

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 7, 2011

1:04 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

OTHER LEGISLATORS PRESENT

Representative Alan Austerman

COMMITTEE CALENDAR

HOUSE BILL NO. 97

"An Act extending a provision relating to noxious weeds, invasive plants, and agricultural pest management and education; providing for an effective date by repealing the effective date of sec. 2, ch. 102, SLA 2008; and providing for an effective date."

- MOVED HB 97 OUT OF COMMITTEE

HOUSE BILL NO. 106

"An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities of the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 22, ch. 31, SLA 2005; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 97

SHORT TITLE: EXTEND INVASIVE PLANTS LAW

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) RES, FIN
03/07/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 106

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) RES, FIN
03/07/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

JEANNE OSTNES, Staff
Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 97 on behalf of
Representative Johnson, sponsor.

DAVID LENDRUM, Owner
Landscape Alaska
Juneau, Alaska

POSITION STATEMENT: Supported HB 97.

FRANCI HAVEMEISTER, Director
Central Office
Division of Agriculture
Department of Natural Resources (DNR)
Palmer, Alaska

POSITION STATEMENT: During the hearing on HB 97, answered
questions.

GINO GRAZIANO, Natural Resource Specialist
[Invasive Weeds and Agricultural Pest Coordinator]
Division of Agriculture
Department of Natural Resources (DNR)
Palmer, Alaska

POSITION STATEMENT: During the hearing on HB 97, answered
questions.

JANICE CHUMLEY
Cooperative Extension Service
University of Alaska Fairbanks
Nikiski, Alaska
POSITION STATEMENT: Supported HB 97.

BRYCE WRIGLEY, Farmer
Delta Junction, Alaska
POSITION STATEMENT: Supported HB 97.

LORI ZAUMSEIL
Anchorage, Alaska
POSITION STATEMENT: Supported HB 97.

BLAINE SPELLMAN
Alaska Association of Conservation Districts
Fairbanks, Alaska
POSITION STATEMENT: Supported HB 97.

RANDY BATES, Director
Division of Coastal and Ocean Management (DCOM)
Department of Natural Resources (DNR)
Juneau, Alaska
POSITION STATEMENT: Introduced HB 106 on behalf of Governor Parnell, sponsor.

LINDSAY WOLTER, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During the hearing on HB 106, answered questions.

ACTION NARRATIVE

[1:04:13 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Feige, Seaton, Gardner, Munoz, Dick, and Herron were present at the call to order. Representatives P. Wilson, Foster, and Kawasaki arrived as the meeting was in progress. Representative Austerman was also present.

HB 97-EXTEND INVASIVE PLANTS LAW

1:04:47 PM

CO-CHAIR FEIGE announced that the first order of business is HOUSE BILL NO. 97, "An Act extending a provision relating to noxious weeds, invasive plants, and agricultural pest management and education; providing for an effective date by repealing the effective date of sec. 2, ch. 102, SLA 2008; and providing for an effective date."

1:05:03 PM

JEANNE OSTNES, Staff, Representative Craig Johnson, Alaska State Legislature, introduced HB 97 on behalf of Representative Johnson, sponsor. She explained that the bill would delete the sunset clause for a two-year-old position [Invasive Weeds and Agricultural Pest Coordinator] in the Division of Agriculture, Department of Natural Resources. She directed attention to a document in the committee packet outlining the accomplishments of this position, specifically pointing out that the person in this position successfully applied for grants that brought in funds in addition to those provided by the state for the position. The two-year position was established by House Bill 330, which provided \$80,000 for the position's paycheck to put together a plan for the state.

MS. OSTNES pointed out that Alaska does not have much policy dealing with invasive weeds. One project of this position was to bring together a state plan, which is almost complete because all of the public comment has happened. The letters of support received by committee members are from many of the organizations that deal with the land and people around Alaska, such as the soil and water conservation districts and the Alaska Committee on Noxious and Invasive Plant Management (CNIPM). A number of people volunteer with these organizations to try to deal with weeds in each of their specific areas. She drew attention to a graph showing the timeline between an invasive species first occurrence in an area and when it goes into its high growth period. She related that most experts say Alaska is at the bottom of the depicted S-curve and ready to go into the high growth period.

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MS. OSTNES noted that a huge spurt in dandelions, white clover, and hairy vetch occurred this last summer. This position will bring together the people around the state dealing with weeds as

they appear and begin to cause problems. For example, an award was given to a U.S. Coast Guard employee in Ketchikan who found a gypsy moth egg mass at the top of a conning tower of a ship that came in from Japan. She warned that gypsy moths coming into the Tongass National Forest would definitely be an agricultural pest.

MS. OSTNESS said one example of something the state must begin worrying about is the Anchor River where an invasion of reed canary grass has grown so much that now nothing can be done and therefore smaller infestations must instead be dealt with first. This position prioritizes, discusses policy, and tries to save the state from spending a lot of money. For example, in 2007 the governor of Idaho requested \$6 million to fight noxious weeds in that state; \$4 million to deal just with Eurasian watermilfoil. She reminded members that Idaho is a state much smaller state than Alaska with much less water. Because invasives can be such a costly problem, this position will hopefully save Alaska millions by trying to employ a rapid response against those species that have invaded the state.

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REPRESENTATIVE GARDNER observed that the fiscal note is now [\$101,100 annually] and asked why the difference.

MS. OSTNES replied that this includes travel, supplies, and contracts, such as for surveying areas.

REPRESENTATIVE DICK commented that he has heard nothing but good about this program, but he has also heard that much of this success is due to the dedication of the person currently holding the job. He expressed his concern that if the sunset provision is removed, a new person with less diligence might be hired sometime in the future.

MS. OSTNES responded that the person in this position must be a good coordinator. While she does not know what the department's job description is for the position, she said she is sure there would be a full vetting process should the current coordinator decide to leave. She also offered her belief that the position requires applicants to be Alaska residents.

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REPRESENTATIVE DICK cautioned that if government is going to be grown, it must be done with a specific purpose and intent. He

expressed his fear that in 10 years there may not be the same diligence, focus, and energy as there has been so far.

MS. OSTNES related that from her talks with the various organizations and soil and water conservation districts around the state that they could not have done the \$1 million of work without this coordinator. The state must at some point begin to make policy decisions and this will not happen without someone in this job. In the long run, she advised, spending \$100,000 now will save millions later.

REPRESENTATIVE MUNOZ offered her support for the bill and asked whether the costs for [weed management] projects initiated by the coordinator are funded at the local level. In response to Ms. Ostnes and Co-Chair Feige, Representative Munoz agreed to ask this question of the coordinator, Gino Graziano, when he testifies.

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CO-CHAIR FEIGE opened public testimony on HB 97.

DAVID LENDRUM, Owner, Landscape Alaska, noted that he is the fifth generation of an agriculture family and that in addition to his nursery and landscape contracting business he is the landscape superintendent for the University of Alaska Southeast. He confessed that when Mr. Graziano first visited him he was not enthused because he was sure he would be told that some of the plants he was selling and planting would be on the prohibited list. However, he is now a wholehearted convert. Over the past two years he has worked with people from the Committee for Noxious and Invasive Plant Management (CNIPM) and has found that their expertise and the size of the problem are much larger than he ever imagined. As Alaska's climate changes, the plant materials change, and the plants moving into the state now are causing much more trouble than they would have 100 years ago.

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MR. LENDRUM explained that the biology of invasive species gives them certain advantages, such as starting earlier or lasting longer in the season or occupying niches that would not otherwise be occupied by something else. Several species are already nearly out of control; for example, sweet white clover is displacing everything along rivers in the Fairbanks area and is waist to chest high as far as the eye can see. Alaska is still in a pretty good position, he continued, because invasive

plants must follow a highway system, too, in that they need a way to be introduced and therefore much of Alaska has had virtually no introduction. However, those areas that are prone to infestation are vulnerable. While the coordinator position addresses invasive plants, CNIPM addresses invasive plant, marine, and insect species.

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MR. LENDRUM related that at a conference last year he learned that invasive underwater plants that have never before been seen in Alaska are spreading in the state's harbor areas and there are no control measures. These types of things are what need work and prohibition, he advised. Regarding Representative Dick's questions, he said he has been overwhelmed by the depth of dedication not just from Mr. Graziano, but throughout the whole [CNIPM] organization. The people involved have taken it up with a fervor that is not normally seen. It has become a calling for many of these people who are from all age groups, economic standards, and lifestyles, and he is impressed.

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REPRESENTATIVE GARDNER commented that some of this sounds terrifying and asked what chance does the state have.

MR. LENDRUM replied that this is the only thing; the state must get going now. He grew up in California where most of the native habitat has been overcome by European invaders; most of the plants now seen in California's wild landscape are non-natives that have taken the place of the species that were there before. He allowed there are some invaders that might not be stopped, but advised that the focus needs to be on early detection and rapid response to the first invaders while their numbers are small.

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FRANCI HAVEMEISTER, Director, Central Office, Division of Agriculture, Department of Natural Resources (DNR), said she is present to answer questions, but noted that this successful program has been housed within the Division of Agriculture for just under three years.

REPRESENTATIVE KAWASAKI inquired why control of underwater invasive plants is not done under the Division of Agriculture.

MS. HAVEMEISTER deferred to Mr. Graziano.

GINO GRAZIANO, Natural Resource Specialist, [Invasive Weeds and Agricultural Pest Coordinator], Division of Agriculture, Department of Natural Resources (DNR), replied that determining whether management of submerged aquatic invasive species belongs to the Division of Agriculture or the Alaska Department of Fish & Game is ongoing. Within DNR he has not yet heard an attorney general's opinion, but he has heard some folks mention that DNR manages the substrate of a river bed and therefore it would fall to the Division of Agriculture working with lands. Others point out that the harvest of seaweed is managed by the Alaska Department of Fish & Game and therefore management of aquatic invasives is the purview of ADF&G. Beyond that, the general consensus that he gets is that it is probably a DNR issue.

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JANICE CHUMLEY, Cooperative Extension Service, University of Alaska Fairbanks, informed members that throughout the years when invasive plants in the state were being noted as a growing menace to Alaska's wildlife habitat, fisheries, and agriculture, the one sticking point was that there was no point person through the Division of Agriculture to coordinate all of those activities and, therefore, efforts were splintered. She said she supports continuation of this position, regardless of who might hold it in the future, because it is important to have someone coordinating statewide efforts for addressing these invasive species. Without one person coordinating things, all the efforts will be splintered and nothing will proceed. Alaska still has the ability to contain or eradicate some of the invasive species within the state and efforts really need to be taken to make that happen.

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REPRESENTATIVE MUNOZ asked how a specific project is identified and what is involved in coordinating with communities.

MR. GRAZIANO responded that typically a community will form a cooperative weed management area (CWMA), getting interested organizations and individuals involved in invasive species management and bringing to the table the Department of Natural Resources, Department of Transportation & Public Facilities, and federal and municipal land managers. He helps the groups get organized, identify projects, and find funding for the projects. For example, Fairbanks has a cooperative weed management area

led by the soil and water conservation district. One of the area's members found the common waterweed, *Elodea canadensis*, so he joined their meetings to start addressing the weed and develop strategies for finding funds to do more surveying and management of that weed.

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REPRESENTATIVE MUNOZ inquired whether Juneau's problem with Japanese knotweed has been brought to Mr. Graziano's attention.

MR. GRAZIANO answered yes; he has been working with the Juneau management area through the Juneau Watershed Partnership. The partnership has been doing what it can by removing the weed, but Japanese knotweed is a very entrenched species in Southeast Alaska. Additionally, he has had a lot of correspondence with the Department of Transportation & Public Facilities, particularly when the department is doing construction projects in areas that have Japanese knotweed, in which case he consults with them on how to deal with it.

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BRYCE WRIGLEY, Farmer, testified that he raises about 1,000 acres per year of barley and wheat. Over the years he has watched invasive weeds move into the state that represent a direct threat to his ability to provide a sellable product in the Alaska market. After Canada thistle was discovered in a local field, the Cooperative Extension Service and the Delta Farm Bureau coordinated an effort to eradicate the weed before it could spread. Later, the soil and water conservation district took over the noxious weed effort in this area. It took 18 years to eradicate that patch of Canada thistle and there has not been any in the area for the past 13 years.

MR. WRIGLEY expressed his concern as a producer that Alaska is doing too little to address this problem while it is in its infancy. Once this window of opportunity for controlling the spread of invasive plants closes, it will never again be as cheap or as easy to address the problem as it is right now. It is his opinion that the solution is a long-term commitment by the state to manage invasive species, beginning with a point man, and HB 97 addresses the sunset of this position. The purpose of House Bill 330 was to hire a coordinator to develop a statewide weed plan, which is necessary to bring in federal dollars for weed management in Alaska. He drew attention to a report by Mr. Graziano that states a federal grant of \$80,000

had to be returned because there were no matching funds for that grant. If the state does not pay to address this issue now, it will most definitely be paying for it later, he advised.

MR. WRIGLEY suggested that in addition to removing the sunset for the coordinator's position, the committee also include in HB 97 a mechanism to match federal dollars so that the investment by the state can be maximized. Without an effective weed management plan for the state, the cost to Alaska farmers will continue to increase and the cost to the state will increase exponentially. More needs to be done in Alaska to address this problem. He urged that the coordinator's position be funded, the sunset clause removed, and a mechanism provided for utilizing federal grants.

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LORI ZAUMSEIL informed members that she and her husband Troy were the people who found a Canada thistle growing in a plant that they had purchased from a local box store. They began investigating this, and with the help of the Cooperative Extension Service learned just how noxious and invasive Canada thistle is. When no satisfactory response came from the store as far up as its corporate level, they contacted the Division of Agriculture only to find that there was no one to take their report about something so serious and they were subsequently passed all the way to the division's director. She further found that in Anchorage, all of the federal agencies in the U.S. Department of Interior had a person working on this issue, but the State of Alaska had no one and the Municipality of Anchorage had no one. Even to an amateur it was obvious that multiple people spinning in individual orbits were not going to accomplish anything positive enough to handle this problem. So creating a position to advocate for the State of Alaska seemed like an incredibly important thing to do to bring the state into the battle so it was not just a battlefield to be overrun.

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MS. ZAUMSEIL related that when Representative Johnson responded to her and Troy in 2007, they committed to doing everything they could to make their fellow property owners and taxpayers understand that spending \$1 now would save \$100 later. This is an issue that will grow exponentially and is growing even with effort. If momentum is lost from losing this position, it will be so costly to everybody in Alaska, from salmon fishermen to property owners to farmers. As a result of their involvement in

Alaska, she and Troy have been invited to speak all over the country and they have found that all eyes are on Alaska. People in other states with budgets of tens of millions of dollars and with agricultural losses in the tens of millions of dollars, have told her that Alaska is where their state was 20 or 30 years ago and they wish they had not waited to deal with the problem. She understands Representative Gardner's position about being terrified because that is exactly how she and Troy felt. She urged the continuation of the coordinator's position because it is important and matters on so many levels.

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REPRESENTATIVE GARDNER commented that she would not know a Canada thistle and would therefore not be alarmed about something growing in a plant pot.

MS. ZAUMSEIL answered that she and Troy came across a pocket-sized weed guide that talked about invasive plants in Alaska, which was a totally foreign concept to them. However, they paged through the guide anyway. A month later they found a Canada thistle growing in their backyard in Anchorage, which heightened their awareness. The next spring while purchasing garden starts at a retail box store in Anchorage they found a Canada thistle growing in a pot. They had an inkling that this was a bad thing, so to be certain they took it to the Cooperative Extension Service to have it identified. She then "googled" it on the Internet and in 30 minutes she was pretty mad and in 60 minutes she was an activist.

1:38:26 PM

MS. ZAUMSEIL addressed what local citizens can do, noting that she and her husband have no science background and hold full-time jobs. However, because they recognized the seriousness of this, they created their own nonprofit Cooperative Weed Management Area (CWMA) in Anchorage, and dedicated a lot of time for about three years. A concerned citizen with a voice and a passion can really accomplish something and this particular issue is a good example of that. She informed members that federal legislation was introduced by U.S. Senator Harry Reid, and at her and Troy's request this legislation was co-sponsored by Senators Begich and Murkowski. They also asked Congressman Don Young to introduce a companion bill, which he did the day after Senator Reid's bill was introduced. This demonstrates how much impact a citizen can have on the process.

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BLAINE SPELLMAN, Alaska Association of Conservation Districts, said his organization wrote a letter of support for HB 97 and he is willing to answer any questions about how the Division of Agriculture's program has benefitted his group's efforts in managing invasive plants around the state.

CO-CHAIR FEIGE asked Mr. Blaine Spellman about how effective the coordinator position has been in terms of actual coordination.

MR. SPELLMAN replied that the soil and water conservation districts have been managing invasive plants for a very long time and, as pointed out by Ms. Chumley, it was oftentimes an uncoordinated effort done by various groups in complete isolation of one another. Having a state coordinator has been exceptionally important because it has unified all the nonprofits and the soil and water conservation districts into one team working with the state. He said he feels that the position and the strategic plan developed by the Division of Agriculture have been very valuable.

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The committee took an at-ease from 1:42 p.m. to 1:43 p.m.

1:43:43 PM

CO-CHAIR FEIGE closed public testimony on HB 97 after ascertaining that no one else wished to testify.

REPRESENTATIVE HERRON commented that Dave Cannon, a local area coordinator, gave him a presentation on this issue and it is surprising how much is unknown about invasive species. Pretty, non-native flowers that people want to grow can be disastrous. The legislature needs to think about creating an Alaska seed bank or creating more of a seed bank, like the global seed bank in Norway, and should consider a seed vault so that native plant species can be saved for the future.

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CO-CHAIR SEATON moved to report HB 97 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 97 was reported from the House Resources Standing Committee.

[1:45:40 PM](#)

The committee took an at-ease from 1:45 p.m. to 1:48 p.m.

HB 106-COASTAL MANAGEMENT PROGRAM

[1:48:35 PM](#)

CO-CHAIR FEIGE announced that the next order of business is HOUSE BILL NO. 106, "An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities of the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 22, ch. 31, SLA 2005; and providing for an effective date."

[1:48:53 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management (DCOM), Department of Natural Resources (DNR), first provided an overview of HB 106. He explained that in 2005, Senate Bill 102 amended Alaska statute 44.66.020(a) to include the Alaska Coastal Management Program (ACMP) as a program subject to termination, thereby providing the legislature with a mandatory review of the ACMP's efficacy through the program sunset process within that statute. This provision of Senate Bill 102 also included an uncodified section that terminates the ACMP on July 1, 2011. This termination of the ACMP is not like a normal sunset provision because there is no grace period or program wind down - it is effective immediately July 1, 2011, which means a bill must be passed this session extending the ACMP or the program terminates. He said Governor Parnell has introduced HB 106, extending the termination date of the ACMP by six years, in recognition of the value of the Alaska Coastal Management Program to extend the state's authorities to federal lands and agency activities, as well as the importance of incorporating local participation and input into those decisions.

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MR. BATES next reviewed the history of the ACMP and the changes that have been made to it. He said, "The ACMP is a federally authorized, voluntary state program where the state oversees the responsible development of coastal uses and resources, federal activities within the coastal zone, and activities on the outer continental shelf." The consistency review process is the primary tool for implementing this program. Through this

process, proposed resource development projects, such as a dock or an oil and gas exploration project, are reviewed by federal and state agencies, coastal districts, and interested public members for compliance with the ACMP state standards and district enforceable policies. Since 1979 the structure of Alaska's coastal management plan has included the most expansive coastal zone in the nation, extending for the most part from Alpine to the ice fields of southeast Alaska, all the way around western and southcentral Alaska, and several hundred miles inland up anadromous waterways. Also important is that Alaska has a "geographic location description" which allows extension of the ACMP to the edge of the outer continental shelf.

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MR. BATES said the State of Alaska chose this network-structured program where its departments and divisions participate in the implementation of the ACMP. The state also included a local component where several coastal municipalities and service areas voluntarily participate in implementation of the ACMP. The Division of Coastal and Ocean Management (DCOM) serves as the lead agency and is responsible for all aspects of implementation of the program.

MR. BATES related that in 2003 changes were initiated to the coastal management program by passage of Executive Order 106, which moved the Division of Governmental Coordination into the Department of Natural Resources, and passage of House Bill 191. House Bill 191 was intended to reduce delays, avoid regulatory confusion and costly litigation, allow new investment in Alaska, and update and reform the ACMP statewide standards and district enforceable policies to be clear, concise, more uniform, related to specific concerns and in the case of districts to local concerns, and to be non-duplicative of state and federal laws. A key change made by House Bill 191 was elimination of the Coastal Policy Council, which was the governing body of the coastal program, and the transfer of all of the council's duties into DNR. The bill also required a complete re-write of the statewide standards, the coastal district plans, and the enforceable policies to ensure that all the standards and district policies met with the legislative intent to be clear, concise, not susceptible to subjective interpretation, and not duplicative of otherwise existing requirements. The bill clarified that district enforceable policies may not address a matter regulated or authorized by state or federal law unless the policy related specifically to a matter of local concern.

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MR. BATES continued, saying that House Bill 191 clarified the consistency review process to provide more predictable timelines and standards, including the scope of the project subject to review, when a project can proceed in phases, and the extent to which projects inland of the coastal zone are subject to review. The bill encouraged expansion of the use of general permits and otherwise expedited consistency reviews. The last key change made by House Bill 191 was implementation of the "DEC carve-out," which excluded Department of Environmental Conservation (DEC) permits from the coordinated consistency review process of the ACMP and prohibited coastal districts from establishing enforceable policies addressing air, land, and water quality that are already covered by DEC.

MR. BATES said that in 2004 the ACMP regulations were amended as required by House Bill 191. In 2005 Senate Bill 102 was passed, which provided the legislature with a mandatory review of the ACMP's efficacy through the previously mentioned sunset provision. House Bill 102 also amended the deadlines for coastal districts to submit their amended coastal district plans, immediately repealed district policies that were in conflict with existing law, and mandated revision to the "ABC List," including those activities that qualify for an expedited review under the ACMP. The Office of Ocean and Coastal Resource Management (OCRM), the federal granting and oversight body, approved those changes in December 2005 after performing a National Environmental Policy Act (NEPA) analysis on all of those changes.

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MR. BATES noted that pre-2003 there were 35 coastal districts, 33 of which had coastal district plans approved. As a requirement of House Bill 191, 28 coastal districts revised their entire plan, 25 of which are in place now, and 1 of which is pending and under final review.

MR. BATES reported that as a preliminary to the termination of the ACMP under the sunset provisions in statute, Senator Olson last year requested a full program audit on the ACMP. The audit, delivered in two parts, was a significant investment in time by the Division of Legislative Audit that conducted the audit, as well as the Division of Coastal and Ocean Management (DCOM), network agencies, coastal districts, and other participants that responded to, provided information for, and

participated in the audit. It is the administration's perspective that the audit represents a comprehensive and objective review and evaluation of the ACMP. He said the audit findings include the following: "the program is operated and functioning consistent with statutes, regulations, and legislative intent; clarifying the ACMP standards, and district enforceable policies, and reducing the redundancy in the program were the legislature's intent; the ACMP changes have not diminished the state's rights under the CZMA, the Coastal Zone Management Act; DNR is an appropriate agency to administer the ACMP."

MR. BATES pointed out that the audit did not recommend any statutory changes and concluded that the legislature should reauthorize the ACMP. Audit findings identified ways to improve the ACMP, including that while the ACMP is operated openly and transparently, certain aspects of its process are deficient in openness and transparency. Another finding was that changes have lessened consensus building among the review participants. He said the division and the department are contemplating ways to improve the program as identified within the audit findings. With these audit findings in hand, and based on the governor's guiding principles on resource management as it relates to the ACMP, the governor has introduced HB 106, a six-year extension of the termination date for the ACMP.

[2:03:00 PM](#)

REPRESENTATIVE P. WILSON asked whether DNR has decided to make any of the changes recommended in the audit.

MR. BATES replied that appropriate changes are being considered to be responsive to the audit findings. The governor has not introduced statutory changes at this time, but other types of changes are being contemplated that would still accommodate the findings from the audit.

REPRESENTATIVE P. WILSON surmised that had the audit suggested any changes those changes would have been in the regulations.

MR. BATES responded yes; the audit did not find statutory changes necessary or warranted, but both the division and the department recognize that improvements could be made to increase the effectiveness and delivery of the coastal program. The [division's] responses to the auditor are largely captured in the audit findings themselves. While there are certain changes that [DCOM] feels it could and should make, there are other

aspects of the audit that [the division] responded to that clarify some of the issues. At this time [DCOM] has not decided or determined what would be appropriate regulatory versus procedural issues to address the points that were raised.

2:05:00 PM

REPRESENTATIVE P. WILSON inquired what the timeframe might be for some of the changes that [DCOM] is looking at.

MR. BATES answered that the majority of [the division's] time for the next 45 days will be dedicated to being responsive to this committee and the legislature on this bill and its companion on the other side. As time permits, [DCOM] will debate what it can do based on the findings and what can be done by procedure or regulation to solve some of the issues raised because the desire is to have a functional and effective division and program.

REPRESENTATIVE P. WILSON asked whether personalities would make a difference, such as a different person in a certain position.

MR. BATES replied that he is unsure who Representative P. Wilson might be suggesting, but that his is a challenging position to administer in compliance with state and federal law. The decisions he has to make are not always easy and are certainly not well received by all the players, which is important to recognize considering that this program significantly affects the industry, the coastal districts, the public, and state agencies. If it is not his position that is being talked about, everybody in this arena has an opinion about these changes as very few people are ambivalent about whether the program is functioning appropriately and this tension is good because it creates the opportunity to decide what is wanted as a program.

REPRESENTATIVE P. WILSON assured Mr. Bates that she has not talked to anyone in this regard; it was just a question that came to mind.

2:08:15 PM

REPRESENTATIVE HERRON requested Mr. Bates to share two examples of projects that were significantly delayed or stopped because of the laws in place prior to passage of House Bill 191 in 2003.

MR. BATES responded that some information was earlier provided to the co-chairs, at their request, regarding project reviews

during the five years prior to 2003, which might be applicable to the question. One of the complaints about the program in 2002 was that there was no legal certainty to the timeframes associated with project reviews. While he cannot remember a specific example, he does know that there were projects stopped for review for which there was no legal reason to do so from the division's perspective; the division just stopped the review because it needed more time to consider things. So, the regulations were written at one time to address some of that as an issue. He offered to come up with specific projects if Representative Herron wished.

[2:10:36 PM](#)

REPRESENTATIVE HERRON said he looks forward to receiving the information that was provided to the co-chairs. He related that the correspondence from the coastal districts about HB 106 is universal in wanting the ACMP to be extended. However, the districts also want some returns to pre-2003, such as a return of the [Coastal Policy] Council so that the districts can have legitimate local input. He inquired whether these returns to pre-2003 have been considered for the legislation or whether [DCOM] only wants the extension.

MR. BATES, returning to the prior question, asked whether Representative Herron's request for information is the material that was provided to the co-chairs, which was data relating to consistency reviews for the past 10 years.

REPRESENTATIVE HERRON repeated that the committee has received written testimony from the districts stating that they want a return to some of the issues as they were prior to House Bill 191, such as a Coastal Policy Council. He asked whether HB 106 does this.

MR. BATES again returned to Representative Herron's prior question [about specific examples of delayed or stopped projects], saying that he is trying to ascertain whether the data provided to the co-chairs is the information that Representative Herron is looking for.

CO-CHAIR SEATON clarified that the information received by the co-chairs was basically a data dump of all of the permits that were issued in the past, not a list of projects that were analyzed or delayed. The co-chairs did not provide copies to the other members because of the large volume of copying that

would have been involved; also, the data would not be meaningful to the request that Representative Herron has at this time.

2:13:26 PM

REPRESENTATIVE HERRON reiterated that all the districts want the ACMP to be extended, so that is not the issue. But, they also want to see a return to some of the other items, including a [Coastal Policy Council] to provide legitimate, genuine, local input. He asked whether such a provision is included in HB 106.

MR. BATES said it is fortunate that all the coastal districts, as well as others, support extending the program because it is valuable and meaningful at the local level. At the state level it is a meaningful opportunity to influence federal activities and federal agency permit activities, particularly on federal land and waters. The governor is not proposing any statutory amendments to the ACMP through HB 106, it is an extension only. [The department] understands that Representative Joule, and possibly members of the other body, may be submitting bills proposing substantive amendments to the ACMP. He continued: "The governor and the department's engagement on any proposed amendments to the ACMP will be guided by the following four principles: the ACMP must maintain a predictable process, the ACMP must be maintained as a strong state program where participant input is valued, the ACMP standards and enforceable policies must be objective and must not duplicate or re-define existing authorities, and coastal districts should be afforded a meaningful role for input on projects but should not possess a veto decision over projects."

2:16:10 PM

REPRESENTATIVE HERRON commented that he does not think any district wants veto power or local control, they just want legitimate and genuine local input. He said he reads the audit to suggest four years, but the governor is asking for six years and a senate bill is proposing one year.

MR. BATES answered that the governor put forward six years largely based on the years 2005-2011 and 2011-2017. Six years seemed reasonable for a future legislature to determine whether the program is functioning effectively and whether it should be continued or terminated. There is not much difference between a four year extension and a six year extension other than [the division] does not want to go through this too often just to determine the value of the ACMP. A one year extension is

challenging for the administration to consider because staff and the program need some security to be able to get down to business. Two issues are at stake: extension of the program and program change. [The division] does not want the program survivability linked to program change because they are separate issues and [the division] wants to deal with them separately to the extent possible.

REPRESENTATIVE HERRON disagreed that the two issues can be severed from one another, and specified that the length of the extension and the concerns addressed by many people are truly non-severable.

[2:19:34 PM](#)

REPRESENTATIVE MUNOZ asked how many local enforceable policies existed prior to 2003 and, of those, how many exceeded state and federal law or regulation.

MR. BATES replied he does not have the number at the top of his head, but he believes that the Division of Legislative Audit calculated those numbers and made some percentage remarks. In further response, he agreed to follow up with this information. For clarification of Representative Munoz's question, he noted that in 2005 [Senate Bill 102] immediately terminated any district enforceable policies that were rendered duplicative with existing state or federal law. While the division did not cull the policies at that time, that bill had a significant effect on the district policies. He presumed that the next number Representative Munoz might be thinking of is the number of policies that the division finally approved in district plans.

REPRESENTATIVE MUNOZ agreed that she would like to be able to compare how many policies existed prior to 2003 and how many remained in place after the change.

MR. BATES said he will follow up in this regard.

[2:22:09 PM](#)

REPRESENTATIVE GARDNER read from a letter written to Mr. Bates on 1/27/11 by Representatives Herron and Foster which asks why ACMP Section 306 funds cannot be used for contracts. She then read from pages 5 and 6 of Mr. Bates's 2/24/11 response to that letter which discuss the \$250,000 that could not be accounted for by the Bering Straits Coastal Resource Service Area (CRSA).

She inquired whether this issue was due to lack of experience in leadership or malfeasance.

MR. BATES responded that some of these long-standing financial issues with the Bering Straits CRSA were just resolved and the CRSA was funded again within the last month, which means the Bering Straits CRSA is now back on track as a full participant in the program. In a program financial audit of the Bering Straits CRSA the independent auditor found that a little over \$250,000 could not be accounted for. Over the course of three fiscal years there were no check stubs or check history of how the money was spent. As the program facilitator and implementer, the division took that issue seriously and shared it with the Department of Law. After looking at the issue, no criminal or civil proceedings were taken. The goal was to get the CRSA cleared of charges and back on track to receive funding as a full participant in the ACMP.

[2:25:35 PM](#)

REPRESENTATIVE GARDNER, in response to Co-Chair Feige, reiterated that this issue is discussed in a 1/27/11 letter to Mr. Bates and in his response of 2/24/11. She inquired whether the \$250,000 was used appropriately but the record keeping was shoddy, or was there concern that the money had been used inappropriately.

MR. BATES answered he does not think it his place to cast doubt or make judgment, but that [DCOM] recognizes there was a problem in terms of financial accountability. The personnel representing the Bering Straits worked well on the program. After the Bering Straits audit was finished, audits were performed on the other three CRSA's because the four CRSA's are entities solely for purposes of coastal management and have no other organizational structure to them. [The division] funds them with \$73,000 to \$75,000 a year for staff time, a bookkeeper, and office space, and they have a minimal matching requirement of about 25 percent. The other 24 coastal districts are municipalities that are under control of their Title 29 municipal authorities and as such they are accountable for their monies and are audited on a regular basis.

[2:27:54 PM](#)

REPRESENTATIVE GARDNER understood Mr. Bates to be saying he cannot answer or is unable to answer the question about whether

the \$250,000 was used appropriately for the coastal zone management program.

MR. BATES replied he does not have an answer as to whether it was spent appropriately. The money was not identified as to where it went, how it went, and how it was used, so it is difficult to make any judgments and it is not necessarily [the division's] place to do so. There is no information to suggest it was inappropriately spent. [The division] wanted to get the Bering Straits CRSA's programmatic bookkeeping in line so that it could receive monies again. When the issues came out, [DCOM] terminated the opportunity for that CRSA to receive any further funding until the issues could be resolved and financial controls put in place so the CRSA could operate effectively and efficiently utilizing [the division's] monies as well as any other monies.

[2:29:36 PM](#)

REPRESENTATIVE GARDNER asked whether Ms. Wolter of the Department of Law had heard her question.

LINDSAY WOLTER, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), responded that this was originally referred to the Criminal Division and she is in the Civil Division, so she did not really participate in the review of this particular issue and cannot comment very deeply on it.

REPRESENTATIVE GARDNER, referring to a letter from Mr. Bates, noted that the issue was sent to Ms. Wolter after a determination that criminal prosecution was not warranted. She said she would like some confirmation that the \$250,000 was not misused or that if it was misused there was some sort of consequence. She inquired whether Ms. Wolter can assure her that this issue was not brushed under the rug.

MS. WOLTER answered she wishes she could make that assurance. She recalled that there was some ability to piece together some of the money and how it was spent, although not nearly the total of \$250,000. This lessened the concern that the funds were inappropriately spent as opposed to just not maintaining the bookkeeping. Thus, the goal was to get the CRSA back up and running rather than determining how the rest of the money was spent, given there are no records to prove either way what happened to the money. In further response, she agreed to call

Representative Gardner's office to let her know whom to contact for an answer in this regard.

2:32:08 PM

CO-CHAIR SEATON understood from Mr. Bates that the audit report has a number of recommendations for the program's problems, but it does not suggest that those problems be fixed statutorily. He recalled Mr. Bates saying that [DCOM] might do something programmatically or through regulations or procedures, but that it has yet to consider any such changes. He inquired why the committee should have any confidence that without statutes the problems will be fixed if the program is extended six years given that [the division] has made no effort or determination to make those fixes.

MR. BATES said the words he used earlier did not appropriately characterize [DCOM's] response to the audit. One audit recommendation is to do the consistency review regulations, and those regulations are prepped and ready to go out for public review, but [the division] has held off on them to see how this legislative process goes. The division is at the ready to address legislative inquiries and, while not overwhelmed, that has necessitated putting those regulations off a little bit. Another audit recommendation is to [complete] the ABC List, the list of expedited consistency reviews, and a process for this was begun within the last month. The audit also talks about transparency of [DCOM's] functions with the working group. Monthly working group meetings are held, but [the division] has a bit of concern with the audit in terms of transcribing or taking minutes from a working group function when it is [DCOM's] opinion that that is not necessarily a productive use of state time and the working group was not necessarily set up to do that. [The division] is looking at ways to meet more effectively with the working group and is intending to use the working group as part of the regulation review committee. Two tape recorders have been purchased to tape the meetings and, as necessary, to transcribe them or rebuild the meeting dialogue. The audits are important to [DCOM] and have not been shelved. He pointed out that the audits are relatively new, with one audit dated the first week of January and the second dated the first week of February [2011], and they are being considered in terms of what the division can do and what the legislature might want to do.

2:36:22 PM

CO-CHAIR SEATON observed that page 24 of the first audit states that the Department of Natural Resources recognizes that the district plan requirements contained in 11 AAC 114 are more stringent than intended under House Bill 191. He inquired whether the department is doing anything to roll that back, given it recognizes that it has gone beyond the statute.

MR. BATES replied that he is on record in previous testimony stating that what was contemplated statutorily was implemented in a more stringent fashion through the regulations. The regulations are still compliant and fully supported by the statutes, but the way the regulations were manifested as they were written they became more stringent by a variety of different factors. When House Bill 191 went into effect in 2003, [the department] did not know that a state cannot regulate that which the Marine Mammal Protection Act already regulates, but the division knows that now. That is the type of issue that has been so challenging and that has made these regulations more limiting than what was contemplated back in 2003. The ACMP regulations include state standards at 11 AAC 112 and they include the coastal planning processes at 11 AAC 114. Those are processes that the department could initiate changes to. And, yes, the department is considering those and is considering how to address some of the suggestions within the audit, whether it be procedural or whether it be regulation, and, as supported by the governor, [the department] is willing to engage constructively with interested parties on statutory amendments.

[2:39:36 PM](#)

CO-CHAIR SEATON stated he is confused that it is being said statutory changes are not needed for the problems identified by the audit; yet, what is being seen is that if they are not done by statute, the probability is that [the division] is not going to do them in its regulations or procedures. Throughout this time the division has not backed off from a more stringent interpretation than what is in statute. So, it seems that [legislators] are left with the need to incorporate changes into statute; otherwise, what is intended in the statute is not going to be followed. He asked whether he is misunderstanding what is being said.

MR. BATES responded that he values Co-Chair Seaton's opinion and recognizes the changes that the co-chair might like to see. Every person and district would like to see something out of the coastal program. While contemplating changes back in 2008 under the re-evaluation, [DCOM] realized that it could not achieve

consensus on program change because there are so many parties and they are affected so significantly with even one minor tweak. It is a package program and [the division] is trying to find the right mix of process and regulation that will relieve and resolve these issues. He said he understands that the perspective of legislators is to change the statutes if [the division] does not get it right. The department wants to make sure that the program as a whole is designed to be most effective for the residents of the state and appropriate given all the interests that are out there, and that the changes are relatively consensus driven.

[2:42:33 PM](#)

CO-CHAIR SEATON asked whether Mr. Bates disagrees with the federal Environmental Protection Agency (EPA) comment cited at the top of page 28 of the first audit that states "... the current standard makes protecting the ecological integrity of the coastal habitats nearly impossible"

MR. BATES said it is not his place to disagree with the comments because those are the comments by a staff person at EPA who feels passionately one way or the other. In its comments back to the Division of Legislative Audit, [the division] pointed out that to have a viable coastal program approvable under the Coastal Zone Management Act it must demonstrate comprehensive and robust habitat management. In 2003, 2004, and 2005, [the division] demonstrated comprehensive habitat management when it showed the OCRM the state authorities that are incorporated into the ACMP, the state standards that address habitat, and the important habitat that is the state standard at 11 AAC 112.300; these were further supplemented by district enforceable policies. There is no question that some folks would like to see an even greater degree of habitat management in the state. However, [the division] must find that balance where there is predictability and responsiveness in a program that affects everybody so significantly.

[2:45:45 PM](#)

REPRESENTATIVE P. WILSON asked whether the \$250,000 is for one year or the total for three years.

MR. BATES answered that it was about \$250,000 over the course of the three fiscal years of 2003, 2004, and 2005.

REPRESENTATIVE P. WILSON said she does not understand why a coastal district could not use those funds to hire a consultant, but she does understand why [the division] thinks there has to be a person in the community who is the point person. It seems to her that the majority of the program is okay, but that the subsistence is not. She asked how long would take to re-do just the subsistence part.

MR. BATES explained that one of the funding opportunities under the ACMP is the Section 309 funding, which is federal funding specific to program changes, such as efforts that would result in a change to an enforceable policy, state standard, or particular implementation technique. [The division] provides funding for all of the coastal districts and state agencies to make these types of program changes and once the Bering Straits CRSA has its district on line, is accepting funds again, and gets its existing plan in place, [the division] can consider funding the CRSA for these types of program changes to incorporate subsistence information into its plan, to revise the plan, or to enhance it in terms of designated areas or enforceable policies. Under [the division's] own project this past year, it identified and compiled relevant and appropriate subsistence information on behalf of, and accessible to, the districts; thus, when they want to do a plan revision that information is already blessed and available and it is an incorporation process. There is a public process associated with that type of program change, and depending on the magnitude of the change, that process will take two to two and a half years just to make sure that the local communities and the affected public have the right opportunity to participate. That is the same timeframe that the program has had since before 1997.

[2:49:42 PM](#)

MR. BATES, responding to a further question from Representative P. Wilson, confirmed that a district would only have to re-do parts of its plan and not the whole thing. At this point the districts will have a fully approved coastal plan and will be able to target a revision, such as revising one policy, a chapter, or the information within the plan. [The division] would work with the districts, and for this type of effort would support a district hiring a consultant to shepherd it through the process.

REPRESENTATIVE P. WILSON, regarding a plan that had incorrect wording for subsistence, asked whether [the division] would show

a district the wording that was correct in other district plans so the district could use that wording to revise its own plan.

MR. BATES replied, "Plagiarism at its best." Environmental impact statements are full of good information related to habitat, fish, wildlife, and so forth, and [the division] is gathering as much meaningful information as it can for districts to utilize in either developing a designated area for subsistence use or enforceable policies related to that subsistence use.

[2:51:42 PM](#)

REPRESENTATIVE MUNOZ asked whether there have been projects opposed by the local districts that were allowed to proceed.

MR. BATES allowed there are projects around the state that he is aware of, with a recent one in Juneau. Many times when a district feels it cannot provide alternative measures which would modify a project into compliance, it will simply object to the project. His agency affords due deference to the state agency or district; so, while a local district may object to a particular project, [DCOM] would provide the district comments to the state agency with greater expertise or responsibility and ask for some position to help [the division] craft a final determination. [The division's] goal with consistency reviews is certainly not to object to projects, it is to modify them into consistency so that economic development occurs in the state while protecting and preserving the coastal uses and resources that are important.

[2:55:18 PM](#)

REPRESENTATIVE MUNOZ asked Mr. Bates to cite some examples of projects that were not supported locally but that received a go-ahead.

MR. BATES responded that he believes one such project was along Lemon Creek in Juneau. He recalled that he and Representative Munoz might have been at the creek at the same time to look at whether that activity was an emergency activity that required immediate repair within two to three days. Although the city was not available at the time of his visit, he is very aware that the City and Borough of Juneau had some serious concerns with the issuance of a permit and a consistency finding for that project. While the city's concern was understood, either [DCOM] or the Alaska Department of Fish & Game determined that placing

riprap on a stream bank was necessary to protect the life and property of nearby residences. Other such projects are offshore oil and gas development where a particular district might have objected to an activity, but [the division] was able to resolve the matter and issue a consistent finding. He offered to do a review and provide a list of these types of projects.

[2:55:26 PM](#)

REPRESENTATIVE MUNOZ inquired, in general, whether the objection of the local district causes the project not to happen.

MR. BATES answered that the coordination process requires that public notice be given and public comment solicited. Within the context of a consistency review, a coastal district and state agencies would look at a project, and 30 days later submit their comments to [DCOM]. By regulation, those comments must be in a particular form: they either concur with the project and say it is consistent with the ACMP standards and policies, or they object to it and submit alternative measures suggesting how to modify the project to allow it to proceed. A district that submits an objection with no alternative measures is challenging because what it is saying is that there is no way to stipulate this project into compliance to allow it to move forward. That is certainly a position of some of the districts, and it is certainly an option for them. As the coordinating agency, if [DCOM] determines the project does not comply, it would issue an objection to a final consistency. As a coordinating agency, [DCOM] must work with the district and must also do an evaluation determining compliance with each of the state standards and district policies that might be applicable. So, a district or state agency may disagree, but [DCOM's] rationale will be included as a legal document within the determination demonstrating how and why [the division] found it consistent with that standard or that policy.

[2:58:05 PM](#)

CO-CHAIR SEATON stated he does not have a good understanding of how the coastal zone program works under current regulations and would like to see some flowcharts showing examples of large and small projects from the past, the participants, and timelines. He further requested that the legislative auditor be asked to provide an explanation of the audit and what the recommendations mean.

CO-CHAIR FEIGE concurred, saying the committee would benefit from a step-by-step explanation of the mechanics of the program and the process that people seeking consistency reviews have to go through.

[HB 106 was held over.]

[3:00:35 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:01 p.m.