanctuaries, and other specially designated areas. The Division of Subsistence is charged with scientifically quantifying, evaluating, and reporting information about the customary and traditional uses of Alaska's fish and wildlife resources, and, again, is primarily a research division that collects information about subsistence uses and customary and traditional patterns, and then provides that information to the department and the boards of fisheries and game in order to support their decision-making processes. Furthermore, the Division of Subsistence assists the Division of Habitat in preparing comments on development projects that are expected to impact subsistence fish and wildlife use.

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ACTING COMMISSIONER CAMPBELL explained that the Division of Habitat - again, primarily a permitting division - is charged with protecting Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand. This division reviews applications and issues permits for activities taking place in anadromous water bodies - fish-bearing waters. For example, the Division of Habitat reviews proposed timber-harvest activity, conducts field inspections, and reviews development projects authorized by other agencies to ensure compliance. The Division of Administrative Services is charged with providing routine administrative services for the department, and coordinating development of the annual operating and capital budgets. This division also administers the ADF&G's licensing program, grants, contracts, reimbursable services agreements (RSAs) with other state agencies, and provides overall logistical support. The Board Support Section is charged with ensuring that the public process for the state's fish and wildlife regulatory system operates efficiently and effectively. This section, in addition to providing support to the Board of Fisheries and the Board of Game, also provides support to 82 local advisory committees that provide advice to the aforementioned boards.

ACTING COMMISSIONER CAMPBELL explained that the charts on page 14 of her PowerPoint presentation illustrate the number of employees working within each division/section; currently, of the 1,744 total positions, 924 are fulltime positions and the rest are seasonal positions. These charts also illustrate that the majority of the ADF&G's employees work in one of the three management divisions - the Division of Commercial Fisheries, the Division of Sport Fish, and the Division of Wildlife Conservation. She then relayed that the two charts on page 15 of her PowerPoint presentation illustrate the ADF&G's fiscal year 2012 (FY 12) budget; the chart on the left is broken down by division - with the bulk of the budget being spent by the aforementioned three management divisions - and the chart on the right is broken down by funding source, with the bulk of the funding coming from the general fund (GF), federal funds, and revenues from license sales.

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CO-CHAIR FEIGE asked what the ADF&G would be doing to alleviate friction between commercial fisheries users and sport fisheries users.

ACTING COMMISSIONER CAMPBELL explained that some internal steps have been taken to ensure that the various divisions are cooperating, but acknowledged that more could be done. For example, for a variety of reasons, subsistence fisheries and personal use fisheries tend to be managed by either the Division of Commercial Fisheries or the Division of Sport Fish, and so the ADF&G is going to be reviewing particular activities in order to ensure that their division assignment is sensible.

CO-CHAIR SEATON raised the issue of over-escapement.

ACTING COMMISSIONER CAMPBELL acknowledged that over-escapement represents lost economic opportunities for the state, and assured the committee that she would be researching that issue further and attempting to find solutions to the problem. In response to other questions, she agreed to also research the issues of federal funding for outdoor firearm ranges, and personal-use fisheries abuses and crimes.

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REPRESENTATIVE MUNOZ asked whether the ADF&G has researched the issue of designating the Taku River a critical habitat, and whether such designation could be crafted so as not to impede property owners from accessing their land.

ACTING COMMISSIONER CAMPBELL indicated that she has encouraged the stakeholders along the Taku River to get together and decide what it is that they wish to accomplish in terms of protecting the river, thereby making it easier for the ADF&G to provide assistance; currently, though, such clarification from the stakeholders has not been forthcoming.

ACTING COMMISSIONER CAMPBELL, in response to questions, indicated support for the ADF&G's commitment to sustainability, mentioned that she would be attempting to take an innovative approach to solving the state's resource management quandaries, and opined that the ADF&G's highest priority should be resource sustainability, citing the salmon fishery as an example of a resource that the people of Alaska rely on. In response to comments and questions about enforcement of the state's fisheries laws, she explained that although the ADF&G doesn't have a role in how the Department of Public Safety (DPS) expends its enforcement resources, the ADF&G does share its information with the DPS.

REPRESENTATIVE HERRON expressed his hope that the ADF&G and the DPS would begin working more closely with each other on enforcement issues.

REPRESENTATIVE P. WILSON asked for more information regarding the issue of staff recruitment, retention, and training.

ACTING COMMISSIONER CAMPBELL said that although recruitment and retention continues to be a problem, the ADF&G has instituted a number of internal programs to try to encourage workforce development and recruit new biologists, and the ADF&G continues to be focused on mentoring and transferring knowledge to new employees. In response to further comments and questions, she assured the committee that she has been and would continue to be taking steps to address staffing and salary issues; acknowledged that a lack of accurate information about a particular resource can result in missed economic opportunities; but cautioned that the cost of obtaining accurate information must be weighed against the cost of attempting to manage Alaska's resources without sufficient data. In response to another question, she acknowledged that expanding sea otters populations have had a significant impact on Alaska's shellfish resource, and said she has been and would continue to be working with the federal government, which manages sea otter populations, on that issue.

ACTING COMMISSIONER CAMPBELL, in response to a question, clarified that the decisions regarding opening and closing subsistence hunts and subsistence fisheries aren't made by the Division of Subsistence, which, again, is primarily a research division, but are instead made by the Division of Wildlife Conservation and, with few exceptions, the Division of Commercial Fisheries, respectively, and that the decisions regarding which uses are customary and traditional and whether a reasonable opportunity for subsistence [hunting and fishing] is being provided are made by the Board of Game and the Board of Fisheries, respectively.

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REPRESENTATIVE DICK noted that in years past, people in his district didn't have much confidence in those enforcing Alaska's fish and game laws because the officers took an adversarial approach towards the people, though he has since seen a shift for the better.

CO-CHAIR SEATON asked that department personnel be reminded that they are merely supposed to present the Board of Game and the

Board of Fisheries with balanced information, not promote the department's agenda.

ACTING COMMISSIONER CAMPBELL assured members that information being presented to those boards by department personnel is reviewed beforehand to ensure it is unbiased.

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**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:57 p.m.