

ALASKA STATE LEGISLATURE
CONFERENCE COMMITTEE ON HB 106

May 14, 2011
10:06 a.m.

MEMBERS PRESENT

Representative Craig Johnson, Chair
Representative Bob Herron
Representative Beth Kerttula

Senator Donny Olson, Chair
Senator Bill Wielechowski
Senator Albert Kookesh

MEMBERS ABSENT

All members present

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."

- MOVED CCS HB 106 OUT OF COMMITTEE

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
03/25/11 (H) Heard & Held
03/25/11 (H) MINUTE(RES)
03/28/11 (H) RES AT 1:00 PM BARNES 124
03/28/11 (H) Heard & Held
03/28/11 (H) MINUTE(RES)
03/30/11 (H) RES AT 1:00 PM BARNES 124
03/30/11 (H) Heard & Held
03/30/11 (H) MINUTE(RES)
04/04/11 (H) RES AT 1:00 PM BARNES 124
04/04/11 (H) Moved CSHB 106(RES) Out of Committee
04/04/11 (H) MINUTE(RES)
04/05/11 (H) RES RPT CS(RES) NT 7DP 2NR
04/05/11 (H) DP: GARDNER, MUNOZ, P.WILSON, DICK,
KAWASAKI, SEATON, FEIGE
04/05/11 (H) NR: FOSTER, HERRON
04/05/11 (H) LETTER OF INTENT WITH RES REPORT
04/11/11 (H) FIN AT 9:00 AM HOUSE FINANCE 519
04/11/11 (H) Heard & Held
04/11/11 (H) MINUTE(FIN)
04/11/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/11/11 (H) Heard & Held
04/11/11 (H) MINUTE(FIN)
04/15/11 (H) FIN RPT CS(FIN) NT 9DP 2NR
04/15/11 (H) DP: GUTTENBERG, NEUMAN, FAIRCLOUGH,
T.WILSON, JOULE, EDGMON, COSTELLO,
STOLTZE,
04/15/11 (H) THOMAS
04/15/11 (H) NR: GARA, DOOGAN
04/15/11 (H) TRANSMITTED TO (S)
04/15/11 (H) VERSION: CSHB 106(FIN)
04/15/11 (H) FIN AT 9:00 PM HOUSE FINANCE 519
04/15/11 (H) -- 4/14/11 Meeting Continued @ 9:00 pm
4/15/11 --
04/16/11 (S) READ THE FIRST TIME - REFERRALS
04/16/11 (S) FIN
04/17/11 (S) FIN AT 10:00 AM SENATE FINANCE 532
04/17/11 (S) Bills Previously Heard/Scheduled
04/18/11 (H) SPECIAL SESSION BILL
04/18/11 (S) SPECIAL SESSION BILL

04/19/11 (S) FIN AT 11:00 AM SENATE FINANCE 532
 04/19/11 (S) Scheduled But Not Heard
 04/22/11 (S) FIN AT 1:45 PM SENATE FINANCE 532
 04/22/11 (S) Scheduled But Not Heard
 05/10/11 (S) FIN AT 1:00 PM SENATE FINANCE 532
 05/10/11 (S) Heard & Held
 05/10/11 (S) MINUTE(FIN)
 05/13/11 (S) FIN RPT SCS 2DP 4NR SAME TITLE
 05/13/11 (S) DP: OLSON, ELLIS
 05/13/11 (S) NR: HOFFMAN, STEDMAN, THOMAS, EGAN
 05/13/11 (S) FIN SCS ADOPTED Y13 N5 E2
 05/13/11 (S) VERSION: SCS CSHB 106(FIN)
 05/13/11 (H) CONFERENCE COMMITTEE APPOINTED
 05/13/11 (H) JOHNSON (CHAIR), HERRON, KERTTULA
 05/13/11 (S) RECEDE MESSAGE READ AND TAKEN UP
 05/13/11 (S) CONFERENCE COMMITTEE APPOINTED
 05/13/11 (S) OLSON (CHAIR), WIELECHOWSKI, KOOKESH
 05/13/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 05/13/11 (S) Moved SCS CSHB 106(FIN) Out of
 Committee
 05/13/11 (S) MINUTE(FIN)
 05/14/11 (H) HB106 AT 10:00 AM BARNES 124

WITNESS REGISTER

RENA DELBRIDGE, Staff
 Representative Mike Hawker
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Reviewed the differences between CSHB 106(FIN) and SCS CSHB 106(FIN).

DAVID GRAY, Staff
 Senator Lyman Hoffman
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Provided a review of SCS CSHB 106(FIN).

LARRY HARTIG, Commissioner
 Department of Environmental Conservation
 Juneau, Alaska

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

ACTION NARRATIVE

[10:06:40 AM](#)

CHAIR CRAIG JOHNSON called the meeting to order at 10:06 a.m. Representatives Herron, Kerttula, and Johnson and Senators Wielechowski, Kookesh, and Olson were present at the call to order. Also in attendance were Representatives Edgmon, Gara, Millett, Olson, and Seaton.

HB 106-COASTAL MANAGEMENT PROGRAM

CHAIR JOHNSON announced that the only order of business would be 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."

[10:07:20 AM](#)

CHAIR OLSON moved to adopt CSHB 106(FIN).

CHAIR JOHNSON objected.

A roll call vote was taken. Representatives Kerttula, Herron, and Johnson voted in opposition to adopting CSHB 106(FIN). Senators Wielechowski, Kookesh, and Olson voted against it. Therefore, by a vote of 0-3 of the House members and 0-3 of the Senate members, CSHB 106(FIN) failed to be adopted.

[10:07:59 AM](#)

CHAIR OLSON moved to adopt SCS CSHB 106(FIN).

CHAIR JOHNSON objected.

A roll call vote was taken. Representative Kerttula voted in favor of adopting SCS CSHB 106(FIN). Representatives Herron and Johnson voted against it. Senators Wielechowski, Kookesh, and Olson voted for it. Therefore, by a vote of 1-2 of the House members and 3-0 of the Senate members, SCS CSHB 106(FIN) failed to be adopted.

[10:09:12 AM](#)

RENA DELBRIDGE, Staff, Representative Mike Hawker, Alaska State Legislature, directed the committee's attention to Legislative Legal and Research Services red- and blue-lined summary of changes between CSHB 106(FIN) and SCS CSHB 106(FIN). The first change is the clarifying language located on page 3, line 4, which specifies that one alternate member will be appointed from each of the specific regions. The language on page 3, lines 13-14, restructures the language describing part of the Southwest Alaska region. She then directed attention to the language on page 3, lines 28 through page 4, line 10. The House version allowed that the members of the Coastal Policy Board serve at the will of the governor, while the Senate version allowed members of the board to be removed for cause and adds language outlining the process of removal of a member for cause. The process requires written notice of the charges for cause to the member and provides the member an opportunity to be heard. The Senate language also establishes a process by which the alternate member replaces the removed member and the alternate is replaced. The Senate language defines the term "for cause". On page 4, line 19, the Senate language clarifies that alternates appointed as department [staff] will be appointed as deputy commissioners, not merely deputies or designees. Page 8, Section 8 of the House version included six factors that would be considered when determining whether a policy uses the least restrictive means to accomplish its objectives. The Senate version splits the factors into two groups of three factors each, the first group of which "shall be considered" and the second group "may" be required. Ms. Delbridge then moved on to the next change on page 10, lines 12-16. The House version, CSHB 106(FIN), allowed that the department can require additional action by the districts, when considering whether to approve the plan or portions of the plan. The House version requires that "any other action be taken by the coastal district", while the Senate version allows the department to require the coastal district to submit additional information only if the department determines that additional information is necessary for the department to approve the plan or portions of the plan. The next change can be found on page 12, lines 10-13, such that the Senate version adds a new subsection that prohibits the department from requiring coastal districts to designate areas for the purpose of developing enforceable policies. On page 12, lines 18-19, there is a language change such that the language "commissioner's designee" is changed to "deputy commissioner". The aforementioned change, that the commissioner's alternates will be deputy commissioners, is also made on page 13, lines 6 and 13 as well as on page 14, lines 8-9, and 31. On page 15 of the House version, CSHB 106(FIN)

created definitions for "local knowledge" and "scientific evidence", whereas the Senate version, SCS CSHB 106(FIN) deletes those definitions. The Senate language on page 15, lines 29-31, specifies that the names considered by the governor to create this policy board are also going to require three alternate members. She referred to the aforementioned as a clarification. Page 16 includes technical language changes such that the "alternate member" is added throughout and the term "Act" is replaced with "section". On page 16, Section 25 of the Senate version language is added to require an additional reporting and review requirement such that the board would be required to report to the governor and the legislature as to the effectiveness of the entire coastal management statutes. Continuing on to page 17, lines 8-13 have conforming technical language changes. On page 17, beginning on line 22 the House version contained older language related to effective dates contingent on 2006 actions that were no longer necessary, while the Senate version deleted that reference. The remainder of the changes on page 18, lines 18-21, is conforming changes.

[10:18:05 AM](#)

CHAIR JOHNSON requested an explanation of the Senate version, SCS CSHB 106(FIN).

[10:18:23 AM](#)

DAVID GRAY, Staff, Senator Lyman Hoffman, Alaska State Legislature, informed the committee that in the Senate Finance Committee there were many discussions with the administration and members of the House regarding the Senate's desired changes to HB 106. In many cases, the administration responded with language changes that accommodated the Senate. However, there were some issues about which the administration maintained its concern. He recalled that only about seven issues were taken up, including the minor issue of the change in language from "deputies" to "deputy commissioners". There are a couple of outstanding issues that remain, he remarked.

[10:19:55 AM](#)

CHAIR OLSON inquired as to the reason for the filing of an additional report as required on page 16, line 31, of the red- and blue-lined legislation.

MR. GRAY explained that the Department of Environmental Conservation (DEC) carveout in the House version practically

eliminates DEC permits from involvement with the coastal planning commission. The Senate thought there should be an incentive in order to have serious consideration regarding the DEC carveout and whether it should be modified. He pointed out that one of the iterations of HB 106, once in the Senate, was to repeal the carveout two years from now and thus it would follow the report from the new policy board. The aforementioned wasn't well received. He further related that the Senate was interested in the board returning four years from now with recommendations regarding how the entire program was working.

[10:23:14 AM](#)

REPRESENTATIVE HERRON recalled that during discussions with the attorney general regarding the DEC carveout sunset that Senator Hoffman wanted there was a suggestion of a compromise. He asked if the blue-lined language on page 16, line 31 through page 17, line 1, was the language the attorney general brought to the Senate.

MR. GRAY replied yes, adding that the language was from the attorney general and was also discussed with Representative Herron.

[10:24:28 AM](#)

CHAIR OLSON, referring to page 15 of the red- and blue-lined legislation, inquired as to the rationale behind eliminating the definitions for "local knowledge" and "scientific evidence".

MR. GRAY explained that the definition of "local knowledge" [utilized in the House version] includes what has always been accepted and used in the regulations plus the following new language: "not contradicted by scientific evidence". The definition of "scientific evidence" that is utilized in the House version could be presented to contradict local knowledge and that definition also exists in current regulations. Some felt that there should be a higher standard when local knowledge can't be brought forward. The new provision of the definition of "local knowledge" that requires local knowledge can't be contradicted by scientific evidence constrained local knowledge such that it couldn't be considered in the processes. Therefore, there was a desire to make a higher standard for the elimination of local knowledge, which resulted in suggestions to require a preponderance of scientific evidence or clear and convincing evidence. The aforementioned suggestions weren't accepted by some in the Senate, which resulted in deleting the

definitions from the legislation and leaving the definitions in regulation as they are currently. If there was a need for some qualification of local knowledge, then the Department of Natural Resources (DNR) could promulgate regulations. Mr. Gray related that the Senate felt that deletion of the definitions of "local knowledge" and "scientific evidence" would allow more flexibility in dealing with the two.

[10:28:37 AM](#)

SENATOR WIELECHOWSKI related his understanding that the House legislation, CSHB 106(FIN), included the definitions of "local knowledge" and "scientific evidence" as they are in existing regulations and placed them in statute.

MR. GRAY replied yes.

SENATOR WIELECHOWSKI highlighted that essentially the only change from those definitions in regulations was the addition under "local knowledge" of subparagraph (C). He then inquired as to how the addition of subparagraph (C) impacts HB 106.

MR. GRAY said that he couldn't answer that question.

SENATOR WIELECHOWSKI then related his understanding that although the addition of subparagraph (C) allows local knowledge, a junior scientist who documents the site with journal entries and a photograph could overrule thousands of years of local knowledge. He asked if that's Mr. Gray's understanding of the provision as well.

MR. GRAY opined that it's a possibility. He related that the Senate received concern from districts regarding what [subparagraph (C)] meant and whether it was necessary.

[10:32:07 AM](#)

CHAIR JOHNSON remarked that the term "junior scientist" is inappropriate since the definition for scientific evidence sets a fairly high bar for the scientific evidence, including being peer reviewed.

[10:32:51 AM](#)

SENATOR WIELECHOWSKI stated that although that may be the intent, that's not what the language of [CSHB 106(FIN)] says. He directed attention specifically to the language of Section

20(17)(C)(i)-(ii) of CSHB 106(FIN). The aforementioned language could result in a professional junior scientist coming to Alaska for the summer, issuing an opinion, and overruling thousands of years of local knowledge. If there is a different interpretation of this proposed statute, then perhaps the language needs to be clarified because the existing proposed language of Section 20(17)(C)(i)-(ii) of CSHB 106(FIN) does not impose a high bar for scientific evidence.

[10:33:58 AM](#)

REPRESENTATIVE KERTTULA said that she read the language the same as Senator Wielechowski, and thus the language needs to be clarified.

[10:34:26 AM](#)

REPRESENTATIVE KERTTULA informed the committee that she reviewed the legislation regarding how local knowledge is used and only found three places other than the definition in which the legislation references local knowledge.

MR. GRAY concurred.

REPRESENTATIVE KERTTULA pointed out that in each of the areas in which local knowledge is used, the state maintains the final say. In fact, in one of the sections the state is the entity that uses local knowledge to overturn a district decision. She asked if Mr. Gray has the same understanding, that the state always holds the final trump card in terms of decisions regarding local knowledge.

MR. GRAY mentioned that there had been questioning as to where the problem is that [subparagraph (C)] addresses.

[10:35:54 AM](#)

REPRESENTATIVE KERTTULA interpreted the language in subparagraph (C), "not contradicted by scientific evidence", to mean that local knowledge can't be contradicted by any scientific evidence, no matter how minimal.

MR. GRAY related his understanding that the feeling was that DNR has a considerable amount of say with regard to how things can work out. He reiterated that the question remains: Why the need?

10:37:23 AM

CHAIR JOHNSON said that it's necessary to have the definitions [of local knowledge and scientific evidence] in statute rather than regulation. However, he acknowledged that there could be reason to debate whether the definition is proper. He then stated his opposition to striking the [definitions] entirely.

10:38:05 AM

CHAIR OLSON asked if Chair Johnson would entertain a motion to strike subparagraph (C) and reinsert paragraphs (16) and (17).

CHAIR JOHNSON responded not at this time.

10:39:10 AM

LARRY HARTIG, Commissioner, Department of Environmental Conservation, began by explaining that he is present today because he was part of the administration's team that was involved in negotiations regarding the Alaska Coastal Management Program (ACMP). He then related the administration's thanks for all the hard work done on the ACMP. At the beginning of the legislative session, the administration made clear what it saw as the guiding principles in trying to craft a new ACMP that moves from the years of constant turmoil and litigation. The four principles are as follows:

- 1) There needs to be a predictable ACMP process;
- 2) Community input needs to be valued;
- 3) There must be objective and predictable standards, enforceable policies; and
- 4) There must be no local veto over proposed projects.

COMMISSIONER HARTIG opined that the compromise struck in CSHB 106(FIN) adheres to those principles and allows dialogue and issue resolution rather than litigation. The governor's May 12 letter to Senator Hoffman and both bodies attempts to address the concern that SCS CSHB 106(FIN) interrupts the balance achieved by the four principles. He emphasized that the aforementioned was after months of [discussions] back and forth that was preceded by many years of [discussions] back and forth. Many people put a lot of effort into crafting the language in CSHB 106(FIN) and it didn't take much to upset the balance. Commissioner Hartig related that upon receipt of Senator Hoffman's seven concerns the administration tried to review them with an open mind. During that review, as Mr. Gray indicated,

suggested language was proposed. However, at the onset of the discussion [the administration] identified that the DEC carveout and definitions couldn't be changed.

[10:43:47 AM](#)

COMMISSIONER HARTIG then turned to the definitions of "local knowledge" and "scientific evidence". He pointed out that the aforementioned definitions first appear in Section 7 of [CSHB 106(FIN)] where "local knowledge" is used to support the identification of a need of an enforceable policy. Prior to HB 106 local knowledge was used primarily to designate subsistence use, not to justify the establishment of enforceable policies or define what those policies look like. The aforementioned was a major shift, he remarked. When the administration reviewed local knowledge in terms of how to expand the voice of local districts, other uses of local knowledge beyond its primary uses by DNR were included.

[10:45:27 AM](#)

REPRESENTATIVE KERTTULA clarified that Commissioner Hartig is correct in terms of the current program, but under the previous program local knowledge was accepted as evidence and information when the agencies made decisions. In fact, local knowledge played a large role in the Good News Bay case.

[10:46:03 AM](#)

COMMISSIONER HARTIG noted that he was speaking to the change from the status quo. He then stated that the four principles illustrate that the administration was seriously trying to expand the use of local knowledge and its use in justifying the need for additional enforceable polices and crafting those. He directed attention to AS 46.40.030 and pages 7-8 of the red- and blue-lined version of HB 106, which list the four requirements of an enforceable policy. One of the requirements is to **"address a coastal use or resource of concern to the residents"** and local knowledge can be used to establish the aforementioned.

[10:47:10 AM](#)

CHAIR OLSON pointed out that this discussion regarding "local knowledge" assumes there is a coastal management plan in place and approved by DNR. However, the majority of the coastal management plans haven't been approved and thus there's no place at the table for folks to express their concerns.

CHAIR JOHNSON recalled that of the 23-24 coastal zone districts, only 3 haven't been approved.

COMMISSIONER HARTIG related his belief that Chair Johnson is correct, but mentioned that DNR could verify the numbers.

CHAIR OLSON maintained his understanding that the frustration was in regard to the coastal management plans that weren't approved, which he understood to be more than just three.

CHAIR JOHNSON said he would like the aforementioned clarified.

[10:48:15 AM](#)

COMMISSIONER HARTIG pointed out that AS 46.40.030 addresses the development of district coastal management plans, and therefore what he is discussing is applicable to the approval of those plans. The hope would be that those coastal districts with unapproved plans will be approved whatever the legislation looks like. The intent, he emphasized, is for the coastal districts to have a voice, which is achieved via an [approved] coastal management plan.

[10:48:51 AM](#)

COMMISSIONER HARTIG referred to Section 7(b)(4) of both CSHB 106(FIN) and SCS CSHB 106(FIN), which read: "**employ the least restrictive means to achieve the objective of the enforceable policy**"; the key phrase of which is the "**least restrictive means**". He then pointed out that under Section 8(c)(2) "local knowledge" or "scientific evidence" can be used to support an alternative method. For example, a community that relies on a caribou herd for subsistence would want to ensure any proposed development/activity in the coastal area doesn't negatively impact the caribou herd. In such a case, local knowledge can be used to establish an enforceable policy. If local knowledge is used to establish an enforceable policy, then that area can be protected. However, the question arises as to whether the enforceable policy applies to the entire [coastal district] area or specific designated areas. The thought was that if [coastal districts] aren't required upfront to have designated areas, the requirement to utilize the least restrictive means would provide [boundaries]. Local knowledge or scientific evidence could be used to establish the boundaries. Although the limits of local knowledge could be reached in cases when the proposed activity hasn't occurred in the area before, scientific evidence could be

used to fill in the gaps. Commissioner Hartig emphasized that the idea is for "local knowledge" and "scientific evidence" to work harmoniously as is the case most of the time, as was mentioned in Mayor Itta's letter. Therefore, although he wasn't anticipating many conflicts, there will be limits to both and there may reach a point of conflict. [In times of conflict] the definition is more important in terms of providing predictability and avoiding conflicts. To achieve the aforementioned in the legislation, the language is such that "scientific evidence" trumps "local knowledge" while making sure that the definition of scientific evidence is very robust. Commissioner Hartig noted his agreement with Chair Johnson that "scientific evidence" isn't a junior scientist waving a photograph.

[10:54:56 AM](#)

REPRESENTATIVE KERTTULA pointed out that under Section 8 (d)(3) the department may require "any other relevant factors" to determine whether an enforceable policy employs the least restrictive means. She asked if that's a correct interpretation.

COMMISSIONER HARTIG said that the idea is to provide guidance in statute in order to avoid debate and uncertainty later. The factors in Section 8(c)(1)-(3) are factors that most coastal districts can provide. However, the additional factors under Section 8(d)(1)-(3) are more costly factors the department may or may not require. Therefore, the "may" language provides flexibility such that the Section 8(d)(1)-(3) factors aren't required of a coastal district in every instance. Furthermore, Section 8(d)(3) is intended as a catchall, although DNR would have to determine that it's something that could reasonably be produced by the coastal district and is relevant to the decision, which is the least restrict alternative.

REPRESENTATIVE KERTTULA maintained that the department could still require any other relevant information. She surmised that it doesn't really depend upon the contradicting power of "scientific evidence" over "local knowledge" because the department can still trump [the situation] because it can require any other relevant information.

COMMISSIONER HARTIG reminded the committee that these provisions refer to the approvability of the plans and the enforceable policies that are part of the plans. He said he hasn't heard a complaint in the past. Commissioner Hartig explained that first

there would need to be a reason to evaluate the alternatives. Therefore, the test of relevancy would protect the coastal districts. Furthermore, there are portions of the act that require DNR to assist coastal districts. He opined that it's difficult to respond to the real risk without a real example, particularly since that concern wasn't expressed during negotiations.

[10:58:57 AM](#)

REPRESENTATIVE KERTTULA returned to Commissioner Hartig's earlier caribou example and posed that local knowledge says that caribou are in a particular area whereas scientific knowledge says the caribou are in another area. Representative Kerttula said that she didn't understand why it would be necessary to undercut the existing [regulatory] definition of "local knowledge" with the requirement found in CSHB 106(FIN) that local knowledge isn't contradicted by scientific evidence, particularly since local knowledge can ultimately be trumped by the department. In Section 8 the aforementioned is accomplished by the following requirement: "any other relevant factors." Ultimately, the department maintains authority over these decisions and local knowledge is merely one factor to review.

COMMISSIONER HARTIG, continuing with the caribou example, said there may be local knowledge that the caribou utilize a certain migratory route, although there may be no scientific evidence of that at the time. If that local knowledge met the definition in CSHB 106(FIN) such that the local knowledge is based on local observations and is consistently accepted by members of the community, then "it's in." However, there could be concern that the aforementioned could cause a certain area of the coastal district to become off limits to some activity in the future, and may desire further testing of that local knowledge. A study could be performed, although it would have to meet the test of scientific evidence. If that scientific evidence was produced, then there would have to be review as to whether there is truly a conflict between the local knowledge and the scientific evidence. Commissioner Hartig said, "There is a path there, ... people know that absent ... truly contradicting scientific evidence, the local knowledge is going to be used." The balance is that scientific evidence has to have what he regarded as a high hurdle.

[11:03:08 AM](#)

CHAIR OLSON pointed out that there are studies that contradict each other. Therefore, he questioned how the department will decide which study carries more weight and prevails.

COMMISSINER HARTIG said that although he's not the commissioner of DNR, he deals with the matter [of conflicting studies] regularly] in the environmental arena. He highlighted that before "scientific evidence" can be considered it must meet the definition set out in proposed Section 20(17)(A)-(C)(1)-(3). In regard to the earlier mention of a junior scientist producing a photograph for scientific evidence, that photograph must meet the requirements specified in the aforementioned section. The idea with the requirements of Section 20(17)(A)-(C)(1)-(3) is to narrow the scope in hopes of eliminating the competing science. Practically speaking, it would be left to DNR to bring in the expertise of other agencies and experts and have the parties bring in their own experts for review through the permitting or ACMP process to determine the best science. If the aforementioned can't be accomplished, then more studies can be required.

[11:06:40 AM](#)

CHAIR JOHNSON inquired as to the process when there is conflicting local knowledge.

COMMISSIONER HARTIG indicated he would answer [upon reconvening].

[11:08:15 AM](#)

CHAIR JOHNSON recessed to the call of the chair at 11:08 a.m.

[12:41:01 PM](#)

CHAIR JOHNSON reconvened the hearing at 12:41 p.m.

[12:41:17 PM](#)

REPRESENTATIVE HERRON inquired as to why it's so important to include the language of Section 20(16)(c) in the definition of "local knowledge" when clearly the state has the advantage, as illustrated in AS 46.40.030 and AS 46.40.

COMMISSIONER HARTIG directed attention to proposed Section 15(a)(2)(B), which relates to situations in which the coastal district wants to adopt an enforceable policy that is otherwise

within the jurisdiction of a federal or state agency to set. The aforementioned applies to agencies other than DEC because of the DEC carveout. He then highlighted the language of Section 15(b)(1)(A), which is strong language that addresses those situations in which there is a proposed enforceable policy that's within a federal or state agency's authority to set as a standard. Therefore, it's not "in the full field" that he discussed earlier regarding the use of local knowledge, but rather is a subset of that.

12:45:08 PM

REPRESENTATIVE HERRON opined that for him and his constituents the terms "local knowledge" and "scientific evidence" in CSHB 106(FIN) are necessary. However, the language "not contradicted" in Section 20(16)(C) is of concern. He informed the committee that he had discussed replacing the "not contradicted" language with "non contradicted" and "supported by".

COMMISSIONER HARTIG mentioned that during discussions with the Senate regarding CSHB 106(FIN), the Senate was told that the definitions and the DEC carveout were "must-haves." Furthermore, there were no such discussions with the House [regarding potential language changes to the definitions and the DEC carveout]. Commissioner Hartig said he isn't prepared nor authorized to negotiate such language changes [to the definitions].

REPRESENTATIVE HERRON recalled that the commissioner had characterized the language "not contradicted" as clumsy. If the language is the crux of the legislation, then he opined that it's the responsibility of the committee to work on developing language that will work for both bodies.

12:48:48 PM

SENATOR WIELECHOWSKI inquired as to the impact to the state if HB 106 doesn't pass and the ACMP lapses. He further inquired as to whether the aforementioned is something the Parnell Administration supports.

COMMISSIONER HARTIG clarified that the governor wants to have the ACMP in place. What began as a simple extension has gone through months of negotiations and much effort. Commissioner Hartig felt that the ACMP has value in terms of providing federal funds to the state, which results in jobs and additional

planning funds. He estimated that about \$1.2 million goes to various communities for planning. Through the ACMP there's also the opportunity to involve people in the process early on, although there are other ways to do so. Furthermore, there are federal activities in federal waters that must show [compliance] with the ACMP. Due to the DEC carve, DEC's spill prevention standards are the state's enforceable policies for spill prevention. Therefore, Outer Continental Shelf (OCS) activities are reviewed for consistency with DEC spill prevention standards, which are in most cases more rigorous than federal standards. The aforementioned provides a layer of protection and a voice in the process. Commissioner Hartig offered that without ACMP some of those primary benefits could be replicated by the state while others couldn't be replicated.

[12:51:34 PM](#)

CHAIR OLSON inquired as to whether the governor will veto coastal management legislation that's similar to SCS CSHB 106(FIN). If the commissioner is unable to answer the aforementioned, he inquired as to what Commissioner Hartig would recommend to the governor.

COMMISSIONER HARTIG opined that the governor's position was fairly clear in the letter he sent to Senator Hoffman and which was forwarded to the entire body. Commissioner Hartig expressed concern that there will be focus on one item rather than considering [the legislation] on balance. The letter, he further opined, provides clear guidance with regard to the definitions.

CHAIR OLSON acknowledged that there have been a lot of negotiations with the governor over the last several months. However, he emphasized that [folks having been trying] to have a voice over the last five years, which has been frustrating. The aforementioned is likely why both sides have been fairly determined to address key issues.

[12:53:25 PM](#)

REPRESENTATIVE KERTTULA related that she, too, wants the program to survive, but expressed concern that the two independent definitions from the regulations have been mixed in the manner before the committee today. She then echoed her earlier remarks that every time local knowledge is mentioned in the legislation, the state retains the right to trump local knowledge when necessary. Therefore, she questioned why it's necessary to do

this. She expressed hope that the governor and the legislature work together to develop a compromise in the language and save this program, albeit what's being argued about are the scraps of the former program. Still, Representative Kerttula maintained that there is enough left to have a robust and meaningful program. In fact, she surmised that there will be places in which the state agencies will want to allow local knowledge to prevail. In conclusion, Representative Kerttula expressed hope that there is a way to work out the language.

[12:55:07 PM](#)

CHAIR JOHNSON remarked that all the language, save the sunset date could be deleted. He opined that the aforementioned might be acceptable to everyone.

CHAIR OLSON noted that the governor might not be happy with that.

[12:55:34 PM](#)

CHAIR OLSON moved that the committee adopt SCS CSHB 106(FIN).

[12:55:54 PM](#)

CHAIR JOHNSON then recessed to the call of the chair.

[1:08:04 PM](#)

CHAIR JOHNSON reconvened the meeting.

[1:08:12 PM](#)

CHAIR OLSON withdrew his motion to adopt SCS CSHB 106(FIN).

[1:08:20 PM](#)

CHAIR OLSON posed a scenario in which two scientific studies contradict each other, but one was determined to be invalid. In this case would the invalid study trump local knowledge, he asked.

COMMISSIONER HARTIG said that he would have to think about that further. The definitions are there to guide the agencies, which can request more information and study. Commissioner Hartig then offered that the first question would be whether both meet the definition of scientific evidence. If that's the case,

additional study may be required. Ultimately, it's left to the agency's discretion through a public process.

CHAIR OLSON surmised then that the answer is yes, the invalid study would trump local knowledge.

COMMISSIONER HARTIG replied yes, but noted that there are a number of steps prior to reaching that point, such as requiring more studies.

[1:10:21 PM](#)

CHAIR JOHNSON, continuing to refer to Chair Olson's scenario, inquired as to how local knowledge would marry into the scientific studies.

COMMISSIONER HARTIG explained that first the scientific evidence being offered would be reviewed in terms of whether it passes the definition and if it does, that scientific evidence would be used. Second, if local knowledge passes the definition, then it can be used. In a scenario in which there is a conflict between one piece of scientific knowledge and another piece of scientific knowledge and there's a conflict between scientific knowledge and local knowledge, there would be opportunities for additional input, studies. However, ultimately the agency will have to make a decision with regard to which piece of scientific evidence is more persuasive and determine whether that's in conflict with the local knowledge and if so, then the [scientific evidence] could trump that.

[1:12:43 PM](#)

SENATOR WIELECHOWSKI related his understanding that the language means that any scientific evidence, as defined by statute, that contradicts local knowledge makes it impossible for agencies to consider local knowledge. He highlighted the language of Section 7(b)(3), and reiterated his understanding that if there is science that contradicts local knowledge, then consideration of local knowledge is essentially removed and can't legally be considered.

COMMISSIONER HARTIG clarified that it's only when there is a direct and substantial conflict. In the hypothetical caribou migration situation, local knowledge would be used so long as it passes the definition test. However, if the local knowledge reaches a point where there is a conflict with the scientific

evidence, then the local knowledge isn't used on that particular issue.

[1:14:36 PM](#)

REPRESENTATIVE KERTTULA said she believes that's what everyone wants to have happen, but that's not what the statute says. She pointed to the "not contradicted by" in the definition of "local knowledge" in Section 20(16)(C).

[1:15:05 PM](#)

SENATOR KOOKESH told the committee that 10 years of subsistence battles with which he was involved are similar to this. He opined that [the legislature] wants to use local knowledge and have local input, but he doesn't believe this administration wants to use it. Senator Kookesh said, "For the record ... the administration does not want to use local knowledge and will find every way not to use it." He opined that the aforementioned is unfortunate because those in rural Alaska want to find a way to have local knowledge be counted as a factor and on equal footing. However, this legislation doesn't allow it and the administration doesn't want it to happen, he said.

[1:15:54 PM](#)

CHAIR JOHNSON interjected his belief that all Alaskans, not just rural Alaskans, want local input in resource development. He indicated his opposition to characterizing this as an urban versus rural conflict.

SENATOR KOOKESH stated that this issue revolves around coastal zones in Alaska, which are mostly populated by Native Alaskans.

CHAIR JOHNSON noted that he lives in a coastal zone in which half the population of the state resides.

[1:16:36 PM](#)

CHAIR JOHNSON recessed to the call of the chair at 1:16 p.m.

[4:52:05 PM](#)

CHAIR JOHNSON reconvened the meeting at 4:52 p.m.

[4:52:17 PM](#)

CHAIR OLSON moved to adopt SCS CSHB 106(FIN) and insert the language of CSHB 106(FIN) on page 14, lines 10-14 and lines 16-29 and add the following paragraph in Section 6 as follows:

(5) in administering AS 46.40, address conflicts between local knowledge and scientific evidence by determining the relative strengths of the scientific evidence and the evidence supporting the local knowledge, and render a written decision; in this paragraph "local knowledge" and "scientific evidence" have the meanings given in AS 46.40.210.

There being no objection, it was so ordered.

[4:54:00 PM](#)

CHAIR JOHNSON explained that although the Conference Committee on HB 106 doesn't have limited powers of free conference at this time, the committee intends to act in anticipation of receiving limited powers of free conference.

[4:54:38 PM](#)

CHAIR OLSON moved to adopt the CCS HB 106. There being no objection, it was so ordered.

[4:55:16 PM](#)

CHAIR JOHNSON announced a brief recess.

[4:56:00 PM](#)

CHAIR OLSON made a motion to grant Legislative Legal and Research Services the authority to make all necessary technical and conforming changes to reflect the committee's work today. There being no objection, it was so ordered.

[4:56:28 PM](#)

ADJOURNMENT

There being no further business before the committee, the Conference Committee on HB 106 meeting was adjourned at 4:56 p.m.