

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 28, 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
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 185

"An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges."

- MOVED CSHB 185(RES) OUT OF COMMITTEE

HOUSE BILL NO. 146

"An Act authorizing the transfer of land from the State of Alaska and the Alaska Railroad Corporation to property owners along the Eielson Spur Line; and providing for an effective date."

- MOVED CSHB 146(RES) OUT OF COMMITTEE

HOUSE BILL NO. 106

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 185

SHORT TITLE: EXEMPT DISCHARGES FROM USE OF MUNITIONS

SPONSOR(s): REPRESENTATIVE(s) T.WILSON

03/10/11 (H) READ THE FIRST TIME - REFERRALS
03/10/11 (H) RES
03/18/11 (H) RES AT 1:00 PM BARNES 124
03/18/11 (H) Heard & Held
03/18/11 (H) MINUTE(RES)
03/28/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 146

SHORT TITLE: LAND TRANSFER FROM STATE AND ALASKA RR

SPONSOR(s): REPRESENTATIVE(s) T.WILSON

02/09/11 (H) READ THE FIRST TIME - REFERRALS
02/09/11 (H) RES, FIN
03/21/11 (H) RES AT 1:00 PM BARNES 124
03/21/11 (H) Heard & Held
03/21/11 (H) MINUTE(RES)
03/28/11 (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
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

03/25/11 (H) Heard & Held
03/25/11 (H) MINUTE(RES)
03/28/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions as the sponsor of HB 185.

LYNN TOMICH KENT, Director
Division of Water
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 185.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 146, as the sponsor of the bill.

RICK VANDERKOLK, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 146, for the sponsor of the bill, Representative Tammie Wilson.

BONNE WOLDSTAD
North Pole, Alaska

POSITION STATEMENT: Testified during discussion of HB 146.

RANDY BATES, Director
Division of Coastal and Ocean Management
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 106.

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

POSITION STATEMENT: Answered questions during discussion of HB 106.

ACTION NARRATIVE

[1:07:48 PM](#)

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

HB 185-EXEMPT DISCHARGES FROM USE OF MUNITIONS

[1:08:55 PM](#)

CO-CHAIR SEATON announced that the first order of business is HOUSE BILL NO. 185, "An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges." [Before the committee was Version 27-LS0506\E, Bullard, 3/14/11, adopted as the work draft on 3/18/11.]

[1:09:18 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, referenced the letter from the Department of Environmental Conservation (DEC) [Included in members' packets] which supported an exemption for the military from State of Alaska permitting for [active firing] range requirements under Alaska's Clean Water Act. She pointed out that a [federal] permit was still necessary, but that proposed HB 185 would eliminate the need for permit duplication by the state.

[1:10:12 PM](#)

CO-CHAIR SEATON asked if the required permit would be a general permit, as opposed to a specific permit for a particular range.

[1:10:27 PM](#)

REPRESENTATIVE T. WILSON asked that the response be from "the attorney ... let's make sure we get it right."

[1:11:33 PM](#)

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), agreed that proposed HB 185 would prevent duplication of permitting, as a permit from the State of Alaska would be issued in conjunction with the federal program. She stated that none of the conditions for protection would be changed with the proposed bill. In response to the earlier question from Representative Seaton, she said there is not a general permit for munitions use, as currently an individual permit is required by each facility.

[1:12:44 PM](#)

CO-CHAIR SEATON, noting that although public testimony had been previously closed, asked if there were any further statements. There being none, public testimony remained closed.

[1:13:24 PM](#)

REPRESENTATIVE GARDNER, reading from the DEC letter, asked if proposed HB 185 would now require just one permit instead of two.

REPRESENTATIVE T. WILSON stated that was correct.

[1:14:06 PM](#)

REPRESENTATIVE MUNOZ moved to report CSHB 185, Version 27-LS0506\E, Bullard, 3/14/11, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 185(RES) was reported from the House Resources Standing Committee.

HB 146-LAND TRANSFER FROM STATE AND ALASKA RR

[1:15:06 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 146, "An Act authorizing the transfer of land from the State of Alaska and the Alaska Railroad Corporation to property owners along the Eielson Spur Line; and providing for an effective date." [Before the committee was Version 27-LS0505\M, Kane, 2/10/11, adopted as the work draft on 3/21/11.]

[1:15:23 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, speaking as the sponsor, said that her staff would summarize HB 146.

[1:15:36 PM](#)

RICK VANDERKOLK, Staff, Representative Tammie Wilson, Alaska State Legislature, recapped HB 146, and stated that although the U.S. Congress had repealed the right-of-way reversion provision in 2003, proposed HB 146 would reinstate the mechanism for landowners to regain ownership of their property once the easement was no longer in use.

[1:16:57 PM](#)

REPRESENTATIVE T. WILSON, referring to a question posed at an earlier meeting by Representative Herron, explained that the military would no longer utilize the property if the railroad completely left the ground.

[1:17:50 PM](#)

BONNE WOLDSTAD referred to HB 146 as "housekeeping" as it returns the rights [of property owners along the Eielson Spur Line] to their status prior to the reversionary repeal of 2003.

[1:18:37 PM](#)

CO-CHAIR SEATON closed public testimony.

[1:18:55 PM](#)

REPRESENTATIVE HERRON asked if there were any other railroad issues that needed to be addressed.

REPRESENTATIVE T. WILSON replied that this was the only area of Alaska that was homesteaded and would be included under this revisionary statute.

[1:20:01 PM](#)

REPRESENTATIVE HERRON moved to report CSHB 146, Version 27-LS0505\M, Kane, 2/10/11, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 146 (RES) was reported from the House Resources Standing Committee.

[1:20:49 PM](#)

The committee took an at-ease from 1:20 p.m. to 1:24 p.m.

HB 106-COASTAL MANAGEMENT PROGRAM

[1:24:52 PM](#)

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

[1:25:04 PM](#)

CO-CHAIR SEATON directed attention to the following proposed amendments which would not be addressed today: 27-GH1965\A.13, 27-GH1965\A.4, and 27-GH1965\A.5 in order for committee members to have time to review the recently received material. He clarified that proposed amendment A.13 was still forthcoming.

[1:28:13 PM](#)

The committee took a brief at-ease.

[1:29:58 PM](#)

CO-CHAIR SEATON said that the committee would address as many amendments as desired, and that additional amendments would be addressed at an upcoming meeting.

[1:31:02 PM](#)

CO-CHAIR SEATON clarified that although he had the amendments drafted as a way of getting them all packaged together, he did not necessarily support each of them.

[1:31:48 PM](#)

CO-CHAIR SEATON moved to adopt Amendment 1, labeled 27-GH1965\A.2, Bullard, 3/25/11, which read:

Page 1, line 2, following "**extension;**":

Insert "**relating to the development, review, and approval of district coastal management plans;**"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** AS 46.40.030 is amended to read:

Sec. 46.40.030. Development of district coastal management plans. (a) Coastal resource districts shall develop and adopt district coastal management plans in accordance with the provisions of this chapter. The plan adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives, and standards governing the use of resources within the coastal area of the district. The plan must meet the [STATEWIDE STANDARDS AND] district plan criteria adopted under AS 46.40.040 and must include

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management plan;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management plan;

(3) a statement of policies to be applied to all [THE] land and water uses subject to the district coastal management plan as well as policies that apply only to special management areas; and

(4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND WATER WITHIN THE COASTAL AREA; AND

(5)] a designation of any special management [, AND THE POLICIES THAT WILL BE APPLIED TO THE USE OF,] areas under [WITHIN] the district coastal management plan and enforceable policies that will be applicable within those special management areas [RESOURCE DISTRICT THAT MERIT SPECIAL ATTENTION].

(b) In developing enforceable policies in its coastal management plan under (a) of this section, a coastal resource district shall ensure that the enforceable policies are

(1) clear and concise as to the activities and persons affected by the policies and the requirements of the policies, whether the policies are prescriptive or performance-based;

(2) necessary given local conditions; and

(3) supported by evidence, including scientific or local knowledge, if the policies are more specific than state or federal statutes or regulations [MEET THE REQUIREMENTS OF AS 46.40.070 AND MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE OR FEDERAL AGENCIES].

* **Sec. 3.** AS 46.40.040(a) is amended to read:

(a) Except as provided in (b) of this section and AS 41.17, the department shall

(1) by regulation, adopt, under the provisions of AS 44.62 (Administrative Procedure Act) for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, statewide standards and district coastal management plan criteria for

(A) identifying the boundaries of the coastal area subject to the Alaska coastal management program;

(B) determining the land and water uses and activities subject to the Alaska coastal management program;

(C) developing policies applicable to the land and water uses subject to the Alaska coastal management program;

(D) developing regulations applicable to the land and water uses subject to the Alaska coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the Alaska coastal management program shall be allowed;

(F) designating and developing policies for special management areas [THE USE OF AREAS OF THE COAST THAT MERIT SPECIAL ATTENTION]; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management plans;

(3) undertake review and approval of district coastal management plans in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state;

(6) by regulation, establish a consistency review and determination or certification process that conforms to the requirements of AS 46.40.096.

* **Sec. 4.** AS 46.40.070 is amended by adding a new subsection to read:

(c) In reviewing and approving a district coastal management plan under (a) of this section, the department may not require a district to designate areas for the purpose of developing an enforceable policy.

* **Sec. 5.** AS 46.40.210 is amended by adding a new paragraph to read:

(13) "special management area" means a delineated geographic area within the coastal area that is sensitive to change or alteration and that, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or that, because of its value to

the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to the board's definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal water;

(E) areas of unique geologic or topographic significance that are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, flooding, earthquakes, active faults, tsunamis, volcanoes, liquefaction, ice movement or snow avalanches, or erosion; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches, and offshore sand deposits."

Renumber the following bill sections accordingly.

CO-CHAIR SEATON then directed attention to the spreadsheet of district comments on each of these subjects.

REPRESENTATIVE P. WILSON objected for discussion.

[1:32:30 PM](#)

CO-CHAIR SEATON explained that almost all the districts identified this as an issue. He stated that proposed Amendment 1 clarified that the enforceable policies applied to all of the land and water issues subject in the plan, and that the policies be clear and concise. He noted that, as suggested per the 2008 draft amendments for the Alaska Coastal Management Plan (ACMP), the legislative audit, and the draft regulations, there were no designated areas.

[1:34:26 PM](#)

REPRESENTATIVE P. WILSON asked about the necessity of proposed Amendment 1, and for any ramifications if it was not included.

[1:34:56 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources (DNR), in response to Representative P. Wilson, explained that, with regard to proposed Amendment 1, the concept of designated areas was to draw in specific areas that were important to manage and create predictability for the industry. He said those designated areas were included in the existing regulations.

[1:35:32 PM](#)

REPRESENTATIVE P. WILSON asked if these areas were necessary.

[1:35:45 PM](#)

JOE BALASH, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), in response to Representative P. Wilson, explained that DNR had concerns with proposed Amendment 1, as written. Regarding the need for designated areas to have an enforceable policy, he suggested the possibility of massaging "those particular linkages." He reflected that the concern was for development of a meaningful enforceable policy that was available to applicants, in advance, to plan appropriately for the permitting process. He stated that designated areas allowed applicants and stakeholders to better understand the what, where, and when of what they were contending with. He said that, under certain conditions, it was possible to have separation of designated areas from enforceable policies.

[1:37:33 PM](#)

REPRESENTATIVE P. WILSON asked about the uncertain circumstances.

MR. BALASH replied that this related to the issue of enforceable policies. He shared that the program was "incredibly interconnected and interdependent." He opined that disconnection of enforceable policies from designated areas would have effects on other sections of statute. He directed attention to the need for awareness of the development and application of enforceable policies in the local areas. He pointed out that the local districts were given due deference in the review process for the interpretation and application of the local policy. He emphasized the necessity for clear, specific policies with an understanding for application in the context of a project review.

[1:38:58 PM](#)

REPRESENTATIVE P. WILSON asked to clarify that a pre-designated area would avoid contention.

MR. BALASH replied that "the clearer the rules are, and the clear it is"

REPRESENTATIVE P. WILSON asked if that was "a yes or a no."

MR. BALASH asked for the question to be re-stated, as he wanted to ensure that he understood the question.

[1:39:47 PM](#)

REPRESENTATIVE P. WILSON posed a scenario in which "there's a designated area beforehand, then afterwards, when you go through the process there's not as much squabbling."

MR. BALASH replied that designated areas made the rules clearer, so there would be less squabbling and confusion in the application of enforceable policies. He explained that should the policy apply to the coastal district at large, then sufficient information needed to be submitted with the plan.

[1:41:00 PM](#)

REPRESENTATIVE P. WILSON asked whether DNR has tried to "massage" the problems in order to reach a solution.

MR. BALASH replied that DNR had just received the specific amendments and had done an initial review of the language. He expressed that it was difficult to provide a specific position on this amendment without knowledge of any other amendments, as that would allow a purview of the entire package.

[1:43:03 PM](#)

CO-CHAIR SEATON asked if Mr. Balash had testified, at a prior meeting, that the review process allowed for public and district comments of which the industry would not be aware. He opined that enforceable policies would allow the industry to be aware of the parameters.

MR. BALASH replied that the opportunity to request designated areas in the review process was an opportunity just for the designation. He explained that the request for a designated area allowed the district to have deference on the application of the statewide standard in that area.

[1:44:48 PM](#)

CO-CHAIR SEATON pointed out that Mr. Balash had stated that the industry needed to know the rules. However, if rules were added during the review process, the industry would not have prior knowledge of these.

MR. BALASH replied that having designated areas ahead of time and having enforceable policies ahead of time was the ideal.

[1:45:24 PM](#)

REPRESENTATIVE MUNOZ asked if designated area requirements were removed, would policies which applied to those designated areas then be applied to other areas outside of the designated areas.

MR. BALASH replied that he was unsure, but that the possibility would exist. He offered his belief that the local district

would still be allowed a special management area with specific policies applied to that area, but it would not be necessary for a special designated area in order to apply the policy.

[1:46:42 PM](#)

CO-CHAIR SEATON directed attention to page 1, lines 21-22, of Amendment 1.

[1:47:12 PM](#)

CO-CHAIR FEIGE asked why it had been so difficult for coastal management districts to come up with designated areas. He opined that it was necessary to have a basis for an enforceable policy, with the scientific or local knowledge to support it. He asked if it would make sense to apply it to a specific area, so that future applicants would be aware of the area of enforceable policy.

MR. BALASH replied that the legislative audit recognized that 70 percent of the requested designated areas were approved. He pointed out that it was easier to get an area designated than it was to obtain a local enforceable policy. He noted that it was possible to have a designated area without a local enforceable policy. He reflected that there was frustration with a failure to approve enforceable policies without recognition that "approval of designated areas goes a long way in setting up the coastal districts' seat at the table in the review process."

[1:49:36 PM](#)

CO-CHAIR FEIGE asked whether the enforceable policies would apply to the entire coastal zone district if designated areas were eliminated.

MR. BALASH, in response, directed attention to the specific language referenced in proposed Amendment 1, page 1, lines 20-22. He explained that there would be a two-tier effect, which would include a statement of policies that apply to all land and water uses, as well as policies that apply only to special management areas.

[1:50:36 PM](#)

CO-CHAIR FEIGE requested clarification of the difference between a designated area and a special management area.

CO-CHAIR SEATON related that designated areas cannot be applied to federal lands, which could limit the ability to have effect on federal lands. He stated that special management areas can be adopted.

CO-CHAIR FEIGE asked how the special management area is defined.

CO-CHAIR SEATON replied that, as an example, a migratory route of caribou would not have to designate each specific spot.

MR. BALASH offered to clarify any misunderstandings. He said that it had been suggested that a return to the language prior to 2003 would allow the designation of federal lands, which he declared untrue. He explained that the program, prior to 2003, was indeed doing that, but that it was an oversight to prior federal approvals which was not caught until the audit report.

[1:54:41 PM](#)

REPRESENTATIVE HERRON asked if DNR would work with the committee on each of the amendments. In response to Mr. Balash, he shared that the proposed amendments labeled 27-GH1965\A.4, 27-GH1965\A.5, and 27-GH1965\A.13 were being temporarily held.

MR. BALASH offered to point out the proposed amendments to which the administration was opposed.

[1:56:29 PM](#)

CO-CHAIR SEATON requested that comments be directed to Amendment 1, which is before the committee.

[1:57:00 PM](#)

REPRESENTATIVE HERRON, directing attention to proposed Amendment 1, inquired as to why designated areas were required in regulation but not in federal law or state statute.

MR. BALASH offered his belief that the specific statutes that spell out where enforceable policies shall be provided were in AS 46.40.040 and AS 46.40.070.

[1:57:43 PM](#)

REPRESENTATIVE HERRON requested that responses to his questions be directed specifically to designated subsistence use areas. He asked if the administration would support an amendment which repealed designated subsistence use areas, but did not affect the other designated use areas.

MR. BALASH responded:

The issue surrounding subsistence areas is going to go directly to the level of information provided in the plan regarding the nature of those activities, the location, and the timing throughout the year. At the statewide standard level, the policy is that applications from project sponsors are to avoid subsistence areas and, if that's not practicable, to minimize any impact or effect on subsistence activities, and, if that is not possible, to then mitigate the impacts on those subsistence activities.

MR. BALASH pointed out that the ability for a project sponsor to accomplish this was dependent on the information at hand. He opined that this could be accomplished.

[2:00:23 PM](#)

REPRESENTATIVE HERRON requested a solution to the conundrum of the requirement for a designated subsistence area, which could be denied or modified if there was a project that had an effect on a subsistence species.

MR. BALASH agreed that this was an ongoing struggle, but highlighted that the plans were "not set in stone and left there forever, they can be amended from time to time as information is gathered or made available to supplement or augment the local coastal plan." He stated that this allowed "the program's staying in tune over time." He expressed the importance for maintaining the program training, which included explanations for "how it can be made to work and what the opportunities are to change the plan so that it better suits the needs of the local communities." He stated that it was not necessary to specifically draw very tight boundaries for subsistence activities in a certain area, but that it was necessary to find the balance to allow predictability in the consistency review process. He offered his belief that it was necessary to have program staff to help in both the review and planning stage, and the need for a balance of the needs of the districts and the needs of the industry.

[2:04:25 PM](#)

CO-CHAIR SEATON expressed that a problem was the changing requirements to define designated areas, which was even more problematic for subsistence designated areas. He explained that Amendment 1 would still allow special management areas outside of federal areas, and would allow for broader designated areas.

[2:06:05 PM](#)

REPRESENTATIVE HERRON, reflecting on the response by Mr. Balash, stated that a further conundrum arose when districts changed their plans, yet were criticized by the industry for delaying the process.

MR. BALASH stated that the rules in place at any given time would be the rules used to evaluate a given project. He agreed that later projects could, indeed, have a different set of standards as rules changed. He emphasized that local districts could comment on subsistence, even if there was not a specific designated area. He opined that certain districts would only comment if they were guaranteed due deference. He stated that a district could comment on subsistence whether or not there was a

local subsistence policy or a designated area, and that these comments were considered by the Division of Coastal Ocean Management (DCOM) during the review process.

[2:08:53 PM](#)

CO-CHAIR SEATON listed the boroughs that had identified this as a problem.

[2:09:58 PM](#)

REPRESENTATIVE P. WILSON expressed concern with the proposed amendment, and offered her belief that the designated areas would help the districts when entering the review process. She offered an example of a district with designated areas, which allowed the district to require a business application to attain compliance. She opined that planning ahead and establishing areas would provide protection.

MR. BALASH agreed that having designated areas helped everyone operate more efficiently during the review process. He offered that Amendment 1 allowed for designated or special management areas, and he stated that these would be encouraged by DNR in the plan development process.

[2:14:34 PM](#)

CO-CHAIR SEATON clarified that currently a [coastal district] can't have an enforceable policy that covers more than the designated area; therefore designated areas are required. He stated that developing industries had to be made aware of areas of enforceable policy outside the designated areas, as subsistence areas often exceeded designated areas.

[2:15:28 PM](#)

CO-CHAIR FEIGE asked if there was any limit to the size of a designated area.

MR. BALASH replied that there was not. He explained that it was necessary "to show that the activity or the habitat or the

natural hazard is present in the area." He pointed out that often in the application for a designated area it would become a more limited geographic area.

[2:16:34 PM](#)

CO-CHAIR FEIGE reflected that it was necessary for a checklist for the applicant during the process. He opined that the coastal zones needed "to come up with a plan, and if they do, they get the preference on considerations when it comes to reviewing this plan." He related his understanding that if there was not a designated area, there would not be preference in that specific area during the review process.

MR. BALASH, in response, agreed. He explained that the due deference to a district during the review process was determined by whether they had a local enforceable policy or a designated area. He reported that, after the comment deadline period, there was a search for consensus among all the state, federal, and local groups; however, if there was not consensus, then DCOM had to decide which comments would drive the decision and that was when deference became important and relevant.

[2:18:50 PM](#)

CO-CHAIR FEIGE asked if it was possible to make it easier for districts to encompass more land area into a designated area. He offered his belief that it was already a relatively easy process.

MR. BALASH replied that many districts would disagree with that statement while DCOM would agree with it, and thus there is an area of tension. He surmised that even though the hurdle for granting an area was lowered, the question would still arise: "how is a local policy developed and approved and then ultimately applied in the review process?" He reflected that an increase to the number or size of designated areas would still not be the answer for many local districts.

[2:20:58 PM](#)

REPRESENTATIVE MUNOZ asked if there were districts with policies that applied to the entire district.

MR. BALASH offered to research the question.

MR. BATES, in response to Representative Munoz, said that only about 12 designated areas had been processed in the past 7 years for a consistency review. He explained that once a project review was initiated, there were only 12-14 requests to designate for that specific project. He offered his belief that four to six requests had been by the North Slope Borough, for the entirety of the coastal zone specific to permafrost for natural hazards, and community areas for hunting of bowhead whales, among others. He stated that the more defined requests had usually been granted.

[2:22:50 PM](#)

REPRESENTATIVE MUNOZ asked to clarify that 16 policies were promulgated with designated areas.

MR. BATES, in response, said that there were a dozen or so designated area requests that were handled through the consistency review process.

[2:23:42 PM](#)

REPRESENTATIVE MUNOZ asked if there were policies that applied to the entire district.

MR. BATES offered his belief that there were not any approved policies throughout the entire district, specific to subsistence. He said that, during mediation on these policies, there was agreement on approvable areas and closer agreement to an approvable plan. He offered to research her question.

REPRESENTATIVE MUNOZ expressed interest in subsistence policies and policies that are non-subsistence that might apply to the entire district.

MR. BATES reminded members that there are two opportunities to designate, one of which is within the context of the district planning process and the other is within the consistency review process of a specific project. Within the context of a district planning process there are a number of items for which a coastal district can designate and write enforceable policies, including tourism, recreation, energy siting, commercial seafood and fish processing, natural hazards, habitat, subsistence, archaeology, and pre-history. There are a number of items coastal districts can designate during their planning process. The benefit of the aforementioned is that the data is gathered and retrievable when an applicant seeks information regarding impacts of a project in a specific area. Within the state standards, a district can, through the consistency review process, designate the following four areas: habitat, subsistence, natural hazards, and archaeology. For any of those topics, there are districts that have districtwide designations for tourism, recreation, and etcetera.

[2:26:54 PM](#)

CO-CHAIR SEATON reminded the committee that before it is Amendment 1, which would remove the requirement for a designated area site prior to having a subsistence, habitat, natural hazard, or archaeological site usage in the district.

REPRESENTATIVE P. WILSON maintained her objection to Amendment 1 [text provided previously].

[2:27:48 PM](#)

CO-CHAIR FEIGE opined that it's important to have a clear, concise, well defined checklist. The main objective of the ACMP is to provide the rules at the beginning so that the applicant is aware from the beginning. Having a designated area specifies a particular area where a rule or enforceable policy applies. Not including that requirement in the ACMP opens it up to questioning regarding what the rule is and why it applies to a particular area. If it's difficult to provide a basis for a particular subsistence activity in a defined area, designated area, then he questioned how the local coastal district is going

to obtain enough data, local knowledge, and etcetera to support an enforceable policy over the entire coastal district. Co-Chair Feige opined that it would behoove the coastal districts to define those areas because they are getting a preference in terms of their priority in the decision-making process. Therefore, Co-Chair Feige suggested that rather than removing the designated area requirement, the committee should determine how to make it easier for coastal districts to define those designated areas. He further suggested that the committee should work with DCOM to amend the regulations. Co-Chair Feige related his opposition to Amendment 1.

[2:31:03 PM](#)

CO-CHAIR SEATON agreed that an initial checklist is good, but the problem is that 13 days into the review process [coastal districts] can designate or nominate an area for designation. Since DCOM has made the requirements for obtaining designated areas for subsistence and habitat so tight, industry is unaware of the concerns because they aren't enforceable policies. He agreed that this problem with enforceable policies would not exist if Amendment 1 was adopted. In fact, he opined that he would welcome the department coming forth with alternative mechanisms for consideration. Co-Chair Seaton reminded the committee that the purpose of Amendment 1 is to allow special management areas, which are designated areas, without requiring the designation.

[2:33:38 PM](#)

A roll call vote was taken. Representatives Kawasaki, Herron, Munoz, Foster, Dick, Gardner, and Seaton voted in favor of the adoption of Amendment 1, labeled 27-GH1965\A.2, Bullard, 3/25/11. Representatives P. Wilson and Feige voted against it. Therefore, Amendment 1 was adopted by a vote of 7-2.

[2:34:30 PM](#)

CO-CHAIR SEATON directed attention to Amendment 2, labeled 27-GH1965\A.6, Bullard, 3/25/11. He explained that Amendment 2

would exempt projects requiring an environmental impact statement (EIS) from the 90-day consistency review limit.

[2:34:48 PM](#)

The committee took an at-ease from 2:34 p.m. to 2:36 p.m.

[2:36:29 PM](#)

CO-CHAIR SEATON explained that the EIS process is a long duration. He opined that a complicated project requiring an EIS and the consistency review requirement with a 90-day timeline approval for the project is inconsistent. Co-Chair Seaton then moved that the committee adopt Amendment 2, labeled 27-GH1965\A.6, Bullard, 3/25/11, which read:

Page 1, line 3, following "program;":

Insert "**relating to the time limitations for a consistency review and determination for certain projects occurring in a coastal resource district;**"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 46.40.096(o) is amended to read:

(o) The time limitations in (n) of this section
(1) do not apply to a consistency review involving

(A) the disposal of an interest in state land or resources; or

(B) activity requiring an environmental impact statement;

(2) are suspended

(A) from the time the reviewing entity determines that the applicant has not adequately responded in writing within 14 days after the receipt of a written request from the reviewing entity for additional information, until the time the reviewing entity determines that the applicant has provided an adequate written response;

(B) during a period of time requested by the applicant;

(C) during the period of time a consistency review is undergoing a subsequent review under (d)(3) of this section."

Renumber the following bill sections accordingly.

[2:37:21 PM](#)

REPRESENTATIVE P. WILSON objected for discussion purposes. She then inquired as to why the 90-day timeline exists. She also inquired as to whether the 90-day timeline takes longer [than 90 days].

MR. BALASH explained that within the current statute is a specific limitation on how long consistency reviews can take in order to have a predictable process. Amendment 2 would violate one of the four principles identified early on regarding the [administration's] willingness to constructively engage with the legislature on these questions of substance. Mr. Balash said that he isn't aware of a problem that would be solved by Amendment 2. In fact, having consistency reviews conducted early on better informs project sponsors what it will take to meet the needs of the local coastal districts by obtaining a consistency determination early in order to better adjust the project earlier rather than later when the EIS is close to completion.

[2:39:03 PM](#)

CO-CHAIR SEATON clarified that Amendment 2 doesn't mean there would be no consistency review, rather it means that the time limits of the section don't apply if the project requires an EIS.

[2:39:21 PM](#)

REPRESENTATIVE P. WILSON recalled that the 90-day timeframe was provided to shorten the time in which it takes to obtain permits.

[2:39:52 PM](#)

CO-CHAIR SEATON informed the committee that the 90-day timeframe for approval of permits doesn't circumvent the federal EIS requirement as an EIS will still be required for any significant projects. Therefore, the question is whether there will be

deadlines that coincide and cause [the state] to be out of compliance with being able to do a project and perform a consistency review in 90 days when an EIS is required.

[2:40:33 PM](#)

REPRESENTATIVE GARDNER said she didn't recall any testimony that this has been a problem.

[2:40:46 PM](#)

CO-CHAIR SEATON reminded the committee that there was testimony that the time limits were problematic. He recalled testimony relating concerns about the time limits for air quality permits and the conflicts between federal and state time limits. Amendment 2 addresses the aforementioned and provides a mechanism to "look at" long duration projects that were complicated and provides a mechanism to address such projects, which normally require an EIS. He related that it was thought that Amendment 2 would identify those complicated projects that require longer timeframes.

[2:41:41 PM](#)

CO-CHAIR FEIGE recalled that the testimony regarding timeframes was in regard to DEC permits and the DEC carveout. The EIS is a federal requirement. He then asked if under the ACMP there has to be a determination of consistency prior to starting an EIS.

MR. BALASH replied no, not before the EIS process is started. However, the clock can start for the consistency review once the application is complete. The consistency review can be completed prior to the completion of the EIS process and in some cases can even do so prior to the completion of the initial comment phase of the EIS. Having the consistency review occur at the front end of the EIS process goes toward [addressing] some of the issues prior to decisions being made by the federal government during the EIS process. Therefore, the existing process, he opined, is beneficial to the project and the reviewing entities, both federal and local, because an applicant cannot obtain the other permits if project activities occur in

the coastal zone and the applicant doesn't have a consistency determination. Obtaining the determination early is beneficial, he reiterated. He reminded the committee that during the review process DCOM determines whether the project is consistent or isn't consistent unless alternative measures are adopted. The aforementioned informs the project sponsor early on what needs to be changed to be consistent, rather than finding out at the end and having to redesign then.

[2:44:22 PM](#)

CO-CHAIR FEIGE surmised then that the ACMP guides the applicant toward a path that will most likely result in success.

MR. BALASH replied yes. However, he clarified that a consistency determination doesn't guarantee an applicant will obtain the other permits, but they can't be obtained without the consistency determination. In further response to Co-Chair Feige, Mr. Balash related his understanding that an EIS is fairly costly for an applicant.

CO-CHAIR FEIGE suggested then that in fairness to the applicant it would be better to have the ACMP determination earlier rather than later.

MR. BALASH agreed, but clarified that when that process starts is dependent upon when the applicant chooses to apply for review.

[2:45:53 PM](#)

CO-CHAIR SEATON related his understanding that the administration doesn't want to be able to stop the consistency review process for a complex project that requires an EIS. He said that he would withdraw Amendment 2, if the department is comfortable requiring the 90-day timeframe even for a complex project that requires an EIS.

MR. BALASH stated that the administration is adamant that the 90-day clock be preserved and doesn't want to have exceptions that could spin that process out of control.

[2:47:08 PM](#)

CO-CHAIR SEATON withdrew Amendment 2, labeled 27-GH1965\A.6, Bullard, 3/25/11.

[2:47:20 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 3, labeled 27-GH1965\A.8, Bullard, 3/25/11, which read:

Page 1, line 3, following "**program;**":

Insert "**relating to consistency determinations made under the Alaska coastal management program;**"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 46.40.096(h) is repealed."

Renumber the following bill sections accordingly.

CO-CHAIR SEATON explained that Amendment 3 would repeal the limitation that doesn't allow third party litigation based on coastal zone reviews.

REPRESENTATIVE HERRON objected.

[2:48:05 PM](#)

CO-CHAIR SEATON further explained that Amendment 3 is being offered because the industry's belief that changes are being made to allow third party litigation. He emphasized that the aforementioned is not his intention. Therefore, voting on Amendment 3, which would allow third party lawsuits, allows the committee to be on record that there is no intention to allow such suits. Third party lawsuits would be either from an environmental entity, industry entity, or other party that wants to sue on the basis of the determination. Prior to 2003 such lawsuits were allowed, but after 2003 they were disallowed. Co-Chair Seaton stated his intention to vote against Amendment 3 and expressed his belief that if the committee fails Amendment 3 it would clarify that there is no intention in any of the

committee's amendments to allow third party lawsuits, and therefore leave the law as it exists now.

[2:51:03 PM](#)

REPRESENTATIVE HERRON called for the question.

[2:51:09 PM](#)

A roll call vote was taken. Representatives Kawasaki, P. Wilson, Herron, Munoz, Foster, Dick, Feige, Seaton, and Gardner voted against it. Therefore, Amendment 3 failed by a vote of 0-9.

[2:52:21 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 4, labeled, 27-GH1965\A.9, Bullard, 3/25/11, which read:

Page 1, line 3, following "program;":

Insert "relating to the application of the consistency review and determination process for the Alaska coastal management program to activities inland of the coastal zone;"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 46.40.096(1) is amended to read:

(1) The regulations adopted under (a) of this section apply, as authorized by 16 U.S.C. 1456(c), to

(1) activities within the coastal zone or inland of the coastal zone if the activities would cause direct and significant impact to a coastal use or resource; and

(2) activities on federal land, including the federal outer continental shelf, that would affect any land or water use or natural resource of the state's coastal zone; for purposes of this paragraph, those activities consist of any activity on the federal outer continental shelf and any activity on federal land that are within the geographic boundaries of the state's coastal zone notwithstanding the exclusion of federal land in 16 U.S.C. 1453(1)."

Renumber the following bill sections accordingly.

REPRESENTATIVE HERRON objected.

[2:52:39 PM](#)

CO-CHAIR SEATON explained that the purpose of Amendment 4 is to allow the coastal zone to go inland and address any activities that would cause direct or significant impact to the coastal zone or use of a resource. Prior to 2003 coastal zones could be designated far up rivers all the way to Fairbanks. This is generally referred to as the inland reach provision. Co-Chair Seaton clarified that Amendment 4 is being offered in order to allow the committee to address the matter on the record such that the coastal zone area is confined to the coastal area. Co-Chair Seaton stated his opposition to Amendment 4.

[2:54:06 PM](#)

REPRESENTATIVE GARDNER inquired as to the effect of Amendment 4 with regard to potential efforts against the Pebble Mine to protect fishery resources.

CO-CHAIR SEATON said that he didn't believe it would apply.

[2:55:22 PM](#)

A roll call vote was taken. Representatives Dick, Gardner, Kawasaki, P. Wilson, Herron, Munoz, Foster, Feige, and Seaton voted against it. Therefore, Amendment 9 failed to be adopted by a vote of 0-9.

[2:56:11 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 5, labeled 27-GH1965\A.10, Bullard, 3/25/11, which read:

Page 1, line 3, following "**program;**":
Insert "**relating to the definition of project under the Alaska coastal management program;**"

Page 2, following line 5:
Insert a new bill section to read:

"* **Sec. 2.** AS 46.40.210(9) is repealed and reenacted to read:

(9) "project" means all activities described in AS 46.40.096(1) and all activities in the list of permits, certifications, leases, approvals, and authorizations that trigger a consistency review developed under AS 46.40.096(m), including a federal agency activity as defined in 15 C.F.R. 930.31;"

Renumber the following bill sections accordingly.

CO-CHAIR FEIGE objected.

[2:56:37 PM](#)

CO-CHAIR SEATON stated that Amendment 5 would clarify that the project includes the oil and gas leases. There was a question as to whether oil and gas leases were covered under the current language of HB 106. The goal is to be clear that oil and gas leases are covered by the coastal zone system. He emphasized that Amendment 5 doesn't change the status of the law or the coverage, but rather Amendment 5 merely clarifies what is covered by the coastal zone management system.

[2:57:21 PM](#)

CO-CHAIR FEIGE said he didn't recall any testimony indicating this was a point of contention. He inquired as to the impact of the ACMP covering oil and gas lease sales within the coastal zones because it would cover onshore as well as offshore.

CO-CHAIR SEATON responded that the information the committee has received is that oil and gas leases are already covered, but they're not specified. Therefore, Amendment 5 would clarify that what it's currently applied to is covered under the ACMP.

CO-CHAIR FEIGE requested that the department relate its perspective in terms of benefits and concerns regarding whether oil and gas lease sales should be covered under the ACMP.

MR. BALASH directed attention to lines 8-9 of Amendment 5. He expressed concern that this may damage the existing phasing of the reviews that are done during the oil and gas sale,

exploration, and development processes. Specifically, he expressed concern that Amendment 5 would require the [consistency] review to look beyond the sale to activities that might occur through exploration and development. If the aforementioned is the case, then he would have severe concerns about Amendment 5.

[2:59:52 PM](#)

CO-CHAIR SEATON withdrew Amendment 5 in order to provide the administration time to review it, but he noted that he will re-offer Amendment 5 at a later date after review of any unintended consequences.

[3:00:39 PM](#)

CO-CHAIR SEATON announced that the remaining amendments will be set aside and HB 106 will be considered again on Wednesday, March 30, 2011.

[3:01:43 PM](#)

ADJOURNMENT

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