

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 3, 2014

3:31 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Fred Dyson, Vice Chair
Senator Peter Micciche
Senator Click Bishop
Senator Lesil McGuire
Senator Anna Fairclough
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 16

Requesting the Governor to investigate and report to the legislature regarding the development of a large coal power plant and associated electric grid to provide energy to residents of the state.

- HEARD & HELD

PRESENTATION: ENDANGERED SPECIES ACT ACTIVITIES IN ALASKA

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SCR 16

SHORT TITLE: REQ GOV TO INVESTIGATE COAL RESOURCES

SPONSOR(S): SENATOR(S) KELLY

02/24/14	(S)	READ THE FIRST TIME - REFERRALS
02/24/14	(S)	RES
03/03/14	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

BRUCE CAMPBELL
Staff for Senator Pete Kelly

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on SCR 16 for the sponsor.

LORILEI SIMON, Vice President
External Affairs
Usibelli Coal Mine

POSITION STATEMENT: Supported SCR 16.

GENE THERRIAULT
Alaska Energy Authority (AEA)
Fairbanks, Alaska

POSITION STATEMENT: Commented on the fiscal note for SCR 16.

ALAN PARKS, representing himself
Homer, Alaska

POSITION STATEMENT: Opposed SCR 16.

SUE MAUGER, Science Director
Cook Inlet Keeper
Homer, Alaska

POSITION STATEMENT: Opposed SCR 16.

MARGO REVEIL
Jakolof Bay Oyster Co.
Homer, Alaska

POSITION STATEMENT: Opposed SCR 16.

DOUG VINCENT-LANG, Director
Division of Wildlife Conservation
Endangered Species Act Coordinator in Alaska
Alaska Department of Fish and Game (ADF&G)

POSITION STATEMENT: Gave presentation on Endangered Species Act (ESA) activities in Alaska.

ACTION NARRATIVE

[3:31:15 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Bishop, Micciche, Dyson, French, and Chair Giessel.

SCR 16-REQ GOV TO INVESTIGATE COAL RESOURCES

[3:31:44 PM](#)

CHAIR GIESSEL announced SCR 16 to be up for consideration.

BRUCE CAMPBELL, staff for Senator Pete Kelly, sponsor of SCR 16, explained that the resolution requests the Governor to keep coal in the dialogue.

[3:33:05 PM](#)

SENATOR FAIRCLOUGH joined the committee.

MR. CAMPBELL said that Alaska is blessed with vast quantities of coal: trillions of tons on the North Slope, billions of tons in the Interior, and tens of billions of tons in Cook Inlet. It is some of the cleanest coal on the planet and a cheap way to create electricity.

[3:33:50 PM](#)

LORILEI SIMON, Vice President, External Affairs, Usibelli Coal Mine, said Usibelli is the only operating coal mine in Alaska and supplies six coal burning power plants. They appreciate the continued dialogue of coal being part of the energy mix in the state.

She said legislators are considering major policy initiatives on energy and potential solutions for the energy problems that Alaskans face, and coal remains one of the cheapest energy sources in the Interior. There is an opportunity for coal to expand and have a greater presence on the Railbelt grid and other areas of Alaska, as well.

MS. SIMON said the McDowell Report that came out last year analyzes the energy and economic impacts of coal to the Interior. It focuses on the Interior, because that is where coal is used in Alaska. Coal is half the cost of natural gas, one-third the cost of naphtha and one-sixth the cost of diesel. So, without coal on the grid the Interior ratepayers would see more than a \$200 million annual increase in their energy rates.

SENATOR MICCICHE asked what that increase would be on a percentage basis.

MS. SIMON answered about 20 percent. She said it is also important to understand how coal impacts the region's economy. For example, in 2012 Usibelli spent \$72 million with 400 different Alaskan businesses. That's 577 Interior jobs and a payroll of about \$44 million a year. The McDowell Report said that would mean 692 jobs and \$52 million in payroll statewide.

[3:37:40 PM](#)

SENATOR FRENCH asked how much coal is mined every year.

MS. SIMON replied about 2 million tons per year; this year they will produce about 1.8 million. Half stays in state for the coal burning power plants and the other half is exported to Chili, South Korea, and Japan.

SENATOR FRENCH asked how much coal is in the ground at Usibelli.

MS. SIMON answered hundreds of years of mining; there are about 700 million tons of known reserves in Healy.

SENATOR FRENCH asked how much could be produced there if Alaska suddenly tripled the amount of coal it was using. Could the Healy mine provide that coal?

MS. SIMON answered yes.

SENATOR FAIRCLOUGH asked if additives have to be put in the coal before selling to different folks. She did a tour of a coal plant at Eielson Air Force Base and was told that the federal government was requiring treatment of coal and that the additives were actually driving the fuel costs up significantly.

[3:39:32 PM](#)

MS. SIMON said nothing is added at the mine; probably the power plants would be a better source of the information.

SENATOR BISHOP asked if coal ash was being trucked to Fairbanks and used in blocks and concrete.

MS. SIMON answered yes; coal ash is considered a usable by-product and a quality fill material. Coal ash is used in a lot of the roads and parking lots in Fairbanks.

[3:40:29 PM](#)

GENE THERRIAULT, Alaska Energy Authority (AEA), Fairbanks, Alaska, explained that AEA prepared the fiscal note on behalf of the administration with the thought that if the resolution were to pass that the direction would probably come to AEA. They anticipate \$75,000 at a high level view, but the wording in the resolution is fairly broad and that could be updated as decisions are made.

Regarding Senator Fairclough's question about additives, it's very likely she remembered that when the coal is actually pulverized and combusted, in order to meet federal air emissions

selected catalytic reduction (SCR) or selected non catalytic reduction (SNCR) agents are injected into the flu stream so the particles that may impact PM2.5 or whatnot could be taken out of the exhaust stream.

CHAIR GIESSEL asked if adding the catalyst could be termed the "clean coal process."

MR. THERRIAULT answered that he was at the edge of not knowing what he was talking about. With the Healy Clean Coal Plant the method of combustion and the temperatures at which the combustion took place were different. Some of the older power plants have just the injection of urea to help with reduction of "socks and knocks."

SENATOR FAIRCLOUGH asked if a Finance Committee referral had been added to this bill.

CHAIR GIESSEL answered not that she knew of.

SENATOR BISHOP asked if AEA had the in-house expertise to do this or would they have to go to a third party.

MR. THERRIAULT replied that it would be a combination of some of the regional planning work they are doing in-house, but with an economic consultant doing some additional work to "really crunch the numbers" to be able to do some comparisons.

SENATOR BISHOP asked if he had those people at his fingertips.

[3:44:59 PM](#)

MR. THERRIAULT replied that they had contracted with UAA Institute of Social and Economic Research (ISER) in the past and are now contracting with the UAA Automotive Service Educational Program (ASEP). Because they are a state entity, that is easier than going out through a competitive process.

[3:45:45 PM](#)

ALAN PARKS, representing himself, Homer, Alaska, said he had been a commercial fisherman since 1975 and there is no such thing as clean coal. He opposed SCR 16. Healthy fish are important to him as a fisherman and a father; he hopes to pass his fishing business on to his children. Spending \$75,000 on studies for more coal-fired plants is going backwards. Science has settled it that climate change is happening and humans are causing a significant part of it.

Aside from the climate issue, mercury is a big problem with coal combustion. Governor Palin put fish consumption advisories around certain large halibut and other fish due to mercury contamination. Now the state has a point system for how much halibut kids and pregnant women should eat. While Alaska coal may have relatively lower mercury levels compared to other places, it also has low BTU value, so you need to burn more. He concluded that coal is an energy of the past and Alaska has a lot of opportunity for alternative and renewable energy. It should be a leader in clean energy that protects our wild fisheries and the people in communities who rely on them.

[3:48:06 PM](#)

SENATOR DYSON asked if it's fair to assume that no matter what information came forward about using coal in an environmentally sensitive way that he wouldn't change his mind.

MR. PARKS said it's really the technology and the process of extracting coal [safely] that is a long way out and we should spend our energy and be a leader into renewable resources technologies.

[3:48:45 PM](#)

SENATOR MCGUIRE joined the meeting.

[3:49:27 PM](#)

SENATOR FAIRCLOUGH said she serves on the Alaska's Renewable Energy Advisory Board and asked with five active volcanoes, did he have any idea how much particulate matter is ejected in an eruption.

MR. PARKS answered that he is not a scientist, but humans are the main cause of CO₂ in the atmosphere. The natural eruptions that occur from volcanoes is really not the issue on the table.

SENATOR MICCICHE said he is a big renewable fan going forward. He said that part of the study would likely identify scrubbing coal to compete with other hydrocarbons (natural gas and other cleaner forms of energy) that they both use every day. Would he be more likely to support the resolution if the technologies were otherwise environmentally equal?

MR. PARKS said that was an interesting question, but he thought efforts should be geared toward transitioning with natural gas to other fuels (wind, geothermal and tidal energy). Coal has emission problems as well that destroys habitat that fish need.

It's not just what gets into the air; it's how it gets into the plants.

SENATOR MICCICHE said he agreed with many of his thoughts, but he was truly interested in understanding what it would take for coal to be environmentally neutral with other sources of hydrocarbon as the renewable technologies get further developed.

3:54:06 PM

CHAIR GIESSEL said renewable energies are wonderful and certainly winds seem so great; there are 3-5 tons of copper in every wind turbine.

3:54:24 PM

SUE MAUGER, Science Director, Cook Inlet Keeper, Homer, Alaska, opposed SCR 16. Her focus had been on salmon streams around Southcentral Alaska for the last 14 years and recently on stream temperatures, specifically how current stream temperature patterns in Cook Inlet might change in the future and how these changes might impact salmon.

Based on compelling evidence from the climate scientists around the world and from Alaskan researchers, future climate change will result in not just warmer summer temperatures in Southcentral Alaska, but warmer winter temperatures, which will result in more rain on snow events and a reduced snow pack. With less water stored in our hills during the winter our summer water levels will be lower, and since a little bit of water warms up a lot faster than a lot of water, our summer water temperatures in non-glacial streams will raise that much faster. Based on five years of research in Cook Inlet salmon streams, many of the Kenai Peninsula and Matsu streams are already at temperatures known to be stressful to salmon.

When she has talked about these climate change outcomes in the past they seemed very abstract, but we are now experiencing a remarkably warm winter with high winter temperatures, rain, lack of snow, the vagueness of climate change impacts are more tangible. There is still much to learn about basic ocean dynamics and fresh water habitat requirements for salmon, and we now must add ocean acidification and changing ocean and river temperatures into the challenge of obtaining sustainable fisheries. One thing is certain, the release of more carbon dioxide, which will occur from new coal development will fast-forward the timeline for the most drastic and dramatic of climate change impacts. "For Alaskans living in the state disproportionately impacted by climate change, coal is a loser."

MS. MAUGER said she had sent some documents as evidence of climate change across the world, some information about how to understand the patterns expected for Alaska, and an executive summary of their five-year statistics report of stream temperatures in Cook Inlet from last fall.

[3:57:26 PM](#)

SENATOR MICCICHE asked if she sent her studies to the committee.

MS. MAUGER said they were faxed.

[3:57:48 PM](#)

MARGO REVEIL, Jakolof Bay Oyster Co., Homer, Alaska, opposed SCR 16. She and her husband own an oyster farm in Kachemak Bay and are deeply concerned about changes due to ocean acidification, which is directly linked to increased carbon pollution in our atmosphere. And as more carbon enters the atmosphere, our oceans absorb more, which then forms acids that eat away at shellfish. Their spats are especially vulnerable to increased acidity levels.

Spending money to study more coal-fired plants strikes her as a very bad idea, because coal is a leading source of carbon pollution. The greatest threat to her and her family is not energy costs; shaving a few dollars off their energy bill will not vastly improve their quality of life, but ocean acidification directly threatens their livelihood. She cited where ocean acidification was implicated in a die-off of 90 percent of the mature stock of scallops at a B.C. shellfish farm.

[4:00:22 PM](#)

CHAIR GIESSEL, finding no further questions, closed public testimony.

MR. CAMPBELL concluded that coal has had a long and bi-partisan support in the state and two weeks ago he met with Governor Cowper in Fairbanks and discussed alternative methods for coal plants that would have no CO₂ emissions. They would actually bottle it up and sell it to Hilcorp for enhanced hydrocarbon removal in Cook Inlet.

CHAIR GIESSEL thanked him and said they looked forward to hearing from Senator Kelly on Wednesday and would hold SCR 16 until then.

[4:01:54 PM](#)

At ease from 4:01 to 4:03 p.m.

Endangered Species Act Activities in Alaska

[4:03:05 PM](#)

CHAIR GIESSEL said their next order of business was to hear a presentation on Endangered Species Act (ESA) activities in Alaska.

DOUG VINCENT-LANG, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), said he is also the Endangered Species Act Coordinator in Alaska. Today, he would give them a brief inventory of the current status of listed species federally in the State of Alaska, some of the issues the state is facing with the federal implementation of the ESA, and finally he would talk about the strategy that the state is using to address some of those issues.

MR. VINCENT-LANG explained that an "endangered species" is one that is threatened with extinction in the near term future. The Eskimo Curlew is listed and was likely extinct before statehood (so they are trying to remove that species); so are the Short-tailed Albatross, the Aleutian Shied Fern, Steller Sea Lions (the western sub-population of the larger species), Cook Inlet Beluga Whales, Bowhead Whales, Fin Whales, Humpback Whales and a variety of other rare species that occasionally occupy Alaskan waters including the North Pacific Right Whale, Blue Whale, the Sey Whale and the Leatherneck Turtle.

A wide range of species are on this list ranging from Steller Sea Lions - of which 75,000 - 80,000 are in the world right now and they are growing by 1.5 percent a year - to Bowhead Whales that is growing from a population now of 50,000. The state wouldn't consider any of these as being threatened in the near term future, but the feds still have them listed.

MR. VINCENT-LANG said the state fully supports the listing of one species and that is the North Pacific Right Whale with less than 50 left in the world. We should do everything we can to ensure that they persist as a species including the designation of Critical Habitat.

[4:06:36 PM](#)

The next group of species that are listed as threatened under the federal definition of threatened are the Alaska breeding

population of Steller Eiders, Spectacled Eiders, Polar Bears, Northern Sea Otters, Ring Seals, and Bearded Seals.

[4:07:21 PM](#)

For example, there are 3-7 million Ringed Seals in the world, and the National Marine Fisheries Service (NMFS) recently listed them as a threatened species based on a model projected 100 years into the future that said sea ice may affect the species to such an extent that they might become threatened with extinction. It's the exact same case for Bearded Seals; there are a couple hundred thousand in the world and by their own models both species face a zero percent chance of becoming extinct in the next 50 years. However, 100 years and beyond they show increased risk of extinctions. The state challenged the Polar Bear listing for that reason, trying to define how the foreseeable future really could be used in determining a threatened listing - and lost. In that case they tested it out to about 50 years; now they're pushing it out to about 100 years.

A couple of species are under petition (meaning an NGO or federal agency can decide that a species is potentially at risk of extinction and they can ask a federal agency to actually evaluate whether that species should be listed as either threatened or endangered): Yellow-billed Loon, Pacific Walrus, Alexander Archipelago Wolves, Southeast Alaska Herring, Great White Sharks, Iliamna Seals, and the Pinto Abalone, and more are being added daily (Aleutian Terns and Tufted Puffins).

[4:09:27 PM](#)

SENATOR BISHOP asked if he has the resources available to argue the state's position to counter USFWS - Polar Bears, for instance.

[4:10:04 PM](#)

MR. VINCENT-LANG responded that the state lost its legal challenge, but that doesn't mean the science collection is being stopped. They are using some coastal impact assessment money to actually go out and study the Chukchi Sea population because the basic premise USFWS used to list Polar Bears was that diminishing sea ice is going to cause a habitat loss, which would result in some greater extinction probability. The primary state comment was to say before you list you should have to test those assumptions to find out whether that causal chain of evidence is correct. Chukchi has suffered about a 40-50 percent sea ice loss over the last decade, so vital rates in that population should be changing. In this instance they

collaborated with USFWS that listed it and found that over the last two or three years the vital rates are identical if not better than they were 30 or 40 years ago, despite the sea ice loss. So, they are trying to test the veracity of these models to find out whether they can use that information to attack future listing and modeling assessments.

MR. VINCENT-LANG said they are also looking closely at the Hudson Bay population that suffered a significant amount of sea ice loss and by all models and projections that population should be declining, but what happened is that it recalibrated at a lower level and stabilized at about 1,000 bears.

SENATOR DYSON remarked that Mark Meyers said one of the problems with the federal investigation is that they don't make allowance for natural changing of habitat and migration patterns.

MR. VINCENT-LANG agreed that most of their models are built on assumptions of current behavior and habitats. However, his experience has shown him that animals are much more adaptive than they are given credit for. He said the State of Alaska should do everything possible to preserve species that are really facing extinction, but not give the same level of protection to a species that might be facing extinction based on a model for 100 or 200 years in the future.

[4:13:16 PM](#)

He said that recently, Eastern Steller Sea Lion were recently delisted and that was a result of a petition filed by the States of Alaska, Washington, and Oregon to request NMFS to do that, because it was largely recovered. Kittlitz's Murrelets, Flying Squirrels, and Queen Charlotte Goshawk were petitions that were submitted by NGO's and were found to not be warranted. A lot of that was based on state data they collected. Another recent action was that the Polar Bear critical habitat designation was invalidated by the court, and that was based on the division's analysis in concert with the oil and gas industry and North Slope Borough data.

[4:14:34 PM](#)

SENATOR MICCICHE asked what the objective was of the attempt to list Kittlitz's Murrelets and Flying Squirrels. Was there a project or was it a true concern for those two species?

MR. VINCENT-LANG replied for Kittlitz's Murrelets they identified a couple of different things as threats: commercial fishing by-catch and ocean acidification changes. There was a

lot of uncertainty with the data; and Glacier Bay was used as a model population for the rest of Alaska. He went out and contracted with a sea bird expert and asked their independent opinion on Kittlitz's Murrelets and found out that the science wasn't nearly as clear and that that indicator stock wasn't as good of an indicator stock to use as proof. They showed that Kittlitz's Murrelets were much better off in the State of Alaska than what the petition showed.

Flying Squirrels was a concern around timber sales, and they were able to show through division analysis that they were much more prevalent on the landscape than what the petitioners had thought.

[4:15:59 PM](#)

SENATOR FAIRCLOUGH asked if those legal proceedings in the public's interest recoup of all the money spent fighting it.

MR. VINCENT-LANG replied that money spent on litigation in the public interest is not recouped on those instances - unlike the NGO community that gets to recoup a certain portion of their money often entering into settlement discussions, a practice that is being brought in front of Congress right now.

[4:16:45 PM](#)

A couple of things the state is doing in terms of involvement is staying engaged in Polar Bears, because right now the Polar Bear Recovery Plan is being written. Even though they don't agree with the need for listing they are making sure the recovery plan actually is written in such a way that Polar Bear conservation on the landscape is written in such a way that assures the continued persistence of Polar Bears in Alaska and internationally. They continue to participate in international agreements on Polar Bears and are doing the same thing with the Cook Inlet Beluga Recovery Plan.

[4:17:39 PM](#)

Right now they are in a 12-month status review of the Yellow Billed Loon. When that was put out one of the primary threats identified was high subsistence harvest, but they had significant doubts that was occurring; so, they spent \$130,000 on studying the actual subsistence use of Yellow Billed Loons and their data has shown that is not nearly as prevalent as what people thought it was. So, that has been removed as a reason to list them and it was a primary one. So, he is optimistic they will not be listed across Alaska's North Slope.

They also stay engaged in biological opinions. He explained that once a species is listed, take is prohibited, and whenever an activity is conducted in an area where a species is listed you have to do a biological opinion to assure that that species isn't harmed in any way. For all the species that are listed as threatened or endangered they stay engaged in biological opinions to make sure the best science is brought forward into the federal system to ensure that an informed decision is made. They are currently conducting research on a variety of listed species.

[4:18:39 PM](#)

MR. VINCENT-LANG said the second part of his talk was about some of the issues they have seen with implementation of the ESA in Alaska. The first issue is with the precautionary listing of species, irrespective of current health or abundance, based solely on models speculating possible extinction sometime in the distant future - like their challenge with the Polar Bear case. Right now they are challenging the Bearded Seal listing and considering challenging the Ringed Seal where the listing decision was made based on a 100-year foreseeable future irrespective of their numbers of 3 million to 7 million. He considers this an unprecedented federalization of species that removes a species from state jurisdiction and puts it into federal jurisdiction. He reminded them that since statehood, Alaska has never had a species go extinct.

Secondly, he said, they are seeing expansive designations of critical habitat that encompass almost any area potentially occupied by a species rather than those areas truly critical to a species' survival: an area the size of California is designated as critical habitat for the Polar Bear, for instance. They are now considering challenging the listing of critical habitat for Northern Sea Otters that includes almost the whole Aleutian Chain, the Alaskan Peninsula in Cook Inlet and around Kodiak Island - using the very same approach despite the fact they identified necessary elements - eel grass beds, shallow water, and a third one - but never went through the effort of identifying where those elements occurred in the landscape and just designating those areas.

[4:21:22 PM](#)

Another one is the USFWS routinely under-estimates the cost of critical habitat designations. The state found that out in both the Polar Bear and Cook Inlet Beluga investigations when the state independently went out and assessed the cost of critical habitat designations.

He said states are not involved in a wide range of ESA decision processes including designations of both the Polar Bear critical habitat listing decision, the Steller Sea Lion Biological Opinion, and the Cook Inlet Beluga.

He explained that the Western Steller Sea Lion stock is somewhere between 75,000 and 80,000 and growing at about 1.5 percent per year. NMFS several years ago did a biological opinion on the impact of fishing on this stock in a small area in the middle of the Aleutians where you wouldn't expect them to recover at the same rate as other in some other areas. They determined fishing was impacting their recovery and completely closed commercial fishing in the area of the Western Aleutians. The state challenged it and contracted with the States of Washington and Oregon to do an independent review, which concluded it wasn't right. NMFS didn't trust that and contracted with the Center for Independent Experts who also concluded that NMFS science wasn't right, and the fishery still remains closed today. The state continues to challenge that listing.

[4:23:39 PM](#)

SENATOR MICCICHE remarked that that closure took essentially the State of Alaska commercial fisheries out of the large cod business.

MR. LAND said it had a significant impact on local communities in Western Alaska.

SENATOR MICCICHE commented that he hadn't seen an accurate cost of the supply chain for almost everyone that is affected by that change.

MR. VINCENT-LANG responded that some of that information is available in their court filings, which he would try to get to him. The most troubling thing about the decision process was that no matter how much science the state seems to have on its side on this case, it was left up to the discretion of the federal agency to make that decision. It came down to one hearing they were at where a federal agency staff member said well as long as we think this might be the case, we have to act - despite overwhelming scientific evidence.

[4:25:05 PM](#)

Another concern he had was that recovery goals are often set to fully recover a species rather than simply remove the risk of extinction and contain non-related ecosystem goals. This is

critical. Steller Sea Lions, for instance, at 75,000 to 80,000 animals he thinks that the threat of extinction has been removed, and the Marine Mammal Protection Act that can manage that species to some optimal sustained population under recovery. "The recovery goals for the ESA should be to remove the risk of extinction that the species should get off the list. It shouldn't be to fully recover it back up to some historic high level...."

MR. VINCENT-LANG said they are also seeing the inclusion of ecosystem goals. Northern Sea Otters, as an example; you had to not only remove the risk of extinction, but before the Southwest population can be removed from the ESA, you also have to restore 50 percent of the kelp forests across their historic range. If you think about it, if something happens to kelp besides Sea Otters, you could end up with numerically getting the goal for Sea Otter numbers but not delist, because something else is affecting kelp. So, they think the goal should be back to the species level rather than ecosystem-type goals.

[4:27:15 PM](#)

Another of his concerns was that the states are not fully allowed to participate in the recovery plan development. Alaska was told it had to limit its participation on the Cook Inlet Beluga recovery team, because all of our scientists had to act independently rather than as agents of the state bringing the best available science into that decision-making.

He said the state is addressing these issues by building partnerships with the Western Governors Association to develop a policy statement that talks about critical habitat designations, over-expansiveness, precautionary principles, and the need to get best science into the process. Most importantly, from his perspective, it talks about the need to get "foreseeable future" defined. He is also working with the Western Association of Fish and Wildlife Agencies looking mostly at the modeling aspects. He said he was personally talking to NMFS people to try to resolve some of these policy issues and he had provided testimony on a couple occasions to Congress on these issues and possible solutions.

[4:28:16 PM](#)

They are legally challenging bad decisions, and right now are challenging the Bearded Seal listing in concert with the North Slope Borough and a couple other partners and the Steller Sea Lion Biological Opinion. They were able to remove an ESA component of the CD5 Coleville Delta litigation. They are also

joining other state challenges: for instance, a couple of decisions regarding experimental populations that New Mexico got challenged on, and they are considering challenging the Sea Otter Critical Habitat Recovery Plan.

[4:29:00 PM](#)

SENATOR FRENCH said he mentioned that the state won when it challenged the Polar Bear critical habitat ruling and asked what the state's win/loss record has been in general in these legal challenges.

MR. VINCENT-LANG answered they lost the Polar Bear listing decision, the decision on Cook Inlet Beluga, and one other - about one-third win/two-thirds losses. But he is very optimistic about the Bearded Seal decision, because at 50 years the court determined there was the discretion of the federal agency, but the state has a much better record of their persistence as a species in periods when the Arctic has been ice free and is testing whether they can go out to 100 years versus 50 years.

[4:30:10 PM](#)

SENATOR DYSON asked if any of Alaska's Native groups weighed in against ESA listings.

MR. VINCENT-LANG answered the North Slope Borough had weighed in on both the Polar Bear critical habitat designation and the Bearded Seal listing decision.

SENATOR DYSON asked if any Native groups had weighed in on the restrictions on fishing or whaling.

MR. VINCENT-LANG said the state basically carried the discussion with respect to the Steller Sea Lion litigation.

SENATOR DYSON said some of the Native Corporations in Southeast are pretty interested in logging going forward with something like the Flying Squirrel. Have they shown any willingness to weigh in with the state on any of these issues in fighting the feds?

MR. VINCENT-LANG replied if Alexander Archipelago wolves are listed then they would seek partners if they determined litigation was necessary. He said state research is making a difference in these listing decisions even after a species has been listed.

[4:32:36 PM](#)

They are focusing on Yellow-billed Loons, the subsistence survey and some base line research on the habitats that are important to them on the North Slope. They (and NMFS) are studying Pacific Walrus that is scheduled for a status review in about three years by looking for ways to count them and ways to remove the threat that is associated with Walrus when they move to land, and may ask the legislature for a regulatory packet that gives the state greater ability to deal with preventing stampedes when Walrus move to shore because of retreating ice.

MR. VINCENT-LANG said they are looking closely at the nutritional stress theory around Western Steller Sea Lions, so that can be removed as a threat. And they are looking very hard at Cook Inlet Beluga by getting NMFS to allow them to do some satellite tagging of those animals as well as darting to look at nutritional stress. And they are spending a lot of money in the next three years studying Alexander Archipelago Wolves. They want to understand whether those are a distinct population segment and if they are facing some risk of extinction over the next several years. They know that wolf populations are robust across the state and want to use more than just speculation and modeling.

The division is also looking at Southeast Alaska herring and Iliamna seals related to a petition that was filed by an NGO community for a small population of seals in Lake Iliamna. The petition asks the federal government to list Iliamna seals and one aspect was the lack of regulatory control associated if Pebble Mine would go. It's a precautionary listing based on speculation that the federal regulatory system is inadequate for protecting the seal population. They are out there looking at the seal population right now and trying to find out if it is distinct or common.

[4:35:23 PM](#)

His division is also submitting petitions to delist species like the Central North Pacific stock of Humpback Whales, working on a petition with the North Slope Borough to delist Spectacled Eiders in Alaska, and considering petitions to delist Bowhead Whales that have a population of 50,000 and a proposal to delist Western Steller Sea Lions.

[4:36:00 PM](#)

He summarized that he worried about the precautionary listing of currently health species based solely on models speculating possible future impacts and associated expansive critical habitat designations. They think this represents an

unprecedented federalization of species on land and sea across Alaska.

[4:36:46 PM](#)

CHAIR GIESSEL referred to their recovery goals slide and asked him to describe what "ecosystem-based management" means.

MR. VINCENT-LANG explained that a species needs to be able to persist in its ecosystem and humans are an integral part of that ecosystem; the state practices that now. But he wasn't sure a fully functional ecosystem was needed in order to delist a species, and that is what the state and federal agencies are doing.

CHAIR GIESSEL said adaptation is another aspect of all this.

[4:38:40 PM](#)

SENATOR MCGUIRE said the Arctic Policy Commission decided to table the term, because there are so many definitions of it, and it looks like the federal definition might be different from the state's. So, she wanted to see how the state describes it, because it sounds like it includes human beings. She also wanted his opinion about how the federal government views ecosystem-based management with respect to endangered species.

MR. VINCENT-LANG replied that the federal approach to ecosystem management is precautionary and the state approach is based on active management.

[4:40:10 PM](#)

SENATOR MICCICHE asked if the state supported the listing of the Spectacled Eider by NMFS as threatened and has there been a substantial recovery that would cause us to request a delisting or did the state not agree with the listing initially.

MR. VINCENT-LANG said there was a lot of confusion when they were listed as to whether that was a global population or the Alaska population, and there were a lot of threats in Russia, but not a lot of information to determine the extent of the Russian population. New information suggests that the Russian population is much larger than originally thought and there is probably no difference between the Alaskan and Russian population in terms of their being distinct.

[4:41:13 PM](#)

SENATOR FRENCH asked him to comment on what role the Coastal Zone Management (CZM) played in the state's ability to protect species here.

MR. VINCENT-LANG said a lot of regulatory methods can be used to protect species and CZM was one of them, but the state has sufficient regulatory structures in place right now to protect species without it.

SENATOR FRENCH asked if not having a state coastal zone policy undermined our credibility at all with the federal government.

MR. VINCENT-LANG answered that he didn't think so and that the feds were focused on precautionary listings based on long term models rather than saying you have lack of regulatory control in the near term.

SENATOR FRENCH asked what role the CZM program presence or lack thereof played in the Beluga controversy.

MR. VINCENT-LANG answered that the Beluga controversy was very interesting in that it centered on modeling: what was the risk of extinction to this population of whales in Cook Inlet and how long would it take for over-hunting to be mitigated by the whale population. It certainly pointed to coastal zone and other types of issues, but it fundamentally came down to whether or not that population viability was going to be there after 100 years. In this case, the NMFS actually modeled the ability of the population to remain viable based on a 12-year data set 300 years into the future. When the Marine Mammal staff ran their model, the risk of extinction for Beluga Whales in Cook Inlet was less than 1 percent of 100 years. They said that was okay, but they needed to run it out to 300 years and all of a sudden the risk of extinction went up to 25 percent.

He said the Cook Inlet Beluga are listed as endangered now, but they are managed under the MMPA, exactly the same as before they were listed. So why list it? The risk of extinction is very small over the next 50-100 years for that population.

[4:44:25 PM](#)

SENATOR FRENCH asked who he was referring to as "they" when pointing at the CZM program.

MR. VINCENT-LANG replied probably during the NMFS listing, elimination of the CZM program was cited as causing some impact to regulatory oversight of habitat associated with Beluga's, but

the state argued that just because CZM went away, it still had adequate regulatory measures in place to protect that stock.

SENATOR FRENCH asked if it wasn't the other way around, that the Parnell administration used the presence of the CZM to argue that we didn't need ESA protections.

MR. VINCENT-LANG said he would have to go back and read that part of the record and get back to him.

CHAIR GIESSEL thanked him for the presentation.

4:45:50 PM

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 4:45 p.m.