

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 11, 2011

1:18 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

HOUSE BILL NO. 105

"An Act relating to the Southeast State Forest; and providing for an effective date."

- MOVED HB 105 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 105

SHORT TITLE: SOUTHEAST STATE FOREST

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	RES, FIN

02/14/11 (H) RES AT 1:00 PM BARNES 124
02/14/11 (H) Heard & Held
02/14/11 (H) MINUTE(RES)
03/09/11 (H) RES AT 1:00 PM BARNES 124
03/09/11 (H) Heard & Held
03/09/11 (H) MINUTE(RES)
03/11/11 (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
03/07/11 (H) Heard & Held
03/07/11 (H) MINUTE(RES)
03/11/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

RICK ROGERS, Forest Resource Program Manager
Central Office
Division of Forestry
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 105, answered questions.

MARTY PARSONS, Deputy Director
Division of Mining, Land and Water
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 105, answered questions.

PAT DAVIDSON
Legislative Auditor
Legislative Audit Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 106, reviewed the recent Division of Legislative Audit audit reports of the Alaska Coastal Management Plan (ACMP).

ACTION NARRATIVE

[1:18:38 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:18 p.m. Representatives Dick, Herron, P. Wilson, Gardner, Kawasaki, Seaton, and Feige were present at the call to order. Representatives Munoz and Foster arrived as the meeting was in progress.

HB 105-SOUTHEAST STATE FOREST

[1:19:26 PM](#)

CO-CHAIR FEIGE announced that the first order of business is HOUSE BILL NO. 105, "An Act relating to the Southeast State Forest; and providing for an effective date."

[1:19:55 PM](#)

REPRESENTATIVE P. WILSON moved that the committee adopt Amendment 1, labeled 27-GH1694\A.1, Bullock, 3/8/11, which read:

Page 2, lines 11 - 16:
Delete all material.

Renumber the following paragraphs accordingly.

Page 7, line 23:
Delete ";"
Insert "."

Page 7, line 24, through page 8, line 7:
Delete all material.

CO-CHAIR SEATON objected.

[1:20:14 PM](#)

REPRESENTATIVE P. WILSON related that although Rowan Bay and Hook Arm aren't in her district, she has been told that there are prehistoric heritage sites in these areas, as documented by the Alaska Heritage Research Survey. The two areas also have pink salmon streams, karst, and cave resources. Therefore, she expressed the need to carve out both the parcels.

[1:21:14 PM](#)

REPRESENTATIVE KAWASAKI inquired as to how those parcels were originally selected for inclusion in the state forest and whether DNR would object to their removal.

[1:21:49 PM](#)

RICK ROGERS, Forest Resource Program Manager, Central Office, Division of Forestry, Department of Natural Resources, explained that the parcels were selected for their timber resource values and because both the Central Southeast Area Plan and the Prince of Wales Area Plan for Rowan Bay and Hook Arm, respectively, designate those lands in the general use category. The general use designation means the parcels are part of the state's managed timber base. He noted that both the aforementioned plans acknowledge the anadromous fish habitat fish resources on the parcels as well as the heritage resources. Furthermore, the Forest Resources & Practices Act acknowledges those and provide very generous riparian set asides per statute. Specifically, a 100-foot buffer is required on each side of the anadromous streams. With regard to the heritage resources, Mr. Rogers informed the committee that prior to a timber sale, a forest land use plan is prepared, which supports the best interest findings to proceed with the timber sale. During the aforementioned process, the State's Historic Preservation Office (SHPO), Division of Parks, is contacted. Mr. Rogers opined that DNR can accommodate the heritage resources and would adapt the plans accordingly. Mr. Rogers informed the committee that typically the area plans in Southeast Alaska require a 500-foot coastal buffer as well. The department's past experience has been that most heritage sites are within that buffer, as that's primarily where people settled. However, it was noted that if [the heritage site isn't located in the coastal buffer], additional conditions would be placed on the timber sale. He highlighted that the statute for establishing state forest also requires a state forest management plan, which would need to be prepared within three years of the passage of HB 105. The aforementioned would allow review of any multiple use resource issues that might be involved for the two parcels in question or any of the parcels in the package. In further response to Representative Kawasaki, Mr. Rogers stated that the department would object to the removal of these parcels. This has been vetted internally with the Office of the Governor, multiple agencies within DNR, as well as the Alaska Department of Fish & Game (ADF&G). He concluded that DNR wants to forward HB 105, as written.

[1:25:44 PM](#)

REPRESENTATIVE P. WILSON surmised that DNR took these things into consideration and there is another chance for concerns with regard to the areas in questions to be discussed by those concerned in the areas.

MR. ROGERS replied yes, adding that there is more than one chance. He explained that the first opportunity to address the parcels would be in the state forest management planning process and the second opportunity would be during any of the timber sales through the Forest Land Use Plan, which performs a public review and comment period prior to a best interest finding is approved for a sale. In further response to Representative P. Wilson, Mr. Rogers related his understanding that there's a 45-day review for each. He noted that there are also processes for reconsiderations and appeals. He characterized it as the normal regulatory process that DNR uses for public involvement in its best interest decisions for disposal.

[1:27:44 PM](#)

CO-CHAIR SEATON related his understanding that these lands could be [available], right now, for timber sales. If a timber sale was conducted now and if the land was in the state forest, the management plan would have to be present and have the same process and restrictions. However, the difference with land in the state forest is that DNR could anticipate long-term stability that would allow for pre-harvest thinning to improve the productivity of the [second growth] forest. He asked if the aforementioned is the only difference. "If these [lands] are out, there could still be a timber sale on the land with the same kind of requirements; is that correct," he asked.

MR. ROGERS answered that is correct.

[1:29:04 PM](#)

REPRESENTATIVE P. WILSON withdrew Amendment 1.

[1:29:16 PM](#)

REPRESENTATIVE GARDNER informed the committee that she had intended to offer this amendment, but did not have one prepared after learning that Representative P. Wilson was offering the same amendment. She then announced that she wanted to offer the same amendment [ultimately labeled Amendment 2] in her name.

CO-CHAIR FEIGE reminded Representative Gardner that the committee's policy is that amendments must be provided to the committee 24 hours prior to being offered.

REPRESENTATIVE GARDNER said that Amendment 1 met the committee's policy regarding the submission of amendments. She then maintained that she has a right under the Uniform Rules to offer an amendment.

[1:29:55 PM](#)

The committee took a brief at-ease.

[1:30:32 PM](#)

REPRESENTATIVE GARDNER acknowledged that the original sponsor of Amendment 2 has some ambivalence about it, but stated that she does not as there are important elements that need to be protected. In particular, the Alaska heritage sites are irreplaceable. Representative Gardner pointed out that HB 105 doubles the amount of the state forest land and she supports it, and eliminating the two heritage sites totals only 3.4 percent of the overall state forest lands.

[1:31:21 PM](#)

REPRESENTATIVE P. WILSON remarked that she is torn because the state is trying to keep the timber industry together in Southeast Alaska. She related that she had legislation that will impact less than 1 percent of all of the timber in Southeast Alaska, which doesn't seem to be very much. However, the forest industry related to her that they have only been able to cut less than 2 percent of the timber in Southeast Alaska. Given that the same rules will apply to these parcels whether they are included in the state forest or not, she decided to withdraw Amendment 1. Furthermore, if the entire parcel is taken out [of the state forest, the amount of possible timber is reduced. If these parcels with heritage sites remain in the state forest, she opined that portions of the parcels could be set aside through the process rather than the entire parcel. In conclusion, Representative P. Wilson said she will oppose Amendment 2.

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CO-CHAIR SEATON pointed out that excluding these parcels from the state forest doesn't provide a higher level of protection

for them. In fact, he opined that excluding these parcels from the state forest would result in a lower level of protection because the timber harvest plan won't be required to be developed in the same way in which it is for the state forest. Furthermore, all the sites will be protected adequately under the state forest designation unlike if the sites have a general use status, which could allow the lands to go through land disposals or other processes. Therefore, he opined that placing the parcels in the state forest will provide greater long-term protection status, and thus he announced his opposition to Amendment 2.

[1:35:58 PM](#)

REPRESENTATIVE KAWASAKI asked if that's the perspective of DNR as well.

MR. ROGERS stated that Co-Chair Seaton's description is accurate in that the parcels will have long-term protection under the state forest designation versus the general use designation. He noted that the area planning process, which is a lengthy public process with the opportunity for public input and appeals, has already taken place. He then pointed out that the area plan language addressing both the Hook Arm and Rowan Bay parcels addresses heritage resources in the plan. Furthermore, DNR is clearly given direction to protect those areas. Although the planning document won't have the level of detail necessary to make the site specific decisions, typically much of the information is housed at SHPO. In fact, much of the information is kept confidential in order to prevent looting and other problems with heritage sites. Mr. Rogers reiterated that whether the parcels are in the state forest or not, DNR will consult with SHPO to provide adequate protection for the heritage sites.

[1:38:10 PM](#)

REPRESENTATIVE GARDNER surmised that if these two parcels remain in the state forest, they would be managed primarily for timber production. Therefore, she further surmised that it would then be more difficult to define the parcels for a different management designation.

MR. ROGERS opined that it wouldn't be any more difficult to protect the heritage resources on these parcels if they were included in the state forest. Although he confirmed that Representative Gardner is correct that the guiding language for

the state forest places some emphasis on forestry resources, it's still multiple use management. Furthermore, to be consistent with state and federal statute and regulation heritage resources must be protected. The mechanisms and office in DNR are present to help meet that objective. Mr. Rogers then highlighted that the state forest designation helps because it keeps the land in state ownership, whereas under the general use land designation the parcels may or may not stay in state ownership.

[1:40:07 PM](#)

REPRESENTATIVE GARDNER inquired as to the designation that would provide these historic sites the greatest protection from destruction or damage.

[1:40:28 PM](#)

MARTY PARSONS, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources, answered that the designations that maintain those lands in state ownership will provide the greatest protection of those historic sites. No particular designation would save a historic resource, but placing it into a state forest would keep such land from being conveyed to out-of-state ownership. He reminded the committee that these historic sites are usually one to two acre sites within a 1,500-1,600 acre parcel, and thus it's a very small percentage of the parcel. The Division of Forestry will be held to a fairly high standard for those areas, which they will also have to protect as part of the planning process. In further response to Representative Gardner, Mr. Parsons reiterated that placing the parcels in the state forest would result in the lands remaining in state ownership and provide the historic sites the most protection.

[1:42:22 PM](#)

REPRESENTATIVE GARDNER asked if the most protection is what HB 105, as written, accomplishes.

MR. PARSONS replied yes.

[1:42:40 PM](#)

REPRESENTATIVE GARDNER withdrew Amendment 2.

[1:43:01 PM](#)

REPRESENTATIVE DICK recalled testimony that objected to large scale logging in an area because of the belief that there was enough small business in the area and performing value-added activities would be best for the community.

CO-CHAIR SEATON pointed out that leaving parcels out of the state forest doesn't mean there would be no timber sale [on the parcels]. Placing parcels in the state forest results in parcels being on a longer term rotation status for management purposes.

[1:45:50 PM](#)

CO-CHAIR SEATON moved to report HB 105 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, it was so ordered.

[1:46:21 PM](#)

The committee took an at-ease from 1:46 p.m. to 1:49 p.m.

HB 106-COASTAL MANAGEMENT PROGRAM

[1:49:42 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."

[1:49:55 PM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, paraphrased from the following written testimony [original punctuation provided]:

Usually when I make a presentation to a Committee about the results of an audit - I cut right to the meat of the matter.

However with the Alaska Coastal Management Program (ACMP) I'm going to spend a little more time going through the Background portion of the audit, which

should give some context to conclusions and recommendations in the report.

The foundation of the program starts with the federal Coastal Zone Management Act of 1972. This program is intended to promote the effective management, beneficial use, protection and development of the coastal zones. States participating in this program have the right to review federal agency and federally permitted activities occurring in or affecting the coastal zone. This act encourages but does not require participation of local governments.

The Alaska Coastal Management program began in 1977. In 2003 statutory changes substantially modified the ACMP.

- It transferred the development and implementation of the ACMP from the Coastal Policy Council to the Department of Natural Resources.
- revised statewide standards
- removed DEC from the consistency review
- required coastal resource districts to rewrite their district coastal management plans.

The cornerstone of the ACMP process is the consistency review. So what is that?

A consistency review determines if the proposed activity is consistent with the statutes and regulation of the state's resource agencies (DNR, ADF&G and DEC); whether it is consistent with statewide standards (which are found in AS); and if the activity is consistent with the coastal district's enforceable policies. These criteria are collectively referred to as ACMP's enforceable policies.

The folks participating in the consistency review include resource agency staff or any other state agency requesting participation, the affected coastal resource districts, the applicants and any interested members of the public.

The process of a consistency review starts with:

- a public notice

- Then DCOM [Division of Coastal and Ocean Management] distributes the consistency review packets to the review participants
- Collect comments regarding consistency from the review participants and then distribute those comments to the applicant and other review participants
- facilitate discussion among review participants to achieve consensus
- render a proposed consistency determination with alternative measures as necessary.
- render a final consistency determination

(Exhibit 3 on page 12 of the first report identifies the consistency review timeline) (Exhibit 4 on page 13 gives an example of a project that needed a consistency determination)

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MS. DAVIDSON added that key is the criteria used in determining whether the activity is consistent or not. She clarified that it's whether the activity is consistent with the resource agencies' authorities, statewide standards, and the coastal districts' enforceable policies. She then returned to paraphrasing from the following written testimony [original punctuation provided]:

As bureaucratic processes go it sounds relatively simple. The complexity and the associated controversy come into play with the establishment of the statewide standards and the enforceable policies that the coastal districts can establish.

Going through the conclusions one-by-one:

1. We found that the regulatory changes in 11 AAC 112 and 114 are within state law and legislative intent. (Legislative intent is found on page 23 and 24 Part 1) and they have limited the ability of coastal districts to establish enforceable policies.

Since the new regulations have been established, coastal districts have submitted 490 enforceable policies and only 210 have been approved. Many of the denials are based, at least in part, because

- The coastal district has not sufficiently documented that a matter of local concern is not

already adequately addressed by a state or federal law.

- The coastal district could not provide a map that met the written scientific evidence requirement to support an area being designated as an important habitat area.

[1:56:11 PM](#)

MS. DAVIDSON, in response to Co-Chair Seaton, clarified that she is working from the first audit report [dated November 26, 2010] and is currently discussing the report conclusions that begin on page 19. In response to Representative P. Wilson, Ms. Davidson agreed to inform the committee from which page in the audit report she is working.

[1:56:46 PM](#)

MS. DAVIDSON then directed attention to page 20 of the audit report, which discusses the changes in the number of enforceable policies. Prior to the 2003 and 2005 changes there had been over 1,300 enforceable policies. However, since that time 490 enforceable policies have been proposed of which 210 have been approved. She attributed that substantial decrease to the fact that there was a reduction in the number of participating coastal districts and a change in the law. The change was to have the enforceable policies as clear, concise, and non duplicative as possible. Some of the duplication was in regard to a coastal district with an enforceable policy that was the same as state statute, regulation, or federal law. Another area of duplication was with coastal districts with enforceable policies for federal land, although they don't have authority for such. The first audit report focused on the reasons the enforceable policies hadn't been approved. The audit report found that there might be multiple reasons why a coastal district's enforceable policy had been denied. The denial could've been because the enforceable policy had already been addressed by a state or federal law and didn't have additional scientific evidence to meet the designated area.

[1:59:20 PM](#)

CO-CHAIR FEIGE related his understanding that Coastal Resource Service Areas (CRSA) can still submit areas for consideration.

MS. DAVIDSON confirmed that they can propose them, but it's part of the division's responsibility to review them and ensure they

don't duplicate a state authority or standard. In further response to Co-Chair Feige, Ms. Davidson also confirmed that the ability to amend is always available.

[2:00:02 PM](#)

MS. DAVIDSON pointed out that page 22 of the first audit report provides a comparison by region regarding the number of proposed district plans and the number of approved district plans. She then returned to paraphrasing from the following written testimony [original punctuation provided]:

Those thresholds for designated areas which require scientific evidence are difficult and expensive. (During the reevaluation process DCOM proposed in draft form for informal public to eliminate the designated area requirements)

In its evaluation of the ACMP process, the National Ocean and Atmospheric Administration's Office (NOAA) suggested that DNR revisit the requirements for designated areas especially those related to important habitat and subsistence use.

MS. DAVIDSON said that although DCOM does provide some funding to the coastal districts, scientific evidence and creation of the maps is more expensive than the grant funds provided.

[2:00:51 PM](#)

REPRESENTATIVE P. WILSON inquired as to whether there is any reason why local communities can't hire their own consultant with the grant money. She opined that it would be much better if the community could hire its own consultant.

MS. DAVIDSON explained that the second audit report, dated December 29, 2010, expressed the division's recommendation that consultants be allowed to represent the coastal districts. Many of the coastal districts are political subdivisions and it isn't within the authority of a department to make determinations regarding what a political subdivision can do in operating its own entity. While the agency is trying to foster good participation in the program by the stakeholders of the community, the division believes they overstepped by trying to prohibit the coastal districts from using consultants.

[2:02:57 PM](#)

CO-CHAIR SEATON asked if there is a reason why so many of the enforceable policies were rejected when they were based on guidance provided by the division for the development of the plans. He then inquired as to the background of the rejections.

MS. DAVIDSON said that she didn't have a direct answer because the division didn't review all of them. The rejected enforceable policies that were reviewed had a common theme of establishing that matter of local concern and duplicity. In discussions with the coastal districts, it was determined that the lack of a regulation doesn't mean an issue hasn't been adequately addressed. Therefore, if there's a state statute that says an entity is responsible for something but no regulations defining how that responsibility will be addressed are in place, the issue is deemed as already being addressed when it comes to the coastal districts' ability to write enforceable policies about that issue. The coastal district, she explained, can't fill in the gaps when there is no regulation.

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CO-CHAIR SEATON surmised then that the state ignored the word "adequately" and determined that if it could be addressed by an agency, it has been adequately addressed even if the coastal district has concerns.

MS. DAVIDSON responded that Co-Chair Seaton's remarks are a good paraphrase, but she couldn't recall whether the term "adequately" is in statute. She recalled that the language was that [the enforceable policies] "can't be duplicative of an authority of the state agency." Therefore, it's deemed to have been addressed if it's in statute. For example, with DEC regulations for spills and spill containment, DEC expects a plan in place from the entity proposing an activity if the spill is over 5,000-10,000 barrels. A coastal community can't decide that it would like a plan that addresses a spill of only 1,000 barrels because DEC already has a requirement, and thus the local districts can't have an additional requirement.

[2:08:26 PM](#)

REPRESENTATIVE HERRON, referring to page 22, exhibit 8, footnote 28, asked if the audit delved into the details of footnote 28.

MS. DAVIDSON stated that exhibit 8 is a chart illustrating proposed versus approved designated subsistence and important habitat areas. The reason the northwest is so low is because a management plan must be in place and approved prior to being able to have the enforceable policies approved. The lack of approved management plans was the reason why those enforceable policies weren't approved as opposed to there being an issue with the policy itself.

REPRESENTATIVE HERRON asked if the audit tried to determine why those management plans weren't approved.

MS. DAVIDSON specified that one management plan had been in the commissioner's office and had asked that its determination be suspended, but she couldn't recall the reason for the others.

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CO-CHAIR FEIGE asked if Representative Herron would like the committee to pursue that information.

REPRESENTATIVE HERRON replied yes.

[2:12:12 PM](#)

MS. DAVIDSON directed attention to page 25 of the first audit report, and continued paraphrasing from the following written remarks [original punctuation provided]:

2. As intended by the legislature, the DEC carveout has excluded air, land and water quality permit issues from ACMP reviews.

One of the provisions of Ch 24 SLA 03 was to remove air land and water quality permits issued under DEC's authority from the ACMP consistency review process. This removal or "carveout" did two things.

- First it allows for DEC to conduct its permit review process concurrently rather than consecutively as the ACMP review process. Since some of DEC's permits take an extended period of time, industry, particularly likes the concurrent permitting aspects of the DEC carveout.
- The DEC carveout also functionally eliminated the opportunity for any coastal

district to develop enforceable policy related to air, land and water quality permit issues under the authority of DEC. The ACMP process allows the local coastal districts to have a say - through enforceable policies on projects going through the consistency review process. However this voice has essentially been shut down by the DEC Carveout for air, land and water quality permit issues. Also in its 2008 reevaluation project one of the proposals was to eliminate the DEC carveout.

2:14:05 PM

CO-CHAIR SEATON directed attention to the second to last paragraph on page 25, which relates the industry's belief that the DEC carveout has reduced delays in the consistency review process. He asked if the audit reviewed whether that was correct.

MS. DAVIDSON recalled that when the division reviewed the projects, it didn't review whether it was delayed. However, it was apparent that with the DEC permits proceeding concurrently, the consistency review started earlier and thus should result in an earlier completion. She related her understanding that the air quality permits can take an extensive period of time to obtain. Therefore, merely overlapping the processes allowed for better efficiency. In further response to Co-Chair Seaton, Ms. Davidson explained that the end of the consistency review process can be reached and knowledge gained in terms of whether there are any alternative measures or other enforceable policies prior to the DEC process. Whereas when the DEC process was part of the consistency review process, both pieces had to be complete prior to a determination regarding whether the project was going to be consistent or not. Ms. Davidson clarified that a project must still obtain all of its permits, but there is the opportunity to know the results of the non DEC issues prior to the completion of the DEC process.

2:17:27 PM

CO-CHAIR SEATON related his understanding then that a project may complete the consistency review process prior to DEC, although DEC may have been at the table with other agencies.

MS. DAVIDSON replied yes. Therefore, upon completion of the consistency review process, an applicant will know whether the project's activity is in accordance with state standards and whether it's within the enforceable policies of the ACMP. Therefore, an applicant will know of any issues that need to be mitigated if it's a DEC permit that takes an extended length of time.

[2:19:31 PM](#)

CO-CHAIR SEATON surmised that other agencies will be able to consult on issues that impact DEC permits.

MS. DAVIDSON clarified that DEC will follow its own regulations for issuing permits and if that requires consultation with other resource agencies it would do so. Additionally, the public comment process for general permitting activities is available. Coastal districts have the opportunity to go through the public comment process with regard to the issuance of DEC permits. However, under ACMP an enforceable policy is given due deference, which means [the applicant/project] needs to be in compliance with the enforceable policy. On the other hand, if a coastal district has a comment on a DEC permit issue, it's a public comment issue and isn't given due deference.

[2:21:36 PM](#)

MS. DAVIDSON, referring to page 27, continued paraphrasing from the following written testimony [original punctuation provided]:

Determining if the revised statewide standards have limited the ability to meet the ACMP objectives is subjective and difficult to measure.

Many of the changes clarified the standards and eliminated duplicate authorities. For example the wetlands definition was redefined to match the federal definition.

While DNR believes that ACMP objectives can still be met through comprehensive application of state resource agency statutes and regulations, plus state standards. Some of the resource agencies expressed some doubt, particularly in the area of habitat standards. During NOAA's review they encouraged DNR to *demonstrate the effectiveness of the standards in protecting coastal habitat (by monitoring) how the standards are implemented through permitted projects.* NOAA can't tell DNR to change the state standards, but they

are suggesting that the outcomes of the standards bear watching.

[2:23:10 PM](#)

MS. DAVIDSON directed the committee's attention to page 29 and continued paraphrasing from the following written remarks [original punctuation provided]:

3. And the final conclusion in this first report is that the changes to the ACMP process have not diminished the State's rights under the federal [Coastal Zone Management Act of 1972] CZMA program.

The state still has rights with regard to federal agencies or federal permitted activities within or outside the coastal zone that affects the coast zone of Alaska.

The state has the rights to evaluate the consistency of those federal activities with the State's enforceable policies.

However to the extent the state has limited the development of enforceable policies and designated areas by coastal districts it has also then generally limited its extent to comment on federal activities for those same issues. The one exception is that regulations do allow DNR to designate areas for subsistence and important habitat areas during a consistency review. So even if a designated area has not been developed by a coastal district the state can still establish that as a designated area during its consistency review of federal activity.

That concludes the issues from the first report.

[2:24:08 PM](#)

REPRESENTATIVE P. WILSON related her understanding that coastal districts do have the right to evaluate a decision. When the coastal districts evaluate a decision, they meet with the commissioner in an informal meeting that occurs within 45 days. Whereas DEC's appeals process is a formal process that usually involves a hearing officer and can be lengthy. She asked if Ms.

Davidson is suggesting that the coastal districts evaluation process should be done within 45 days also.

MS. DAVIDSON clarified that the point is to identify the effect of the DEC carveout. Coastal districts don't have enforceable policies on water, land, and air quality permit issues as those are under DEC's authority. If a coastal district believes that a consistency determination has been made and it disagrees with that determination and doesn't believe its enforceable policies have been given sufficient due deference, the coastal district can elevate that determination to the DNR commissioner. The aforementioned is resolved within 45 days and is more of an informal process. In comparison, a coastal district can't write enforceable policies that are given due deference and can only provide public comment on DEC permit issues. If the coastal district moves through the aforementioned process and tries to appeal a DEC decision to issue or not issue a permit, the process for elevating is different in that it's a more formal process with a hearing officer. Ms. Davidson explained that the audit attempts to compare the voice of the coastal districts under DEC permitted activities versus those that go through the consistency review process.

[2:26:43 PM](#)

REPRESENTATIVE P. WILSON observed that the audit reports that the two processes aren't equal, and therefore she inquired as to how it should be changed.

MS. DAVIDSON answered that the audit points out the impacts of the DEC carveout and questions whether the legislature remains satisfied with the DEC carveout. The audit isn't determining whether the DEC appeals process is good or bad compared to the elevation process in the ACMP, rather "when you're evaluating whether or not the DEC carveout is working as the legislature intended, that's one of the impacts of it."

REPRESENTATIVE P. WILSON remarked that it may not be an either-or situation. Perhaps, there could be a compromise to reach a more "livable" situation. Therefore, there's room for work.

[2:29:05 PM](#)

CO-CHAIR FEIGE asked whether an enforceable policy is a local law.

MS. DAVIDSON responded, "For the most part, no." She explained that Alaska's process for developing coastal districts' enforceable policies is an alternative to entities, most of which are political subdivisions, from developing local ordinances. These enforceable policies gain enforcement because they've been accepted and approved as such under the ACMP.

[2:30:03 PM](#)

CO-CHAIR SEATON noted that when the changes were implemented and districts feared they would lose the ability to make enforceable policies, a number of districts incorporated their enforceable policies in borough municipal ordinances. He asked if in such a scenario, the project developer would proceed through the consistency review and in a separate action would have to obtain a permit from the borough.

MS. DAVIDSON pointed out that page 18 of the audit compares Alaska's program with four other states. There are two ways in which to do this. Alaska has primarily allowed local governments to participate in reviews and the comments of the local governments, to the extent the enforceable policies are given due deference. However, in reviewing California, Florida, Louisiana, and Texas, many of their local enforceable policies aren't included in the state coastal plan, which she attributed to the fact that those states have more experience and well developed local governments. These states are dealing with this at the local level with local laws and ordinances. Since the audit report didn't delve that far into the details, Ms. Davidson wasn't sure how much is being done at the local level in Alaska.

[2:33:12 PM](#)

CO-CHAIR SEATON asked if the audit report reviewed how many of the municipal districts adopted their enforceable policies as local codes so that those permits are required.

MS. DAVIDSON replied no, but she directed attention to a map on page 6 of the first audit report that identifies the coastal districts and which aren't currently participating in the ACMP.

[2:34:17 PM](#)

CO-CHAIR SEATON asked if under the DEC carveout, the process is such that a coastal district or municipality going through the

administrative hearing process would proceed to the superior court if there's disagreement.

MS. DAVIDSON answered that although she knows that through the formal appeals process there is an avenue that leads to court, she didn't know all the steps.

[2:35:15 PM](#)

MS. DAVIDSON moved to the second audit report dated December 29, 2010. She then paraphrased from the following written remarks [original punctuation provided]:

The next report has additional conclusions as well as recommendations.

We found that while the ACMP is operating openly and transparently there are certain areas where this openness is lacking. For example

1. There are no recordings or minutes taken for working group meetings.
2. DNR limits the distribution of consistency review materials
3. DNR has not kept participants actively informed about the status of the ACMP reevaluation process that started in 2008.

MS. DAVIDSON clarified that the audit report isn't addressing whether the Administrative Procedures Act is being followed, rather it's reviewing whether there's good flow of information. The consistency review process requires a lot of active participation, which means that communications are essential. The comments are with regard to whether the ACMP is operating in an open and transparent fashion. She then returned to paraphrasing the following written remarks [original punctuation provided]:

DNR's policy of not allowing a district consultant to represent the district on a consistency review disregards the autonomy of the coastal districts. You have to remember that many of the coastal districts are political sub-division; cities and boroughs. We believe that having a state agency tell another governmental unit what can and cannot be delegated is overstepping.

[2:37:30 PM](#)

REPRESENTATIVE HERRON inquired as to the reaction of the ACMP participants to the areas sited where openness is lacking, such as the lack of recordings or minutes for working group meetings.

MS. DAVIDSON pointed out that the Division of Legislative Audit reports contain the agency's response. Generally, the agency disagreed with the audit's observations.

REPRESENTATIVE HERRON commented that it strikes him as unusual that the department operated to the letter of the law, but not within the spirit of the law.

REPRESENTATIVE P. WILSON stated her agreement with Representative Herron's comments, but added her belief that DNR's disagreement was purely because it felt attacked.

[2:40:52 PM](#)

CO-CHAIR SEATON recalled receiving comments that not only did DNR fail to record the meetings, people were told that they could not record the meetings themselves. He asked if Ms. Davidson received similar comments from district participants.

MS. DAVIDSON replied yes.

[2:41:15 PM](#)

CO-CHAIR SEATON related his assumption that the entire purpose of the consistency review and the enforceable policies was to have a coordinated action. He mentioned the prohibition of consultants in the ACMP. He then inquired as to whether there was any explanation as to why there was a prohibition of recording the meetings in order to share them with the other participants in the coastal district.

MS. DAVIDSON recalled discussions about the consultant issues, but didn't recall much discussion about the recording of minutes. The discussion about the consultants addressed the goal of the agency to have members of the coastal districts actively participate rather than delegating the participation. Ms. Davidson said that the division's view is that it's still up to the coastal district to determine what it wants to do.

[2:43:01 PM](#)

CO-CHAIR SEATON said he has heard frustration from coastal districts regarding the inability/prohibition of recording the conversation to share with people within the community.

MS. DAVIDSON confirmed that the division heard similar comments. She opined that in many of these areas it seems actions and intent are at cross purposes. In order to have a dynamic process, people have to be able to participate, which means it has to be made as easy as possible to participate and understand.

[2:44:31 PM](#)

REPRESENTATIVE MUNOZ asked if the division had the opportunity to talk with project applicants about their experience with the process before and after the changes.

MS. DAVIDSON replied yes, but noted from her auditing experience that more unsatisfied people talk to the division than satisfied people. Furthermore, the audit request drives the review as well.

[2:46:02 PM](#)

CO-CHAIR SEATON, referring to language in the audit that specifies DCOM maintains two distribution lists for project reviews, inquired as to the purposes of the two distribution lists.

MS. DAVIDSON said that the audit was trying to explain who is getting more say and more material, rather than relating a compare:contrast issue.

[2:47:23 PM](#)

MS. DAVIDSON, returning to her presentation, continued paraphrasing from the following written testimony [original punctuation provided]:

In analyzing the organizational placement of the Alaska Coastal Management Program we found that ACMP's missions is aligned with any of the three resource agencies - DNR, DFG or DEC. Also because the program coordinates activities among departments the other agency that could manage ACMP could be the Office of the Governor. So our conclusion is that DNR is one of

the appropriate agencies to administer the ACMP program.

We found that the changes in Chapter 24, SLA 03 have centralized decision making in the DNR Commissioner's Office and have lessened some of the consensus-building aspects of the ACMP consistency reviews.

Some of the changes which contribute to the lessening of the consensus building aspects include:

1. elimination of the Coastal Policy Council
2. reduction in the number of district enforceable policies
3. transferring the program from the Office of the Governor to a resource agency may have strained relationship among program participants
4. And, DEC is not as strong a participant since DEC permits have been carved out of the consistency review process.

Finally we conclude that the legislature should reauthorize the ACMP program. This program gives the state [the ability] to formally influence federal decisions regarding the coastal zone. Additionally it coordinates permitting and consistency review for projects and developments [which] aides both state agencies as well as private businesses in dealing with the state bureaucracy. The Legislature could simply repeal the repealer section of uncodified law; or if the Legislature prefers further evaluation of the program it could modify the repealer section and reset the sunset date to July 1, 2015 (4 years)

[2:49:57 PM](#)

MS. DAVIDSON continued:

This report contains to two recommendations.

First that DNR allow the coastal districts to designate their own representatives.

And secondly DNR should complete its two ongoing regulatory projects.

The first project is to revise the ABC list which is already 3 years past the deadline set out in Ch 31, SLA 05. (The importance of the ABC list is that it identifies categories and description of uses and activities that may impact the coastal zone. It is these categories and descriptions that define what level of consistency review is necessary - see page 17 for a description of an A, B and C activity)

The second project is to complete the program reevaluation project that DNR started in 2008. While this project has no statutory deadline, there has been a substantial investment of time and resources into this project and the statutory and regulatory changes should be finalized and the respective public process should be completed.

[2:51:51 PM](#)

REPRESENTATIVE HERRON inquired as to the magic of the four year extension.

MS. DAVIDSON related that the division believes the two regulatory projects, the ABC List and the completion of the reevaluation project are important. There has been a lot of work done and the agency needs to complete them. If it's going to take another 12-24 months to complete and implement those projects and another couple of years to operate underneath those programs, then four years would allow for the aforementioned and the return for an evaluation.

[2:53:19 PM](#)

CO-CHAIR SEATON relayed that there has been some question with regard to the ACMP being in DNR and its lack of focus on the ACMP in comparison to other projects. He asked if the division received testimony from agencies as well as individual coastal districts regarding where the ACMP would be most effectively housed.

MS. DAVIDSON responded that the division received a lot of comments regarding the way the ACMP used to be and how it is now, but didn't receive a lot of specific organizational information. In terms of the best location for the ACMP if the program fits within the mission, it is an appropriate placement. When the ACMP was located in the Office of the Governor it was

difficult for it to get attention. She pointed out that DNR, ADF&G, and DEC all have a lot of issues going on as well as hot button issues that come and go. Therefore, one would need to review the strength of the division and whether the management is moving it forward. The division, she related, tried to find out where the ABC List and the re-evaluation projects died, but there was no clear answer. She acknowledged that the aforementioned are difficult issues on which to obtain consensus, but expressed the need to make decisions. Placing the deadline for the ABC List in statute indicates the need to build consensus as well as make a decision.

[2:57:22 PM](#)

CO-CHAIR SEATON questioned whether it's worth placing in statute again if it was ignored in the past. From the audit, Co-Chair Seaton surmised that DEC was somewhat segregated and less involved than in the past because it wasn't included in the consistency review. He asked if the audit found the aforementioned to be a detriment to the consistency review process or was it simply that they were on their own track.

MS. DAVIDSON answered that she didn't recall that there were delays because of the DEC carveout. However, it did factor into the lessening of the consensus building. Although there's nothing prohibiting DEC representatives from attending and participating in the meetings, there's no incentive for them to do so either. Again, the DEC carveout has lessened the consensus building aspect of the consistency review process.

[HB 106 was held over.]

[3:00:34 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:00 p.m.