

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 16, 2011

1:18 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Alan Dick  
Representative Neal Foster

**OTHER LEGISLATORS PRESENT**

Representative Alan Austerman

**COMMITTEE CALENDAR**

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.

- MOVED CSHJR 8(RES) OUT OF COMMITTEE

HOUSE BILL NO. 121

"An Act establishing the commercial charter fisheries revolving loan fund, the mariculture revolving loan fund, and the Alaska microloan revolving loan fund and relating to those funds and loans from those funds; and providing for an effective date."

- MOVED CSHB 121(FSH) 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: HJR 8

SHORT TITLE: OPPOSE GENETICALLY ENGINEERED SALMON

SPONSOR(S): REPRESENTATIVE(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
03/14/11	(H)	Heard & Held
03/14/11	(H)	MINUTE(RES)
03/16/11	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 121

SHORT TITLE: LOAN FUNDS:CHARTERS/MARICULTURE/MICROLOAN

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/24/11	(H)	READ THE FIRST TIME - REFERRALS
01/24/11	(H)	FSH, RES, FIN
02/08/11	(H)	FSH AT 5:00 PM CAPITOL 120
02/08/11	(H)	Heard & Held
02/08/11	(H)	MINUTE(FSH)
02/22/11	(H)	FSH AT 5:00 PM CAPITOL 120
02/22/11	(H)	Heard & Held
02/22/11	(H)	MINUTE(FSH)
02/24/11	(H)	FSH AT 5:00 PM CAPITOL 120

02/24/11 (H) Moved CSHB 121(FSH) Out of Committee  
02/24/11 (H) MINUTE(FSH)  
02/25/11 (H) FSH RPT CS(FSH) NT 4DP 1NR  
02/25/11 (H) DP: MILLER, PRUITT, AUSTERMAN, THOMPSON  
02/25/11 (H) NR: JOHNSON  
03/16/11 (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  
03/11/11 (H) Heard & Held  
03/11/11 (H) MINUTE(RES)  
03/16/11 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

CURTIS THAYER, Deputy Commissioner

Office of the Commissioner

Department of Commerce, Community & Economic Development

Anchorage, Alaska

**POSITION STATEMENT:** Presented HB 121 on behalf of the administration.

WANETTA JO AYERS, Division Director

Division of Economic Development

Department of Commerce, Community & Economic Development

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 121, answered questions.

PAUL FUHS

Pack Alaska Sea Farms

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

SEAN RUDDY

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

GERRY ANDREWS

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

MEGHAN CLARK

Crabby Sisters

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

TIM DILLON, City Manager

City of Seldovia;

Executive Director, Seldovia Holding Corporation

Seldovia, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

ADAM GALINDO

Taco Loco

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 121.

GLENN GRAY

Glenn Gray & Associates

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 106, provided a PowerPoint presentation and answered questions about the Alaska Coastal Management Program from the perspective of a consultant to some of the coastal districts.

#### **ACTION NARRATIVE**

[1:18:33 PM](#)

**CO-CHAIR PAUL SEATON** called the House Resources Standing Committee meeting to order at 1:18 p.m. Representatives Seaton, Feige, Kawasaki, P. Wilson, and Gardner were present at the call to order. Representatives Herron and Munoz arrived as the meeting was in progress. Representative Austerman was also present.

#### **HJR 8-OPPOSE GENETICALLY ENGINEERED SALMON**

[1:18:48 PM](#)

CO-CHAIR SEATON announced that the first 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).]

CO-CHAIR SEATON opened public testimony on the resolution. He then closed it after ascertaining that no one wished to testify.

[1:19:50 PM](#)

REPRESENTATIVE HERRON moved to adopt Amendment 1, labeled 27-LS0376\M.1, Kane, 3/9/11, which read:

Page 2, following line 13:

Insert a new clause to read:

"**WHEREAS** the applicant has already bred and produced transgenic salmon and shipped them for commercial market tests; and"

There being no objection, Amendment 1 was adopted.

[1:20:59 PM](#)

REPRESENTATIVE GARDNER noted that Alaska has so much invested in its salmon, as well as its image and branding of the state's salmon as being natural, sustainably harvested, and from clean waters. Any introduction of genetically modified fish, whether accidental or however, is terrifying, she said. She offered her support for the resolution.

REPRESENTATIVE KAWASAKI, in response to Co-Chair Seaton, stated that the bill before the committee is Version M [27-LS0376\M].

[1:22:23 PM](#)

REPRESENTATIVE KAWASAKI moved to report CSHJR 8(FSH), as amended out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 8(RES) was reported from the House Resources Standing Committee.

**HB 121-LOAN FUNDS:CHARTERS/MARICULTURE/MICROLOAN**

1:23:04 PM

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 121, "An Act establishing the commercial charter fisheries revolving loan fund, the mariculture revolving loan fund, and the Alaska microloan revolving loan fund and relating to those funds and loans from those funds; and providing for an effective date." [Before the committee was CSHB 121(FSH).]

1:23:43 PM

CURTIS THAYER, Deputy Commissioner, Office of the Commissioner, Department of Commerce, Community & Economic Development (DCCED), said HB 121 would create a suite of three new revolving loan funds that would help Alaska entrepreneurs build their businesses and contribute to the state's economy. Revolving loan funds have a proven track record in the state and are administered within the department's financing section. These new revolving loan funds would make it easier for entrepreneurs to invest in business expansion, which would stimulate economic activity. The bill would incentivize the development of the shellfish mariculture industry, assist Alaska charter operators in acquiring halibut permits to transition to the new regulatory and management regime instituted by the National Oceanic and Atmospheric Administration (NOAA); and would seed microenterprise development across the state.

MR. THAYER explained that the Commercial Charter Fisheries Revolving Loan Fund would provide access to capital for Alaskan-owned charters. It would repatriate permits to Alaskans and would increase economic benefits to Alaska by re-circulating earnings from this sector into Alaska. He informed members that an interest rate change in a previous committee of referral could conflict with the private sector loan program and the department is working with that committee to rectify this conflict as the bill moves forward.

1:25:22 PM

MR. THAYER said the Mariculture Revolving Loan Fund would provide a spark to a growing industry with great year-round potential for coastal Alaska communities and entrepreneurs. Currently, 67 farms are permitted in the state, but only 25 of them are producing farms - 10 in Southeast, 15 in Southcentral. Twenty years ago in British Columbia, mariculture was a \$500,000 industry; today it is a \$30 million industry because the

province seeded these mariculture forms. Alaska's mariculture economy is currently at \$473,000 and this revolving loan fund would act to seed this industry.

MR. THAYER stated that the Alaska Microloan Revolving Loan Fund would help small businesses grow by providing loans for start-up costs, working capital, inventory expansion, and other commercial purposes. Alaska is one of a few remaining states without a microloan program, which has a proven track record in other states and through the Small Business Administration (SBA). He reminded members that last year this very same bill passed the House 40-0, and said that this year it is packaged with some other revolving loan funds.

[1:26:28 PM](#)

MR. THAYER noted that these programs would complement two existing small business loan programs administered by the Division of Economic Development - the Small Business Economic Development Revolving Loan Fund and the Rural Development Initiative Fund, both of which are geared toward long-term financing. Small businesses are the number one creator of private-sector jobs, so HB 121 would be good for Alaska's economy and families because it would spur sustainable economic growth in the state. The department is on a mission to foster a business climate in Alaska that is conducive to job creation and economic growth. The department is examining how it operates in an effort to be more responsive to the needs of the business community and deliver services that are relevant and useful to the private sector. Recent realignment of resources and services within the department has bolstered the state's economic development toolbox and is reasserting the state's role in creating a business-friendly environment in Alaska.

MR. THAYER added that the department has spent a lot of time listening to the private sector. The commissioner recently formed an economic advisory task force comprised of industry leaders that has been instrumental in reaching out to the private sector. This was done through non-governmental organizations, trade associations, helping this administration plot a productive course to economic development. Additionally, the department solicited input from non-governmental organizations, trade associations, Alaska Regional Development Organizations (ARDORs), Alaska Native Claims Settlement Act (ANCSA) corporations, and legislators. A commonly heard theme has been to increase financing options for small businesses because access to critically needed capital can be the

difference between simply getting by, and thriving. He said HB 121 is a step in the right direction and urged its passage.

1:28:03 PM

CO-CHAIR SEATON requested an explanation about the relationship of microloans in terms of HB 121 and ARDORS.

MR. THAYER replied that, currently, one of the twelve ARDORS in the state has a very successful microloan program that is in the Kenai Borough. In the past the department and borough have discussed working together and having the department possibly operate the borough's fund. The department would continue to work with the ARDORS individually and actually prefers that people work with the ARDORS first before coming to the state. Since only this one ARDOR is providing a microloan program, the majority of the state does not have one. In further response to Co-Chair Seaton, Mr. Thayer confirmed that the microloan provision of HB 121 would not override or necessarily replace a microloan program from an ARDOR, but if an ARDOR wanted to work with the department in doing a microloan program this provision would enable it.

1:29:15 PM

REPRESENTATIVE P. WILSON asked whether a person who has a microloan from an ARDOR would also be able to get a microloan from the state.

MR. THAYER deferred to the director of the Division of Economic Development for an answer.

WANETTA JO AYERS, Division Director, Division of Economic Development, Department of Commerce, Community & Economic Development, replied it is conceivable that there could be circumstances where that would happen, but the borrower would have to have the collateral in place to make that possible. The circumstances of that individual borrower, the project, and the kind of collateral that the borrower can bring forward would have to be looked at.

REPRESENTATIVE P. WILSON observed that two of the three revolving loan funds are water related. She presumed that the microloan fund would be available for any other kind of business.

MS. AYERS responded that is correct.

1:30:40 PM

REPRESENTATIVE HERRON understood that a microloan is what financial institutions call pre-bankable.

MS. AYERS answered that in terms of that specific definition she would say that most of these borrowers would have issues in that by definition they would have been turned down by an existing private lender, but may be able to achieve the circumstances of the microloan fund in order to get to a credit decision.

REPRESENTATIVE HERRON agreed, saying his understanding of this proposed legislation is that microloans are for individuals who have lack of collateral. He asked whether a person's employment and credit history are considered.

MS. AYERS replied that all of those factors would be considered by a loan officer prior to being taken to a committee for a decision.

1:32:06 PM

CO-CHAIR FEIGE asked whether these loans would be made to people who previously had not qualified for commercial loans.

MR. THAYER responded yes, there is a turn-down provision by a commercial institution before a person goes to the state.

CO-CHAIR FEIGE presumed these loans are inherently more risky than standard commercial loans.

MR. THAYER answered yes.

CO-CHAIR FEIGE inquired whether the interest rates should be higher than what has been indicated in order to account for the risk.

MS. AYERS replied that characterizing these as riskier loans is correct; however, that risk would be mitigated largely through collateral requirements. The interest rates are what would be common with other comparable microloan programs offered in other states.

CO-CHAIR FEIGE asked what collateral would be acceptable to the commissioner.

MS. AYERS responded that in the past, collateral has included real property, fishing vessels, gear and equipment, and in some cases inventory is considered. Based on the risk and assessment of the loan officer, a determination will be made about how much collateral is required for achieving the loan. The national average microloan value is about \$12,000 to \$13,000. [The division] is requiring anything above \$35,000 to have the turn down and expects it will be close to or slightly higher than that number.

[1:34:40 PM](#)

REPRESENTATIVE GARDNER said she is very glad to see that someone with past-due child support obligations cannot receive a loan. She inquired how the department would track whether a borrower had fulfilled the requirements in Section 1 of the bill. She further inquired whether the sponsor would be receptive to requiring a report to the legislature regarding repayments.

MS. AYERS, regarding Section 1, explained that the department has several objective measurements as to whether things are manufactured in the state of Alaska, including the Alaska product preference statute and the Made in Alaska standard. There would be ways for borrowers to determine whether a particular vendor had achieved those standards. Additionally, that is guidance for the loan officers as well.

MR. THAYER pointed out that both of the aforementioned programs are run by DCCED.

MS. AYERS, regarding the reporting standard, noted that the department does provide an annual report that indicates loan origination and servicing activities, as well as performance standards such as defaults and delinquencies.

[1:37:01 PM](#)

REPRESENTATIVE HERRON asked what the prediction is for the rate of successful microloan repayment.

MS. AYERS answered that [the department] believes it will be in the range of 90-95 percent. While there is no definitive source that provides a national average, the MicroCapital Monitor estimates that the average default rate is about 5 percent, which tracks fairly well with the department's Small Business Economic Development Revolving Loan Fund.

[1:37:53 PM](#)

REPRESENTATIVE P. WILSON inquired as to what the default rate is for the Commercial Fishing Revolving Loan Fund.

MS. AYERS replied that she does not have that specific number on the top of her head, but in general for last year the default rate was less than 1 percent for the entire portfolio.

[1:38:24 PM](#)

CO-CHAIR SEATON opened public testimony.

PAUL FUHS, Pack Alaska Sea Farms, said he first went to work for Pack Alaska Sea Farms to help untangle some extremely complex regulatory issues, but he came to believe so much in this industry and its potential that he became a part-owner of one of these farms, primarily focusing on geoducks. The farms began putting in seed about eight years ago and the first successful harvest of geoducks was just this last month. An adult geoduck ideal for the Chinese and Japanese markets weighs about one-and-a-half to two pounds.

MR. FUHS said the timing of this loan program is good because the technology has now been proven. People mortgaged their houses and drained their bank accounts to get to this point. It takes six to seven years for a geoduck to reach market size, so the fairly long loan repayment terms in the bill are balanced with the lifecycle of these animals. Justification for the state to establish this program is that it is hard for a bank to give a loan when the person cannot show any revenue coming in for six or seven years. Additionally, there are lease expenses to the Department of Natural Resources (DNR); for example, his farm pays an annual lease to DNR of about \$10,000.

[1:40:33 PM](#)

MR. FUHS said economic development is another reason for doing this. In addition to the farmer, there is quite a chain of people involved in the product. Behind the numbers of overall harvest is the boat that is hired for planting, the mechanics who work on the boat, the people the fuel is purchased from, the processing of the geoducks which is done during the salmon offseason thereby allowing processing staff to work longer, the purchase of seed from the Seward hatchery, the transportation of the seed, and the shipping of the product. During his time as the commissioner of the Department of Commerce, Community &

Economic Development quite a few years back, the loan programs for fisheries were very successful with a very low default rate and therefore he expects the same with this.

[1:41:52 PM](#)

SEAN RUDDY stated that he has an oyster farm in Kachemak Bay and is part of the Kachemak Shellfish Mariculture Association and the Kachemak Shellfish Growers Co-op. He has been farming oysters for about eight years and this would be a very beneficial fund, especially for new farmers. In this business it takes a long time to become profitable. Furthermore, it takes many resources, including money, to make it happen. He had to buy his own boat, build his own boat, customize gear, get gear to hold the oysters on the farm, pay his DNR fees as well as Department of Environmental Conservation (DEC) fees, along with the labor of working on the farm. He urged the committee to approve the loan fund.

[1:43:26 PM](#)

GERRY ANDREWS offered his agreement with all of the testimony provided by Mr. Thayer. He said he has owned Icy Bay Oyster Company since 2005 as a startup. He has yet to produce an oyster, but that is not because he didn't try. One big hurdle for an individual like himself coming into the industry is the financing and not having that legacy of production, and this has slowed down getting into production. As a result he has changed his business plan and is now looking at purchasing a farm in Kachemak Bay and becoming a member of the Kachemak Bay Shellfish Mariculture Association and also the greater community of the [Alaska Shellfish Growers Association]. He urged the committee to move HB 121 forward.

[1:45:19 PM](#)

MEGHAN CLARK, Crabby Sisters, testified that her Anchorage-based seafood company brought its product of gluten-free Alaska king crab cakes to market this past January. Over the last two years her company has developed a strong relationship with its local small business development center and have taken over 40 hours of group trainings and seminars. Additionally, she [and her business partner] routinely meet with their business advisors, specifically focusing on the development of their company's current financial analysis and future projections. Her company's market research and development and current production numbers demonstrate a high consumer and commercial demand for

its product, and this demand means growth and expansion. To achieve this growth her small, local manufacturing business will need a loan to meet its cash flow needs. Unfortunately, it has been her experience that despite her ability to demonstrate good character, capacity to repay, favorable market conditions, and previous small business experience, her company is simply categorized as a startup lacking marketing history, which is a red flag for financial institutions. This microloan legislation would assist in breaking down this barrier to expansion by providing sufficient cash flow to grow her Alaska business at a healthy and steady pace.

[1:47:25 PM](#)

TIM DILLON, City Manager, City of Seldovia; Executive Director, Seldovia Holding Corporation, said the community of Seldovia, like many small coastal communities in Alaska, has had a struggling economy for years. "Things are starting to come back and this kind of an opportunity, this kind of a loan fund, would be a huge shot in the arm for a small community like Seldovia." He encouraged the committee to move HB 121 forward.

[1:48:29 PM](#)

ADAM GALINDO, Taco Loco, stated that he is representing Taco Loco products. He is a strong supporter of HB 121. Taco Loco is an established business that is one of Alaska's largest food manufacturers, but it is having a hard time securing capital to grow its business and create jobs without having to pay 12 percent interest and put 35 percent down to the banks that the business has dealt with for many years. The current economy is putting a crunch on a lot of Alaska businesses and manufacturers. He urged that HB 121 be passed from committee.

CO-CHAIR SEATON closed public testimony on HB 121 after ascertaining that no one else wished to testify.

[1:50:03 PM](#)

REPRESENTATIVE P. WILSON inquired whether the startup funding for the provisions of HB 121 would come from the "Commercial Fishing Revolving Loan".

MS. AYERS replied no, that is not part of the proceeds from the Commercial Fishing Revolving Loan Fund. In response to further questions from Representative P. Wilson, she confirmed that under the current fiscal note the funding would come from the

general fund. Currently, capitalization for the Microloan Revolving Loan Fund would be \$3.5 million, for the halibut commercial charters revolving loan fund it would be \$5 million, and for the [Alaska] Mariculture Revolving Loan Fund it would be \$3 million. She said there would also be a separate operating cost but she does not have that amount in front of her.

CO-CHAIR SEATON interjected that fiscal note number 1 would provide \$169,000 for operating expenses in Fiscal Year 2012 and it would be approximately the same amount for subsequent years.

[1:52:53 PM](#)

REPRESENTATIVE MUNOZ asked whether current loan funds are accessible to business people involved in mariculture or the commercial charter fisheries.

MS. AYERS responded that there is not currently something that is designated for these specific activities of mariculture or sport fish. With regard to microloans, there are two funds more designed for long-term financing: the Small Business Economic Development Loan and the Rural Development Initiative Fund. However, both of those funds have certain restrictions, geographic restrictions, and other complications due to federal requirements that make it difficult to lend on a statewide basis.

[1:54:02 PM](#)

CO-CHAIR FEIGE allowed that it sounds from the testimony like there is a fair amount of difficulty in getting standard financing through normal commercial channels. However, he is loathe to put the state in the position of being a bank because the state would then be competing with banking institutions, although he recognizes that in this case it does have a certain degree of merit. He inquired of the committee and Mr. Thayer whether it would be wise to put a sunset on this, keeping in mind that while economic times may be tough currently they could be rosy in 10 years.

REPRESENTATIVE P. WILSON commented that for the "commercial fishermen's revolving loan" the fisherman's boat or permit is the collateral so that person will do everything possible to keep from losing his or her boat because that is the person's only livelihood. She asked what the collateral would be in the case of a shellfish farmer who might have another livelihood

besides the shellfish farm or is retired and undertaking the farm as an investment.

[1:56:55 PM](#)

CO-CHAIR SEATON pointed out that many times the collateral for the loan also includes the person's house or other real estate, not just the boat. Oftentimes a boat does not matter because the borrower needs to have other collateral for backup on the loan. He cautioned that since this is a revolving loan fund, a term on it would create uncertainty for prospective borrowers. People would be unable to make business decisions when the sunset date is approaching. He pointed out that the legislature does have the ability to make adjustments in the future to the revolving loan funds if it is found that they are necessary.

REPRESENTATIVE HERRON noted that Ms. Ayers earlier confirmed that this is a pre-bankable model. Had Ms. Ayers said that the repayment rates might fall below 90 percent, then he would have been concerned. But a 95-97 percent repayment rate should be looked at in a positive way and not be looked at overly critically because the important part in this repayment plan is the borrowers. He said he thinks it is an important finance method that the state should deploy.

[1:59:45 PM](#)

CO-CHAIR FEIGE questioned whether DCCED would support a sunset provision in the bill.

MR. THAYER answered that if it is the will of the legislature, then the department would support a sunset provision for the success of the loan program moving forward. However, while HB 121 was being drafted the department worked with the Commercial Fishing and Agriculture Bank (C-FAB) and the banking community to be very careful not to compete with the private sector. The department would like to see this bill pass.

[2:01:37 PM](#)

The committee took an at-ease from 2:01 p.m. to 2:05 p.m.

[2:05:49 PM](#)

REPRESENTATIVE MUNOZ said she likes HB 121 because it addresses the funding problems that certain industries in Alaska have. She understood that the first years for a new shellfish grower

are very cost intensive and it takes seven to eight years before any income is derived. She asked whether the loans that are specifically for mariculture farmers would take that into account.

MR. THAYER replied that it does and a borrower may defer the interest for up to six years, subject to an arrangement with the Division of Economic Development loan officer. This was addressed by the prior committee, the House Special Committee on Fisheries, he noted.

[2:07:05 PM](#)

REPRESENTATIVE MUNOZ inquired whether the \$169,000 in operating costs during the first years would come from the general fund or the revolving loan fund.

MR. THAYER responded that those costs would be funded through the fund itself. In further response, he confirmed that interest payback/revenue generation would occur in 2012, the first year of operation, and in 2013.

[2:08:21 PM](#)

REPRESENTATIVE MUNOZ moved to report CSHB 121(FSH) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 121(FSH) was reported from the House Resources Standing Committee.

#### **HB 106-COASTAL MANAGEMENT PROGRAM**

[2:08:54 PM](#)

CO-CHAIR SEATON 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."

CO-CHAIR SEATON noted that the committee had previously asked questions about how the Alaska Coastal Management Program works, and Mr. Gray, a consultant to some of the coastal districts, was asked to provide information from a consultant's perspective.

[2:10:11 PM](#)

GLENN GRAY, Glenn Gray & Associates, noted that he worked 11 years in the Division of Governmental Coordination coordinating oil and gas reviews, primarily mineral reviews, and for the past 7 years he has worked for coastal districts throughout the state. In response to several questions from Co-Chair Feige, Mr. Gray confirmed that he worked for 11 years for the Division of Governmental Coordination, which at that time was where the Alaska Coastal Management Program (ACMP) was located, but now he is working as a private individual.

MR. GRAY began by pointing out that the ACMP is now, and always has been, a development program. It is a way to make projects better; very few projects have ever been stopped through the program. It is a one-size-fits-all process, so a large project such as a huge mine or oil and gas development will follow the same process as is outlined on slide 2. A good part of the program is the pre-application services that the Department of Natural Resources (DNR) gives when requested by the applicant. This service gets everyone around the table at a meeting to try and fix any problems before the applications are even submitted. Once there is a complete packet, which includes all permits except for Department of Environmental Conservation (DEC) permits since they are carved out of the program, the review begins on what is called "Day 1". All reviews will either go through a 30-day review or a 50-day review, which is a little misleading because the reviews can be extended up to 90 days or longer for some types of reviews.

[2:12:48 PM](#)

MR. GRAY said the first milestone is on day 13 of a 30-day review or day 25 of a 50-day review when one of the review participants can request additional information. Next is the comment deadline on day 17 or day 30, which is the timeframe applicable to all state and federal agencies, coastal districts, and the applicant. [By day 24 or day 44] DNR, or one of the other departments if it is a single agency review, will develop a proposed consistency determination.

MR. GRAY said "consistency" means that this review is to determine whether that project is consistent with the statewide standards of the ACMP and the coastal district enforceable policies. He pointed out that very few projects are elevated to the level of the DNR commissioner. Prior to 2003, it would have been the divisions of the three resource agencies first, and then the commissioners. Now, under the new program, it is the

DNR commissioner. If there are no elevation requests, the review will go directly to the final consistency determination on day 30 or day 50.

[2:14:13 PM](#)

CO-CHAIR FEIGE inquired whether projects are not elevated because of the pre-application process, or because things are clearer than they were prior to 2003, or because someone in the Division of Coastal and Ocean Management (DCOM) is choosing not to elevate it.

MR. GRAY replied that the review participants decide whether to elevate that proposed decision. He understood that both today and before 2003, less than 1 percent of the projects were elevated or appealed in any way. This number is small because this review process is designed to identify the problems early on and resolve them, even if there are no pre-application meetings.

[2:15:13 PM](#)

REPRESENTATIVE P. WILSON asked whether "one size fits all" is good or bad.

MR. GRAY responded that, in his opinion, a process for large projects would solve a lot of the problems with the program because 95 percent of the projects are not controversial. Those 5 percent that are [controversial] are sometimes the larger projects and it is hard to do a "cookie-cutter" process. In further response to Representative P. Wilson, Mr. Gray related his belief that two different processes would be better. He noted that British Columbia does such.

[2:15:58 PM](#)

REPRESENTATIVE P. WILSON inquired as to what causes elevation.

MR. GRAY explained that the opportunity for elevation could occur when someone believes there are greater impacts to coastal uses and resources and the alternative measures would not mitigate the impacts.

REPRESENTATIVE P. WILSON asked if there is a specific amount of time with which the DNR commission has to deal with the [elevation].

MR. GRAY replied yes. In further response to Representative P. Wilson, Mr. Gray explained that the 50- or 30-day timeline stops the day the elevation begins. There is a timeline for the elevation process. He confirmed that sometimes, although rarely, the project is stopped at this point.

[2:17:20 PM](#)

CO-CHAIR FEIGE recalled that less than 1 percent of the entities face elevation after making it through the application process. He recalled that prior to 2003 a small number of entities were elevated.

MR. GRAY responded that's correct. In further response to Co-Chair Feige, Mr. Gray recalled that prior to 2003 very few applications were withdrawn from the process. He mentioned that he used to coordinate some of the elevations and could only recall a couple of those he coordinated that were withdrawn.

CO-CHAIR FEIGE mentioned that the committee saw some numbers from DCOM that showed a fairly significant amount of applications that had been withdrawn.

MR. GRAY suggested that the committee would want to utilize DCOM's figures because he was basing his information on his experience seven years ago.

[2:18:41 PM](#)

REPRESENTATIVE MUNOZ inquired as to the difference between a 30-day and a 50-day review.

MR. GRAY explained that each permit that triggers a consistency review will either have a 30-day or 50-day timeline. An entity that has three permits of which one has a 50-day review and two have 30-day reviews, will follow the 50-day review since it's the lowest common denominator.

CO-CHAIR FEIGE asked if that's from the A and B list.

MR. GRAY clarified that the projects on the A and B list are those that have minimal impact and are already found consistent. Therefore, activities that are on the A and B list wouldn't even necessitate a consistency review because it has already been performed.

[2:19:31 PM](#)

CO-CHAIR SEATON characterized the aforementioned as a general permit. He surmised that those activities falling within the same scope and listed within the A and B list because there are not impacts outside the enforceable policies or the statewide standards would not go through the [consistency review] process.

MR. GRAY responded that is correct, and added his understanding that general permits are automatically placed on the B list.

[2:20:29 PM](#)

MR. GRAY, in further response to Representative Munoz's earlier question, clarified that there is a list of permits that will trigger consistency reviews; not every project is reviewed for consistency. The list specifies whether it's a 30-day or 50-day review permit, and thus determines the process that's followed.

[2:20:49 PM](#)

MR. GRAY, continuing his presentation, opined that one of the primary benefits of the ACMP is that the Coastal Zone Management Act (CZMA) provides states more rights than any other environmental law. The ability to influence federal decisions far surpasses any he can recall. Another primary benefit is that the Act gets everyone around the table. Currently, every state and federal agency has its own permit process that generally operates in isolation. The case is the same with local governments that have a Title 29 permit. Therefore, the potential with ACMP is to bring everyone around the table to identify and solve the issues. Furthermore, once everyone is around the table, folks may discover that they have similar permit stipulations and thus there's the opportunity to work out the issue and have a common requirement for the industry rather than slightly different solutions. Mr. Gray noted that review participants have slightly different status since they can request information specified on the previous slide. The [review participants] include the affected coastal districts, three resource agencies, and any state resource agency that requests participation. Although the process is designed to include DEC, he related his understanding that DEC usually is not part of the process. He noted that the applicant has special status since the applicant drives the process.

[2:22:37 PM](#)

CO-CHAIR FEIGE inquired as to the advantages for the applicant.

MR. GRAY related his understanding that although some applicants prefer to go to each agency individually, having everyone together at once is beneficial to many applicants. He said that he could recall some reviews that did not require an environmental impact statement (EIS). Federal agencies would be present at these meetings because it was their only venue to discuss the project with other state and federal agencies, he noted.

CO-CHAIR FEIGE opined that one of the primary advantages for the applicant is the timeline, which encourages completion in a timely manner. Therefore, the timeline can be planned within the process and the economics of the project.

MR. GRAY agreed that would be a benefit to the applicant. He then related that although under this system the agencies cannot issue a permit until the review is completed, the legislature established a 90-day timeline to develop a solution. Furthermore, under most circumstances state agencies must issue their permits within five or so days unless there is a disposal of state land interests or something similar. "It also is coordinated with the permit process, although it isn't necessarily coordinating the permits themselves," he stated.

[2:24:30 PM](#)

REPRESENTATIVE P. WILSON asked whether the current process, with the DEC carveout, is faster than when DEC was included.

MR. GRAY responded that he did not know whether the current process is faster or not. However, he related his understanding that the DEC process is independent [of the ACMP] for the permits. In further response to Representative P. Wilson, Mr. Gray said that the DEC process would generally be after the ACMP process.

REPRESENTATIVE P. WILSON surmised then that the DEC carveout would result in the entire process being longer.

MR. GRAY deferred to industry, but offered his opinion that generally it would be shorter if there was coordination.

[2:26:04 PM](#)

REPRESENTATIVE MUNOZ inquired as to what happens once a project is through the 30- or 50-day process and it is found that the

project has an aspect that is not consistent with one of the departmental requirements.

MR. GRAY answered that usually the applicant will voluntarily ask to have the clock stopped. If it is something that cannot be worked out, the project would either be withdrawn or the agency would find that aspect inconsistent. However, usually a measure can be included in the project to make the aspect consistent. Drawing from his experience coordinating elevations, he recalled that most of the withdrawn projects were along the Kenai River because they could not be found consistent since they destroyed king salmon habitat.

[2:27:04 PM](#)

CO-CHAIR FEIGE inquired as to what occurs during the pre-application meetings. He mentioned the complete packet and a lengthy online questionnaire.

MR. GRAY clarified that the questionnaire is mostly a checklist to determine what permits might be needed. There is also a certification page that is signed to relate the project is consistent. Most applicants are required to have a consistency analysis, although sometimes a simple checklist is completed.

[2:27:54 PM](#)

CO-CHAIR FEIGE surmised that there is contact between DCOM and the applicant while the applicant is completing the packet.

MR. GRAY answered that it depends on the complexity of the project. For some projects there is no [contact], rather the applicant's coastal zone questionnaire and the application packet are submitted and the review starts. The larger projects normally have a pre-application, which is voluntary on the part of the applicant. He noted that the pre-application process can last up to a year or longer. In further response to Co-Chair Feige, Mr. Gray confirmed that once the application is complete, the clock starts. Although theoretically DCOM would have all the information it requires at the start, there can be a request for additional information if something develops later.

[2:29:08 PM](#)

REPRESENTATIVE HERRON related his understanding that the DEC permit process is supposed to be concurrent with DNR's process. He then requested that "the record" of the aforementioned be

provided to the committee. With regard to the DEC carveout, he asked if the air quality permits, save the prevention of significant deterioration air quality permit, would be appropriate to be included in the consistency review rather than be outside of it.

MR. GRAY, drawing from his experience prior to 2003, said [the prevention of significant deterioration air quality permit] was the problem for some major oil and gas developments. He recalled that the application actually had to have drawings of the facilities. The aforementioned, he opined, could be addressed easily by having regulations that specify the review can begin prior to having the prevention of significant deterioration air quality permit. The issues related to the application could still be reviewed without having a complete application. Mr. Gray recalled that the aforementioned application was the only one for which this problem occurred.

[2:30:51 PM](#)

CO-CHAIR SEATON related his understanding that Representative Herron's question was whether the DEC permit, even with the carveout, occurs concurrently with the consistency review process.

REPRESENTATIVE HERRON clarified that his request was for the track record of the aforementioned requirement.

[2:31:27 PM](#)

REPRESENTATIVE P. WILSON surmised then that it would be appropriate to add DEC for all the permits, save the prevention of significant deterioration air quality permit, to the coordinating agency that meets with the applicant.

[2:32:01 PM](#)

MR. GRAY, returning to his presentation, referred to slide 4 and the four types of review and timelines. There are reviews that only have state authorizations. An authorization, he offered, can be thought of as a permit, although it may not be a permit but rather something that an applicant has to have before proceeding. When there is a federal authorization, the federal regulations for the CZMA will be in place. There are federal activities for which there is no applicant. Federal activities include oil and gas lease sales, U.S. Army Corps of Engineers dredging, and general permits. Outer Continental Shelf Projects

are treated a bit differently because the permit applications are not reviewed, rather the exploration plan or the development and production plan is reviewed. Mr. Gray clarified that although the process is the same, some different factors may be in the mix.

[2:33:17 PM](#)

CO-CHAIR FEIGE pointed out the note on slide 4 that specifies the following: "The Alaska statutory 90-day timeline for reviews overrides the federal timelines."

MR. GRAY responded yes, unless it's regarding one of the exemptions such as the disposal for land use. In further response to Co-Chair Feige, Mr. Gray confirmed that the timeline begins when the application is determined to be complete.

[2:33:58 PM](#)

MR. GRAY, continuing his presentation, stated the entire gist of the consistency review process is the following: "It's to determine whether or not the project is consistent with the statewide standards, which are in regulation at 11 AAC 112, and the coastal district enforceable policies." At the same time, the agencies coordinate their permit reviews. Technically, the consistency review is only about consistency with these enforceable policies and statewide standards. After 2003 when DNR implement the new regulations, there was a requirement that the enforceable policies "flow from" only one of the statewide ACMP standards or the designated areas listed on slide 5.

[2:35:09 PM](#)

CO-CHAIR FEIGE asked if there is a topic that is missing.

MR. GRAY said that the topic of minerals is missing. He explained that the mineral statewide standard was changed to a sand and gravel extraction standard that only applies to coastal areas near the salt water. He pointed out that the legislative objectives specified in AS 45.40.020 are much broader than the objectives [listed on slide 5], and therefore there is likely quite a bit missing.

REPRESENTATIVE GARDNER asked then if the regulations limited what the legislation permitted.

MR. GRAY replied, "That would be what I would assert." He then relayed, "DNR has said that the regulations are more stringent than what the legislature intended and I'm not sure that has ever been clarified, but at least in my understanding this would be one of the reasons why it's more stringent." Directing attention to the yellow paper in the committee packet entitled "Alaska Coastal Management Program Approved Coastal District Enforceable Policies, March 16, 2011," Mr. Gray highlighted that the two topics of recreation and coastal development account for 63 percent of the total percentage of topics for enforceable policies. However, there are very few enforceable policies for some of the topics, such as important habitat, natural hazards, and subsistence, which are of the biggest concern for residents throughout the state.

[2:37:15 PM](#)

CO-CHAIR FEIGE, referring to the yellow paper's notation that [an enforceable policy] can't be written for mining, related his understanding that mining is very heavily regulated at the state and federal levels.

MR. GRAY clarified that he did not mean to imply that mining is not regulated, rather through the ACMP a coastal district is not able to develop a policy specific to mining for a local concern. He acknowledged that other agencies have regulations, but pointed out that the regulations or statutes that would apply depend upon who the landowner is. "It's not anything uniform," he remarked.

CO-CHAIR FEIGE interjected his understanding that mining regulations are uniform across the state.

MR. GRAY related his understanding that it depends on who the landowner, the state or the federal government, is as to the regulations followed. Some state permits, he noted, apply to federal land and some do not.

[2:38:30 PM](#)

MR. GRAY, moving on to slide 6 of his presentation, reviewed the statutory requirements for enforceable policies. He characterized the statutory requirement to be prescriptive as problematic. For example, he recalled the following prescriptive enforceable policy that specified that floating facilities must be moored in a minimum of 12 feet of water during mean low or low water or 0.0 tide stage. Although such a

policy may work, sometimes industry prefers performance-based policies, such as that floating facilities shall be designed so that they do not ground in tidal areas. The aforementioned achieves the objective. Mr. Gray suggested that the idea behind the performance-based policy is that sometimes industry may have a better way of reaching the objective than a prescriptive policy. He reiterated that the statutory requirement that the enforceable policy must be prescriptive is problematic, but he added that the other statutory requirements would not be problematic if they were implemented with a simple common interpretation of the statute.

[2:39:52 PM](#)

REPRESENTATIVE MUNOZ, returning to the topic of mining, stated that mining projects go through the ACMP process, but local coastal districts cannot establish enforceable policies pertaining to those projects.

MR. GRAY clarified that coastal districts can establish a policy that specifically addresses impacts from mining. A coastal district might have a policy on subsistence, if allowed, or one of the other matters and that would apply to the mining project if those activities fit the enforceable policy.

[2:40:28 PM](#)

MR. GRAY returned to his presentation and directed attention to the statutory requirement that an enforceable policy must address a local concern that is sensitive to development, of unique concern to the coastal district, and not adequately addressed by state or federal law. The problem has been in regard to the interpretation of the language "not adequately addressed by state or federal law." He said he understood DNR is interpreting the aforementioned language to mean that policies cannot address a matter that a state or federal agency could address, regardless of whether there is a regulation that addresses it. The audit of the ACMP said the same thing. However, the 2005 ACMP program description approved by the federal government specified that [enforceable] policies can address a matter as long as it's not addressed specifically in a regulation. In fact, a 2004 memorandum from the attorney general basically says the same, specifically regarding DNR area plans. The aforementioned memorandum says that a coastal district can address the same matter in the area plan so long as the area plan is not incorporated into regulation. "If it's not enforceable, then a district can have a policy," he said.

Therefore, he opined that there's confusion and misinformation regarding this statutory requirement.

[2:42:07 PM](#)

CO-CHAIR FEIGE posed a scenario in which an agency is already regulating a particular activity statewide, and surmised that under the ACMP subdivisions of the state cannot "step on the toes" of the state agency already regulating a particular activity. He referred to the note at the bottom of slide 7, which in part says: "... districts may establish policies for matters not addressed in a regulation."

MR. GRAY said the "hinge" would be the definition of the term "matter." He then reiterated his interpretation of the program description to be that the regulation must specifically address that [matter], not merely that it could address it. "And unless it's preempted by federal or state law, I believe according to what the statute says and even the regulation that a district would be able to address that as long as they met the other district plan criteria," he offered.

[2:43:21 PM](#)

CO-CHAIR FEIGE asked if it is in an agency's authority to decide not to regulate something.

MR. GRAY agreed that it is within the agency's authority, but he understood the law to say the district would still be able to address the matter unless the district was preempted from doing so for some other reason. He then provided the following example in which it is not within a coastal districts power to set game limits for fish and game as that's the purview of ADF&G and thus the coastal districts would be preempted from addressing such a matter.

[2:44:10 PM](#)

CO-CHAIR FEIGE clarified that the discussion is in reference to municipalities and coastal districts trying to regulate matters that are under the authority of another agency.

MR. GRAY agreed and added that his example was to illustrate that a coastal district could not have a policy on fish and game take because it is preempted from doing so. However, for matters such as impacts to habitat, which he opined the coastal districts and municipalities are not preempted from addressing,

a coastal district would be able to have [an enforceable] policy on fish habitat, for example. He pointed out that there are only two statutes regarding fish habitat, unless it's a special area, and they are limited statutes that don't address the fish habitat. Therefore, he opined that it would be allowable for a coastal district to have an [enforceable] policy so long as it did not conflict with a state or federal law.

2:45:08 PM

REPRESENTATIVE P. WILSON, referring to slide 5, asked if the areas listed are the only subjects that can be covered.

MR. GRAY responded yes, through a district enforceable policy or the consistency review, although there are a few additional standards that aren't listed in the statewide ACMP standards column. The statewide ACMP standards and the district enforceable policies are the parameters for what can [be addressed] in a consistency review.

2:45:46 PM

REPRESENTATIVE P. WILSON, recalling the example Mr. Gray provided with regard to important habitat, asked if important habitat could be put under that subject area.

MR. GRAY answered yes, if one could get the important habitat areas approved. He related his understanding that statewide only three districts, Juneau, Craig, and Thorne Bay, have very small [important habitat] areas. Juneau has perhaps the largest of these areas with 11 [enforceable] policies while Craig and Thorne Bay have one each. The aforementioned is all there is for important habitat in the state in so far as what a district has been approved to designate. In further response to Representative P. Wilson, Mr. Gray recalled that the designated area in Craig is around eel grass beds, in Thorne Bay the designated area is a buffer around five or six rivers, and in Juneau the designated area is part of the Juneau Wetlands Management Plan and some of the wetlands type is considered an important habitat area.

2:47:02 PM

REPRESENTATIVE P. WILSON surmised that the reason Juneau has an important habitat area designated is because Juneau has a general permit for the wetlands.

MR. GRAY added that Juneau, through this ACMP review, has important habitat designated and 11 of the 13 policies have been approved for important habitat. Therefore, if it goes through a review, it would be reviewed for consistency with those policies.

[2:47:33 PM](#)

REPRESENTATIVE P. WILSON asked if the communities with the designated areas received those early in the state's history and that in more recent times designated areas have not been approved.

MR. GRAY related his understanding that the Juneau wetlands management plan is fairly old and predates the changes to 2003. Therefore, the objective was to make the wetlands management plan part of the ACMP. Although it did not quite fit and it was originally disapproved, through mediation there was agreement. In further response to Representative P. Wilson, Mr. Gray explained that there are very few important habitat designations in the state because DNR made a ruling that the other areas did not meet DNR's requirements for the important habitat designation and thus they were disapproved.

[2:49:13 PM](#)

CO-CHAIR SEATON reminded the committee that 490 [enforceable policies] were developed under the guidelines of which 210 were approved. He said that the committee would obtain a listing of those disallowed [enforceable policies] and why they were disallowed.

[2:49:50 PM](#)

CO-CHAIR FEIGE surmised that the agencies with the authority to manage these particular matters are staffed with individuals who have expertise, history, and academic credentials to make decisions. He asked if the coastal districts have the same kind of staff with the expertise to address these matters.

MR. GRAY answered that it depends upon the municipality. For instance, the North Slope Borough has one of the best wildlife departments in the world and thus would have expertise. However, small communities with Coastal Resource Service Area (CRSAs) may not have staff with the [expertise, history, and academic credentials], although they would have local knowledge.

[2:51:16 PM](#)

CO-CHAIR FEIGE noted his appreciation for the coastal district's local knowledge for which there is an opportunity to provide to the ACMP. However, he questioned why they should be given the authority to write policies when they do not have the staff to fully evaluate those in the coastal districts.

MR. GRAY said that is a question for the legislature to answer, although current law does provide coastal districts that ability. However, there are many restrictions and if the coastal district misses any one of these, the [plan] would be disapproved. Prior to the approval of a plan, it passes through many layers of review and one cannot arbitrarily or unreasonably restrict a use of state concern, for example. Mr. Gray emphasized that it has to be a local concern prior to an [enforceable] policy being approved.

[2:53:05 PM](#)

MR. GRAY, continuing his presentation, moved on to slide 8. He then highlighted the stringent requirement that in order to have some policies a coastal district must establish a designated area and many of the coastal districts have had difficulty getting those areas approved. With regard to the subsistence areas, Mr. Gray pointed out that of the total coastal district acreage the three largest are 52 percent of that coastal area and there hasn't been one subsistence use area approved in those areas. The aforementioned coastal district is located from the Yukon Kuskokwim area north, which are areas heavily interested in subsistence. Since the subsistence areas weren't approved, these areas are not able to bring forth an issue regarding an impact or potential impact to a subsistence use area during a review. Again, this is a case in which Mr. Gray opined that the regulations are more stringent than the legislature intended. Mr. Gray clarified further that when the review begins a coastal area without an approved designated area cannot even submit a comment regarding potential impacts to subsistence.

[2:54:38 PM](#)

REPRESENTATIVE P. WILSON related her understanding that the aforementioned three districts were denied a subsistence area designation while all the other districts have received such a designation.

MR. GRAY pointed out that not every district asked for subsistence either because the district doesn't have concerns or gave up early on. Four of the largest coastal districts have no [designated] subsistence areas. In further response to Representative P. Wilson, Mr. Gray confirmed that during the pre-application phase [the designated areas] are approved or disapproved. If the [designated area request] is disapproved, it cannot be mentioned. Although a subsistence use area can be designated during a [consistency] review, it has occurred very few times. In fact, some of those subsistence use area requests have been denied during the [consistency] review.

[2:55:39 PM](#)

CO-CHAIR FEIGE noted that slide 8 specifies that only three subsistence policies have been approved. He inquired as to the location of those three areas.

MR. GRAY responded that there is a special management area in the Kenai and an area in the Lake and Peninsula Borough. However, he could not recall the third area.

[2:56:13 PM](#)

CO-CHAIR FEIGE highlighted that there are subsistence areas that have been approved, and thus areas have been able to rise to the requirements of the ACMP. He then inquired as to the areas that have been denied [a subsistence use designation].

MR. GRAY specified that the areas that have been denied are some of the largest coastal districts. For example, the North Slope district, which is the size of the state of Minnesota, is required to identify every type of subsistence and the location that it occurs. He mentioned that he will delve deeper into this matter later in the presentation.

[2:56:53 PM](#)

MR. GRAY, returning to slide 8 of his presentation, related that the audit found that the designated areas reduced the ability of the state to influence federal decisions because the designated areas only apply to nonfederal land. Without a designated area, the [CZMA] allows the state to discuss impacts to coastal resources and uses even when on federal lands or waters. The designated area requirement reduces the state's rights because it limits the consideration of impacts to nonfederal land.

2:57:30 PM

CO-CHAIR FEIGE emphasized that what bothers him is that subsistence areas have been approved, so there does not appear to be anything wrong with the system. The three areas Mr. Gray is discussing are the Northwest Arctic Borough, the North Slope, and the Bering Straits.

MR. GRAY related that the largest coastal district is the Yukon-Kuskokwim River. In response to Co-Chair Feige, Mr. Gray opined that those areas haven't been able to get a plan approved because the restrictions are too onerous. He recalled working on the Bering Straits plan when ADF&G said it did not even have the information that was being required of the district to gain approval.

CO-CHAIR FEIGE asked if there is an effort to obtain that information for the coastal districts.

MR. GRAY replied that Bering Straits has requested funding to [obtain the necessary information], but has been denied each time. He offered his belief that since the Bering Straits program just got up and running, it might request funding again.

2:58:38 PM

MR. GRAY, continuing with slide 8, pointed out that the 2008 federal ACMP evaluation recommended DNR reevaluate the designated area requirement. The 2011 legislative audit did as well. Furthermore, DNR's own draft regulations in 2008 would have eliminated that designated area requirement. Therefore, there seems to be general recognition that the designated area requirement is not working.

2:59:04 PM

MR. GRAY then directed attention to slide 9, which is an example of how the rules for subsistence areas have changed over time. In 2005, it was very clear that an entire coastal district may be designated as a subsistence area. Although the regulations did not change, at some point the interpretation of that regulation changed and thus the rules changed such that each type of subsistence use had to be designated. He noted that most of this information isn't written anywhere and one would be lucky to obtain it in an email. At this point it was clear that the coastal district could determine the types of subsistence use to designate. However, as time passed DNR said it had to

approve the subsistence types, although there was no list of subsistence types. Coastal districts had to submit a list of subsistence types and the types of areas must reflect the species' "life history," and then DNR would determine what was approvable. He remarked that to this day he does not what this means. There was the ability to map the area so long as the scale was 1:250,000. Therefore, the Northwest Arctic Borough would require 68 maps. Later, DNR determined there were too many different types of subsistence uses on one map and then required four maps per quadrangle. Just last year, DNR developed a new rule, without consulting the districts, such that the new map scale would be 1:63,360. The new map scale would require the Northwest Arctic Borough to have 2,108 new maps. He related that the last time he checked it cost about \$40 a map to merely print a map. Therefore, the cost is astronomical and unreasonable. Mr. Gray opined that this is merely one thing that has changed over time, although the regulations remain the same.

[3:01:20 PM](#)

MR. GRAY, moving on to slide 10, stated that the statewide standards were weakened in both the scope of what could be covered and the geographic coverage. For example, with regard to the habitat for offshore areas as currently written the impacts to habitat can't be discussed, only impacts to competing uses, such as subsistence fishing and commercial fishing, can be discussed. He noted that the mining standard was changed to a sand and gravel standard in the saltwater area. Mr. Gray then directed attention to the diagrams on slide 11. He informed the committee that prior to 2003 habitat impacts throughout the coastal zone could be addressed. However, through regulation changes the habitat standard results in a much smaller area in which habitat impacts can be considered. The area that can now be considered is along the coast where wetlands drain directly to salt water and a 100 foot buffer on the upper rivers and a 500 foot buffer in the delta. Mr. Gray opined, "This is pretty dramatic." Only areas with important habitat areas can address impacts to habitat inland of the aforementioned areas. Again, only three districts have very small areas approved.

[3:03:07 PM](#)

MR. GRAY continued on to slide 12, regarding the DEC carveout. He related that some coastal districts would say that everything is related to air and water quality. The DEC carveout has made this confusing to everyone. He then posed an example of an oil

and gas offshore project in which coastal districts may be interested in the impacts of an oil spill on subsistence. To his knowledge, there are no laws about the aforementioned and thus through the DEC review [the coastal district] would not be able to address that. Moreover, [the coastal districts] would not be able to address it at all during the ACMP review. He then directed attention to slide 13, which reviews the summary of effects. He highlighted that now there is centralized decision-making such that one person in DNR makes the ultimate decisions. The audit found the aforementioned to be a lack of consensus building during the reviews. Moving on to slide 14 regarding possible statutory changes, he opined that the criteria could be clarified in statute. In terms of the possible checks and balances, there has been some suggestion of establishing a coastal policy board, moving the agency, or with elevations have all three resource agency commissioners make the decision rather than just DNR's commissioner. He then addressed the DEC carveout and related that when this was explained to the legislature in 2003, the administration clearly stated that coastal districts could have policies to fill the gaps in DEC's regulations and statutes. In fact, he recalled the language "for those purposes" was added for the aforementioned purpose. However, no air or water quality policies have been approved regardless of whether there is a DEC regulation. With regard to the 90-day timeline, Mr. Gray opined that although it is not workable for very large projects, it is probably workable for most of the other projects.

[3:05:08 PM](#)

MR. GRAY referred to slide 15, which provides possible regulatory changes. While these changes could be done through regulation, he said he hasn't heard any political will to do so other than to revise the ABC list and change the consistency review regulations.

[3:05:28 PM](#)

CO-CHAIR SEATON moved that the proposed committee substitute for HB 106, Version 27-GH1965\B, Bullock/Bullard, 3/16/11, be adopted as the work draft.

REPRESENTATIVE P. WILSON objected for discussion purposes.

CO-CHAIR SEATON explained that the proposed work draft will be taken up at a later meeting and thus folks will have time to study it.

3:06:30 PM

REPRESENTATIVE P. WILSON requested that the [Department of Natural Resources] address the committee about Version B [at a subsequent hearing].

CO-CHAIR SEATON confirmed that is the intention. He then held over HB 106.

3:07:41 PM

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:07 p.m.