

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

January 28, 2013

1:02 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Mike Hawker
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Geran Tarr
Representative Chris Tuck

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Andrew Josephson

COMMITTEE CALENDAR

HOUSE BILL NO. 36

"An Act exempting certain federal agencies or military services firing or using munitions on active ranges from prior authorization requirements of the Department of Environmental Conservation."

- MOVED HB 36 OUT OF COMMITTEE

HOUSE BILL NO. 80

"An Act relating to the regulation of wastewater discharge from commercial passenger vessels in state waters; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 36

SHORT TITLE: EXEMPT DISCHARGES FROM USE OF MUNITIONS

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

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) RES
01/28/13 (H) RES AT 1:00 PM BARNES 124

BILL: HB 80

SHORT TITLE: CRUISE SHIP WASTEWATER DISCHARGE PERMITS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/13 (H) READ THE FIRST TIME - REFERRALS
01/18/13 (H) RES
01/25/13 (H) RES AT 1:00 PM BARNES 124
01/25/13 (H) Heard & Held
01/25/13 (H) MINUTE(RES)
01/28/13 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the prime sponsor, introduced HB 36.

MAJOR GENERAL THOMAS KATKUS, Adjutant General/Commissioner
Department of Military & Veterans' Affairs
Fort Richardson, Alaska

POSITION STATEMENT: Testified in support of HB 36.

KEVIN WARD, Regional Counsel
Regional Environmental and Energy Office - Western
Assistant Secretary of the Army for Installations, Energy &
Environment
U.S. Army
Denver, Colorado

POSITION STATEMENT: Testified in support of HB 36.

SETH BEAUSANG, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 36.

EMILY NAUMAN, Attorney
Legislative Legal Services Division
Legislative Affairs Agency

Juneau, Alaska

POSITION STATEMENT: Answered questions as the drafter of HB 36.

MICHELLE BONNET HALE, Director

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 36.

LIEUTENANT COLONEL JUSTIN TRUMBO, Regional Counsel

Regional Environmental Coordinator

Western Region

U.S. Air Force

Department of Defense (DoD)

San Francisco, California

POSITION STATEMENT: Related DoD's strong support for HB 36.

KARLA HART, Lobbyist

Alaska Community Action on Toxics

Juneau, Alaska

POSITION STATEMENT: Expressed concern that HB 36 would take away the public's right to know what is dispersed into waters.

JIM POWELL

Juneau, Alaska

POSITION STATEMENT: Provided information relevant to HB 36.

LYNN TOMICH KENT, Deputy Commissioner

Office of the Commissioner

Department of Environmental Conservation (DEC)

Juneau, Alaska

POSITION STATEMENT: Answered questions related to HB 80.

MICHELLE BONNET HALE, Director

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 80.

MICHELLE RIDGWAY

Auke Bay, Alaska

POSITION STATEMENT: Answered questions related to HB 80.

ACTION NARRATIVE

[1:02:36 PM](#)

CO-CHAIR DAN SADDLER called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Tuck, Johnson, Hawker, Seaton, Olson, P. Wilson, and Saddler were present at the call to order. Representatives Tarr and Feige arrived as the meeting was in progress. Representative Josephson was also present.

HB 36-EXEMPT DISCHARGES FROM USE OF MUNITIONS

[1:03:04 PM](#)

CO-CHAIR SADDLER announced that the first order of business would be HOUSE BILL NO. 36, "An Act exempting certain federal agencies or military services firing or using munitions on active ranges from prior authorization requirements of the Department of Environmental Conservation."

[1:03:42 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, speaking as the prime sponsor of HB 36, informed the committee that in 2008 when the Alaska Clean Water Act was amended to its current form, a problem was created with the state's long-standing military munitions exemption. The legislation before the committee proposes to amend AS 46.03.100(e)(7) such that it can't be misinterpreted to restrict military exercises on ranges other than in situations in which the federal Clean Water Act applies. She pointed out that HB 36 reduces the chance of litigation in trying to interpret waters of the U.S. and said Alaska is the only state with this unclear interpretation of the Clean Water Act. Without the proposed amendment in HB 36 there is the possibility that military ranges would need to curtail operations due to misinterpretation of Alaska law, even if the ranges are in compliance with federal law. She highlighted that the proposed amendment in HB 36 was vetted by the Environmental Protection Agency, the Department of Environmental Conservation, the Department of Defense, and the Alaska Department of Military & Veterans' Affairs. This legislation, she related, maintains primacy, protects the environment, and allows military exercises to continue without potential litigation.

[1:05:39 PM](#)

MAJOR GENERAL THOMAS KATKUS, Adjutant General/Commissioner, Department of Military & Veterans' Affairs, highlighted the strategic importance of Alaska to the military as a military and

training platform. No other places have ranges such as the Joint Pacific Alaska Range Complex (JPARC). He acknowledged that in this time of constrained resources, all of the states and all of the locations in which the U.S. has forces are seeking areas to be relevant and to train vigorously. Although Alaska has great areas to offer, it comes at an expense. Therefore, Alaska needs to ensure that it's balanced, not more or less restrictive than other areas, and remain fair and in line with all competitors. Moving HB 36 forward accomplishes just that, he opined.

[1:07:00 PM](#)

REPRESENTATIVE SEATON, referring to the language on page 2, lines 18-19, asked if HB 36 would apply to all rifle ranges not just military active ranges.

MAJOR GENERAL KATKUS deferred to others on line.

[1:07:51 PM](#)

REPRESENTATIVE TUCK inquired as to whether the term "active ranges" means a range where there is firing as well as training. He further asked whether any types of maneuvers take place on "active ranges."

MAJOR GENERAL KATKUS clarified that "active ranges" encompass the full suite of military training. For more specifics, he deferred to others on line.

[1:08:19 PM](#)

CO-CHAIR SADDLER inquired as to the number of active ranges in Alaska and their size.

MAJOR GENERAL KATKUS responded that although most of the active ranges are located on the federal facilities, there are different types of ranges, including space and cyber. Therefore, the ranges could be broadly defined.

CO-CHAIR SADDLER then inquired as to what risks the active duty component would encounter if HB 36 is not enacted.

MAJOR GENERAL KATKUS reiterated that in this resource constrained environment everyone is working very hard to be the best location for the military. In a worst case scenario, the possible interpretation that Alaska's law restricts the use of

Alaska military ranges in a manner not required by federal law could be the tipping point and of critical importance.

1:09:44 PM

REPRESENTATIVE P. WILSON asked whether it is a moneymaker when other entities train in Alaska.

MAJOR GENERAL KATKUS answered that the National Guard sees no benefit, but there is a huge impact to the local area. For instance, Red Flag in the Eielson Air Force Base (Eielson) area has a huge impact in the local community. The presence of military has a significant and positive impact on the local community.

REPRESENTATIVE P. WILSON surmised then that [the possible interpretation] has a large impact on the economy of Alaska as a whole.

MAJOR GENERAL KATKUS agreed it could have a very big impact if the interpretation that Alaska's military ranges were restricted in a manner not required by federal law was the sole decision point regarding whether to place, train, or station resources in Alaska.

1:11:21 PM

KEVIN WARD, Regional Counsel, Regional Environmental and Energy Office - Western, Assistant Secretary of the Army for Installations, Energy & Environment, U.S. Army, speaking on behalf of the Department of Defense (DoD) Regional Environmental Coordinator's Office and military services in Alaska, noted that the committee packet should include a letter of support for HB 36 from Clare Mendelsohn, DoD Regional Environmental Coordinator, Region 10. He said the bill clarifies language in the Alaska Clean Water Act so that it will only apply to military ranges if required by the federal Water Pollution Control Act. In other words, Alaska Department of Environmental Conservation (DEC) remains the permitting authority, Alaska and Alaska state government remains the agency making permitting and enforcement decisions. For decisions pertaining to military ranges, Alaska will look to the federal Water Pollution Control Act.

1:12:35 PM

MR. WARD explained that the committee is being asked to pass HB 36 because until 2008, the Environmental Protection Agency (EPA) held primacy and was the enforcing and permitting authority in Alaska for the Clean Water Act. When Alaska sought that primacy, the EPA told DEC it must amend an existing exception for military ranges, which was changed in 2008 to read: "there would be exception unless there was a discharge to waters of the United States". The aforementioned language has been the subject of much litigation, including at least three U.S. Supreme Court decisions over the last several years and EPA and U.S. Army Corps of Engineers regulations and guidance. Furthermore, the definition of "waters of the United States" is some 30 lines long. Despite the aforementioned, it remains unclear as to what that term means and there appears to be another case that may go before the U.S. Supreme Court and the EPA and U.S. Army Corps of Engineers are working on guidance with regard to the earlier mentioned phrase. Therefore, Mr. Ward supports passage of HB 36 that replaces the language "it results in a discharge into waters of the United States." with "otherwise regulated under 33 U.S.C. 1251-1376 (Federal Water Pollution Control Act)" so that there is a body of law to utilize when determinations are necessary. He noted that DEC remains in the decision-making process.

[1:14:26 PM](#)

REPRESENTATIVE SEATON related his understanding that under HB 36 the Kachemak Bay gun club, an active range, from which a lot of lead ends up in a wetlands area would be exempt even though it is not an active military range.

MR. WARD understood the basis for Representative Seaton's reading of the language, but pointed out that the language was in the existing statute prior to 2008. He said he did not know if that is how DEC applied the language until 2008 nor how DEC would read the language.

REPRESENTATIVE SEATON clarified that he does not object to the legislation, but rather to an unintended consequence of allowing the potential for contaminants to enter water for which there is no intention to have this military exemption.

[1:17:17 PM](#)

SETH BEAUSANG, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), pointed out that the terms "training activities" and "active

ranges" are not defined in statute, and thus he was not sure there is a clear answer. However, in the past DEC has interpreted the language broadly so that AS 46.03.100(e)(7) applies to both military and non-military ranges.

REPRESENTATIVE SEATON opined that it is not the intent to allow the discharge in the waters of the United States for non-military ranges. Therefore, he expressed the need to review that.

[1:18:40 PM](#)

CO-CHAIR FEIGE asked whether ranges that [do not have military activities] would be regulated under the EPA regulations.

REPRESENTATIVE T. WILSON clarified that any range that has to be permitted will still have to be permitted because the Clean Water Act must be followed. The change proposed in HB 36 speaks only to military ranges, the language to which Representative Seaton is referring was already in statute and [HB 36] will not change anything DEC was doing prior to this legislation. The change proposed in HB 36 merely clarifies one sentence as all the other language is already in place.

[1:20:27 PM](#)

REPRESENTATIVE TARR recalled that Mr. Ward testified that the language is being interpreted as more inclusive. By removing the language ", including active ranges" would be definitive in terms of what ranges are being addressed.

REPRESENTATIVE T. WILSON offered to ask that, but noted that [HB 36] was vetted through four agencies and word-smithed such that there would not be any consequences. She suggested that deleting the language suggested by Representative Tarr would likely impact other ranges. She opined that DEC will take care of the permitting and the bill as written is what the department needs in its toolbox.

[1:22:30 PM](#)

REPRESENTATIVE SEATON, referring to the language on page 2, lines 17-18, asked whether this language would include ranges used for civilian training or other local activities. He further asked whether the language covers ranges other than military ranges.

EMILY NAUMAN, Attorney, Legislative Legal Services Division, Legislative Affairs Agency, said she did not know, but offered to research the matter and provide the committee with an answer.

[1:23:30 PM](#)

CO-CHAIR SADDLER asked whether there are permitted ranges in Alaska that do discharge in the water.

MR. BEAUSANG related his understanding that in the past DEC has not issued permits for munitions ranges.

REPRESENTATIVE SEATON informed the committee that he was involved with the Kachemak Bay gun range, and there were considerations, permits required, and restrictions on an area because it would have put lead shot into water discharges, which is waters of the U.S. or the state. He reiterated the need to avoid any unintended consequences, especially since there have been expensive mitigation efforts to clean up lead shot that went into wetlands.

REPRESENTATIVE P. WILSON related that this same thing has come up in Sitka.

MICHELLE BONNET HALE, Director, Division of Water, Department of Environmental Conservation, understood the question to be whether there are any ranges that are permitted now. She clarified that the permit being discussed is considered a wastewater discharge permit and would be issued under the Alaska Pollutant Discharge Elimination System program. She said that as far as she knows there are no [ranges that are permitted]. Prior to October 2012 the EPA retained authority for that discharge, which was one of the final phases. The DEC has not issued any permits in that interim time and she related her understanding that none were in place when the EPA had authority for the program. She said that to consider munitions a wastewater discharge is an odd category.

[1:26:36 PM](#)

CO-CHAIR SADDLER inquired as to the risks to the state should HB 36 pass as written.

MS. BONNET HALE responded that DEC has reviewed the legislation and there is no risk to primacy, and it has been cleared with the EPA. The legislation returns [the statute] to the original intent, such that if the Clean Water Act is changed so that

permits are not required for munitions, the state would be consistent with the Clean Water Act. Therefore, there is no risk to the program.

[1:27:12 PM](#)

REPRESENTATIVE TARR surmised then that because there has been a limited time since the state took over and completed the fourth phase of primacy from the federal government, there would not have been an opportunity for DEC to have issued any permits, and thus [ranges] would have been operating under any existing EPA permits, were there any. She requested verification of the aforementioned.

MS. BONNET HALE agreed to verify that, but reiterated her understanding that the EPA did not issue any permits. In further response to Representative Tarr, Ms. Bonnet Hale said she would specifically review the Rabbit Creek [range].

[1:28:02 PM](#)

REPRESENTATIVE JOHNSON pointed out that the statute refers to ranges operated by the DoD or a U.S. military agency. The Rabbit Creek range is operated by the Alaska Department of Fish & Game (ADF&G) and the military does not operate private ranges such as the one in Homer. He requested confirmation that the military does not manage [non-military] ranges.

MAJOR GENERAL KATKUS shook his head no.

[1:28:51 PM](#)

CO-CHAIR SADDLER highlighted that the title of HB 36 specifically refers to "An Act exempting certain federal agencies or military services" He then asked whether the title provides any comfort that HB 36 specifically addresses military ranges and not other private ranges.

MS. NAUMAN directed attention to the language on page 2, lines 17-18, and stated that the language "including active ranges operated by the United States Department of Defense ..." does not foreclose other types of active ranges. The language merely provides examples of some of the ranges that would apply to this proposed law.

CO-CHAIR SADDLER remarked then that the title does not specifically limit the legislation to [military ranges].

[1:29:57 PM](#)

REPRESENTATIVE SEATON surmised then that the language "including active ranges operated by" actually means that the legislation applies to both those operated by DOD as well as others not operated by DoD. He related his understanding that the intent of the legislation is to address active ranges operated by DoD and he has no opposition to that, but the existing language creates unintended consequences.

[1:31:07 PM](#)

LIEUTENANT COLONEL JUSTIN TRUMBO, Regional Counsel, Regional Environmental Coordinator, Western Region, U.S. Air Force, Department of Defense (DoD), began by relating DoD's strong support for HB 36. Regarding the application to private ranges, he clarified that HB 36 does not create any new exemptions. He then directed attention to page 2, lines 19-20, of HB 36 and stated that the language "unless otherwise regulated" is important. The legislation, he specified, does not do anything that federal law does not do. The language does not create an exemption per se, rather it would conform Alaska law to federal law. Therefore, he did not believe changing the language at this point would be advisable. With regard to the impact military ranges have on the state's economy, he highlighted that the military is Alaska's largest employer and has an annual impact of nearly \$5 billion a year. Therefore, HB 36 will help provide consistency and predictability with Alaska's water law and will provide protection to Alaska in accordance with federal law. The aforementioned is why he urges the committee to move forward with HB 36. In closing, he thanked prime sponsor Representative T. Wilson and co-sponsor Representative Johnson for their work.

The committee took an at-ease from 1:33 p.m. to 1:37 p.m.

[1:37:37 PM](#)

REPRESENTATIVE HAWKER reviewed AS 46.03.100(a)-(e) and related that subsection (a) specifies there must be prior authorization of the department for waste management, disposal, and discharge. Subsections (b)-(d) address how to obtain that prior authorization. Subsection (e) is a specific carve-out for certain activities. He said he didn't see anything that changes the regulatory authority the state has vested over shooting ranges that exist for recreational purposes, which were the

types of ranges cited before the committee. He requested confirmation that HB 36 has no effect, increasing or decreasing, Alaska's regulatory structure or intent to regulate shooting facilities maintained for the recreational use of the public.

MR. BEAUSANG concurred with Representative Hawker and confirmed that HB 36 would not change any of the existing state permitting requirements as it applies to munitions. The only change is that in the future any federal law changes with respect to what permits, HB 36 would ensure that both federal and state permitting requirements are the same.

REPRESENTATIVE HAWKER remarked that he is very comfortable with HB 36 as it is currently written.

[1:40:46 PM](#)

REPRESENTATIVE SEATON then withdrew his objection to the language.

[1:41:39 PM](#)

REPRESENTATIVE TUCK asked whether the drafter concurred with Mr. Beausang's interpretation.

MS. NAUMAN stated her agreement with the previous speaker that HB 36 makes no change to what the state will be allowed to regulate.

[1:42:23 PM](#)

CO-CHAIR SADDLER opened public testimony.

KARLA HART, Lobbyist, Alaska Community Action on Toxics, expressed concern that HB 36 would take away the public's right to know about what is dispersed into waters. As was mentioned, Alaska is strategically located in terms of exercises and those exercises are at a greater scope, scale, and volume which create the potential of placing more hazards into the environment. She then informed the committee that DoD has an initiative to get its activities exempted from the federal environmental protection laws, including the Marine Mammal Protection Act, the Endangered Species Act, and elements of the Clean Water Act. If DoD is successful in exempting themselves from the federal law, then DoD will be in compliance with the federal law when exempt from it. Therefore, Alaska is giving up its right to protect its waters and to understand what is being placed in the waters

of the state. Given what can be found in munitions, it is worthwhile for Alaska to have knowledge of it.

[1:44:40 PM](#)

JIM POWELL began by informing the committee that he is a former 25-year employee of DEC during which he performed water quality standards. With regard to an earlier question about state permitting on rifle ranges, Mr. Powell said that there was permitting through a 401 certification, which is a dredge and fill permit, under the Clean Water Act. Most of the ranges in the state are located on wetlands, and thus a wetlands permit would be necessary. In fact, [DEC] did a permit for the Hank Harmon Range, which provided a reasonable assurance that state and federal water standards were met through the permit. In conclusion, Mr. Powell stated that he has no position on HB 36.

[1:46:00 PM](#)

REPRESENTATIVE TUCK inquired as to the size of the largest range in the state.

MAJOR GENERAL KATKUS responded he did not know the number of acres, but the JPARC is a significant sized range that is larger than the state of Massachusetts. However, he clarified that that does not mean every square inch is impacted by ordines. Although the ranges are very large in Alaska, this legislation changes nothing in how those ranges are managed. The legislation provides a clarification that allows Alaska to be on a level playing field with every other state.

[1:47:26 PM](#)

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

REPRESENTATIVE HAWKER observed that a zero fiscal note is associated with HB 36.

REPRESENTATIVE JOHNSON related that during his meeting with the minister of Alberta he learned that Alberta has an agreement with the University of Nevada to provide [unmanned air vehicle] (UAV) ranges. Although that opportunity is no longer, he expressed the need to ensure Alaska does not miss further opportunities. To that end, he stated his support of HB 36.

[1:48:43 PM](#)

CO-CHAIR FEIGE moved to report HB 36 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 36 was reported from the House Resources Standing Committee.

The committee took an at-ease from 1:49 p.m. to 1:53 p.m.

HB 80-CRUISE SHIP WASTEWATER DISCHARGE PERMITS

[1:53:12 PM](#)

CO-CHAIR SADDLER announced that the next order of business would be HOUSE BILL NO. 80, "An Act relating to the regulation of wastewater discharge from commercial passenger vessels in state waters; and providing for an effective date."

CO-CHAIR SADDLER re-opened public testimony so members could ask questions of previous witnesses.

[1:53:32 PM](#)

REPRESENTATIVE P. WILSON requested verification of a statement that she heard that only one cruise ship company is not in compliance [with Alaska's wastewater discharge requirements].

LYNN TOMICH KENT, Deputy Commissioner, Office of the Commissioner, Department of Environmental Conservation (DEC), replied she did not recall any statements that only one cruise ship is not complying. Of the approximately 28 vessels in Alaska every year, about 16 ask for permit coverage. Not all of those asking for permit coverage actually discharge in the state, but they do all of their monitoring and submit all of their monitoring. The requirements that they have to comply with are the standards in the permit because right now they do not have to meet the point of discharge for those parameters that they cannot quite meet yet.

[1:55:01 PM](#)

REPRESENTATIVE SEATON understood that one ship switched from bronze to titanium impellered pumps because bronze sheds copper. He inquired whether passage of HB 80 would allow ships to return to bronze impellered pumps or would the ships have to stay with the [current] standards that have lowered their copper discharge into the water. He further asked whether that would be on an individual vessel basis or industry-wide basis.

MS. KENT responded DEC does not regulate the kinds of pumps, propellers, or other equipment used onboard a vessel. Rather, DEC permits look at the discharge in terms of water quality that is coming off a vessel. In the last permit, DEC had a multitude of different discharge limits in an effort to push those vessels that can do better to do better.

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REPRESENTATIVE SEATON pointed out that the vessels have been pushed towards having less discharge at end of pipe. He asked whether the ships could increase their amount of copper discharge by going back to the cheaper, older pumps in replacement situations if mixing zones are now allowed and there is no longer measurement at the end of pipe. He further asked whether the ships would be required to maintain lower amount of discharge at end of pipe even though a higher discharge would meet their mixing zone at the end of the ship.

MS. KENT answered it would not be DEC's intent to allow ships to lower the quality of the water being discharged just because they are allowed to have a mixing zone. The mixing zone rules require a mixing zone that is as small as practicable. A lot of conditions must be met to get a mixing zone. The only flexibility that DEC might need would be for vessels currently discharging only graywater and that have very stringent permit limits. If in the future those vessels want to also discharge blackwater, DEC would have to come up with effluent limits for that, too, that may or may not equal, or be more stringent than, the previous permit. In general, DEC would not want to see a permit get more lax.

1:58:50 PM

REPRESENTATIVE SEATON understood DEC would not want to see that, but asked how the department would regulate so that this does not happen. He said his understanding is that DEC would not establish where the edge of the mixing zone is or take any measurements at the edge. He inquired how DEC would enforce the intent to not allow the water discharges to creep back up to previous levels.

MS. KENT replied that when going through the permitting process DEC looks at the previous data and uses that data to evaluate and set the permit limits for the next permit. In general, if a permittee is meeting permit limits and doing even better than

the permit limits, DEC usually ratchets down and becomes even more stringent. In very few instances would the effluent limits go up on a permit from one issuance of the permit to the next. This is because DEC has a lot of regulations that look at the technology the permittee must be using and the permittee must meet the highest standards for treatment. She said the requirements for a mixing zone are very stringent and therefore she did not see a relaxation of permits in any big way.

[2:00:56 PM](#)

REPRESENTATIVE TUCK asked how long it currently takes to issue permits under the 2006 Initiative.

MS. KENT responded she would have to look at DEC's records to see exactly long it takes from the start of writing a permit to actually issuing a permit; however, it is an extensive process that takes many months. The department must look at all of the data from the discharges that were discharged under the previous permit, do calculations on that, revise the effluent limits, conduct a public notice and comment period on the permit, and write a fact sheet that goes with the permit that describes how DEC developed the limits for the permit.

[2:01:47 PM](#)

REPRESENTATIVE TUCK inquired how DEC gains that previous data and what is looked at when that is judged.

MS. KENT answered the current permit requires the subset of vessels visiting Alaska and discharging in Alaska to take their first monitoring samples within 10 days of their first visit to the state each cruise ship season. A third party sampler is used by DEC to collect the samples and conduct the analysis. Thereafter the ships have monitoring requirements - some are daily requirements, most are twice per month - and those are reported to DEC. The department therefore has quite a bit of data by the end of the season.

[2:02:50 PM](#)

REPRESENTATIVE TUCK asked whether DEC has seen from the data any violations since 2006.

MS. KENT replied there has been a few exceedances of the permit limits but she did not know how many.

REPRESENTATIVE TUCK asked what the consequences are for violations.

MS. KENT responded DEC uses the same approach that is used for enforcement across the department. First, the reasons for the violation are looked at to see whether there were any extenuating circumstances. The department sometimes provides compliance assistance, but for anything that becomes repeated or that is a gross violation DEC issues notices of violation (NOV).

[2:03:50 PM](#)

REPRESENTATIVE TARR inquired how DEC establishes and enforces the boundaries of a mixing zone. She further asked which reporting is done by the third party and which is self-reported by the cruise ship.

MS. KENT deferred to the director of the Division of Water.

MICHELLE BONNET HALE, Director, Division of Water, Department of Environmental Conservation (DEC), answered that establishment and monitoring of the mixing zone boundary varies from permit to permit. Typically, mixing zones are established using modeling, which is quite complex and includes factors such as water density, the kind of fresh water present, and the tidal flow. The modeling itself is used to create the boundary of the mixing zone and DEC sizes its mixing zones to be as small as practicable. It depends upon the permit, when it is issued or re-issued, as to whether DEC will have monitoring at the edge of the mixing zone or not; DEC is not required to do that, but it is something DEC can do to actually determine if the mixing zone is working as modeled. In regard to reporting, she said she has been away from the specifics of the reporting, but offered her belief that the sampling and reporting on most cruise ships is currently being done through a third party. She pointed out, however, that in general - nationwide as well as in Alaska - self-reporting is very common for permittees.

[2:06:44 PM](#)

CO-CHAIR SADDLER requested Ms. Hale to speak to the qualifications of a third party sampler.

MS. BONNET HALE replied she did not have the qualifications at the top of her head.

MS. KENT offered her belief that the department has established the qualifications of the person conducting the sampling in regulation, but that she and Ms. Hale did not have a copy of the regulation with them.

[2:07:23 PM](#)

REPRESENTATIVE SEATON inquired whether each ship would have a different size mixing zone based on the pollutant load of that particular ship and would that size be based on the samples taken initially in the season.

MS. BONNET HALE responded that DEC has handled mixing zones differently in different types of general permits. In some general permits, DEC does the modeling for the mixing zone and sets the characteristics that must be met in order for a discharger to qualify for the permit; for example, the discharge could only be up to a certain level. In other cases, DEC has done modeling on a case-by-case basis so each authorization has the mixing zone modeled for that specific authorization. Since the department has not been doing mixing zones, per se, for the cruise ship discharges, it would have to figure out what is the best way to do it.

[2:08:46 PM](#)

REPRESENTATIVE SEATON surmised it is currently unknown whether it would be one generalized mixing zone regardless of the contaminant load from the ships or individualized mixing zones.

MS. BONNET HALE answered DEC would not model and size a mixing zone regardless of the pollutant load. The pollutants going into the effluent are very important in the modeling, so there might be a set of mixing zones based on ranges. While it is hard to speculate at this time, DEC would not have a one-size-fits-all-no-matter-what-is-in-the-effluent mixing zone.

[2:09:52 PM](#)

REPRESENTATIVE TUCK inquired how the modeling is done in those cases where certain qualifications have to be met.

MS. BONNET HALE replied that DEC has permitting staff who specialize in modeling and numerous staff who are trained in modeling. Oftentimes, one staff will do the modeling and then the experts will check that. The department also frequently works with the permittees where the permit applicants do some

modeling themselves and then DEC's expert staff members check those models.

[2:10:31 PM](#)

REPRESENTATIVE TUCK asked what is included in the modeling.

MS. BONNET HALE responded that some of the factors looked at in the modeling include: flow of the effluent, depth of the receiving water, stratification of the receiving water, the different buoyancies, and the different levels of marine versus fresh water; and for a stationary source DEC takes into account tidal reversal.

[2:11:13 PM](#)

REPRESENTATIVE TUCK inquired whether the modeling takes into account the propulsion method used, such as whether a ship is using azipods, and how much water is agitated by the propulsion method and the size of the wake.

MS. BONNET HALE answered it is hard to get very specific about exactly what goes into the model, but if DEC has information that there are different methods of propulsion for a ship, the department's modelers will definitely take that into account. She said DEC's modeling software is the standard software used throughout the country, and it takes many factors into account. While she did not know whether the software would take into account, for example, the method of propulsion, she said it would take into account the turbulence of the water.

[2:13:23 PM](#)

REPRESENTATIVE SEATON noted that Ms. Ridgway was a member of the Cruise Ship Wastewater Science Advisory Panel ("Science Advisory Panel") and asked whether Ms. Ridgway's dispute with the panel's findings had been submitted to the panel in writing.

MICHELLE RIDGWAY first clarified that she was availing herself for questions on her own behalf and that she did not want to testify on behalf of the panel nor about the process. She said DEC was present at all the meetings and it would be more appropriate for DEC to explain the panel process. Regarding Representative Johnson's 1/25/13 question about whether she had communicated with her fellow panelists about what items she felt should be in the report, she said she had sent e-mails to panel members about the areas for which she strongly felt specific

information needed to be included, such as geographic information system (GIS) databases on where ships go throughout the state, data on what the constituents were, the effluent being discharged by these ships throughout the state, the volumes, the proximity to important fish rearing grounds, larval aggregation areas, and other things of this nature. She sent 183 e-mails to the contracted manager of the panel; 93 e-mails to DEC staff; and 46 e-mails to the technical staff requesting that specific data, data tables, and queries be made and incorporated into the document as well as expressing her concern about some things that were included in the document. In total, she sent about 571 e-mails.

[2:16:56 PM](#)

REPRESENTATIVE P. WILSON offered her understanding that Representative Johnson was asking whether Ms. Ridgway had submitted written concern at the end [of the report writing process].

MS. RIDGWAY replied yes and that she would provide it to the committee.

REPRESENTATIVE JOHNSON confirmed he would like Ms. Ridgway to provide her written comments to the committee.

CO-CHAIR SADDLER clarified that what is specifically being asked for is Ms. Ridgway's written dissent offered for the panel's report, not the e-mails.

[2:18:09 PM](#)

REPRESENTATIVE TUCK, noting that concern had been expressed about marine mammals and fish, inquired whether the Alaska Department of Fish & Game (AGF&G) would be providing testimony and whether ADF&G had been invited to do so.

CO-CHAIR SADDLER answered no to both questions.

REPRESENTATIVE JOHNSON said this is the administration's bill, so it is the administration that provides the testimony.

CO-CHAIR SADDLER closed public testimony and opened discussion to the consideration of amendments.

[2:19:19 PM](#)

REPRESENTATIVE JOHNSON pulled Amendment 1, labeled 28-GH1987\A.4, Nauman, 1/26/13, with the understanding that he may offer it later depending on the outcome of discussion. He said he had conversations and to enact the kind of standards that would have to be enacted would probably be very detrimental to the seafood industry and would make a salmon dinner considerably more expensive than it is now.

[2:20:13 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 2, labeled 28-GH1987\A.3, Nauman, 1/26/13, which read:

Page 2, line 25, through page 3, line 5:

Delete all material and insert:

* **Sec. 3.** AS 46.03.462(e) is repealed and reenacted to read:

"(e) When issuing, reissuing, renewing, or modifying a permit required under (a)(1) of this section, the department may only include the authorization of a mixing zone for a commercial passenger vessel if

(1) that vessel employs an advanced wastewater treatment system that falls within the class of systems identified by the department under (k) of this section or employs other means of pollution prevention, control, and treatment that the department finds can achieve a quality of effluent that is comparable to that of one or more vessels employing an advanced wastewater treatment system; and

(2) the permit prohibits the discharge of untreated sewage, treated sewage, graywater, or other wastewater in an area established under AS 16.20 as a state game refuge, game sanctuary, or critical habitat area."

Page 3, following line 6:

Insert a new subsection to read:

"(i) Under (e)(1) of this section, if a commercial passenger vessel employs an advanced wastewater treatment system that satisfies the requirements of (e)(1) of this section, the department shall find the commercial passenger vessel satisfies all state technology-based treatment requirements for authorization of a mixing zone."

Reletter the following subsections accordingly.

Page 3, line 15:

Delete "(e)"

Insert "(e)(1)"

Objection to the amendment was voiced by Representative Johnson and Co-Chair Feige.

2:20:40 PM

REPRESENTATIVE SEATON explained he requested Legislative Legal and Research Services to draft an amendment to HB 80 to prohibit cruise ship wastewater discharges in ADF&G special areas, critical habitats, state game refuges, and state game sanctuaries. The amendment is a little longer than it would otherwise would have been because there was some difficulty with conforming language due to HB 80 being a governor's bill drawn up by the Office of the Attorney General rather than Legislative Legal and Research Services. He said Alaska Statutes 16.20.520-530 allow the legislature to establish critical habitat areas to protect and preserve habitat areas especially critical to the perpetuation of fish and wildlife and to restrict all other uses not compatible with the primary purpose. Amendment 2 would take the public's angst off the table about giving DEC the ability to discharge using a mixing zone in waters that would not be otherwise compatible with the Alaska standards. He added that cruise ship industry representatives have told him that they do not intend to discharge into state critical habitat areas.

2:25:17 PM

CO-CHAIR SADDLER understood that Amendment 2 would establish a point-of-discharge water quality standard for large cruise ships in the state's critical habitat areas.

REPRESENTATIVE SEATON replied there would be nothing that prevents someone from discharging water that meets the water quality standards in any waters of the state of Alaska. Amendment 2 would disallow DEC from authorizing a mixing zone for water that is above water quality standards within the six critical habitat areas that include marine waters. In further response, he clarified that "above water quality standards" means prevents water that is dirtier than the existing state standards that exist without a mixing zone. He said these areas established by state statute should be taken off the table.

2:27:11 PM

REPRESENTATIVE JOHNSON asked whether any municipal wastewater facilities are disposing of waste in a mixing zone in any of the six critical habitat areas.

REPRESENTATIVE SEATON responded he did not believe there was in all of them, but the Kachemak Bay Critical Habitat Area goes from Anchor Point over to Seldovia. No municipal discharge goes into Kachemak Bay itself, but outside of Kachemak Bay it is about a three-mile distance between the end of the spit and where the critical habitat line goes across and that is within the discharge zone of the City of Homer and it is a fixed mixing zone.

[2:28:13 PM](#)

REPRESENTATIVE JOHNSON asked whether the discharge pipe and mixing zone of Homer are not in the critical habitat area, 1600 feet offshore.

REPRESENTATIVE SEATON understood that it is not in Kachemak Bay, but outside, whereas cruise ships generally come into Kachemak Bay. While there could be permits in Kachemak Bay, he was unaware of any for the municipality of Homer.

REPRESENTATIVE JOHNSON requested verification of that.

MS. BONNET HALE understood that, based upon DEC's records, the City of Homer discharges within the Kachemak Bay State Critical Habitat Area, as do a couple of seafood processors and possibly Seldovia.

[2:29:46 PM](#)

REPRESENTATIVE JOHNSON, in the interest of clean water, inquired whether the maker of Amendment 2 would be willing to accept a friendly amendment that would bring into Amendment 2 the municipal waste systems' discharge within the critical habitat area.

REPRESENTATIVE SEATON answered that including municipalities would expand the bill greatly. He maintained that a fixed-point mixing zone that can be measured and sampled at the edge and a large cruise ship vessel that has a mixing zone edge that cannot be defined or measured are quite different things and should not be combined.

2:30:54 PM

REPRESENTATIVE P. WILSON asked how many other critical habitat areas and wildlife sanctuaries have entities discharging into them. She further asked how Amendment 2 would affect DEC.

MS. BONNET HALE replied she did not know off the top of her head how many other facilities discharge into critical habitat areas, but she could find out. In general, a lot of communities all over the state have discharge.

2:31:56 PM

REPRESENTATIVE P. WILSON asked where the governor stands on Amendment 2.

MS. KENT responded DEC believes Amendment 2 unnecessary because the department already has authority in the statutes to put special conditions on any discharger that either reduces the amount that the discharger can discharge, specifies the location of discharge, or prohibits locations for discharge, which DEC does in many of its permits. Regarding how Amendment 2 might affect the department, she said permitting by statute takes away some of the flexibility that DEC might need for specific dischargers in specific locations; DEC feels it has plenty of authority to protect water quality in those areas while maintaining some flexibility. Even the small vessels that do not currently have to have a permit are prohibited by DEC from discharging in the same areas that the bill would want them to be prohibited from discharging in, and DEC has also put special provisions where they cannot discharge within 100 meters of an anadromous fish stream. So, DEC has a lot of control over protecting special areas in the state under the existing permitting regime. An amendment like this would undo some of the other things the administration is trying to do with the bill, which is really to treat cruise ship discharges like the state treats all other wastewater discharges.

2:34:11 PM

REPRESENTATIVE HAWKER directed attention to AS 46.03.462, the statute governing the terms and conditions of discharge permits, that Amendment 2 proposes to amend. He read from subsection (a) which states, "An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a commercial passenger vessel into the marine waters of the state unless ..." and said the permitting process that is subsequently outlined in

the statute is rigid and rigorous. He said the only thing Amendment 2 would accomplish is to selectively step in to statutorily prohibit discharge in a state game refuge, sanctuary, or critical habitat area. To him, this involves the legislature in selective permitting and not allowing the latitude the legislature has historically granted to the department. Representative Hawker further noted that subsection (h) states, "Nothing in this section shall be construed to limit the authority of the department to "restrict the areas in which discharges permitted under this section may occur" or "impose additional terms and conditions on the manner in which discharges permitted under this section may be made in a specific area." Therefore, he believed that DEC is absolutely adequately empowered under existing statute to appropriately protect the environmental interests of the state without the legislature selectively mandating absolutes into the permitting process, which he thinks is wrong.

[2:37:01 PM](#)

CO-CHAIR FEIGE concurred with Representative Hawker, saying it is not in the best interest of the legislature to micromanage the executive branch through statutory changes. He said everyone in the room has the same interest, which is to keep Alaska's waters as pristine as possible.

[2:37:57 PM](#)

REPRESENTATIVE TUCK, noting the statute empowers DEC to exempt certain areas from mixing zones, stated that it also empowers the department to have mixing zones in critical habitat areas. He asked why DEC would need to have mixing zones in critical habitat areas.

MS. KENT answered it gets back to treating the sources of discharges differently. Once it gets into the water it does not matter if it came from a cruise ship or a domestic wastewater facility, what DEC is most concerned about is the impact on the water body. An amendment like this would be treating the dischargers differently even though their impact may be the same or their impact may be different, and those are the kind of issues that DEC works out through the permitting process and through the public review of those permits.

[2:39:09 PM](#)

REPRESENTATIVE TUCK said that when he heard this issue four years ago it was made clear that there is a difference between a stationary port facility and its regulations versus a mobile vessel carrying 3,500-5,000 people. He understood Ms. Kent to be saying that DEC would like to treat cruise ship discharges the same as a port facility.

MS. KENT replied there might be a bit of misunderstanding. What DEC would like to do is use the same permitting procedures to apply to all of the facilities regardless of the source.

[2:40:12 PM](#)

REPRESENTATIVE OLSON, observing the bill currently has a zero fiscal note, inquired whether Amendment 2 would add a cost.

MS. KENT believed that Amendment 2 would not have a fiscal impact on the department.

[2:40:33 PM](#)

REPRESENTATIVE JOHNSON opined that it is everyone's goal to have clean water regardless of the source of discharge. He understood DEC's standards to say that clean water is how the department wants to treat people equally and there are different regulations to make sure that that happens with mixing zones. It is not that people are being treated differently; it is that the end result needs to be the same, and getting there is different for each of the different users of the resources.

MS. KENT agreed.

[2:41:44 PM](#)

REPRESENTATIVE SEATON reminded members that by the statutes establishing these critical habitat areas, the legislature has said these areas are different. He maintained it is confusing to say that the discharges of a city that is in a fixed point of time and a fixed area should be treated the same as a mobile discharger that can use holding tanks for its large load. To not recognize the six specific areas that the legislature has designated as critical habitats begs the question that DEC can be allowed to determine whether additional discharges from mobile sources can go in those areas. He urged the committee to recognize the difference between the communities in the state that are fixed and the mobile sources that come into an area and

to make the state's water quality be the best it can be by adopting Amendment 2.

2:44:07 PM

REPRESENTATIVE JOHNSON maintained his objection.

A roll call vote was taken. Representatives Tuck, Seaton, and Tarr voted in favor of Amendment 2. Representatives Hawker, Johnson, Olson, P. Wilson, Feige, and Saddler voted against it. Therefore, Amendment 2 failed by a vote of 3-6.

2:45:05 PM

REPRESENTATIVE TARR moved to adopt Amendment 3, labeled 28-GH1987\A.1, Nauman, 1/25/13, which read:

Page 3, line 23:

Delete "46.03.462(g), and 46.03.464"

Insert "and 46.03.462(g)"

Objection was voiced by Representatives Johnson and Hawker, and Co-Chair Feige.

2:45:22 PM

REPRESENTATIVE TARR specified Amendment 3 would take away the language in the bill that repeals the Science Advisory Panel. She pointed out that under existing statute the panel's final report is due on or before January 1, 2015; however, as currently written, HB 80 would become effective immediately so there would be no reason for the Science Advisory Panel to complete its work. She stressed that there is strong dissenting opinion [by a panel member] about the panel's draft report. Amendment 3 would keep the panel in place, giving it the opportunity to complete its work. She reminded members that a big portion of what is being dealt with came through a citizen initiative and some of the proposed actions overturn the will of the voters.

2:46:33 PM

CO-CHAIR SADDLER inquired whether the Science Advisory Panel has more work that it should do or whether information presented in the panel's report indicates that more work would be productive.

MS. KENT emphasized the panel termed its report "preliminary" rather than "draft" and said it is the panel's final working product to date after an exhaustive review of technologies available today and on the horizon; so, the panel really has completed a complete version of the work it was asked to do. The department did not ask the panel to produce a report, it asked the panel to advise the department and a report was the method the panel chose. Continued work by the panel would not produce any new information, new data, or new treatment technologies unless something miraculously appeared in the next few years. She said these current permits are on a three-year renewal cycle and most of DEC's permits are on a five-year renewal cycle, and at a renewal cycle DEC always looks to see what technologies are available. Additionally, DEC has explicit authority in AS 46.03.488 to continue to push for continuous improvements even without a science panel of experts. Some of those provisions include authority for monitoring and studying the direct or indirect environmental effects of those commercial passenger vessels and researching ways to reduce the effects of vessels on marine waters and other coastal resources. Thus, DEC has "plenty of authority to continue the work to look for a better mouse trap."

[2:48:45 PM](#)

REPRESENTATIVE P. WILSON asked what the cost would be to continue the Science Advisory Panel.

MS. KENT replied the panel has been working for parts of four fiscal years. The total cost so far has been about \$530,000 for contractor costs, travel costs for panel members to attend meetings, and doing the additional research that the panel asked to be done.

[2:49:26 PM](#)

REPRESENTATIVE TARR underscored that once the statutory language goes away DEC will have to come to the legislature for a budget request because, while DEC would have the authority to do that technological review, it would not have the funding necessary to do it.

CO-CHAIR FEIGE inquired whether keeping up with emerging technologies is something DEC normally does as part of its day-to-day duties or is something that would cost extra.

MS. KENT responded that it is part of what DEC does when issuing permits and looking at permit renewals, so it is already included in the DEC budget.

[2:51:07 PM](#)

REPRESENTATIVE HAWKER questioned why the fiscal note is zero rather than negative since costs will go away with elimination of the Science Advisory Panel.

MS. KENT answered that when the Science Advisory Panel was set up under House Bill 134, the department did not seek a budget increment because it did not have a good feel for what it would cost to do the work. She explained that DEC's budget is set up for the cruise ship program such that there is a little bit of money to do things like special studies and the department used that funding to fund the panel. If the panel did not continue, then that money would be rolled back into the permitting, reviews, inspection, and other work done by DEC in association with cruise ships.

REPRESENTATIVE HAWKER proffered that DEC would therefore have the funds for a project without having to come back to the legislature for an incremented budget request.

MS. KENT concurred.

[2:53:06 PM](#)

REPRESENTATIVE TUCK urged keeping of the Science Advisory Panel to investigate what is around the corner for technology. Since many of the cruise lines are currently meeting the standards, he did not want to see regression of the standards. When municipal facilities do not meet the standards, the state does not reduce its standards, he pointed out. The standards are kept so the facilities can eventually get there. The goal is to have and maintain high standards for Alaska waters and the Science Advisory Panel leads the state in that direction.

[2:54:45 PM](#)

REPRESENTATIVE TARR said was explained to her that while DEC would have the statutory authority, it would not have the funding necessary to bring together the technical experts at a future date. Noting she is a person with a science background in the professional world, she said that typically a final report would include the dissenting opinion of one of the

panelists, and this absence from the panel's preliminary report seems like a failure of that process.

[2:55:32 PM](#)

Objection to Amendment 3 was maintained by Representatives Johnson and Hawker.

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of Amendment 3. Representatives Hawker, Johnson, Olson, Seaton, P. Wilson, Feige, and Saddler voted against it. Therefore, Amendment 3 failed by a vote of 2-7.

[2:56:29 PM](#)

REPRESENTATIVE TUCK moved to adopt Amendment 4, labeled 28-GH1987\A.2, Nauman, 1/25/13, which read:

Page 3, following line 22:

Insert new bill sections to read:

"* **Sec. 5.** AS 46.03.476(b) is amended to read:

(b) The ocean ranger shall

(1) monitor, observe, and record data and information related to the engineering, sanitation, and health related operations of the vessel, including but not limited to registration, reporting, record-keeping, and discharge functions required by state and federal law; and

(2) for each month a large commercial passenger vessel enters marine waters of the state,

(A) collect and test at least one wastewater discharge sample; and

(B) report the test result for the wastewater discharge sample collected under (A) of this paragraph to the department.

* **Sec. 6.** AS 46.03.488 is amended by adding a new subsection to read:

(b) The department shall publish the data collected under AS 46.03.476(b)(2) on the department's Internet website."

Renumber the following bill sections accordingly.

Objection was voiced by Representatives Johnson and Hawker, and Co-Chair Feige.

REPRESENTATIVE TUCK explained Amendment 4 would provide for DEC to use a third party contractor to gather data so it would be known what is going into cruise ship mixing zones. In addition to providing for the ocean rangers who are already there to gather this data, the amendment would require the data be posted on the Internet for the public to see.

[2:57:44 PM](#)

REPRESENTATIVE JOHNSON asked whether an ocean ranger has the qualifications to do this proposed testing.

MS. KENT replied the primary qualification for an ocean ranger is to be a U.S. Coast Guard licensed marine engineer, which does not normally come with training in how to take, preserve, and ship samples and handle proper chain of custody.

[2:58:22 PM](#)

REPRESENTATIVE OLSON inquired whether there would be associated costs with the provisions of Amendment 4.

REPRESENTATIVE TUCK understood the ocean rangers do conduct sampling at the point of discharge, so since the rangers are already there this would just be giving them another duty.

MS. KENT responded the ocean rangers do not currently take samples, so they are not trained to do that and there would be an additional cost to train them. The bill is unclear as to who would be charged for the sample collection or for the sample analysis.

[2:59:43 PM](#)

REPRESENTATIVE P. WILSON surmised the training cost would add up to quite a bit.

MS. KENT answered there are 21 ocean rangers for coverage on most of the vessels most of the time they are in Alaska waters. She reminded members that a tremendous amount of monitoring is required under the permit and this would be in addition to that monitoring. Since some of the monitoring requirements are daily or twice monthly, DEC already receives a lot of data about the discharges.

[3:00:39 PM](#)

REPRESENTATIVE HAWKER said he believes the legislature does not need to micromanage regulatory process because there is already adequate statutory mandate upon the agency and upon whom the mandate is being imposed to protect the state's waters. He read some of the information-gathering requirements included under AS 46.03.465, which states in its entirety:

Sec. 46.03.465. Information-gathering requirements.

(a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the state, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other wastewaters into the marine waters of the state, and provide electronic copies of those records on a monthly basis to the department not later than five days after each calendar month of operation in state waters.

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling technique approved by the department.

(c) While a commercial passenger vessel is present in the marine waters of the state, the department, or an independent contractor retained by the department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the state.

(d) The owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) The owner or operator of a commercial passenger vessel shall pay for all reporting, sampling, and testing of samples under this section.

(f) If the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information gathering, gathered the

information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

(g) The department may exempt from the requirements of (a) - (d) of this section the owner or operator of a small commercial passenger vessel who has a plan for alternative terms and conditions of vessel discharges approved by the department under AS 46.03.462(c).

(h) On request, the owner or operator of a commercial passenger vessel discharging wastewater under AS 46.03.462(b) shall provide the department with information relating to wastewater treatment, pollution avoidance, and pollution reduction measures used on the vessel, including testing and evaluation procedures and economic and technical feasibility analyses.

[3:02:23 PM](#)

REPRESENTATIVE SEATON stated he cannot support Amendment 4 because testing wastewater discharge samples has not been within the parameters of what an ocean ranger can do. Additionally, testing should be done in a laboratory, not onboard the vessel.

[3:03:20 PM](#)

REPRESENTATIVE TARR said she is most interested in the public right to know aspect of lines 16-17 of Amendment 4, which would require DEC to publish on its Internet web site the data collected under AS 46.03.476(b)(2). Currently the data goes to the department, but there is no easy way for the public to access that information. Some cruise ships are operating on continuous permits, meaning they are allowed to continually discharge the entire time they are at port. If she were a parent she would be concerned about her children playing in nearby water. She therefore urged consideration of lines 16-17.

[3:04:22 PM](#)

REPRESENTATIVE TUCK said his intent was to help DEC be more efficient by having a third party person take the samples since that person was already there on the ship. However, after hearing that training would be involved at a cost to DEC, he said he would be open to a friendly amendment to delete the

first section of Amendment 4 and leave the second section [lines 15-17].

[3:05:14 PM](#)

No friendly amendment to Amendment 4 was offered. Objection to the amendment was maintained by Representatives Johnson and Hawker.

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of Amendment 4. Representatives Johnson, Olson, Seaton, P. Wilson, Hawker, Feige, and Saddler voted against it. Therefore, Amendment 4 failed by a vote of 2-7.

[3:06:14 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 5, labeled 28-GH1987\A.6, Nauman, 1/26/13, which read:

Page 3, following line 22:

Insert new bill sections to read:

"* **Sec. 5.** AS 46.03.463(h) is amended to read:

(h) The provisions of (a) - (f), and (i) of this section do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

* **Sec. 6.** AS 46.03.463 is amended by adding a new subsection to read:

(i) Except as provided in (h) of this section or AS 46.03.462(c), a person may not discharge sewage, graywater, or other wastewater from a commercial passenger vessel into the marine waters of the state that has a copper concentration of more than two parts per billion for more than 10 minutes with a dilution factor not greater than 50,000."

Renumber the following bill sections accordingly.

Objection was voiced by Representatives Johnson and Hawker, and Co-Chair Feige.

[3:06:23 PM](#)

REPRESENTATIVE TARR said much time has been spent talking about what level [of copper concentration] is appropriate to protect

salmon. She said putting into statute a [copper] standard of two parts per billion (ppb), which she understood most of the cruise ships can meet, would indicate the legislature's concern for protecting the state's wild salmon. She offered to share several scientific articles in this regard.

[3:07:14 PM](#)

CO-CHAIR SADDLER requested DEC to address the possible impacts of Amendment 5.

MS. KENT stated this is another amendment that strays into permitting. While DEC is concerned about copper, the concern here is that the bill would be setting a discharge standard that is not really based on available science. The science demonstrating some behavioral issues on olfactory ability of salmon is all done on freshwater and even the researchers doing that work have said it cannot be translated to marine waters because of the differing buffering capability in the marine waters and because they cannot reflect the physiological changes that occur in the fish as they are moving from saltwater to freshwater. It is an area where more research is needed, but DEC does not currently have something that is scientifically defensible on which to base these standards.

CO-CHAIR SADDLER held over HB 80.

[3:08:45 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:08 p.m.