

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 14, 2011

1:05 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Neal Foster

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 19

Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea.

- MOVED CSHJR 19(RES) OUT OF COMMITTEE

HOUSE BILL NO. 174

"An Act relating to the period in which a permit authorizing activities in the state related to mineral resources, oil or gas, or transportation projects is valid when activities authorized by the permit have been stayed by a court or administrative order."

- HEARD & HELD

HOUSE BILL NO. 89

"An Act authorizing the commissioner of natural resources to offer bedload material for disposal for flood control purposes in exchange for a percentage of the profit from the sale of that material."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 8

Urging the United States Food and Drug Administration to deny an application to sell genetically engineered salmon in the United States; urging compliance with the provision of P.L. 110-85 (Food and Drug Administration Amendments Act of 2007) that requires the Commissioner of Food and Drugs to consult with the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration regarding a report on environmental risks associated with genetically engineered seafood products; and urging that product labeling requirements include the words "Genetically Modified" prominently displayed on the front of the package if the application is approved by the United States Food and Drug Administration.

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 19

SHORT TITLE: URGING US TO RATIFY LAW OF THE SEA TREATY

SPONSOR(s): ECON. DEV., TRADE & TOURISM

03/07/11	(H)	READ THE FIRST TIME - REFERRALS
03/07/11	(H)	EDT, RES
03/08/11	(H)	EDT AT 10:15 AM BARNES 124
03/08/11	(H)	Moved CSHJR 19(EDT) Out of Committee
03/08/11	(H)	MINUTE(EDT)
03/09/11	(H)	EDT RPT CS(EDT) 7DP 1DNP 1NR
03/09/11	(H)	DP: GARDNER, THOMPSON, MUNOZ, JOULE, TUCK, FOSTER, HERRON
03/09/11	(H)	DNP: KELLER
03/09/11	(H)	NR: OLSON
03/14/11	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 174

SHORT TITLE: EXTENDING STAYED PERMITS

SPONSOR(s): FEIGE

02/25/11	(H)	READ THE FIRST TIME - REFERRALS
02/25/11	(H)	RES, JUD
03/14/11	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 89

SHORT TITLE: EXTRACTION OF BEDLOAD MATERIAL

SPONSOR(s): SEATON

01/18/11	(H)	PREFILE RELEASED 1/14/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS

01/18/11 (H) RES, FIN  
03/14/11 (H) RES AT 1:00 PM BARNES 124

BILL: HJR 8

SHORT TITLE: OPPOSE GENETICALLY ENGINEERED SALMON

SPONSOR(s): KAWASAKI

01/18/11 (H) READ THE FIRST TIME - REFERRALS  
01/18/11 (H) FSH, RES  
02/10/11 (H) FSH AT 5:00 PM CAPITOL 120  
02/10/11 (H) Moved CSHJR 8(FSH) Out of Committee  
02/10/11 (H) MINUTE(FSH)  
02/14/11 (H) FSH RPT CS(FSH) NT 6DP  
02/14/11 (H) DP: HERRON, MILLER, PRUITT, JOHNSON,  
KAWASAKI, THOMPSON  
03/11/11 (H) RES AT 1:00 PM BARNES 124  
03/11/11 (H) Scheduled But Not Heard  
03/14/11 (H) RES AT 1:00 PM BARNES 124

#### **WITNESS REGISTER**

ROB EARL, Staff  
Representative Bob Herron  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Reviewed the provisions of HJR 19 on behalf of Representative Herron, sponsor.

DR. LAWSON BRIGHAM, Professor of Geography and Arctic Policy  
University of Alaska Fairbanks  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of HJR 19.

PAUL FUHS, Chairman  
Board of Directors  
Marine Exchange of Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Provided remarks on HJR 19.

KATHIE WASSERMAN, Executive Director  
Alaska Municipal League (AML)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HJR 19.

WYN MENEFEE, Acting Director  
Division of Mining, Land and Water  
Department of Natural Resources

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 174, answered questions.

CAMERON LEONARD, Senior Assistant Attorney General  
Natural Resources Section  
Civil Division (Fairbanks)  
Department of Law  
Fairbanks, Alaska

**POSITION STATEMENT:** During hearing of HB 174, answered questions.

LOUIE FLORA, Staff  
Representative Paul Seaton  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 89 on behalf of the sponsor, Representative Seaton.

ROGER HEALY, P.E., Director/Chief Engineer  
Division of Statewide Design & Engineering Services  
Department of Transportation & Public Facilities  
Juneau, Alaska

**POSITION STATEMENT:** Provided suggestions regarding HB 89.

DONALD BULLOCK, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 89, answered questions.

PHILLIP E. OATES, City Manager  
City of Seward  
Seward, Alaska

**POSITION STATEMENT:** Testified in support of CSHB 89, Version B.

#### **ACTION NARRATIVE**

[1:05:19 PM](#)

**CO-CHAIR PAUL SEATON** called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Herron, Gardner, Kawasaki, Feige, and Seaton were present at the call to

order. Representatives Dick, Munoz, and P. Wilson arrived as the meeting was in progress.

**HJR 19-URGING US TO RATIFY LAW OF THE SEA TREATY**

[1:06:31 PM](#)

CO-CHAIR SEATON announced that the first order of business is HOUSE JOINT RESOLUTION NO. 19, Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea. [Before the committee was CSHJR 19(EDT).]

[1:06:37 PM](#)

REPRESENTATIVE HERRON, speaking on behalf of the House Special Committee on Economic Development, International Trade and Tourism that he chairs and who is the sponsor of HJR 19, informed the committee that the Law of the Sea treaty has been around for quite awhile. However, the U.S. Senate has chosen not to debate it or vote on it. Representative Herron stated that the U.S. is an Arctic nation because of Alaska, which results in broad and fundamental interest in the Arctic region where the U.S. seeks to meet its national security needs, protect the environment, responsibly manage and develop the nation's resources, protect and account for [the nation's] indigenous communities, support scientific research, and strengthen international cooperation on a wide range of issues. The aforementioned is what HJR 19 will accomplish, he opined.

[1:08:39 PM](#)

CO-CHAIR SEATON clarified that before the committee is CSHJR 19(EDT).

[1:09:11 PM](#)

ROB EARL, Staff, Representative Bob Herron, Alaska State Legislature, stated:

The United Nations Convention on the Law of the Seas (UNCLOS) was entered into force in November 1994. This convention establishes a treaty regime to govern activities on, over, and under the world's oceans. Mr. Chairman, it builds on the four 1958 Law of the Sea conventions and sets forth a framework for future activities in parts of the oceans that are beyond national jurisdiction. The treaty comprises 320

articles and 9 annexes .... The convention defines the rights and responsibilities of nations and their use of the world's oceans. As Representative Herron mentioned, this particular resolution, HJR 19, urges U.S. Senate ratification of the treaty. And [U.S.] Senator Lisa Murkowski, in her speech to the legislature on February 24th requested such a resolution to help her get a ratification vote to the [U.S.] Senate floor. Under the treaty, member nations can claim an exclusive economic zone (EEZ) up to 200 miles from their coast with sovereign rights to explore, develop, and manage the resources within that zone. A claim can extend beyond the 200 mile limit if a connection can be proven that the nation's continental shelf extends beyond 200 miles. It's estimated the area off ... the north coast of Alaska is about the size of California.

[1:10:53 PM](#)

MR. EARL then directed the committee's attention to the slides entitled "Chinese Claims," which were provided by U.S. Coast Guard Admiral Colvin. On slide 1 he highlighted the quote from the Chinese admiral who said that since one-fifth of the world's population lives in China, China is entitled to one-fifth of the resources in the Arctic's international waters. The second slide tracks the Chinese in the Arctic in the summers of 2009 and 2010.

[1:11:53 PM](#)

REPRESENTATIVE HERRON interjected that the slides that provide the tracking of the Chinese vessel were provided in concert with the Marine Exchange.

[1:12:19 PM](#)

MR. EARL then directed attention to slide 4, which illustrates the remaining unclaimed space in the Arctic. Slide 5 illustrates the portion of the unclaimed space in the Arctic that the U.S. could claim, which is where the Chinese have been operating. In response to Representative Gardner, Mr. Earl confirmed that with ratification of UNCLOS the U.S. could extend its claim as illustrated in slide 5. The UNCLOS has to first be ratified before the U.S. can make a claim.

[1:12:56 PM](#)

REPRESENTATIVE HERRON pointed out that under Article 76 of the convention a coastal state with a broad continental margin limit may establish a shelf limit beyond 200 miles. Therefore, the [claim] could be for 350 miles. Because of the extension of the continental shelf, there are areas of potential that are beyond imagination. As the prior slides illustrate the Chinese are exploring from 201-400 miles, and thus it's in the best interest of the nation in terms of national security to have jurisdiction over the extra 150 miles.

[1:14:04 PM](#)

CO-CHAIR FEIGE related his assumption that the Russians have signed onto this treaty.

MR. EARL replied yes, adding that all Arctic nations, save the U.S., have signed on to the treaty.

CO-CHAIR FEIGE inquired as to why the Canadians haven't extended their EEZ.

MR. EARL answered that the Canadians have made their claim with the United Nations, but he didn't believe that it has been approved yet.

[1:14:43 PM](#)

REPRESENTATIVE HERRON, addressing Russia's 2001 claim to the international boundary that extends to the North Pole, informed the committee that all the other nations don't believe that is a legitimate claim. He explained that once a nation joins the treaty, it has only 10 years to make extended claims. However, even a nation that's not a member of the treaty can still provide comments about the claims.

[1:16:01 PM](#)

REPRESENTATIVE P. WILSON inquired as to the reason the U.S. hasn't signed on to the treaty.

MR. EARL responded that some people are concerned about a loss of sovereignty, although the benefits greatly outweigh anything that's given up. The UNCLOS hasn't been ratified because there are certain U.S. Senators who oppose its ratification. In further response to Representative P. Wilson, Mr. Earl informed

the committee that 161 countries have signed the treaty thus far.

[1:17:25 PM](#)

REPRESENTATIVE HERRON noted that the committee packet includes pro- and anti-ratification arguments in the packet. Since the U.S. isn't a member of the committee, it cannot make extended claims and has little to say about the claims other countries make. Representative Herron highlighted that the U.S. would have the largest EEZ area in the world, if it signed the treaty.

[1:18:39 PM](#)

REPRESENTATIVE HERRON moved to adopt CSHJR 19, Version 27-LS0608\I, Kane, 3/9/11, as the working document.

REPRESENTATIVE GARDNER objected for discussion purposes.

[1:19:13 PM](#)

MR. EARL informed the committee that the Legislative Research Services report dated March 11, 2011, precipitated Version I. The Legislative Research Services was asked to vet the "**WHEREAS**" clauses and they found the need for a couple of changes. On page 3, lines 14-17, the language was reworded in recognition that there wasn't a hearing in 1994 but rather was pending. Also, Legislative Research Services found that the "**WHEREAS**" clause on page 3, lines 12-13, had inadvertently been eliminated and thus is reinserted in Version I.

[1:20:09 PM](#)

REPRESENTATIVE GARDNER removed her objection.

There being no further objection, Version I was before the committee.

[1:21:03 PM](#)

DR. LAWSON BRIGHAM, Professor of Geography and Arctic Policy, University of Alaska Fairbanks, provided the following testimony:

My name is Lawson Brigham and I am a Distinguished Professor of Geography and Arctic Policy at the University of Alaska Fairbanks. I was a Coast Guard

officer for 25 years, icebreakers at both ends of the world. I have also served as the Alaska Office Director of the U.S. Arctic Research Commission in Anchorage. Of relevance to this topic, during 2005-09 I was Chair and U.S. Lead for the Arctic Council's Arctic Marine Shipping Assessment (AMSA), a large assessment that deals with enhanced marine safety and environmental protection for the Arctic Ocean, including the coastal waters of the U.S. Arctic. A central finding of AMSA was that the United Nations Convention on the Law of the Sea (UNCLOS) was the key legal framework from which we viewed all else in our work; governing Arctic shipping and all other marine uses. In our review in AMSA, we restated that since the Arctic Ocean is one of earth's oceans, UNCLOS provides the legal basis for managing the new maritime Arctic. No new treaty or any comprehensive new agreement by the Arctic States or other states is necessary. Importantly, UNCLOS preserves and codifies the principal of freedom of navigation for the Arctic Ocean and the global oceans; a key tenant for U.S. security and economic well-being. UNCLOS provides two important articles one of which you've heard today. Article 76 allows the coastal states in an orderly process to assert sovereignty on the extended continental shelf beyond the 200-mile Exclusive Economic Zone (EEZ), out to 350 miles. Article 234 allows the coastal states the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered waters within the EEZ. Both of these [articles] have important implications for Alaska and the United States maritime Arctic. [In December I had an opportunity to join some 200 experts at the U.S. Naval War] College for a Global Shipping Game that dealt with the Arctic and future Panama Canal. One overwhelming outcome was that the U.S. continued failure to ratify UNCLOS would create substantial risk for the United States in terms of economic development in the Arctic, and will threaten the U.S. position as a global leader in maritime issues. In summary, U.S. ratification of UNCLOS is essential for all future challenges and opportunities in the Arctic Ocean. In my mind, it is at the heart of much of what we in Alaska and the United States will do to protect, develop, manage and lead in the future maritime Arctic.

Thank you, Mr. Chairman, for this opportunity to speak.

1:24:26 PM

REPRESENTATIVE MUNOZ inquired as to the effect an extension of the U.S. economic zone would have on the educational missions the Chinese are performing in the Arctic.

1:24:43 PM

DR. BRIGHAM pointed out that the nation's sovereignty extends to the fisheries and seabed resources, but doesn't restrict the freedom of navigation and transit of those [Russia] ships. With regard to education opportunities, Dr. Brigham surmised that would refer to tourism. He said that all of the aforementioned is allowable under UNCLOS.

1:25:25 PM

PAUL FUHS, Chairman, Board of Directors, Marine Exchange of Alaska, began by informing the committee that the Marine Exchange of Alaska was started by all the major elements of shipping within Alaska and has provided vessel tracking services. He then thanked Representative Herron for taking a leadership position on this matter. Through the vessel tracking it has become clear that there is much activity in the Arctic. Mr. Fuhs opined that if the U.S. doesn't ratify UNCLOS, it's surrendering its sovereignty. He identified one of the issues as regulatory oversight in that there would be concern with regard to [nations] not following the same rules that the [U.S.] must. There has also been much concern with regard to oil and gas development in the Arctic and discussing how best to regulate that. He then presented a slide that illustrated the receiving stations within Alaska, of which there are about 80. Due to international maritime organization law, vessels over a certain size are required to have a transponder [on the vessel]. With the increased concern regarding activity in the Arctic, more receiving stations have been constructed. He also presented a slide that relates the various types of vessels operating in the Arctic.

1:28:19 PM

CO-CHAIR FEIGE inquired as to the range on the transponders.

MR. FUHS answered that it depends upon the location and the amount of radio activity in the area. For a "clean" site the range is beyond 200 miles, with the longest range being 350 miles. The lowest range is 20 miles. He noted that they can track vessels all the way over to the Russia coast line.

[1:29:19 PM](#)

MR. FUHS provided a picture of the Chinese ice breaker "Xue Long." Although Xue Long is very large vessel, the Chinese are building one that's even larger, and will perhaps be the largest in the world, and intends to operate in the Arctic. He then presented a picture of a bulk vessel that's delivering fuel to the coast of Russia, which is always a concern. He also presented a slide of the Gamble site, where there are Russian vessels operating. The tanker in the slide is bound for Canadian oil field development. He then provided a slide of the offshore area of the Outer Continental Shelf (OCS) that's open to other nations. When one moves past the OCS, it becomes so deep that it's not rational for anyone to mine unless they're going to mine deep sea nodules. Under the Law of the Sea Treaty, deep sea mining of nodules is completely regulated, but "for the rest, it would establish rights for us as a coastal state."

[1:30:41 PM](#)

MR. FUHS, in response to Representative Gardner, clarified that the slide with the tanker is not a Russian tanker, but rather is bound for a Canadian oil field. He noted that the tracking of the vessels provides the following information: type of vessel, country of origin, cargo type, depth of vessel, various operational aspects, and for some the rudder angle of the vessel.

[1:31:32 PM](#)

MR. FUHS highlighted that the Marine Exchange of Alaska has the technical ability to know what's going on in the Arctic and a lot of activity is occurring in the Arctic. As policy makers, he surmised that they would have to weigh the costs and benefits [of the treaty]. However, he opined that failing to ratify the Law of the Sea Treaty would result in surrendering the sovereignty of the U.S.

[1:32:08 PM](#)

REPRESENTATIVE P. WILSON asked if there is any way Alaska could make a commitment [to the treaty], but not the entire U.S.

MR. FUHS replied no, adding that treaties of the U.S. are controlled exclusively by the U.S. Senate.

[1:32:57 PM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), informed the committee that in November AML passed a resolution in support of ratifying UNCLOS. Upon doing research of the treaty, Ms. Wasserman discovered that the last seven or eight presidents have been in favor of ratification of the treaty as have most of the state department employees. However, there is a holdout by a few members of the Senate who believe they would be giving up economic sovereignty. Research also resulted in AML believing that the most important aspect of the Law of the Sea Treaty is to claim the seabed mineral resources in the continental shelf, even beyond the 200 mile EEZ. The limit of Alaska's area in Alaska's Arctic is unknown as hydrographic surveys haven't determined the full extent of the potential area along the Chukchi cap. The area is believed to be very extensive and thought to even reach the North Pole. She then recalled attending a meeting at which it was revealed that seven or eight countries that don't border the Arctic were making claims on Arctic mineral resources all the while the U.S. twiddles its thumbs, which she characterized as very irresponsible. She informed the committee that just last week she was in Washington, D.C., where she and other western state representatives had a meeting with the undersecretary of the Department of Natural Resources. The big issue was the black-footed ferret. Upon asking the undersecretary if he was aware of all the mineral resources in the Arctic, the undersecretary blankly stared at her and said he didn't believe that's in his department. However, Ms. Wasserman said she believes otherwise. She emphasized that it doesn't seem that the U.S. is tied into this issue as well as it should be, although she related her understanding that Alaska's Congressional delegation has done quite a bit of research on the issue. The lack of ratification of the Law of the Sea Treaty would simply retain the status quo. Although the U.S. already abides by many of the laws of UNCLOS, it doesn't have a voice. Therefore, she expressed hope that the committee would support HJR 19.

[1:36:42 PM](#)

CO-CHAIR SEATON, upon determining no one else wished to testify, closed public testimony.

[1:37:06 PM](#)

REPRESENTATIVE DICK inquired as to who the U.S. Senators are who oppose [ratification of the treaty] and their arguments against it.

REPRESENTATIVE HERRON identified U.S. Senator Imhof as one of the handful of U.S. Senators opposing ratification of the treaty. The opposition is based on their belief that [ratification of the treaty] would negatively impact the sovereignty of the U.S. such that the U.S. sovereignty would be giving up sovereignty to a tribunal. However, that's not the view of the majority of folks who believe [ratification of the treaty] would merely be surrendering the sovereignty of the U.S.

[1:38:27 PM](#)

CO-CHAIR SEATON, recalling a presentation by U.S. Senator Wicker during the Energy Conference, related that U.S. Senator Wicker expressed the need for the Secretary of State to utilize due diligence to gain control of the minerals and oil and gas resources [in the Arctic]. However, upon follow up regarding the Law of the Sea Treaty, U.S. Senator Wicker was more reticent because some interest groups feel there is some conflict with sovereignty. He highlighted that every time the U.S. signs a treaty, it's an international protocol to perform something. Therefore, some feel that the U.S. shouldn't sign any international protocol or treaty. Co-Chair Seaton highlighted that initially there were four reasons why the Heritage Foundation opposed UNCLOS. Upon corrections and changes, only one of those reasons remain, which is that signing a treaty gives up some sovereignty because of agreeing to a process that includes more people than [only the U.S.] Co-Chair Seaton said that's the only issue of which he is aware.

[1:40:42 PM](#)

REPRESENTATIVE DICK noted that he, too, is concerned about the nation's sovereignty, which he believes has been compromised in the past. Referring to the language on page 2, lines 5-8, that relates the estimate "that the Arctic contains conventional oil and gas resources totaling approximately 90,000,000,000 barrels of oil", Representative Dick pointed out that Alaska can't even access the oil on its own land. Therefore, accessing other oil

doesn't seem meaningful to him. Representative Dick said that until he has more details regarding what would be given up in terms of sovereignty, he couldn't support HJR 19.

[1:41:42 PM](#)

CO-CHAIR SEATON related his understanding that the U.S. Coast Guard, Navy, and other military [branches] have all supported this. In fact, [Rear Admiral Christopher C. Colvin], Commander, Seventeenth Coast Guard District, U.S. Coast Guard, Department of Homeland Security, obtained special permission to testify at a previous hearing. He mentioned that Rear Admiral Colvin's written testimony is included in the committee packet.

[1:42:26 PM](#)

REPRESENTATIVE HERRON clarified that the language to which Representative Dick referred merely specifies that if the U.S. does not sign the treaty, then it's surrendering [those resources] to other nations. These are resources to which the U.S. has legitimate claim. Once the treaty is signed, the U.S. could extend 150 miles [beyond the existing zone] and the U.S. would be in first position. However, if the U.S. chooses not to ratify the treaty and another country lays claim to those resources, then the U.S. is in second position.

[1:43:28 PM](#)

REPRESENTATIVE GARDNER moved to report CSHJR 19, Version 27-LS0608\I, Kane, 3/9/11, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 19(RES) was reported from the House Resources Standing Committee.

[1:44:06 PM](#)

The committee took an at-ease from 1:44 p.m. to 1:46 p.m.

#### **HB 174-EXTENDING STAYED PERMITS**

[1:46:25 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 174, "An Act relating to the period in which a permit authorizing activities in the state related to mineral resources, oil or gas, or transportation projects is valid when

activities authorized by the permit have been stayed by a court or administrative order."

1:46:35 PM

CO-CHAIR FEIGE, speaking as the sponsor HB 174, explained that HB 174 seeks to limit the tactic that has been used to try to discourage development in the state. Alaska's permitting system is used by various departments and resource managers to oversee the myriad of projects throughout the state. He characterized Alaska's permitting system as one of the most comprehensive in the world that is used as a checklist to ensure that all the municipal, state, and federal laws are followed. However, over the years there have been many cases in which the development of a project has resulted in a lawsuit in which the judge has issued a stay. Therefore, the project is essentially put on hold.

1:48:13 PM

CO-CHAIR FEIGE explained that HB 174 allows any permits already issued for the activity, prior to the stay, to be placed on hold. Most permits have a time period associated with them and one tactic has been to obtain a stay on the permit and force the company to continue to update the permit even while it can't engage in the activity. He informed the committee that in the process of review of HB 174 by applicable departments, a number of issues/comments were raised and may require some tweaks. However, all [the applicable] departments have indicated the legislation is something they would like. Therefore, he hasn't requested public testimony from the departments. Co-Chair Feige announced that it will take a while for HB 174 to reach its final form.

1:49:54 PM

REPRESENTATIVE GARDNER inquired as to how much of a problem is permitting at the state level as compared to the federal level, for which there have been many delays. She then related her understanding that if there is a lawsuit and a court issues a stay, under HB 174 the time line remains valid. However, there could still be revocations if the lawsuit is successful.

CO-CHAIR FEIGE replied that would be correct. For further clarity, he pointed out that the permit is up to the permitting agency to grant or not. If a state-issued permit is granted for

four years and only one year has passed when the stay is issued, then three years would remain whenever the stay is lifted.

[1:51:25 PM](#)

REPRESENTATIVE GARDNER inquired as to how problematic are lawsuits and appeals at the state level. In discussing challenges with permits and time delays with permits, she opined that everyone is likely familiar with cases that deal with federal permits. However, she inquired as to how much of a problem it is at the state level.

[1:52:18 PM](#)

WYN MENEFEЕ, Acting Director, Division of Mining, Land and Water, Department of Natural Resources, answered that there are occasionally situations in which people are sued and it creates delays. Depending upon the type of authorization given, the permit or authorization may or may not be issued at the point of the stay being issued. Typically, as the end of the stay is reached, the department will extend the permits as the department has the authority to do so. Under a disposal of interest decision, the department wouldn't have issued the authorization at the point of appeal, but by the time it reached the conclusion court hearings, the department would [likely] be at the point at which it could issue 25 years from that point forward. With regard to delays, Mr. Menefee confirmed that there are delays and there are delays because of lawsuits and appeals.

[1:53:51 PM](#)

REPRESENTATIVE GARDNER inquired as to the reasoning behind a time limit on the permit.

[1:54:04 PM](#)

MR. MENEFEЕ said that there are limits on all the department's authorizations. For instance, permits issued under AS 38.05.850 have a maximum limit of five years since the permits are supposed to be short-term in nature. However, long-term disposal of interest, such as material sales and leases, can be issued for longer periods of time. He attributed those longer periods of time to the need for individuals seeking loans or investments to make the project viable to have control of the state land or the right of interest in order to ensure that any investment can be amortized out.

1:55:09 PM

REPRESENTATIVE KAWASAKI acknowledged that the department already does this administratively, and then questioned whether it needs to be written in statute. Therefore, he questioned whether there has ever been a time when HB 174 would've been of value to the department as a permitting agency.

MR. MENEFEE clarified that he isn't going to say it doesn't need to be done. However, he did point out that the department does have situations in which the department has the authority to adjust. There are cases, such as the Kensington Mine, in which there is an existing authorization, the court implements a stay, and a deadline is reached. He related a recent situation in the North Slope in which the department extended the authorization to deal with a deadline that arose. Mr. Menefee related his understanding that HB 174, placing in statute [the department's ability to deem valid activities authorized by a permit that have been stayed by a court or administrative order], provide surety that the extension would be granted versus the possibility that the department would extend it. Furthermore, placing this in statute sends those who might be suing for the purposes of delay that there will be an extension granted.

1:56:58 PM

REPRESENTATIVE KAWASAKI surmised then that the department extended the North Slope permit administratively through regulations.

MR. MENEFEE responded yes, according to the department's authority under AS 38.05.850. That North Slope permit was a temporary authorization that went year to year. While under delay, the department has the right to redo the terms. He explained that the idea was trying to lease the parcels, therefore the stay came due to the lease. However, the permit was still valid and the department extended it to keep them operating until a decision was made regarding the leases.

1:57:50 PM

REPRESENTATIVE KAWASAKI surmised that for large projects there would be multiple permits from multiple agencies. How does the division currently track all of these permits, he asked. He further asked how the division would track each of the permits it extends when there is a stay.

MR. MENEFFEE answered that under a stay, the extensions would be handled by each authorizing agency responsible for a particular permit, which he understood the legislation to do as well. For a large project that used the state's large project team under the Office of Project Management and Permitting, then there would be a project manager who would review it and coordinate it. For those projects that don't use the division's coordinating services, each individual entity it authorizes would be responsible.

[1:59:50 PM](#)

REPRESENTATIVE P. WILSON asked whether there is anyone else in the state, other than those listed in HB 174, which authorizes permits that should be added.

MR. MENEFFEE pointed out that the location of the various citations in HB 174 fall under different statutes that are used by specific agencies. For instance, an oil and gas [permit] falls under the jurisdiction of the Oil and Gas Conservation Commission for an authorization for drilling. However, theirs may not be the only authorization. There could be many different authorizations required from different agencies. Mr. Menefee clarified that it takes into account more agencies than are listed in the proposed HB 174. Due to the definition of "permit" outlined in the proposed statute, it does cast a broad net that would apply to any entity that authorizes or provides a certificate for those operations.

[2:02:12 PM](#)

REPRESENTATIVE P. WILSON asked then if the use of the term "permit" allows other agencies to take responsibility. Since each section of the legislation addresses a different agency, she questioned whether additional language is necessary. She said she really likes HB 174, but asked if it should be broadened to cover other areas.

CO-CHAIR SEATON reminded the committee that the sponsor has said he will work on this legislation for some time.

[2:03:08 PM](#)

CO-CHAIR SEATON then questioned whether this legislation would also apply to municipalities that have [authorized] a permit.

MR. MENEFEE read the bill such that it would affect municipalities and would have to adhere to the automatic extensions as well.

[2:04:27 PM](#)

CO-CHAIR SEATON asked whether HB 174 includes leases, such as oil leases. He further asked if this legislation would lengthen the term of an oil lease also or is the legislation speaking strictly to an authorizing permit.

MR. MENEFEE, directing attention to the definition of "permit" in Section 3, opined that it sets a very broad net. Therefore, the legislation requires anything that needs to be obtained from any state agency or municipality. The aforementioned means that [this legislation would apply to] any authorization or certificate that's required, and thus would include leases, rights-of-way, material sales, and permits.

[2:05:48 PM](#)

CO-CHAIR SEATON posed a scenario in which someone has an expiring oil and gas lease, and asked if one of the partners of the lease could file a suit and thus automatically extend the lease if a stay was issued. Therefore, the lease wouldn't return to the state, he surmised.

[2:06:44 PM](#)

CAMERON LEONARD, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Fairbanks), Department of Law, confirmed that could be a possible interpretation of the legislation since the term "authorization" is very broad.

[2:07:28 PM](#)

CO-CHAIR FEIGE interjected that there would still have be a stay from the court or an administrative order in order to cease work on the project. He asked if Co-Chair Seaton is talking about the possibility of artificially extending a lease.

CO-CHAIR SEATON clarified that he is just considering other implications in terms of oil and gas leases that are issued over a specified term under a specified plan and term of development. He said that he's in favor of the concept of HB 174, but he wanted to be sure there aren't unintended consequences.

[2:08:43 PM](#)

REPRESENTATIVE MUNOZ asked whether HB 174 could also apply to federal projects within the state.

MR. LEONARD answered that he didn't believe so because the definition of "permit" doesn't reach that broadly. Furthermore, the state doesn't have jurisdiction to effect the duration of a federal permit.

[2:09:18 PM](#)

REPRESENTATIVE GARDNER requested examples of when the lack of the provision proposed in HB 174 has adversely impacted a leaseholder or permittee.

[2:09:54 PM](#)

CO-CHAIR SEATON announced that HB 174 would be held over.

[2:10:23 PM](#)

The committee took an at-ease from 2:10 p.m. to 2:12 p.m.

**HB 89-EXTRACTION OF BEDLOAD MATERIAL**

[2:12:28 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 89, "An Act authorizing the commissioner of natural resources to offer bedload material for disposal for flood control purposes in exchange for a percentage of the profit from the sale of that material."

CO-CHAIR SEATON moved to adopt CSHB 89, Version 27-LS0334\B, Bullock, 3/11/11, as the working document.

REPRESENTATIVE P. WILSON objected for discussion.

[2:13:01 PM](#)

LOUIE FLORA, Staff, Representative Paul Seaton, Alaska State Legislature, informed the committee that the differences between Version B and HB 89 can be found on page 1, line 6, where the language "approved flood control project" was changed to "site-specific flood mitigation plan". The change was in response to conversations with the Department of Natural Resources (DNR)

regarding the "flood mitigation project", which is usually a federal term implicating the U.S. Army Corps of Engineers in a broader project. There are statutes under existing AS 38.05 that address federal flood mitigation projects, whereas this legislation [aims to address] smaller scale site-specific projects that would be approved by the commissioner of DNR. Conversations with the Department of Transportation & Public Facilities (DOT&PF) revealed their concern that the entire statute could apply to their operations when they perform gravel removal to protect their infrastructure. The DOT&PF didn't want to bureaucratize their process. Therefore, on page 1, line 14 through page 2, line 1, the language "other than the state or federal government or a political subdivision of the state" was inserted in order to exempt DOT&PF from this statute. He clarified that this statute applies to a private entity performing the removal. Mr. Flora then pointed out the conceptual amendment that makes changes to ensure that the state infrastructure isn't impacted by the extraction, which can be found in the committee packet.

[2:17:18 PM](#)

REPRESENTATIVE P. WILSON removed her objection.

There being no further objection, Version B was before the committee.

[2:17:38 PM](#)

MR. FLORA explained that Version B would allow the commissioner of DNR to make a finding based on the findings listed on page 1, lines 8-13. Once those findings are complete, the commissioner under a site-specific plan, would be able to offer bedload material under navigable waters to be extracted by a private contractor for approved flood mitigation projects. The main problem with any extraction issue is that the state is bound by statute to receive the fair market value for its bedload material sales. He told the committee that the committee packet includes a price listing of the fair market value [of bedload material] statewide. The upfront fees that an extractor must pay are quite high and inhibit the ability to extract the gravel and resell it. Therefore, this legislation would allow the extractor, under a site-specific plan, to extract the gravel, net out the transportation extraction costs, and pay the state no less than 12.5 percent of the profit. The general intent of HB 89 is to alleviate flooding problems, providing financial incentive for extractors to extract and sell the gravel. Mr.

Flora then directed the committee's attention to aerial slides of bedload flooding. Generally, bedload flooding is when gravel comes down during a sustained rain event and fills the stream over time, which results in flooding.

[2:20:10 PM](#)

CO-CHAIR SEATON, referring to a photograph of Seward, explained that so much gravel comes down the Resurrection River with its low flow that it deposits and builds up such that sometimes there are portions of the river that are higher than the airport. Paying \$3.25 per yard to take out the gravel, which is paid upfront and can't be done as commercial use, creates a problem. There is a similar problem in Valdez, he mentioned. The purpose of HB 89 is to let the commissioner, in those cases where there is bedload buildup, determine that the state is receiving extra value by mitigating floods for which it will have to pay in terms of emergency services and damages to airports and roads. The legislation would allow the department to hold an alternative sale of which the state will receive a minimum of 12.5 percent of the net profit of the sale. The aforementioned would allow businesses to remove this material, which would save the state money in the long term. Co-Chair Seaton then displayed various slides that illustrate the situation in Seward.

[2:23:49 PM](#)

CO-CHAIR FEIGE asked if the commissioner gets to pick the site; that is the sale is preemptive in nature.

CO-CHAIR SEATON responded that is correct. He explained that under HB 89 a contractor or someone with a project that has a bedload would apply to the commissioner. The commissioner would then have to make the findings [outlined in the legislation] and determine whether it would be beneficial and provide enough added value to the state in flood mitigation. Nothing in the legislation restricts or expands the department's ability to let gravel extraction now. Currently, people can apply to DNR, but they have to pay \$3.50 per cubic yard. That \$3.50 per cubic yard is high enough that commercial entities aren't applying for it because it doesn't make financial sense. The legislation aims to avoid the state having to use state equipment during a flood to maintain a channel, rather it would be performed over time with the state as a partner that takes a minimum of 12.5 percent of the profit.

[2:25:15 PM](#)

CO-CHAIR FEIGE asked if the all findings listed on page 1, lines 8-13, will apply or will one finding apply.

CO-CHAIR SEATON pointed out the use of the term "and", which means that all the findings must apply.

[2:26:06 PM](#)

REPRESENTATIVE KAWASAKI expressed the desire to obtain the best value for the state's resources, including gravel. He then inquired as how the legislation addresses the Compton case regarding selling something for less than its value.

CO-CHAIR SEATON reiterated that the legislation allows part of the value to the state, as determined by the commissioner, to include the savings to the state in terms of flood mitigation and offsetting costs the state will incur due to floods if the gravel isn't removed. In response to Representative Kawasaki, Co-Chair Seaton offered to contact Legislative Legal Services for comment on Representative Kawasaki's concern.

MR. FLORA mentioned there is existing statute in AS 38.05 that allows the department for flood control projects to provide 5,000 cubic yards free of charge and additional yardage at \$.50 per cubic yard for political subdivisions. Therefore, there is existing precedence in statute.

[2:28:17 PM](#)

REPRESENTATIVE DICK asked if there is anyone locally selling gravel that would be adversely affected by selling it below fair market value.

CO-CHAIR SEATON said that he couldn't answer that because this situation could occur at several spots across the state. However, he suggested that it's likely that those who currently sell gravel would apply for this usage.

REPRESENTATIVE GARDNER interjected that for those who sell gravel, the ability to purchase it at below market value would be advantageous to them.

REPRESENTATIVE HERRON related his understanding that HB 89 offers a narrow application to mitigate disasters and doesn't attempt to compete.

CO-CHAIR SEATON concurred.

CO-CHAIR FEIGE pointed out that to sell gravel it must be sized, which requires various crushing and sorting equipment and trucks. Therefore, Co-Chair Feige didn't view the legislation as resulting in unfair competition. He characterized HB 89 as a short-term source of inexpensive raw materials for [existing] operators.

[2:33:14 PM](#)

CO-CHAIR SEATON moved to adopt Conceptual Amendment 1, as follows:

Page 2, line 8, following "state.";

Insert "The commissioner may request the plans for bed load material extraction to be reviewed by a professional engineer with relevant experience."

REPRESENTATIVE P. WILSON objected for discussion.

[2:34:20 PM](#)

REPRESENTATIVE P. WILSON related her understanding that departmental staff would've already examined the area, and therefore she surmised that this individual would've already done something like this. Therefore, she questioned whether department staff could perform this work at no cost to the municipality [or the project].

CO-CHAIR SEATON said that the language on page 1, including the findings, is general. A person applying to take and dispose of bedload material will have a plan of development and extraction and DOT&PF would like to ensure that it has been reviewed by an engineer with relevant experience. Such oversight is desired to ensure the state's structures aren't damaged as a result of the removal of the bedload material. He did note, however, that there could be situations in which the commissioner would determine that review by an engineer isn't necessary. The aforementioned could be the case when, for example, the area [where the bedload material is being deposited] is in the middle of a flood plain where there are no bridges or state infrastructure and the desire is to merely have a channel.

[2:37:46 PM](#)

REPRESENTATIVE P. WILSON inquired as to who pays for the aforementioned review by an engineer.

CO-CHAIR SEATON answered that it would be paid for by the person wishing to extract the gravel. He clarified that he wouldn't want to say that the departments have free engineers with expertise in relevant areas.

[2:38:30 PM](#)

ROGER HEALY, P.E., Director/Chief Engineer, Division of Statewide Design & Engineering Services, Department of Transportation & Public Facilities, paraphrased from the following written remarks [original punctuation provided]:

The Department of Transportation & Public Facilities is familiar with the challenges of containing the waters and sediments of our rivers adjacent to our transportation infrastructure. Whether it is flooding of the Seward Airport or undermining of highway embankments along the Haines or Glenn Highway, our large braided glacial rivers have a high bed load of sediment making the river hydrology unstable and difficult to easily predict deposition areas and new flow channels.

Our Department does not typically undertake upstream or in-stream excavations adjacent to our bridges, highways, or airports, but when we do so as a part of our capital projects to protect new or expanded infrastructure, the in-stream work is designed by registered professional engineers specializing in river hydrology.

Because our transportation infrastructure of highways, airports, and bridges represent significant state owned assets, the Department recommends to the Committee that any in-stream work adjacent to or upstream from the State's transportation or facility infrastructure authorized through this proposed bill be designed by professional engineers with relevant experience. Our Department would encourage and support coordination between the Department of Natural Resources and our Department when removal of bedload material is proposed near our transportation infrastructure.

Thank you for the opportunity to testify, and if you have any questions, I will be happy to answer them.

[2:40:25 PM](#)

MR. HEALY, in response to Representative P. Wilson, responded that for work that is adjacent to highways and airports, DOT&PF engineers will undoubtedly be involved in the review of the plan. However, he pointed out that there is a liability associated with the excavation. If there are associated impacts to the excavation, then the operator should follow the guidance of a professional engineer. Still, the department would have to assess the impact of these projects because the engineers are currently working on active projects. He pointed out that doing the detailed discussion and analysis from a design standpoint versus a review standpoint creates a different cost impact to the department.

[2:42:50 PM](#)

REPRESENTATIVE P. WILSON noted that the state budget already includes these [engineering] positions, and she opined that DOT&PF shouldn't charge for this work.

[2:43:23 PM](#)

CO-CHAIR SEATON surmised that if these engineers will have to be available throughout the state, then there will likely need to be another position to implement this. Due to the legislature's work in constraining the number of personnel in the state departments, involving department staff could result in significant delays of projects. He noted that the gravel operators thought the 12.5 percent of profit was reasonable and acceptable. In further response to Representative P. Wilson, Co-Chair Seaton clarified that the aforementioned is covered in the [gravel operators'] plan of development. Co-Chair Seaton further clarified that the person performing the project would have to pay for the design of the project and the engineer's review of the project.

[2:45:52 PM](#)

REPRESENTATIVE P. WILSON opined that someone from the state must oversee this anyway and review the project, and therefore she questioned why the state's engineers wouldn't be the ones to review the plan.

CO-CHAIR SEATON echoed Mr. Healy's comment that from an engineering standpoint there is a difference between designing a project and reviewing another engineer's design.

[2:46:41 PM](#)

REPRESENTATIVE GARDNER said that although these situations seem to happen on an emergency basis, it would seem that one could see the gravel building up. Therefore, removal of the gravel could be arranged and sold prior to an emergency situation. She opined that the language on page 1 of Version B would allow the aforementioned. If that's the case, she inquired as to how the cost would compare when it's not an emergency situation, particularly in terms of the payment proposal in the legislation.

CO-CHAIR SEATON clarified that this isn't thought of as an emergency situation, rather it's a situation in which when bedloading is known to occur flooding is known to occur. Furthermore, at \$3.50-\$5.00 per cubic yard no one will come in to remove the gravel and maintain the stream bed. Moreover, river bed gravel is suboptimal. The purpose of HB 89 is to create a situation in which a commercial operation can exist.

[2:48:41 PM](#)

REPRESENTATIVE MUNOZ asked whether DOT&PF would compete for this gravel for its projects.

MR. HEALY explained that DOT&PF's gravel needs depend upon the specific requirements of the project, and therefore some projects would not be able to use river bed gravel. In general, Mr. Healy said that DOT&PF probably wouldn't use river bed gravel.

[2:50:34 PM](#)

REPRESENTATIVE P. WILSON removed her objection to Conceptual Amendment 1.

There being no further objection, Conceptual Amendment 1 was adopted.

[2:50:59 PM](#)

REPRESENTATIVE KAWASAKI noted that he has been working on similar legislation in which royalty oil could be sold below the fair market value. However, the legislation ran into problems regarding selling an item below the fair market value due to the

Compton case. He inquired as to how the Compton case would impact HB 89.

[2:51:32 PM](#)

DONALD BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, directed attention to Article 8, Section 1 of the Alaska State Constitution, which read:

Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

MR. BULLOCK explained that HB 89 addresses a unique situation with regard to a flood mitigation plan. Under the plan, it's sometimes the case that gravel needs to be removed. There is a benefit to the state for offering the gravel for sale at a reduced price in order to encourage someone to remove the gravel. The aforementioned would avoid the state having to pay someone to remove the gravel in order to prevent flooding and improve the area. Therefore, both sides would benefit.

[2:52:50 PM](#)

PHILLIP E. OATES, City Manager, began by relating his support for CSHB 89, Version B. To illustrate support the City of Seward has enacted a similar resolution for gravel that is owned by the city. He thanked Co-Chair Seaton for coming to Seward to examine the problem and develop a solution. He noted that the city has had at the borough level comprehensive meetings with DNR to address this issue. This issue is important because gravel is uneconomic unless produced in large quantities and the cost of transport often makes it uneconomic for commercial purposes. Furthermore, the additional state charge for removing gravel from streams makes it uneconomic. He opined that the issue revolves around the state receiving value for its resources. However, HB 89, he opined, adequately and fully compensates the state in two ways. The legislation provides the state a profit akin to what it receives for selling its other resources and provides protection from flooding. Therefore, the legislation prevents the state from having to assist after a [flood] disaster happens. He opined that the legislation allows communities/boroughs to remove the gravel at no cost to it, allows the contractor to make a small profit, and provides

benefits to the state in terms of profit and flood prevention. Mr. Oates then expressed the importance of validating [the plan] through appropriate engineering as well as for it to be for flood mitigation purposes. He opined that when the aforementioned requirements are met it would be a win-win situation.

[2:56:21 PM](#)

REPRESENTATIVE P. WILSON, referring to the definition of "bedload material" on page 2, line 12 of the legislation, asked if the definition of "bedload material" includes sand or sediment.

CO-CHAIR SEATON answered yes.

[2:56:46 PM](#)

REPRESENTATIVE KAWASAKI related that he thought the legislation dealt with displaced gravel after a flood. Is that the case, he asked.

CO-CHAIR SEATON clarified that the legislation refers to material that deposits over time when there isn't a flood. This material builds up over time such that when there is a high water event there is no streambed left and the bedload material causes a flood.

[2:57:41 PM](#)

REPRESENTATIVE P. WILSON recalled the river braiding that looks mostly to be sand, which occurs in the Tok area. She asked whether the proposal in HB 89 would work in that situation.

CO-CHAIR SEATON reminded the committee that this legislation would address areas where the commissioner has made the findings that there is a flood mitigation plan.

[2:58:46 PM](#)

CO-CHAIR SEATON announced that HB 89 would be held over.

**HJR 8-OPPOSE GENETICALLY ENGINEERED SALMON**

[2:58:54 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE JOINT RESOLUTION NO. 8, Urging the United States Food and Drug Administration to deny an application to sell genetically engineered salmon in the United States; urging compliance with the provision of P.L. 110-85 (Food and Drug Administration Amendments Act of 2007) that requires the Commissioner of Food and Drugs to consult with the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration regarding a report on environmental risks associated with genetically engineered seafood products; and urging that product labeling requirements include the words "Genetically Modified" prominently displayed on the front of the package if the application is approved by the United States Food and Drug Administration. [Before the committee was CSHJR 8(FSH).]

[3:00:07 PM](#)

REPRESENTATIVE KAWASAKI, speaking as the sponsor HJR 8, explained that the resolution is a statement to the U.S. Food and Drug Administration (FDA) and Congress that urges the FDA to deny the application before it to sell genetically engineered salmon. There is a proposal from a company for a hybrid Atlantic salmon, which could be the first genetically engineered animal for human consumption in the U.S. He opined that there hasn't been enough due diligence at the FDA and it would establish a risky precedence to allow the sale of these genetically modified salmon. He reminded the committee of the farmed fin fish from British Columbia, Canada, that have traveled into Alaskan waters. There is no knowledge regarding what will happen with this genetically modified salmon, which is an Atlantic salmon with the growth genes of a king salmon and an anti-freeze gene of an eel. He characterized this salmon as "frankenfish" and stressed that science needs to be done before approving it as food for human consumption. He noted that Representative Herron offered an amendment in the House Special Committee on Fisheries that the committee was unable to address, but which could be considered in this committee.

[3:00:39 PM](#)

CO-CHAIR SEATON announced that HJR 8 would be held over.

[3:01:11 PM](#)

**ADJOURNMENT**

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