

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 13, 2017

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Natasha von Imhof
Senator Bert Stedman
Senator Shelley Hughes
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 6

"An Act relating to industrial hemp; and relating to controlled substances."

- HEARD & HELD

OVERVIEW: ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT
(ANILCA)

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 6

SHORT TITLE: INDUSTRIAL HEMP PRODUCTION

SPONSOR(S): SENATOR(S) HUGHES

01/09/17	(S)	PREFILE RELEASED 1/9/17
01/18/17	(S)	READ THE FIRST TIME - REFERRALS
01/18/17	(S)	RES, JUD
02/08/17	(S)	RES AT 3:30 PM BUTROVICH 205
02/08/17	(S)	Heard & Held
02/08/17	(S)	MINUTE(RES)
02/13/17	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

AKIS GIALOPSOS, Staff to Senator Giessel and
Senate Resources Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in SB 6 from version A to version U.

BUDDY WHITT, Staff to Senator Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on SB 6 for the sponsor.

ROB CARTER, Manager
Alaska Plant Material Center
Division of Agriculture
Anchorage, Alaska

POSITION STATEMENT: Supported SB 6.

ARTHUR KEYES, Director
Division of Agriculture
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Agreed with Mr. Carter's comments SB 6.

SUE MAGEE
ANILCA Program Coordinator
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Provided an Overview of Alaska National Interest Lands Conservation Act (ANILCA).

BRAD PALACH, Program Manager
ANILCA and Access Defense Programs
Alaska Department of Fish and Game (ADF&G)

POSITION STATEMENT: Provided an overview of Alaska National Interest Lands Conservation Act (ANILCA).

ACTION NARRATIVE

[3:30:11 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Von Imhof, Stedman, Wielechowski, Coghill, Meyer, Hughes, and Chair Giessel.

SB 6-INDUSTRIAL HEMP PRODUCTION

[3:30:42 PM](#)

CHAIR GIESSEL announced consideration of SB 6, sponsored by Senator Hughes. In the last meeting the sponsor and her staff pointed out that the bill would need some changes in order to more formally comply with recent changes in federal law.

[3:31:27 PM](#)

SENATOR COGHILL moved to adopt CSSB 6, labeled 30\LS0173\U, as the working document.

CHAIR GIESSEL objected for purposes of explanation and discussion.

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AKIS GIALOPSOS, staff to Senator Giessel and the Senate Resources Committee, Alaska State Legislature, Juneau, Alaska, said he would review the explanation of changes in Committee Substitute (CS) for SB 6 from version A to version U.

[3:32:34 PM](#)

The first change is in the title on page 1, lines 1-4:

The bill title is revised to more clearly define the intent and the subject matter addressed in the previous hearing that includes adding in the titles for the appropriate sections that are discussed by Mr. Whitt, particularly those related to the establishment of pilot programs, separating the definition and change in statutes for industrial hemp from marijuana, and also clarifying that adding industrial hemp to food does not adulterate that food.

The second change is still on page 1, lines 6-14, and all of page 2:

Adds industrial hemp as an agricultural product to Title 3. It further establishes the Division of Agriculture within the DNR as the regulatory authority for industrial hemp, lays out minimum registration guidelines, and establishes guidelines for seed, plant and record retention by registered growers.

[3:33:43 PM](#)

The third change is found on page 3, lines 1-8:

Adds language establishing industrial hemp growth as a pilot program that only those who have registered at an institution of higher learning may participate in

(federal statutes Mr. Whitt referenced in the February 8th hearing). This additional language is added in order to be in line with Section 7606 of the Agricultural Act of 2014.

[3:34:13 PM](#)

The next change on version U is found on page 3, lines 9-11: Places the definition of industrial hemp under Title 3 instead of under Title 11 as it was in the original bill (version A). The definition itself is unchanged and matches the definition in Section 7606 of the Agricultural Act of 2014.

Page 3, lines 12-21:

Language added to the bill specifies that under AS 11.71.900, industrial hemp is not marijuana, thereby removing industrial hemp from the list of controlled substances.

The next change is also on page 3, lines 22-24:

Adds language to exclude food containing industrial hemp from adulterated foods under Title 17.

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The final explanation for the changes can be found on page 3, lines 25-31, and on page 4, lines 1-2:

At an earlier explanation of changes he forgot a line: language is added to further to exclude industrial hemp from marijuana definitions under Title 17.

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BUDDY WHITT, Staff to Senator Hughes, Alaska State Legislature, Juneau, Alaska, recapped that in an earlier hearing the first version of the bill needed to be changed in order to comply with federal law and that has been done with the CS.

SENATOR WIELECHOWSKI said this is a "pretty dramatic change" from the first version and that Alaska doesn't comply with federal law on marijuana now, and asked why we are worried about doing it with hemp.

MR. WHITT answered that there is a federal law and it is pretty clear what actually has to be in statute in order to comply with it. That is the blueprint he followed in order to develop this piece of legislation. The sponsor tried to draft legislation that will be successful while complying with federal law.

SENATOR WIELECHOWSKI said it is pretty onerous to have to register, list global positioning coordinates, and pay fees every year to cover the regulatory costs. This entire industry could be killed by setting the costs so high that it would drive these small businesses out of business. It requires them to keep records of hemp transfers for three years, which sounds like big government to him. He asked what it will cost the Division of Agriculture to administer it.

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MR. WHITT answered that a lot of the information that is within this CS and the reason it was put together has to do with Federal Register, Volume 81, 156, which was produced on August 12, 2016 by the U.S. Department of Agriculture, which specifically laid out the items that any state would have to do in order to comply with federal law. It's not for him to judge how onerous the legislation is, but it is very clear that the Division of Agriculture would have to be the regulatory authority and have the powers to set those regulations in order to keep tabs on this new growth industry. He deferred the second part of Senator Wielechowski's question to Mr. Carter.

[3:40:00 PM](#)

ROB CARTER, Manager, Alaska Plant Material Center, Division of Agriculture, Anchorage, Alaska, supported SB 6. Even though there may be fees and the bill may be onerous, he really supports it professionally, because sticking to federal guidelines provides longevity and sustainability to the industrial hemp in Alaska. The fees are \$25-50/annually across the country and there is no intent to hurt industry in terms of fees. The division plans on making this registration a simple process, an application that is designed by the industry so a database can be maintained that is more or less for consumer protection and protection of the farmers, so that when someone drives by and sees an industrial hemp field, claims it is a recreational or medical marijuana grow, and calls law enforcement, the department has registered industrial hemp locations.

He believes that the division can take this workload on and maintain it without any additional money at this time. They really can't say what the fee will be without knowing how many individuals are actually going to partake, but probably it will be somewhere between \$25-50, just like grass and grain fees, and have a certification process very similar to the one for potatoes. Their goal is to educate before they regulate these

folks and make sure the state can have a sustainable industrial hemp industry.

SENATOR WIELECHOWSKI asked if he anticipates any new hires as a result of this legislation.

MR. CARTER answered no; they plan to take this additional workload on with current staff. They will build an online application as well as a printable one that can be sent in with the payment. A database will be built in the first year and be evaluated on a year by year basis. They want this industry to be able to take off in the state with a potential for export. A few things in federal regulation allow hemp products to be exported to other states and worldwide.

SENATOR WIELECHOWSKI asked the penalty for non-compliance if a person doesn't register, pay the fee, or keep appropriate records.

MR. CARTER answered at this time Section 1 (f) says the department may issue a stop-sell order or a violation notice to a person who is producing industrial hemp without a current registration. This is how the division currently responds to certification issues with potato, grass and grains. They can issue a stop sell order that has no penalty, because it is a direct order. If someone does not comply, it is a civil Class 3 misdemeanor and a \$500 fine.

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SENATOR WIELECHOWSKI asked what if a person growing industrial hemp keeps records of who he sells it to, then that person transfers it or sells it, are they allow to do that or do they have to keep records as well?

MR. CARTER answered at this time they are just looking for the initial transaction. Normally, agricultural products have one buyer and after that it is considered a post-harvest, processed product.

SENATOR WIELECHOWSKI asked how these requirements compare to the requirements for people who grow marijuana. Are they required to register and have a GPS and keep track of all the transfers of their marijuana products?

MR. CARTER answered that industrial hemp regulations are very burdensome from an agricultural production standpoint; the fees are high and borough or municipal approval is needed, but this

process is simplified and is pretty standardized for industrial hemp nationwide.

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SENATOR WIELECHOWSKI asked if someone would be able to grow industrial hemp in their backyard under this legislation.

MR. CARTER answered yes.

SENATOR MEYER agreed with Senator Wielechowski that this industry has potential and has a lot of good uses, but he wonders if a pilot program can be done with a zero fiscal note. It seems that it would cost something. He asked what a fee structure would look like and if it would be by application or based on the quantity produced.

MR. WHITT answered the Division of Agriculture can decide how many registrants it can handle with a zero fiscal note, if they choose to go that way. In the future, language says they "shall be able to charge a registration fee." If this becomes a growth industry, managing it might incur more costs than can be handled internally.

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MR. CARTER said he knows it is very unique for a state agency to say it can do something without a fiscal note, but the Plant Material Center works with agricultural industries of all types and its mission is to support and encourage agricultural development in Alaska. They could take on a registration process with current staffing, but if the industry becomes the next biggest thing out of Alaska years from now that won't be true. "Hobbling the industry with high fees and lots of regulation is definitely not the way to get something up and growing."

SENATOR MEYER said Mr. Carter commented that this product could be exported and asked if federal regulations allow export currently.

MR. CARTER answered the 2014 Farm Bill, Section 7606, allows the production and the trial by state agricultural agencies and universities. It legalized the production but the biggest difficulty is what to do with the product, and the Farm Bill didn't authorize the interstate travel of industrial hemp products. But then there is a little known "slip-through" within the Omnibus Appropriations Act of 2016, Section 736, that states:

No federal funds made available by that act or any other act may be used to prohibit or transfer processing sales of industrial hemp that is grown or cultivated in accordance with 7606 of the Agricultural Act of 2014 within or outside the state in which the industrial hemp is grown.

So, without the federal government really stepping in and saying industrial hemp can be grown; it can be used and processed and it can be shipped interstate, this really provides legal protections by proxy for allowing Alaska (and not allowing the feds to prosecute or use any funds to prosecute) to produce, process or sell industrial hemp products. That is how the other states - Kentucky, Colorado, Maine, Vermont, and Idaho - are using interstate commerce for their industrial hemp products.

3:52:36 PM

SENATOR MEYER said that the industrial hemp producers are required to have their hemp tested for THC content and asked where that is to be done. Alaska has only two testing centers.

MR. CARTER answered that is correct and one of the good things about legalizing recreational marijuana is that that industry paved the way for testing. So, for a nominal fee through one of these private agencies any individual that is growing a cannabis sativa plant can have it tested for multiple cannabinoids including THC, CVA, CVD, and CVNs.

SENATOR MEYER asked if the state crime lab could be used for testing, as well, if these other two are busy with the recreational hemp.

MR. CARTER answered to his knowledge they have the equipment - a mass spectrometer and a gas chromatographer - that could do the work, but he didn't know about their workload and the availability of employees.

SENATOR MEYER asked if the University of Alaska is or could they be involved.

MR. CARTER replied that he couldn't speak to the University's motives and practices and didn't have any contact about industrial hemp, but the 2014 Farm Bill allows them to take part. However, in the past, some universities have steered clear of anything with cannabis not wanting to jeopardize the amount of federal funding that they do get just to help one industry.

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SENATOR WIELECHOWSKI said his concern is that the industry would be so successful in the future that more employees would be needed and asked if he would be willing to cap fees at \$500 to protect against over-charges and growing government.

MR. WHITT said that the Judiciary Committee would be a great place for that discussion.

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SENATOR COGHILL asked in following federal rules, if people would be eligible for the federal or state revolving loan funds.

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MR. WHITT said he would look into that for him.

MR. CARTER added that the agricultural revolving loan fund that is administered through the Division of Agriculture has no limitations at this time. It is administered by the Board of Agriculture and Conservation, but a cannabis application has not been submitted.

CHAIR GIESSEL asked Mr. Keyes if he had any comments.

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ARTHUR KEYES, Director, Division of Agriculture, Department of Natural Resources (DNR), Anchorage, Alaska, replied Mr. Carter has said what needs to be said.

SENATOR HUGHES said the state is required to have a database and she tried to keep it as simple as possible and pointed out that charging fees says "may" and she was open to putting in a limit. She just wants to give farmers one more economic opportunity.

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CHAIR GIESSEL removed her objection and CSSB 6 was adopted. She said she would hold SB 6 in committee with public testimony open to allow time for the fiscal notes to be updated.

Overview: Alaska National Interest Lands Conservation Act

[4:01:38 PM](#)

CHAIR GIESSEL announced the overview of the Alaska National Interest Lands Conservation Act (ANILCA): how it was created and when it was created, and build the public record recognizing its significance to our state and to our country. It was passed in 1980 in the last stages of President Jimmy Carter's

administration. It was another in the last of the grand compromises of Alaska's entrance into the United States as a full-fledged member of the Union. If there was one word to encapsulate the purpose of ANILCA it was balance, a balance between conservation and development, national and state interests, and rural and urban access to our lands, streams, fish, and game.

It was a carefully crafted law and as its name suggests, embedded a promise. It was the national interest that the development of Alaska and the conservation efforts find an equilibrium. This committee will hear from the in-house expertise of the Department of Natural Resources (DNR) as well as the Alaska Department of Fish and Game (ADF&G) about it. One of the tenets of ANILCA is how our state agencies, constitutionally mandated to be stewards of our lands, fish, and wildlife for generations now and to come were empowered to effectively use those management techniques. Over time that intent has been tested and some would argue eroded. She welcomed Sue Magee and Brad Palach to the table.

[4:03:31 PM](#)

SUE MAGEE, ANILCA Program Coordinator, Department of Natural Resources (DNR), Anchorage, Alaska, said she coordinates state agency reviews of federal actions that affect Alaska's conservation system units (CSU).

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BRAD PALACH, Program Manager, ANILCA and Access Defense Programs, Alaska Department of Fish and Game (ADF&G), said he mirrors Ms. Magee, but within the ADF&G.

[4:04:08 PM](#)

MS. MAGEE started with some background information leading up to the passage of ANILCA. In 1958, the Alaska Statehood Act was passed and it included a 103-million acre land grant to the state. In 1971, the Alaska Native Claims Settlement Act (ANCSA) established and granted surface and subsurface estate to Alaska Native village and regional corporations. In response to this massive transfer of lands out of federal ownership, a provision was put in ANCSA that called for a reservation of up to 80 million acres for study as future conservation areas in the state. This resulted in a very public and contentious debate among environmental groups, development proponents, the State of Alaska, and rural residents.

During the 70s, several bills were introduced proposing various conservation designations in the state. One in particular, HR 39, was introduced in 1977 that proposed 145 million acres of instantly designated wilderness. That shifted the discussion in Congress to look at special provisions for the State of Alaska that would accommodate its special circumstances, one of them being a new state that would be dependent on resource development. A lot of the state is very remote and many people lived in the areas affected by these designations.

In 1978, a bill had not yet passed and the D-2 withdrawals were due to expire. So, President Carter invoked the Antiquities Act to create 56 million acres of conservation areas and 17 individual national monuments.

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In response, Governor Hammond and the Alaska Legislature worked with a variety of constituent groups to identify seven consensus points that would be the state's formal position on resolving the lands issue. These points were all addressed in the resolution in one way or another and they:

1. Wanted all of the 1978 monuments and executive withdrawals revoked.
2. Wanted the state and the Native corporations to receive their full land entitlement.
3. Wanted access across federal lands to state and private lands.
4. Wanted to confirm state management of fish and game on all lands.
5. Wanted to ensure that the conservation boundaries did not include economically important natural resources.
6. Wanted to continue traditional land uses on all lands, and
7. Wanted to preclude administrative expansion of conservation system units.

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In 1980, ANILCA (often referred to as The Great Compromise) was passed and states the congressional intent in the very beginning of the act that they were to have balanced the national conservation interests with the social and economic needs of Alaska and its citizens. This was done by designating very large conservation system units (CSU) of unprecedented size, the intent being to encompass whole ecosystems. Then similarly, unprecedented provisions were included for access and use. It actually added over 100 million acres of conservation system

units and pre-designated some existing units that resulted in 15 national parks, preserves, and national monuments that are managed by the National Park Service, 16 National Wildlife Refuges that are managed by the Fish and Wildlife Service, 25 Wild and Scenic Rivers, and 43 designated wilderness areas that are located within wildlife refuges, national parks, and national forests. It also added some other non-CSU areas, one national conservation, a national recreation, and two wilderness study areas - one in the Chugach National Forest and one in the Central Arctic Management Area - on the North Slope.

CHAIR GIESSEL asked if other states have this degree of patchwork in terms of authority over different land pieces.

MS. MAGEE answered that she was sure some states have some conservation system units, but nothing that equals Alaska's.

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She next covered some key ANILCA provisions that were very important to the State of Alaska:

- "No more" Clauses: There are several - 101-D (the statement that Congress made that they balanced the national conservation interests with the social and economic needs of Alaska). This is a really strong statement of intent, but it doesn't prohibit a future action of Congress, which is reflected in a lot of the other "no more" clauses. She noted concerns over some of the administrative actions the federal agencies are taking, shifting the balance away from the state's interests.

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A second "no more" clause is Section 1326(a), which precludes the future large administrative withdrawals without congressional approval (something like the Antiquities Act). So if a federal agency wants to withdraw more than 5,000 acres in the aggregate, they have to get congressional approval.

Section 1326(b) prohibits future studies of new conservation areas absent congressional direction. Some language refers to a single purpose study and that has turned into somewhat of a loophole in that some agencies have been conducting Wilderness and Wild and Scenic River studies in their management plans feeling that no longer makes it a single purpose study.

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Section 7804 prohibits further statewide roadless area reviews for the purpose of recommending additional designated wilderness without congressional direction. The key word is "statewide," so

it's not very useful, because Alaska has two national forests and they could do them separately. The Department of law would talk about the roadless rule on Wednesday.

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Several access provisions apply: one is Section 1110(a) for general public use for snow machines, motorboats, airplanes, and non-motorized methods of transportation for traditional activities that applies to all the CSUs including designated Wilderness and Wild and Scenic Rivers. This is a very important provision for providing access to and within these areas, many of which are very remote and not on a road system.

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Section 11 is a similar provision, but just for subsistence access. This allows snow machines, motor boats, and other means of surface transportation traditionally employed for subsistence use (typically an all-terrain vehicle).

MS. MAGEE said both Sections 11 and 1110 are subject to reasonable regulations. This means the federal agencies can manage the use, which the state doesn't dispute, but the disagreements come over the justification for restrictions or closures. She explained that the Park Service and Fish and Wildlife Service have regulations that have been in place since the early 80s and they require site-specific justification and a public process so that people that are affected by any restrictions or closures have a chance to communicate with the federal agencies and hopefully work with them on coming up with other ways to address the resource concerns without restricting access.

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She said in-holder access is in Section 1110(b) and establishes a guaranteed right of access to state and private in-holdings within CSUs, specifically for economic and other purposes. So, if you have an in-holding you should be able to have a business on your in-holding and should be able to develop resources. It is a very important and strong provision in ANILCA.

In response to then governor, Murkowski, in the mid-2000s the DNR worked with the Park Service on getting some guidance in place to help in-holders to secure their access. This was most important in the Wrangell - St. Elias National Park and Preserve because it has a lot of in-holdings.

Section 1323 is a similar provision to 1110(b), but it applies to non-CSU BLM and Forest Service land. It assures access but it is not as strong a right. Probably, Congress didn't anticipate problems with multiple-use lands, which is what BLM and the Forest Service management is.

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Another very important provision in Title 1101-1107 - the Transportation and Utility System process in ANILCA - ensures that federal agencies will consider a transportation or utility system project that occurs on CSUs. It doesn't guarantee an answer, but it ensures that they can't just turn a proponent away, or the state, for that matter. There is very strong intent language that Alaska is a young state and needs to be able to develop its infrastructure, and that's why they developed a process. But the process, itself, is a little out of date; the timelines are out of sync with how long it takes to do an environmental document in today's world, but extensions are possible. However, it has some procedural problems with it, as well.

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MS. MAGEE said she has heard that industry doesn't think this process works well. It has been used for small projects, but it is problematic for larger ones. In all honesty, the federal agencies are in charge of the process and their first instinct is to protect and avoid a CSU, which is generally the outcome, and that's where the problem lies.

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CHAIR GIESSEL asked if the management plan for the Wrangell - St. Elias 1110(b) area is complying with or eroding Alaskans access through ANILCA.

MS. MAGEE said the plan the Park Service has for Wrangell - St. Elias is still in the works, but it is a back country wilderness stewardship plan, and primarily deals with access. It's more about the 1110(a) public methods of access for traditional activities (not subsistence access), snow machines in particular.

CHAIR GIESSEL said she hears some concerns that the plan is eroding access.

MS. MAGEE said the plan is in its early stages, and snow machines are still an issue with that plan. So, she will be watching it closely.

[4:21:39 PM](#)

SENATOR STEDMAN asked if the department tracks all these plans the federal government puts forward and automatically responds to the statutory rights Alaska has, and if they are ignored, what the department does to make sure we have these rights for access.

MS. MAGEE answered she is the state coordinator and when a federal agency releases a plan, policy or regulation that affects one of these units, the state reviews it, and she works with any state agency that has an interest in it. Then they prepare written comments if it's a formal public comment period, but they also try to talk and work with the federal agencies as the plans are being developed. ANILCA has provisions that require that they consult and cooperate with the state on different things and planning is one of those areas.

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SENATOR STEDMAN remarked that sometimes it seems like the feds just ignore the state's statutory rights versus recognizing they even exist, particularly in the Tongass.

MS. MAGEE responded that the state has been struggling with this over the last few years. It has always monitored the implementation of ANILCA very closely, but they have been frustrated in the last few years. The federal agencies will go so far and recognize that 1110(a) applies to these units, but they often disagree on the justification for a restriction or a closure. Sometimes legal challenges are a result.

SENATOR STEDMAN said he wanted to look at the road easements through the Tongass that were granted a few years ago, because some of them haven't been cleared.

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SENATOR COGHILL commented he was glad to hear the state tries to get in on the planning process, because the disappointing thing to many of them is that they have invited non-government agencies into the planning processes way ahead of the state, and yet ANILCA contemplated the state being at the table through the Land Use Planning Council. He asked if there had been some conversation within the state and federal government about looking at a reconstituted Land Use Planning Council.

MS. MAGEE said she didn't speak for the state and didn't know if it is supportive of that right now, but it would be helpful to have that forum for productive conversations.

SENATOR COGHILL remarked that in his neck of the woods, the areas of critical environmental concern "just drive me crazy" and "no clauses" are kind of "in your face right now" in both the central and the eastern planning units. The state has to assert this law. It is unique between the federal government and a state among the states that is almost akin to the Louisiana Purchase and it should be held accordingly. This law becomes a tool that if the state does not use, then it looks like the federal agencies continually go to the Federal Land Policy Act instead of ANILCA, and it's up to the state to reassert on every occasion.

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MS. PALACH said when ANILCA was being discussed in Congress, management and use of fish and wildlife was a very significant topic, and ANILCA addressed it in several different places. Section 804 discussed establishing a priority for subsistence use of fish and wildlife over other uses when it was determined necessary to restrict a take of fish or wildlife.

Section 1314 confirmed a very important part, which was that the state would retain management of fish and wildlife on all lands.

Section 1316 considered existing uses on federal land, so they discussed an allowance for existing uses and future establishment of temporary facilities, camp sites, tent platforms, and shelters that were related to taking fish and wildlife. These are important not only for the general public but for guided commercial use, as well.

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MR. PALACH noted that they had just talked about state/federal cooperation, and Title 12 of ANILCA addressed the Alaska Land Use Council. It was a joint federal/state/Native corporation forum that was charged with making recommendations on ANILCA implementation including a required plan, studies, and regulations. So when the Fish and Wildlife Service did a comprehensive conservation plan or the National Park Service did a general management plan, the Land Use Council, which included the governor and the head of the federal agencies in Alaska, would meet and consider those plans. They would discuss the pros and cons and how they thought it addressed ANILCA and whether they thought the plans were sufficient, or in some cases, with

the first round of National Park Service Plans, whether they were deficient and needed to be redone, which did happen in the first round of general management plans for the National Park Service, which were returned and revised significantly over concerns that the Alaska Land Use Council provided.

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He said the Council, itself, had a sunset and he recommended a congressional reauthorization, but that didn't go forward. So, the Land Use Council went away in 1990.

Other ANILCA amendments have passed since 1980; it isn't a stagnant law. Some examples are the Tongass Timber Reform Act in 1990 that eliminated the mandatory large timber sales and related subsidies. It also designated additional wilderness areas and 12 new land use designations on the Tongass National Forest. And the Submerged Lands Act of 1988 amended ANILCA, Section 901, to exclude major waterways from ANCSA conveyances, which sped up the Native Corporation and state land conveyance processes. Basically, if you were conveying land, you could come up to a major water body and instead of having to figure out what to do with it, you could just exclude it - it didn't count either as state or Native corporation land in the entitlements the state got under the Statehood Act or under ANCSA.

[4:33:11 PM](#)

MS. MAGEE took up implementation challenges and said many provisions in ANILCA require federal agencies to consult or coordinate with the state in addition to Title 12. It is interesting that an entire title is devoted to state/federal cooperation, but that is not the only place it says we're supposed to cooperate.

She said that lately they are experiencing different interpretations of what constitutes "meaningful" consultation and coordination. There is a difference between informing somebody of what you are doing and having a good dialogue/exchange of information. The state is looking for an opportunity to having the dialogue and an opportunity to share information and look for solutions, because often there is more than one way to solve a problem.

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MS. MAGEE said another issue with national policies and regulations is that they often don't reflect or recognize ANILCA or Alaska's unique context. So, the state frequently recommends regional guidance to local Alaska regional offices, and

sometimes they are heard and sometimes not. In 2005, the Forest Service had a national access and travel management regulation go into effect that was inconsistent with ANILCA's open-until-closed provisions on access. It took a while to get the Forest Service's attention, but then they agreed to do some regional guidance that allowed the district plans to be implemented in a manner that was consistent with ANILCA.

MS. MAGEE said that they been talking to the Bureau of Land Management to put together some regional guidance for Alaska, because they are a multiple-use agency and don't have all of the same implementing regulations that the Parks Service and the Fish and Wildlife Service have that were promulgated in the early 80s.

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The Department of Interior has Title 11 access regulations, but they have introduced some new policies like the Wildlands Policy in around 2010 that requires their lands to be inventoried for wilderness character and to manage to protect that. It wasn't a real designation by Congress, so a lot of states objected to it. Some changes were made, and now they don't actually designate "wildlands" any more, but they are still implementing the policy and it's at odds with a lot of the access and special provisions in ANILCA that apply to designated wilderness. This is just an example of where the state would like to have some regional guidance that would speak to all the staff that are working on the three plans now, so the department doesn't have to continually make the same comments over and over again. Unfortunately, no progress has been made there. Unfortunately, when federal decisions conflict with ANILCA, it leads to unnecessary conflicts and litigation.

Another challenge is that plans are thousands of pages long. But the departments are looking to public access for traditional activities: hunting, fishing, trapping, and camping. They want to promote state-managed access to and along state waterways and protect access and development opportunities for natural resources located on in-holdings and adjacent non-federal lands; they want to encourage appropriate opportunities to provide tourism and visitor services and support recreational uses on the public lands and benefit the local economies that are affected by these areas. They also want to ensure state management of fish and wildlife on all lands.

ANILCA often affects multiple state agency interests and mandates and that is why the coordinated state agency review is

done. It allows the state to speak more powerfully with one voice and helps to facilitate more effective consultation prior to the final decision, which is an important aspect of their work.

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MS. MAGEE said the final challenge for state agencies and primarily federal agencies because it is a federal law, is that their knowledge of ANILCA is diminished by turnover, whether someone is being transferred out of the state after being here for a while, which is the routine that federal agencies go through with their employees, or some long-term knowledgeable people who are retiring. You're just losing institutional memory of ANILCA.

CHAIR GIESSEL said she was pleased to hear about the coordinated state agency reviews, and at the same time they are saddened to lose the Citizens' Advisory Commission on Federal Areas (CACFA), which kept the legislature pretty well apprised.

SENATOR COGHILL thanked them for their day-to-day work in wading through thousands of documents. One of the things legislators need to continually be made aware of, just like they have to continually instruct the federal government, is they have to also continually instruct where the state fits in the Statehood Act and the Alaska Native Land Claims Settlement Act (ANILCA) that are its forming documents. The trouble is that one can literally change the whole agreement for statehood based on a regulation. But the other part of the context is there was a Tongass Act prior to this and yet it's poorly understood how the Endangered Species Act, the Clean Water Act, and NEPA all happened after this act, which has had a huge impact on how the state can manage conservation units. He asked how ANILCA helps us cut through these acts or does it add complexity that makes it harder.

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MS. MAGEE answered in referring to the other environmental laws and regulations that are in effect today, she primarily thinks about the plans that affect multiple-use lands as opposed to the conservation system units. This is an issue for them in the context of the Eastern Interior Resource Management Plan that was recently finalized, because they feel there are existing environmental laws and regulatory authorities that protect resources that didn't exist back in the late 70s. Some of these administrative designations - the areas of critical environmental concern and riparian conservation areas are a few

- they had never seen before. There was no acknowledgement that other regulations existed that would protect the resources, and so, that is why they are really looking at the justification for that designation and if they are necessary.

SENATOR COGHILL said he is still appalled and asked who we appeal to, Congress? And go past the regulators? Is the administration alarmed at anything in this?

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MS. MAGEE said the state is looking at all of its options on that particular plan, and litigation is a possibility. Part of the issue with BLM plans right now is this new planning role that they have recently finalized called "Planning 2.0" that seeks connectivity within ecosystems. In Alaska, that ends up being buffers for the many conservation system units that already exist in the state. So, BLM lands that are still multiple use lands are being managed primarily for resource protection under that new planning rule. There lies a cause for concern. She knows Congress is looking at whether or not that rule can be repealed under the Congressional Review Act.

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CHAIR GIESSEL thanked them for their presentation and said she felt obligated to point out that as one of the three Territorial kids sitting at the table - Senator Stedman, Senator Coghill, and herself - that Alaska became a state because of the discovery of oil at Swanson River and ANSCA was actually the result of the desire to build the TransAlaska Pipeline System (TAPS), once again about Alaska's petroleum hydrocarbon resources.

SENATOR STEDMAN remarked that one of the reasons Southeast Alaska wanted to become a state was to close down the fish traps, a different type of oil.

CHAIR GIESSEL asked if they could provide a list in written form of the various provisions in ANILCA that they had called out.

SENATOR COGHILL said one of the last acts of CACFA was an ANILCA review and it might contain some documentation of the changes the departments have had to deal with as a matter of course.

CHAIR GIESSEL said that the Department of Law has provided her with a chart of potential conflicts with the federal government on these kinds of issues that she would provide the committee

members and they can ask the department about them at the next committee meeting.

4:50:51 PM

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 4:50 p.m.