

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 25, 2011

1:07 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Scott Kawasaki

COMMITTEE CALENDAR

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

HOUSE BILL NO. 173

"An Act amending the termination date of the licensing of sport fishing operators and sport fishing guides; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

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
03/16/11 (H) Heard & Held
03/16/11 (H) MINUTE(RES)
03/18/11 (H) RES AT 1:00 PM BARNES 124
03/18/11 (H) Heard & Held
03/18/11 (H) MINUTE(RES)
03/23/11 (H) RES AT 1:00 PM BARNES 124
03/23/11 (H) Heard & Held
03/23/11 (H) MINUTE(RES)
03/25/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 173

SHORT TITLE: SPORT FISHING GUIDING SERVICES

SPONSOR(s): FISHERIES

02/25/11 (H) READ THE FIRST TIME - REFERRALS
02/25/11 (H) FSH, RES
03/08/11 (H) FSH AT 5:00 PM CAPITOL 120
03/08/11 (H) Moved Out of Committee
03/08/11 (H) MINUTE(FSH)
03/09/11 (H) FSH RPT 2DP 2NR
03/09/11 (H) DP: AUSTERMAN, THOMPSON
03/09/11 (H) NR: MILLER, PRUITT
03/09/11 (H) FIN REFERRAL ADDED AFTER RES
03/25/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

EDWARD ITTA, Mayor
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Supported the work draft for HB 106.

JOMO STEWART, Staff
Representative Steve Thompson; Staff, House Special Committee on
Fisheries
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 173 on behalf of the sponsor,
House Special Committee on Fisheries, chaired by Representative
Thompson.

CHARLES SWANTON, Director
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 173.

MELVIN GROVE, President
Prince William Sound Charter Board Association (PWSCBA)
Big Lake, Alaska

POSITION STATEMENT: Testified in opposition to HB 173.

KEN LARSON, Owner/Operator
Sanity Charters
North Pole, Alaska

POSITION STATEMENT: Provided comments on HB 173.

JOE BALASH, Deputy Commissioner
Office of the Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 106, provided a presentation entitled "Coastal District Planning and Enforceable Policies."

RANDY BATES, Director
Division of Coastal and Ocean Management
Division of Natural Resources
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 106, answered questions.

ACTION NARRATIVE

[1:07:16 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Dick, Herron, P. Wilson, Foster, Gardner, Seaton, and Feige were present at the call to order. Representative Munoz arrived as the meeting was in progress.

HB 106-COASTAL MANAGEMENT PROGRAM

[1:07:43 PM](#)

CO-CHAIR FEIGE announced that the first order 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."

[The motion to adopt the proposed committee substitute labeled 27-GH1965\B, Bullock/Bullard, 3/16/11, at the March 16, 2011 hearing was left pending due to an objection.]

1:08:25 PM

EDWARD ITTA, Mayor, North Slope Borough, paraphrased from the following written testimony [original punctuation provided with minor formatting changes]:

Thank you, Mister Chairman. I appreciate this chance to speak with the committee today. Let me get right to the point. I'm in favor of the work draft of the committee substitute for HB 106, because it makes substantive and logical changes to the existing program, which is really no program at all.

The federal law on coastal management allows a voice for Alaskans in the permitting process when federal lands or waters are considered for development. The State thinks the law is working just fine. But when it comes to the Arctic [Outer Continental Shelf] OCS, the State has been notably absent from the discussion of a whole range of primarily federal issues that are important State concerns—including endangered species rulemaking, development of a National Ocean Policy, and ocean discharge limits.

Instead of being engaged, the State simply submits generic written comments saying it supports development, and then it litigates. That certainly doesn't address issues of concern to the affected local communities. From the local perspective, coastal management as it is now practiced in Alaska is a hollow program. It's ineffective because it ignores community input.

Alaskans agree that people who are closest to the action have unique concerns and deserve a voice and a

chance to contribute their local expertise, especially when it comes to projects in their own back yard. Hasn't the State been aggressively making that same point with respect to recent federal actions in Alaska?

Alaskans also care about preserving our unique subsistence cultures. And for communities in the North Slope and Northwest Arctic regions, nothing is more critical. That being said, we also recognize that jobs and economic progress are essential to our quality of life and to the preservation of our subsistence culture. We depend on a strong oil and gas industry and state economy as much as anyone else. We are not in any way "anti-development".

Several coastal zone proposals have been placed on the table, and I've asked the Administration to sit with us and go through them point by point. The Borough's position has been that there is nothing in these proposals that cannot be modified.

But the State has thus far declined to discuss any significant changes in the program. We'll meet and they'll hear us out, but they have not budged on anything. Their energy goes into explaining how well the program works for the State. This opens the door for industry to argue that local involvement will kill development. If that's the case, then how come we've had so much development on the North Slope and at Red Dog? Until 2003, those developments were permitted through a coastal zone program that was much stronger than anything recently proposed.

Many who have commented on this bill say that six more years of deliberation are necessary to identify appropriate changes that would address district concerns. I can't tell you how frustrating it is to hear that. We and other districts have already spent huge amounts of time and money on that effort over the past eight years. There have been endless workshops, stakeholder meetings, program re-evaluation meetings, a federal review of the program, a legislative audit, and plenty of hearings in Juneau. At this point, delaying action is no action. It's just kicking the

issue down the road for someone else to deal with later. And when it comes to the Arctic OCS, later may be too late.

Without a meaningful program, our communities are left with only one option. If the State has no interest in addressing our concerns, then we'll have to turn to federal agencies for help. We'll have to see if the U.S. Fish & Wildlife Service, National Marine Fisheries Service, [Bureau of Energy Management, Regulation, and Enforcement] BOEMRE and the EPA will pay more attention. That's the corner we're being forced into.

The Borough has been really clear that on most federal issues—like [National Petroleum Reserve-Alaska] NPR-A development or Endangered Species listings—we have a lot more in common with the State than we have with the feds or the [nongovernmental organizations] NGOs. I don't see why the State would want to push us away in a direction that could have unintended consequences.

There will be a de facto alignment going forward—either the State can align with the local communities whose interests it ought to represent, or the federal agencies and local communities can align. I don't like that choice and that's a choice that should concern all Alaskans who want urban and rural interests to come together. Alaskans are most successful when we're united.

On coastal zone management, the North Slope Borough has tried to play by ever-changing rules since 2003. We have nothing to show for it. Now it's up to the Administration and the Legislature. If you're going to leave the program as it is, and let coastal management work for everybody except those coastal communities who clearly have the most at stake, it probably makes more sense to go ahead and let the program sunset.

On the other hand, if the State believes that local communities really should have a say in coastal policy, if it values the partnerships that come from working together on important federal issues, and if

it is willing to consider reasonable changes to a clearly flawed ACMP, then we're listening.

In closing, the Committee Substitute contains many good proposals. I encourage the Committee to take a positive step forward on this issue by adopting the CS.

[1:17:18 PM](#)

REPRESENTATIVE GARDNER requested that Mayor Itta repeat the three specific examples of areas in which "the state is missing in Arctic discussions."

MAYOR ITTA specified the example of the Endangered Species Act listings for the polar bear, walrus, and the bearded seal. He also specified the examples of the critical habitat designation as well as OCS issues regarding possible exploration and activity in the Arctic Ocean.

[1:19:19 PM](#)

REPRESENTATIVE HERRON recalled that there has been other testimony about designated subsistence areas and suggested that may be a part of the legislation that needs to be discussed. He asked if the federal government considers the state not requiring designated subsistence areas an invalid part of the process.

MAYOR ITTA characterized the designated subsistence area as a catch 22 issue in that the division overseeing coastal zone management and locally enforceable policies also holds the authority to designate subsistence areas. Without designated subsistence areas, "we" are unable to have locally enforceable policies. The [North Slope Borough] can't address the areas of concern because the division within the Department of Natural Resources (DNR) that oversees coastal management refuses to designate subsistence areas. Therefore, it's a real wall.

[1:21:25 PM](#)

REPRESENTATIVE HERRON agreed that is the conundrum about which many have testified. However, he related his understanding that the federal government has told the state that it cannot require designated subsistence areas from coastal districts. He asked if that's Mayor Itta's understanding.

MAYOR ITTA answered that would be news to him as it would be the first he has heard of this.

[1:24:26 PM](#)

CO-CHAIR SEATON informed the committee that the proposed CS, labeled 27-GH1965\B, Bullock/Bullard, 3/16/11, was put forward in an integrated fashion in order to bring the concerns identified by the coastal districts in one document. However, it's difficult for the committee to adopt the entire piece of legislation. Therefore, Co-Chair Seaton explained that he would like to withdraw the CS, Version B, from consideration and then come forward with individual elements of Version B as amendments to the original legislation as well as other amendments. The aforementioned will allow the committee and the public to comment on each element as it's moved forward.

[1:26:01 PM](#)

REPRESENTATIVE P. WILSON removed her objection to the motion to adopt the proposed CS, labeled 27-GH1965\B, Bullock/Bullard, 3/16/11.

CO-CHAIR SEATON withdrew his motion to adopt Version B.

[1:26:21 PM](#)

REPRESENTATIVE DICK related his appreciation for the committee addressing HB 106 in this manner.

[1:26:38 PM](#)

The committee took a brief at-ease.

[The committee set HB 106 aside while it addressed another bill, the committee then returned to HB 106 later in the hearing.]

HB 173-SPORT FISHING GUIDING SERVICES

[1:27:28 PM](#)

CO-CHAIR FEIGE announced that the next order of business is HOUSE BILL NO. 173, "An Act amending the termination date of the licensing of sport fishing operators and sport fishing guides; and providing for an effective date."

[1:28:00 PM](#)

JOMO STEWART, Staff, Representative Steve Thompson; Staff, House Special Committee on Fisheries, paraphrased from the following written sponsor statement:

House Bill 173 will ensure the continuation of Alaska's sport fish guide licensing and reporting program. Legislation authorizing the program was passed in 2004 and the program has proven beneficial to both the sport fishing industry and resource managers. With more than 1.8 million clients, 88% of whom are nonresidents, taking more than 460,000 guided fishing trips in Alaska annually, guided sport fishing has become an integral part of Alaska's tourism economy. In fact, a study commissioned by the Alaska Department of Fish and Game estimated that nonresident spending on sport fishing was more than \$650 million in 2007.

Since the program's inception, an average of 1,670 sport fishing business licenses and 1,981 sport fishing guide licenses have been sold annually. 90% of license holders are Alaska residents and the professionalization of the sport fishing guide industry has benefitted both the industry and the resource. The data collected through the program provides information state and federal managers need to sustainably manage sport fish populations. The program also allows Alaska to receive an exemption from the National Saltwater Angler Registry; a federal program that would begin levying fees for registration in 2011.

Recognizing the importance of the program, the Alaska legislature extended the program's termination date for one year in 2010. HB 173 proposes to similarly amend the program's statutory termination language to allow this valuable program to continue serving Alaskans and their valuable fishery resources.

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REPRESENTATIVE MUNOZ inquired as to why only a one-year extension is being proposed.

MR. STEWART noted that the program has regularly come up for one-year extensions. The program generates a lot of good information, but because of the way the information has been gathered it takes some time to process that information. He related that he has heard that the industry thinks it's good to have the information, but they would prefer that the information be better processed and utilized. Currently, SB 24 is moving through the Senate. The Senate legislation was more ambitious in that it was going to establish a regulatory board that would have oversight over the sport fishing and guide licensing industry. However, SB 24 was placed in a subcommittee for work over the interim. Mr. Stewart recalled that there has regularly been discussion of having a more detailed review of the program and to make recommendations to achieve optimal functioning. However, it just hasn't happened, and thus the legislature has regularly made one-year extensions.

[1:33:52 PM](#)

CHARLES SWANTON, Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), began by relating the administration's support for HB 173 and the program. The legislation allows for basic professional standards for the industry and to collect data on how many are participating in this industry and where, as well as their activities. From a manager's perspective it's always a good thing to know how many people are operating in a particular area, whether it's a harvest or catch activity. Mr. Swanton informed the committee

that the legislation enacting the program included a three-year sunset, after which the program was placed on a one-year sunset cycle.

[1:35:09 PM](#)

CO-CHAIR FEIGE asked if there is any advantage to extending the program for more than one year.

MR. SWANTON related his preference for a three-year sunset. In further response to Co-Chair Feige, Mr. Swanton acknowledged that, like any new program, there are issues to be addressed. Some believe that the data being collected isn't to their advantage to being collected, especially when that information is placed in a regulatory format. He then told the committee that there have been improvements to the program. For instance, the saltwater logbook sheets, which were a cumbersome size at 11.5" X 17", have been changed to a standard 8.5" X 11" size. The program is moving from entering the data via key punch to a scannable program for the salt water this year. The hope is to work out any technical problems. The department also plans to institute a scannable spreadsheet for fresh water in 2012. Those improvements, he opined, will result in an improved timeliness with regard to the availability of the data.

[1:37:44 PM](#)

REPRESENTATIVE P. WILSON questioned whether it's difficult to work on something for which it is unknown whether it will be continued in the next year.

MR. SWANTON reiterated that he would like the program to be extended for three years, but related that in his line of work much isn't set in concrete and thus he works with it as best he can.

[1:38:43 PM](#)

REPRESENTATIVE FOSTER inquired as to which groups aren't in favor of extending the program for more than a year.

MR. SWANTON answered that he didn't believe it's necessarily any one group, per se. For a program with over 3,000 participants there will be those who don't agree with the program for a variety of reasons, including the belief that the state should pay for the program rather than the participants.

[1:40:14 PM](#)

REPRESENTATIVE HERRON asked whether an extension for more than one year could be achieved if the budgeted amount was reduced to \$240,000. To further clarify his question, Representative Herron asked whether the program could be run for \$240,000 rather than the expected \$400,000.

MR. SWANTON responded no, not without substantial decreases in terms of the effectiveness of the program and timeliness of the data. He noted that efficiencies have been gained by distributing the logbooks and answering questions to the 22-plus area management offices throughout the state. However, he acknowledged that adding to area managers' duties is difficult to do without some pushback. Mr. Swanton stated that it would be very difficult for the program to operate with a budget of \$240,000.

[1:42:19 PM](#)

CO-CHAIR SEATON, referring to the fiscal note, inquired as to why there is a \$400,000 appropriation for 2013 when the program is scheduled to end in 2013.

MR. SWANTON explained that the logbooks are issued in January of a year, and thus it's the beginning of the sequence. Part of the disparity in the money taken in and the cost of the program has to do with the start of the program when registration for a sports fishing guide was voluntary. Therefore, from the outset the cost of the program and the receipts from the guides were disparate with each other. The \$400,000, he specified, is the cost to run the program for 12 months, while the \$240,000 is the receipts received from the fees from the guides and the owners of the businesses.

[1:44:29 PM](#)

CO-CHAIR SEATON pointed out that HB 173 doesn't have a House Finance Committee referral. Furthermore, the fiscal note is basically zero because [the appropriation] is incorporated into the governor's 2012 budget. However, if [there's an extension] to 2013, would that result in the need for there to be a fiscal note that requires a House Finance Committee referral, he asked. He further asked if the 2013 \$400,000 would be necessary if the program sunsets December 31, 2012. Co-Chair Seaton related his assumption that the House Special Committee on Fisheries, since it's the sponsor of HB 173, fully vetted and determined that it wanted a one-year extension of the program. Therefore, he questioned why there's a two-year fiscal note.

MR. SWANTON responded that he can't answer that question other than to offer that in many cases, the cost of the program is merely being projected forward versus the \$240,000, an average of the receipts over the past years, that's carried forward. He related his belief that a better job of splitting out the costs between one calendar year and the fiscal year could be achieved, if that is what is requested.

CO-CHAIR SEATON remarked that perhaps the sponsor could comment on that matter at some point.

[1:46:55 PM](#)

REPRESENTATIVE MUNOZ recalled that this issue was before the House Special Committee on Fisheries last year and some of the opposition came from the perception that the fees were going to increase due to a more sophisticated data entry system. However, it appears the costs won't increase and thus may alleviate the aforementioned opposition.

MR. SWANTON clarified that the aforementioned opposition occurred two years ago when conceptually the fees were being reviewed in terms of making the program solvent. As one would imagine, there was a fair amount of opposition to that. In further response to Representative Munoz, Mr. Swanton confirmed that under HB 173 the fees will remain the same. Therefore, the

fee will remain \$100 for a [business owner] or business owner/guide combo and \$50 for a guide.

[1:48:20 PM](#)

REPRESENTATIVE MUNOZ stated that she would like the committee to consider an extension of the program because it has been successful.

[1:48:36 PM](#)

CO-CHAIR FEIGE asked if would be possible for the fees to decrease.

MR. SWANTON expressed hope that over the course of time with scannable logbooks and other foundational changes to how the data is collected that [there would be some savings realized]. However, to suggest what those savings would be at this point is probably problematic and premature.

CO-CHAIR FEIGE encouraged Mr. Swanton to review decreasing the fees. He suggested that decreasing the fees may offer a reasonable trade for extending the program to provide Mr. Swanton and his staff certainty in terms of the length of the program.

[1:50:08 PM](#)

REPRESENTATIVE P. WILSON commented that the fees don't come close to covering the costs of the program now, and she doubted that even if the costs were to decrease that they would decrease even by half. She said she wouldn't believe the fees would be lowered unless the revenues received are more than the cost of the program. Representative P. Wilson then related that she is in favor of renewing the program for three years.

[1:51:01 PM](#)

REPRESENTATIVE DICK said that although he understands the need for good data to make good decisions, he pointed out that at the same time there are folks who don't want to give out

information. He then inquired as to where this logbook information can be found.

MR. SWANTON answered that he believes it's on the ADF&G website, but since its redesign he isn't sure exactly where it can be found. He offered to provide the specific site and the requested information to the committee later.

[1:52:11 PM](#)

CO-CHAIR SEATON pointed out that the committee's backup material includes 2006 and 2007 saltwater charter logbook registration forms. He asked if those are the same pages currently being used.

MR. SWANTON recalled that the department's comprehensive review and modifications to the logbook pages occurred between 2008 and 2009. The aforementioned timeframe was when fairly substantial modifications were being made to the saltwater logbook pages. He explained the changes came about after the department travelled to 10 different locations in the state in which the local guides were invited to provide comments regarding how best to accommodate their needs for filling out the logbook sheets in a timely and efficient manner. The suggestions from the guides resulted in the modified logbook sheets in 2010.

CO-CHAIR SEATON clarified that the backup material the committee has doesn't include the modified logbook sheets from 2010, rather it has logbook sheets from 2006, 2007, 2008 for salt and fresh water.

[1:54:22 PM](#)

MELVIN GROVE, President, Prince William Sound Charter Board Association (PWSCBA), began by stating that he has been dealing with this issue for the last three years. Mr. Grove explained that originally, the administration wanted to terminate the sunset of this program altogether. The PWSCBA was opposed to the aforementioned primarily because the guides and sport fishermen have seen no benefit from the data provided. In fact, fewer fish and lower allocation has resulted, and thus the

information provides has hurt guides rather than help them. He highlighted the halibut issues in Southeast Alaska as an example. Additionally, there is the cost. The \$100 fee provides a guide with a logbook, a sticker for the boat, and a wallet card. Mr. Grove related that the guides aren't opposed to the requirements and filling out the logbooks. However, the guides don't feel they should have to pay for this data, especially if they don't receive any benefit from it. Mr. Grove suggested that if the total cost of the program is divided by the amount of fishermen [PWSCBA] supports, it amounts to about a \$.30 increase in the fishermen's licensing fees. He opined that the cost of the program should be derived from the licensing fees rather than allowing the state to make revenue from the fishermen [and guides]. He then encouraged the committee to consider what is spent on the statewide harvest survey, which he estimated to be over \$4 per survey sent out when that information has already been gathered from PWSCBA's clients. He suggested that perhaps some of the funds spent on the statewide harvest survey could be shifted to this logbook program. He further suggested reviewing the percentage of funds spent on the program in comparison to the benefits received. Mr. Grove said that he didn't have a problem extending the program, and opined that the one-year extension was offered in order to review the sport fish guide service legislation mentioned earlier. However, he said he didn't believe Senate Bill 24 could be fixed within a year without some serious changes.

[1:59:19 PM](#)

REPRESENTATIVE P. WILSON recalled her time as a nurse and working at the hospital the day a sport fishing boat that didn't have enough life jackets sunk. In the aforementioned situation, some lived and some did not. The fact that fishermen are required to know CPR and other things is very important, as the aforementioned situation brought to bear that day. She then expressed hope that Mr. Grove could view [the legislation] as a way of helping the whole industry. The counts, she emphasized, are important in order maintain a sustainable fishing industry that includes guides.

[2:01:20 PM](#)

CO-CHAIR FEIGE requested that Mr. Swanton reiterate the value of the information the guides are submitting.

MR. SWANTON said that one benefit of the data is that the area management staff responsible for maintaining the health of the stocks has timely and geographically proximate information with regard to catch effort and harvest. Within the guiding industry, the aforementioned information wasn't available prior to this program. He recalled that Mr. Grove referenced other programs, such as the Statewide Harvest Survey that has been a standard program since 1977. He noted that the Statewide Harvest Survey has a fair amount of opponents and critics. In fact, recently the department received information that other places in the country are struggling to collect harvest information from recreational anglers and are considering instituting a mail-out survey very similar to the one [ADF&G] is instituting. He attributed this consideration of Alaska's program to the quality of the data collected from the program. Furthermore, some of the creel clerks, which collect size and harvest information, have been noticed. Mr. Swanton emphasized that because of the size of the state and the diversity of the recreational anglers throughout the state, a one-size fits all program can't be used, and therefore there are multiple programs. He then informed the committee that the Board of Fisheries received and addressed over 200 proposals for the Upper Cook Inlet and for over one-third of those proposals data provided from the logbook program was provided and utilized by the board.

[2:04:13 PM](#)

KEN LARSON, Owner/Operator, Sanity Charters, began by noting that he is a past president and current secretary of PWSCBA. He said he wanted to offer observations about not doing something like SB 24, but rather extending the sunset through January 2013 with HB 173. He stated that halibut charter operators already have to meet almost all of the requirements included in SB 24, except for onerous exams and adhering to exclusive sport fish guide use areas. The latter of which is the largest problem for Mr. Larson. In fact, he opined that the exclusive sport fish

guide use areas will be extremely difficult if not impossible for saltwater guides to adhere to. Furthermore, [sport fish guides] are already guided by their own association of professionalism and conservation rules of the resource. Moreover, sport fish guides have a minimal impact in terms of bycatch and waste issues, such as continually occurs with the commercial fisheries. Mr. Larson opined that the logbooks have shown that the sport fish industry, particularly in terms of halibut, has had a minimal impact on the fishery when one considers sport fisheries, both guided and non guided, account for 10-15 percent of the annual catch of halibut. The big impact players are the commercial fisheries, such as the long liners and the draggers. He informed the committee that the commercial fisheries has a bycatch and waste issue of 13 million pounds annually while the entire sport fisheries is catching 8-9 million pounds annually. Regardless, halibut charter guides have already been reduced by 35-40 percent by implementation of the halibut charter limited entry program this year. The aforementioned has reduced the amount of halibut charters to about 600 boats and it's steadily declining. Furthermore, the one fish, 37-inch rule in Southeast Alaska is going to eliminate more guides and businesses. Therefore, he questioned who is really going to be regulated. He characterized [the halibut sport fish industry] as a dying industry that's overregulated. As was mentioned earlier, the guide license legislation has been worked on since 2004. Historically, 85 percent of the guides have opposed the guide license legislation, and therefore he questioned why such an expensive oversight regulation would be continued. Furthermore, the existing logbook program seems to work well and provides the desired and needed data.

[2:07:39 PM](#)

MR. LARSON, as an aside, informed the committee that ADF&G's nonresident license revenues and overall revenues have been declining since 2005. Therefore, he opined that costs to guides will drastically increase to fund and implement a guide licensing board. "Extend the sunset, if you must, but use the time to just permanentize a guide services board with a nine-person staff will just cost a whole lot more money. I've never seen a growing government program go down in cost," he remarked.

2:08:25 PM

CO-CHAIR SEATON noted that the commercial fishery has an electronic logbook that it has been perfecting over the years. He asked whether such an electronic logbook would generally be available so that the [charter guide] forms could be submitted electronically or is it beyond the current capacity of the charter guides.

MR. LARSON acknowledged that the charter guides are aware that electronic submission of forms is probably in the future. However, there are areas that don't have Internet service. For instance, Mr. Larson told the committee that his lodge is 25 miles out of Valdez and just recently received intermittent Internet service. Furthermore, there are many "dead areas" in Prince William Sound where he can't obtain an electronic signal to send in the data, which he assumed is also the case in areas of Southeast Alaska. Mr. Larson surmised that technology will eventually catch up and he doesn't object to [submitting forms electronically]. In further response to Co-Chair Seaton, Mr. Larson related that he often flies his clients from Valdez to his lodge and then hauls them back, and thus sometimes he runs afoul of the seven-day rule of the logbook to get it in the mail. He said the same could happen if he doesn't have adequate electronic service at his lodge. He assumed that the aforementioned would be more critical in Southeast Alaska where there are more dead spots and mainly have fly-out clients. Therefore, there is a concern, he stated.

2:11:28 PM

CO-CHAIR FEIGE, inviting Mr. Stewart back, announced that some issues have been discovered with the fiscal note and the committee should review it again.

MR. STEWART said that he noticed [the issues] with the fiscal note as well, and then pointed out that the legislation has been referred to the House Finance Committee.

2:11:59 PM

CO-CHAIR SEATON recalled that when the House Special Committee on Fisheries introduced HB 173 it had a one-year sunset. He inquired as to whether there was much discussion regarding a one-year extension versus a three-year extension.

MR. STEWART informed the committee that HB 173 mirrors SB 91, which is a one-year extension. There was no discussion regarding an extension longer than one year as folks seemed satisfied with it pending other possible activities.

[HB 173 was held over.]

HB 106-COASTAL MANAGEMENT PROGRAM

[2:13:14 PM](#)

CO-CHAIR FEIGE announced that the next order of business is a return to 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."

[2:13:43 PM](#)

JOE BALASH, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources, told the committee that today he will discuss the coastal district planning process, which is the process by which the department reviews and approves local district plans that are then used in the coastal consistency review. Referring to slide 2 entitled "Federal Structure for Coastal Programs and Local Participation," he informed the committee that the Coastal Zone Management Act (CZMA) is a federal program that allows states to develop their own coastal management program, which Alaska did in the 1970s. Basically, there are three techniques that can be utilized. "Technique A" is a locally implemented coastal management program in which there is a state program, standards are developed, and the authorization to provide the consistency determinations is given to the local [community]. "Technique B" is a purely state program in which a state agency administers the program,

collects the comments, performs the reviews, and grants the authorizations. "Technique C," a hybrid of the other techniques, is one in which coastal districts are allowed to form and participate in the program. If the coastal districts choose, they can develop local coastal district plans that are incorporated as part of the reviews the state performs and is an additional element of participation in the program. Alaska is the only state that has taken this approach. Whether the district or area has a local plan, coastal districts can participate in the review and comment process. The aforementioned, he opined, is an important and necessary element to achieve the consensus necessary to advance projects in a responsible manner.

[2:17:12 PM](#)

REPRESENTATIVE MUNOZ asked if the technique A falls under the 30-day or 50-day limitation on a review or is there no limitation.

MR. BALASH suggested that Representative Munoz may be referring to the ABC list for the consistency review process. He clarified that the aforementioned techniques are the overall path a state takes when choosing which type of program to have. The point of explaining the various techniques was to illustrate that Alaska's program is unique and adds more value to the program. Although coastal districts, he explained, can form and not necessarily have a local coastal district plan that is part of the program, they can participate in the reviews. Furthermore, even without a local plan there are certain circumstances under which they can be granted due deference in the review proceeding in the consistency review process. However, Mr. Balash wanted to be clear that due deference is not given to any local district at any time, rather it's dependent upon the circumstances. If the local district has an approved local plan with local rules and designated policies, then they enjoy deference on those particular pieces and components. Otherwise, the local district is just another reviewing entity participating in the review process.

[2:19:13 PM](#)

MR. BALASH explained that for those coastal districts that do wish to participate and develop a local coastal plan there are a set of regulations and procedures for the district to follow and adopt a plan. He then directed attention to slide 3, which relates the elements of a coastal district plan. The list of elements is specified in the regulations. He noted that the plan itself has a large amount of information regarding the area itself, including the resources, historic use of the area, and activities of the local residents. All of the information is developed in a public process, as specified on slide 4.

[2:20:23 PM](#)

CO-CHAIR FEIGE asked if all that's presented on slide 4 happens prior to any reviews.

MR. BALASH replied yes, adding that the process occurs in accordance with the regulations. The [plan] is developed by the coastal district, which informs the division that they want to print a plan or amend their plan.

[2:20:527 PM](#)

CO-CHAIR SEATON, returning to slide 3, inquired as to where the historic use of an area is incorporated in the [elements] of the coastal district plan.

MR. BALASH answered that within the resource inventory, resource analysis, and subject uses, and activities the coastal district identifies, particularly for subsistence use areas, what is used and the times of year it's used.

[2:21:35 PM](#)

CO-CHAIR SEATON asked if per the regulation there are fine details for the very specific areas and uses. He asked if the regulations define and require that specificity.

MR. BALASH said that he would talk more about designated areas and activities later. However, he offered that to the extent a

local plan includes information, that information doesn't mean the area has achieved the designated area status under the plan.

[2:22:38 PM](#)

MR. BALASH then returned to the flow chart on slide 4, which illustrates the sequential process that occurs over two to three years. This is a long-involved process in which a coastal district has meetings with agencies, stakeholders, and the public; performs its initial work; and submits a public draft to DCOM. After achieving completeness in the application stage, the coastal district then moves on to the public hearing, comment, and meeting stage. Mr. Balash drew the committee's attention to the various stages of the process leading up to the final approval process. He then focused on the second step of the final approval process in which the commissioner approves or disapproves the amendment. At this stage, if a coastal district is dissatisfied with the evaluation made by DCOM, it can request mediation. Mediation is a voluntary process and the district is not bound to accept the mediator's decision. However, following [the medication] the commissioner issues the final approval [or disapproval] for the plan.

[2:25:05 PM](#)

MR. BALASH highlighted that at various stages during the process there are opportunities for public comment. He opined that the record would show that as the coastal districts have gone through this process, some of them have generated significant comments by specific interest, whether it was by state or federal agencies, trade associations, and impacted industries. The intent is to obtain a lot of input into those local plans and to help DCOM evaluate the specifics that matter the most, particularly in the enforceable polices section.

[2:26:02 PM](#)

MR. BALASH related that since the law was changed in 2003, four coastal districts have requested mediation. Two of the coastal districts utilized a professional mediator and reached an agreement. However, two other coastal districts utilized a

professional facilitator and despite concerted effort DCOM was unable to approve the enforceable policies that were of high value to those coastal districts. Both of the coastal districts that utilized the professional facilitator voluntarily declared an impasse and don't currently have approvable plans.

2:27:07 PM

MR. BALASH, referring to slide 5, pointed out that the major focus of the DCOM approval process is in regard to specific components of the plan, which include enforceable policies, designated areas, and maps. There are certain rules with regard to the enforceable components, which resulted in DCOM creating the ACMP Enforceable Policy Decision Tree. He characterized the ACMP Enforceable Policy Decision Tree as a lengthy road map that's dependent upon the paths taken at the forks of the process. Ultimately the ACMP Enforceable Policy Decision Tree determines whether a policy or area is approvable.

2:28:32 PM

MR. BALASH, referring to slide 6, told the committee that he wanted to discuss House Bill 191, very contentious legislation, which was passed in 2003. The intent of House Bill 191 was to put ACMP in context and to illustrate that the state has a robust program that takes into account local input and values while at the same time recognizing that there is an entire body of state and federal law regarding the protection of the environment, including the coastal areas. The legislation eliminated the Coastal Policy Council, which had been the governing body of the ACMP, and transferred those authorities to the Department of Natural Resources. The legislation also required a rewrite of the ACMP statewide standards that govern activities in the coastal zone as well as the development of local plans. The aforementioned, thus, required all local plans be rewritten and reapproved. He highlighted that House Bill 191 made important clarifications in the consistency review process and the Department of Environmental Conservation (DEC) carveout was established. Referring to slide 7, Mr. Balash pointed out that after the passage of House Bill 191, the statutory requirements occurred in AS 46.40.030 and 46.40.070. Those

statutes specify that local enforceable policies "shall not duplicate, restate, or incorporate by reference statutes or regulations adopted by state or federal agencies." The statute was largely in response to the practice of a number of coastal districts that adopted, by reference, the regulations promulgated by DEC regarding land, air, and water use. The aforementioned created conflict and tension between the local district when it interpreted its plan and the interpretations by the agency that actually promulgated the regulations. The notion was to eliminate duplication and conflicting interpretations of the same regulations. The statute also requires that the enforceable policies be clear and concise with regard to the activities and person affected by the policies. Furthermore, the enforceable policies must use precise, prescriptive, and enforceable language and shouldn't address matters regulated or authorized by state or federal law unless the enforceable policy relates specifically to a matter of local concern. Referring to slide 8, Mr. Balash stated that matters of local concern are defined specifically in AS 46.40.070(A)(2)(C) such that the matter of local concern demonstrates it's sensitive to development, isn't adequately addressed by state or federal law, and is of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence. Mr. Balash characterized those as high statutory hurdles that are further fleshed out in the regulations.

[2:33:25 PM](#)

CO-CHAIR SEATON related his understanding that there has been some consternation regarding the interpretations of the language "not adequately addressed by state or federal law." Therefore, he requested clarification on the aforementioned language because his understanding is that there are interpretations that state law doesn't have the ability to address it, even if there are no regulations. If the state has the ability to address the matter of local concern, then it's considered adequately addressed, and therefore no local concern can be about something for which the state hasn't issued regulations.

MR. BALASH agreed that the language "not adequately addressed by state or federal law" does drive much conflict between local planners and DCOM. Furthermore, it's a difficult area to parse. As an example he turned to the preservation and regulation of fish habitat, which the legislature has charged ADF&G with protecting throughout the state. Those who conduct activities in an area with sensitive fish habitat must follow specific rules and obtain the permits required by ADF&G, Division of Habitat. Therefore, when a local coastal district tries to regulate or constrict the impacts on fish habitat in a manner that is already addressed by ADF&G there is tension. The question is whether it's the legislature's desire to allow local coastal districts to get into the middle of fish habitat issues that ADF&G already has the authority to regulate. The department, DNR, has determined that ADF&G already has that authority and thus makes those decisions. Although the local reviewing entity is still able to comment when an activity is occurring and there is a fish habitat involved in the project, it doesn't enjoy due deference. He explained that during the review process if consensus can't be found, then one must be aware of the agency that enjoys due deference. Currently, the policy is to give due deference to the biologist versus the local community. Still, consensus among all parties is attempted, he emphasized. Mr. Balash suggested that there might be something the Division of Habitat regulations don't address, which is the point at which some local coastal districts have tried to find some room to insert their own policies. Although the aforementioned is a gray area, it hasn't been treated as a gray area in the implementation of the standards for reviewing local plans.

[2:38:23 PM](#)

CO-CHAIR SEATON recalled testimony that local coastal districts would be able to address matters that aren't specifically addressed by the agencies, particularly when there is no map showing the habitat. Therefore, whether a matter is adequately addressed by state or federal law is fairly questionable when there is no map. However, the agency has taken the stance that since they would have the ability to pen regulations on the

matter, the local coastal district can't have local policies. He asked if that's the case.

MR. BALASH opined that the question is whether or not "adequately addressed" is a subjective or objective term of art. Unfortunately, it is subjective. Whether a matter has been adequately addressed by the agency with authority is a matter of interpretation. Although DCOM has worked to balance it, the division has erred on the side of not having exceptions because once exceptions are granted it's difficult to draw a hard line. The [DCOM] has been tough with regard to the elimination of the overlap of authority.

[2:41:08 PM](#)

CO-CHAIR SEATON recalled that the state's testimony regarding House Bill 191 was that if a matter wasn't adequately addressed in regulations, then the local coastal districts could address it in their enforceable policies. Co-Chair Seaton said that he wanted to be sure that the legislative intent of that point isn't being stretched since Mr. Balash's comments are opposite of what the legislature was told at the time House Bill 191 was debated.

MR. BALASH responded, "... that's a fair acknowledgement." However, without sufficient legislative interpretation as to whether "adequately addressed" has occurred, the department had to exercise its judgment. He characterized the aforementioned as a part of administering a program.

CO-CHAIR FEIGE commented, "We'll work on that."

[2:42:30 PM](#)

CO-CHAIR FEIGE inquired as to how local usage or scientific evidence is demonstrated, accomplished.

MR. BALASH deferred to Mr. Bates.

[2:43:32 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management, Division of Natural Resources, pointed out that the two terms, "local usage" and "scientific evidence," are defined in DNR's regulations. To justify a designated area for subsistence use requires the demonstration of local usage, which means the current and historical use of an area. He noted that definition of "local usage" was added in 2005 as part of the additional regulations package. The definition of "scientific evidence" is specific to what a coastal district would need to provide to justify a designated area or an enforceable policy for habitat and other areas, which is based on documented and peer-reviewed scientific principles and other requirements.

[2:44:56 PM](#)

CO-CHAIR FEIGE inquired as to how "local usage" is demonstrated.

MR. BATES informed the committee that the definition of "local usage" is found in 11 AAC 114.990(23) and is as follows:

(23) "local usage" means current and actual use of a coastal resource by residents of the locality in which the resource is found;

A local coastal district would demonstrate local usage by affirmation or confirmation of local usage. Simply put, a resident could raise an issue that the assembly adopts as part of the district plan. He acknowledged that the designation of subsistence uses has had to include a lower threshold of local usage so it could be moved forward for the coastal districts. There isn't a body of information related to all of the use areas or the science behind the use areas, and therefore the threshold for proving subsistence was low. In terms of habitat, a higher threshold of scientific evidence is required.

[2:46:52 PM](#)

CO-CHAIR SEATON asked then if Mr. Bates is only referring to a municipal district adopting a matter into a local ordinance in response to someone raising an area of subsistence.

MR. BATES clarified that the aforementioned is one form of confirmation or affirmation. He explained that all coastal district plans have to go through an approval process either as a city through their code, as a municipality through their assembly and ordinances, or as a coastal resource service area through their board.

[2:47:46 PM](#)

CO-CHAIR FEIGE asked then if it would be adequate confirmation of local usage for an elder to inform the coastal zone management board that he has always hunted for seals in a particular area.

MR. BATES responded, "In general, the answer is yes." He then provided the following example of a designated area that DNR couldn't approve. He recalled that while historically the community of Point Hope had participated in the harvest of bow head whales, it hadn't done so for a number of years. Therefore, the aforementioned local usage didn't meet the threshold of the definition because there hadn't been a hunt or a subsistence harvest for bow head whales for at least a decade. Since the community was intending to hunt the following spring, the district was told that when the hunt was completed it should submit the information with its coastal management plan and it would qualify as local usage.

[2:49:24 PM](#)

CO-CHAIR SEATON recalled that 280 enforceable policies were not approved and inquired as to why they weren't approved.

MR. BALASH said he will touch on that later in the presentation, but noted that most of the time denial can be attributed to duplication of state or federal law or the local coastal district not adequately demonstrating that the matter isn't addressed by state or federal law or regulation.

[2:50:57 PM](#)

MR. BALASH, returning to slide 9 of his presentation, pointed out that there are other important criteria. He emphasized that "adequately addressed" is a specific filter/qualification in the statute. He then related that another area of consternation has been whether or not a policy flows from the statewide standards. Again, statute specifies that local plans and policies must meet statewide standards and district plan criteria while also requiring DNR to identify what land and water uses and activities are subject to the ACMP. Due to that statutory requirement, DCOM has established a long list of activities from which local enforceable policies would flow. Those activities include the following: coastal development, natural hazards, coastal access, energy facilities, and others that he offered to provide the committee. Moving on to slide 10, Mr. Balash stated that another important component of the coastal district management plans is the designated areas. He highlighted that a designated area doesn't necessarily need to have an accompanying local enforceable policy. Once a designated area has been approved in the local plan, the policies that apply in that area are ones for which the local coastal district enjoys due deference during the review process. There are certain subject uses that are identified areas in the local plan, and there are more of those than are considered in the consistency review process. He explained that the statute in 2003 required designated areas to be included and approved because under the old program the designated areas weren't actually being approved while the policies were still being applied. Therefore, there was confusion regarding when and under what circumstances a policy applied or not. With the legislative goal of providing certainty and predictability with the ACMP review process for project sponsors, the [designated areas] provided clarification regarding what the rules were and where they applied. Mr. Balash then moved on to another point of contention, which is regarding whether a designated area can include federal land. The federal law doesn't allow federal land to be included in a designated area, and therefore it creates a challenge in the adoption of designated areas in local plans, particularly for those in or around significant bodies of federal land. However, there is a way to have the state's enforceable policies apply to certain federal activities occurring on federal lands, but that's something to take advantage of during the consistency

review process by doing an effects test. Still, it can't be included permanently in the local plan itself. Mr. Balash noted that the aforementioned is particularly important when discussing the offshore areas. Because the designated area can't include federal lands, Alaska extends three miles offshore and beyond that point is federal land. Although an area can't be designated in the offshore for subsistence uses, natural hazards, or the like for purposes of the local plan, during the consistency review process the federal effects test can be performed to determine whether the activity on the federal land is going to have an effect on a coastal use or coastal resource. For example, if an activity offshore of the Beaufort and Chukchi Seas caused the whales to deflect toward land, the activity is having an effect on the use of a coastal resource or activity. The aforementioned allows the [state] to reach out beyond that three-mile limit, which is of great frustration for those who identify their entire being with the bow head whale. Prior to 2003, designated areas that included federal land were what he characterized as an oversight by both the state and federal agencies and came to light when reworking the program.

[2:58:10 PM](#)

CO-CHAIR SEATON asked, "Is the state in the same position, as far as if we are talking about a use and designated areas are required that we lose some of our ability to constrain or control or ... to affect those kind of uses on federal lands because designated areas are not permitted by the state or the districts on federal land?"

MR. BALASH opined that it does present an obstacle. However, the federal effects test can be utilized to credibly demonstrate that the coastal resource or coastal uses are going to be effected.

[2:59:47 PM](#)

MR. BALASH, continuing his presentation, informed the committee that there are specific requirements in the regulations regarding how a designated area becomes such. Furthermore, each type of area has its own set of rules for documentation and

consultation. As mentioned earlier with regard to subsistence uses, local use documentation provides a means of meeting the requirement and getting the area into the local plan. Important habitat areas are a different classification and have a different set of rules. Moreover, important habitat areas require a more stringent set of requirements in terms of written scientific evidence that the area is biologically and significantly productive. These designated areas are important during the consistency review process as well as for those who want to understand what's going on in the local area where the project is being developed. He then moved on to the requirement that a designated area must be described or mapped at a scale sufficient to determine whether a use or activity is located within the [designated] area, which has been a cause for concern. The mapping is a burden and has costs, but it's necessary to understand where and when different rules apply.

[3:03:39 PM](#)

MR. BALASH directed the committee's attention to slide 12, which is the flow chart of the ACMP District Enforceable Policy Decision Tree. As mentioned earlier, there are a number of filters that are used to screen out an enforceable policy in order to decide whether it's something unique or of local significance and importance. He pointed out that the district can designate an area, but not necessarily have an enforceable policy that goes along with it. As illustrated by the flow chart, it's difficult to satisfy all the requirements to obtain a local enforceable policy into the plan. The aforementioned was intended by House Bill 191 in 2003. It's a difficult point of contention between the districts and the division, while recognizing the ACMP's place in the overall regulatory structure at the state and federal level for the development of natural resources and conducting activities in these sensitive areas. With regard to an earlier question regarding the reasons why enforceable policies have been disapproved, Mr. Balash said he wasn't sure there is a document that states every reason why a given enforceable policy would be disapproved. However, once an enforceable policy fails one of the tests in the ACMP District Enforceable Policy Decision Tree, the enforceable policy is disapproved. Disapproved enforceable policies have been

reviewed on occasion and the mediation process is utilized to move disapproved enforceable policies to approved enforceable policies. In some cases, the division has faced a challenge in terms of the advice the coastal districts are receiving. When the coastal districts receive advice from people who opposed the changes made in 2003 and who disagree with the policy at a fundamental level, it's not conducive to finding common ground. He related that he has information that suggests numerous examples in which coastal districts included in their plan [enforceable] policies that it knew weren't approvable well in advance and forced the division to comment negatively and disapprove the plan. The aforementioned is unfortunate, he opined.

[3:07:55 PM](#)

CO-CHAIR SEATON remarked that he found it difficult to believe that plans were disapproved without communicating to the districts why they were disapproved. Therefore, he requested the committee be provided with the communications and reasoning for the first four to five district [plans] that were disapproved.

MR. BALASH agreed to do so. He then directed the committee's attention to slide 4 and pointed out that there are multiple steps during the amendment process when the comments of DCOM and analysis of plans are known and available.

[3:09:59 PM](#)

MR. BALASH, continuing his presentation, moved on to slide 13 entitled "Examples of Enforceable Policies." He reminded the committee that the legislature purposefully limited enforceable policies to reduce duplication with existing authorities and to focus ACMP on the coast and coastal interactions. The boundaries of the program had been limited, which impacted the makeup of the local plans. Mr. Balash said it's understandable why local districts would like to have greater authority and the opportunity to have a given policy regardless of whether the state or federal agency manages that issue, such as in regard to marine mammals. The Marine Mammal Act is a federal law used by

the National Oceanic and Atmospheric Administration (NOAA) to manage aquatic resources. Therefore, when proposed district policies would regulate the impacts and take of marine mammals, it duplicates the aforementioned federal law. He acknowledged that it's a hot button issue. Although the entire department and the governor understands the importance of the bow head whale to the Inupiat people, under this program policies regulating the bow head whale can't be approved. The aforementioned, he stated, will be difficult to reconcile. He then directed attention to slide 14 and discussed the City & Borough of Juneau's Wetlands Management Plan. Originally, DNR was going to disapprove Juneau's Wetlands Management Plan, but after consultation with the U.S. Army Corps of Engineers the city was able to request and receive authority to manage the wetlands and include it in Juneau's local coastal district plan.

[3:13:41 PM](#)

REPRESENTATIVE P. WILSON asked if, in the aforementioned situation, the City & Borough of Juneau (CBJ) already had a general permit. She related her understanding that Juneau has three different general permits from the U.S. Army Corps of Engineers that allows the city to "take care of themselves."

MR. BALASH related his understanding that had to do with whether some nationwide permits that exist for wetlands activities would apply in Juneau. "This is a separate deal, just for the wetlands here in the CBJ," he stated.

[3:14:28 PM](#)

MR. BALASH, returning to his presentation, moved on to consistency review examples in which the local enforceable policies were applied successfully. The Bristol Bay Borough was able to rely on four of its approved district policies to persuade the U.S. Army Corps of Engineers to exclude the borough from a suction dredging general permit. General permits, he explained, are permits that operate by regulation as opposed to permitting a specific activity. The Division of Habitat sited the habitat standard to require miners to stay away from fisheries statewide. In the Kenai Peninsula Borough an

applicant proposed a shellfish farm in Halibut Cove and the district used one of its policies to propose an alternative measure, which led the applicant to adjust the operation. In the Bristol Bay CRSA, an applicant proposed a new hybrid fiber optic and microwave broadband network. The district used one of its enforceable policies to propose an alternative measure that was used in the Nushagak Mulchatna Designated Subsistence Use Area and Recreational Use Area. The aforementioned illustrated how the coastal districts are using their plans to change projects that are actually being proposed and established. "To the extent this state has developed this particular program, we're able to provide opportunities for locals to affect those projects, even with limited enforceable policies," he highlighted.

[3:17:32 PM](#)

MR. BALASH, referring to slide 16, returned to the flow chart on the consistency review process. He clarified that when he presented information on Wednesday he didn't mean to leave the impression that local coastal districts enjoy due deference in many circumstances, particularly in the box on Day 13/25 when a local district requests the designation of a specific area, which isn't always granted. However, if that specific area is granted in that particular review, the district does enjoy due deference in the process that occurs during the consideration of comments and the attempts to resolve issues. Again, it's an attempt to obtain consensus between all the reviewing entities, not just those enjoying due deference.

[3:18:40 PM](#)

CO-CHAIR FEIGE, referring to bullet 2 on slide 15, recalled that there have been complaints regarding restrictions on how the coastal districts can spend their implementation funding.

MR. BALASH confirmed that there are some restrictions on those activities. There are a couple of strains of revenue from the federal government, some of which require a state match while others do not. Section 306 funds are implementation funds that amount to about \$2.1 million in the fiscal year (FY) 2011

budget. The section 306 funds are shared with state agencies and a portion is shared with the coastal districts. The section 309 funds can only be used for changes to the program. The section 306 funds, implementation funds, are for consistency reviews and the activities that take place in the implementation of the program, while the section 309 funds are for project plan amendments. These funds are a limited pot of money that's distributed on a competitive basis to coastal districts. If a coastal district wanted to propose a new designated area in its plan, [the section 309] funds would be available.

[3:20:48 PM](#)

CO-CHAIR FEIGE asked if strings are attached to the different funding sources.

MR. BALASH answered that the strings are connected to the purpose of the particular grant line. For example, it would be inappropriate for a community that requested section 309 funds and received them to try to use those funds to pay a consultant for a consistency review. For the aforementioned activity, section 306 funds would have to be used.

CO-CHAIR FEIGE surmised, "So, it's not that they can't hire consultants, it's just they have to be very careful what that consultant is engaged in doing for them under the funding stream."

MR. BALASH agreed with that summation.

[3:21:31 PM](#)

MR. BALASH, in response to Representative P. Wilson, explained that when coastal districts request a grant, an agreement is signed that specifies how much funding can be used and for what purposes. The request includes a budget, including the approximate hours for a consultant, training, and travel.

[3:22:46 PM](#)

REPRESENTATIVE P. WILSON inquired as to how a coastal district would know how many hours it will take.

MR. BALASH deferred to Mr. Bates.

MR. BATES explained that annually a particular amount of grant funds is set aside in order that those funds go to the districts for implementation. Those implementation funds have averaged \$710,000 over the last several fiscal years; those funds are split between the 20 participating coastal districts based on a funding formula that was developed by Department of Commerce, Community & Economic Development and DNR. For example, the City of Sitka, the City & Borough of Juneau, and the North Slope Borough each receive about \$38,000 annually and base their work plan on that amount of funds. Although that amount of funds may not be enough to fully fund their participation in the ACMP, they have to match that with local funds and anything else necessary has to come from the [coastal district] unless [the state] can provide additional funds somehow.

REPRESENTATIVE P. WILSON questioned how the [coastal districts] would know the amount of hours they would spend on the various activities.

MR. BATES clarified that the municipalities aren't held to the same standards as the CRSAs, which exist solely for purposes of coastal management. As part of an annual budget, CRSAs provide an estimate of how much time will be spent on consistency reviews, bookkeeping, and education. He characterized the aforementioned as a best guess with which the department is willing to work. The municipalities, on the other hand, don't put together as detailed a work plan annually. The department reimburses the CRSAs through [DCCED] on actual expenditures. Therefore, while the CRSAs develop a work plan, they also have to submit detailed billings for reimbursement.

[3:25:42 PM](#)

CO-CHAIR SEATON, referring to slide 14, related his pleasure in understanding that the Bristol Bay Borough, the Kenai Peninsula Borough, and the Bristol Bay CRSA use the enforceable policies

to make a project with stipulations and conditions that better fit with the local area and its concerns. Co-Chair Seaton expressed the need for the public to understand that this program [uses the enforceable policies] not as a wall, but to make the project work well within the system.

[3:26:49 PM](#)

MR. BALASH agreed with Co-Chair Seaton in terms of the program that is in place today. However, he then provided two examples, one of which is in regard to an enforceable policy and the other is in regard to a designated area from the draft plan submitted by the North Slope Borough. In these examples, he posited that Shell is going to engage in an exploration plan in the Beaufort Sea. The North Slope Borough proposed an enforceable policy that states: "When there are potentially conflicting uses, subsistence uses of plants, fish, and wildlife, including marine mammals, shall be the highest priority use of the lands and waters in the coastal area." Therefore, if Shell or ConocoPhillips or any other lessees were to engage in an exploration plan, they would go to DCOM with their questionnaire and put forward a plan stating their belief the project is consistent with the program, including the local enforceable policy. The comments from the coastal district could object to the coastal plan based on the impact on the bow head whale and related subsistence activities and propose an alternative measure, which would be to modify the exploration plan such that it would be a winter only activity. The aforementioned would dramatically increase the cost and time for Shell to conduct those exploration activities. In order to obtain a consistency determination in that case, Shell would have to agree to the aforementioned alternative measure. Although there is some question as to whether that's how the borough would implement the policy and submit their comments, it's an example of how that particular series of policies would fall out in the consistency review process. Mr. Balash emphasized, however, that he didn't believe the aforementioned scenario is a stretch and in fact, mirrors some of the requests from the borough in certain situations with the offshore.

[3:30:10 PM](#)

CO-CHAIR SEATON recalled testimony the other day that instead of using the consistency review process to resolve such matters, Shell has been waiting as the federal government proceeds through its processes, which has caused a number of years delay as well. Now, the programs are being modified to be similar to the local enforceable policies that were suggested at the outset. Therefore, Co-Chair Seaton expressed the need to ensure the consistency review process will provide the fastest way to develop a process.

[3:31:28 PM](#)

[HB 106 was held over.]

[3:31:35 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:31 p.m.