

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 28, 2018

3:30 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Overview: State of Alaska's Permitting System for Anadromous Streams

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SAM COTTEN, Commissioner
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Provided overview of ADF&G's participation in Alaska's permitting system for anadromous streams.

LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Provided overview of ADEC's participation in Alaska's permitting system for anadromous streams.

ANDY MACK, Commissioner

Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided overview of DNR's participation in Alaska's permitting system for anadromous streams.

RON BENKERT, Permitting Lead
Division of Habitat
Alaska Department of Fish and Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Provided overview of the Division of Habitat's participation in Alaska's permitting system for anadromous streams.

WADE STRICKLAND, Manager
Wastewater Discharge Authorization Program (WDAP)
Department of Environmental Conservation (DEC)

POSITION STATEMENT: Provided overview of ADEC's participation in Alaska's permitting system for anadromous streams.

HEIDI HANSEN, Deputy Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided overview of DNR's participation in Alaska's permitting system for anadromous streams.

KYLE MOSELLE, Associate Director
Office of Project Management and Permitting (OPMP)
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided an overview of OPMP's participation in Alaska's permitting system for anadromous streams.

BRENT GOODRUM, Director
Division of Mining, Land, and Water
Department of Natural Resources (DNR)
Fairbanks, Alaska

POSITION STATEMENT: Provided overview of the Division of Mining, Land, and Water's participation in Alaska's permitting system for anadromous streams.

ACTION NARRATIVE

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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 Coghill, Bishop, Von Imhof, Stedman, Meyer, and Chair Giessel.

**Overview of the State of Alaska's Permitting System for
Anadromous Streams**

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CHAIR GIESSEL announced the overview of Alaska's existing permitting system for anadromous streams. She said Alaska is considering changing the laws that govern its anadromous fish streams that are located in Title 16, and today's hearing is informational to determine whether the existing permitting system works and to understand the quantifiable changes to the permitting system if the initiative efforts become law.

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SENATOR WIELECHOWSKI joined the committee.

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SAM COTTEN, Commissioner, Alaska Department of Fish and Game (ADF&G), Juneau, Alaska, opened remarks by saying that the agencies were here today in response to Chair Giessel's request to discuss how agencies manage and protect fish and wildlife habitat in Alaska. He was joined by Ron Benkert, Regional Supervisor and Permitting Lead for Southcentral Large Projects, in the Division of Habitat. He noted that he has been assigned to lead the division's efforts in the large projects group. He said that Mr. Benkert also leads an "integrated approach" that includes input from the Division of Subsistence, the Division of Sportfish, the Division of Wildlife, and the Division of Commercial Fish that also have an interest in some of these projects.

COMMISSIONER COTTEN said the department's core mission is management and protection of Alaska's fish and wildlife resources, adding that habitat is a very high priority in that overall mission. Healthy habitat is extremely important as various interests compete for allocations - in salmon resources, especially - and find that they all have one thing in common: that healthy salmon habitat benefits everybody. The department does not take that lightly. In fact, he has several partnerships around the state with local governments and many groups (sport fish organizations, commercial fish organizations, resource development organizations, and dozens of non-government organizations) that put a lot of time and effort into habitat protection projects, like culvert replacements and other fish passage efforts.

COMMISSIONER COTTEN said the chair's letter suggested that the departments respond to three general questions, and Mr. Benkert would respond to those for his department. He cautioned that they would be a little hesitant to speculate on impacts to various stakeholders (question 3), because a lot of the projects have their own parameters and special needs. He also didn't want to appear to advocate for or against any potential initiatives or to influence the Supreme Court review.

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LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), Juneau, Alaska, said the department has no position on the initiative and that Wade Strickland, Manager, Wastewater Permitting Program, was with him today to talk about the details of their existing program. He said during today's hearing, DEC would present on three topics:

1. How water quality standards are set to protect all aquatic life and other uses for both marine and fresh water.
2. How the process is used to incorporate those water quality standards into the Alaska Pollutant Discharge Elimination System Permits (APDES) that the department issues under the authority granted it by the Environmental Protection Agency (EPA) in Section 402 of the Clean Water Act.
3. How the initiative would impact their program fiscally.

COMMISSIONER HARTIG said water quality standards are science-based and are the foundation on which permitting and other programs are built to protect water quality. The EPA must approve those water quality standards before they get used in the permits. The water quality standards get revisited every three years to evaluate data from dischargers and to look for new science that could require a change. DEC consults with the National Marine Fisheries Services (NMFS) and other federal agencies. Both agencies use a public process to set or change water quality standards. A lot of work goes into water quality standards; sometimes it takes years to get one changed.

He explained that the EPA delegated the authority to issue Alaska Pollutant Discharge Elimination System (APDES) permits to the DEC in 2008 and the program was phased in over four years. Improvements that Alaska wanted were made on updating permits and getting them out the door more efficiently and now the department has worked through the backlog it inherited from the

EPA. They have issued APDES permits for all the major operating mines in Alaska at least once (Pogo) and most of them twice (Red Dog, Kensington, Greens Creek, and Fort Knox). These permits are issued for five years, but they can be modified or even terminated for certain reasons. None of the permits have been appealed judicially.

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ANDY MACK, Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, opened by saying the state has an incredibly large portfolio of property that includes 105 million acres of land and about 55 million acres of fresh water. The state of Oregon has about 60 million acres by comparison. The department tends to manage state lands and waters through plans and they tend to emphasize multiple use and sustained yield. They are all developed with the direct involvement of stakeholders across the state and also the influence and participation of local organizations including cities and communities. The state's plans tend to be forward-leaning and are designed to allow access including resource development. They will be talking about three distinctions:

1. general state land
2. state parks
3. forestry

He explained that state parks are created by the legislature along with public use areas. The department also manages state lands which have certain activities not requiring a permit and certain other activities requiring a permit or an authorization. At each critical juncture, they work with their sister agencies and take guidance from them on business matters. They view the DNR as the custodian of both the resource, which lies under the land in many cases, and the surface estate, which is the impacts and activities on the surface.

Presenting with him today will be Kyle Mossel, Office of Project Management and Permitting (OPMP), who is very familiar with how projects come together, and Heidi Hansen, DNR Deputy Commissioner, who manages many of the divisions that do the work on management of state lands.

CHAIR GIESSEL remarked that over the years the committee has had meetings and talked about how the three departments work together to maintain the state's water quality and this is a wonderful opportunity to hear from all three at once.

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RON BENKERT, Permitting Lead, Division of Habitat, Alaska Department of Fish and Game (ADF&G), Anchorage, Alaska, said he would provide an overview of how the division approaches permitting projects that will potentially impact anadromous water bodies and all other water bodies, and then segue into what changes would have to occur within the division and the department to accommodate the passage of the initiative.

MR. BENKERT said culvert replacements are done routinely. They are classified as good or bad for fish passage. They work from a list and work with Department of Transportation and Public Facilities (DOTPF) and various local governments to replace culverts whenever roadwork is being done.

SENATOR BISHOP asked how long it took to permit the fish passage pictured in the power point.

MR. BENKERT answered that is a culvert project for DOTPF in Cordova and a culvert of this size and scope usually takes 2-6 weeks to permit.

He added that a lot of times a diversion plan has to be approved after the permit is issued. For instance, if a channel needs to be diverted, the contractor comes up with a design and the department has to approve it. The project gets another review prior to its initiation to assure fish passage through an area even when the construction is going on.

SENATOR BISHOP asked if this initiative passes how long would it take to permit this project.

MR. BENKERT replied that the initiative requires a public notice and that would add 10-30 days, whatever was settled upon as a length of time for posting.

SENATOR WIELECHOWSKI asked if there is any public process under existing law, especially for major projects.

MR. BENKERT answered there is currently no public process for any of their permitting. He added that the public notification might not cause a delay because when DOTPF or one of the boroughs initiates a permit application they usually do it way in advance.

SENATOR WIELECHOWSKI asked if permitting involves fees.

MR. BENKERT replied that they currently have no fee schedule for issuance of permits, but compensation on larger projects comes to the department through a funding mechanism managed by the OPMP Division called reimbursable services agreements. These are agreements with project proponents to reimburse the department for the cost of evaluating large documents and for evaluating the project on the ground.

SENATOR WIELECHOWSKI asked how many fish habitat permits they issue in the course of a year; how much does that cost the department and how much are they getting back?

MR. BENKERT answered they had a peak in 2013 when 5,000 permits were issued statewide. That number has dropped dramatically to 1500 because of the current fiscal climate.

SENATOR WIELECHOWSKI asked how much it costs the state to issue those permits and how much it is getting back through cost sharing.

MR. BENKERT replied that it is hard to place a cost on just issuance of permits because the Division of Habitat is involved in a lot of other things. Its budget is around \$7 million year.

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SENATOR VON IMHOF said usually an entire project is noticed initially - for instance, several culverts that will take six months to replace.

MR. BENKERT agreed that was correct, adding that DOTPF initiates the public notice. If other components from other departments are involved - for instance, if water needs to be withdrawn or a stream needs to be diverted - then the DNR Division of Water would issue a permit. The DEC also issues permits for large construction projects - for example, the Storm Water Pollution Prevention Plan (SWPPP) is part of their APDES permit. It requires inserting sediment controls to make sure sediment is not running off the site into a stream during project construction. Those are public noticed, as well.

SENATOR VON IMHOF thanked him and said it is very reassuring to know that there is quite a bit of opportunity for public notice already. She asked if the culverts in his picture would need additional scrutiny and permits to replace the same culvert in the event the initiative passes.

MR. BENKERT replied that is undetermined. The initiative has two categories of permits: it's either a major permit or a minor permit, and there is no clear guidance as to how that determination is made.

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SENATOR MEYER asked if it is safe to say that if the initiative passes that it would create more work on the part of the department and require a larger budget.

MR. BENKERT replied yes. He said the division's mission statement says to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand. The Habitat Division is a little bit different than the other fish and game divisions that mostly allocate resources. They are trying to find that balance between allowing development and still maintaining Alaska's fish habitats and do a lot of negotiating with project proponents.

He explained that when a project comes into the office they routinely look at it and recommend alternative methods or avoidance and minimization measures that can be implemented into the project to make it better. They always prefer to see a bridge over a creek rather than a culvert under the road; and sometimes they convince the project proponent that that is the way to go. It costs a little bit more initially, but the long-term maintenance costs are much lower, and bridges don't have a chance of impacting any kind of fish passage.

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MR. BENKERT said their workload priorities are primarily under Title 16 permitting, but they do a lot of other things like field work, writing technical reports, developing new standards like the recent blasting standards, and information collection. Large projects of importance to the state - hydro and mining projects - is another issue they spend time on. They also provide direction for the Forest Resources and Practices Act (FRPA), issue permits to the Forest Service when they are doing timber harvest and special area planning, and permitting on all the state game refuges, critical habitat areas, and sanctuaries. They write the management plans for those in conjunction with their wildlife staff and DNR. When activities are proposed in those special areas that aren't covered in a management plan they will evaluate those to see if they can actually authorize that activity and then write up a "special area permit." Sometimes fish need to be handled or transported properly if a creek is being diverted or a scientific study is being

conducted, then a fish resource permit is drafted, typically through the Sport Fish or Commercial Fisheries Divisions.

MR. BANKERT said he would next focus on two of the department's statutory authorities: the Fishway Act, AS 16.05.841, and the Anadromous Fish Act, AS 16.05.871. He would first discuss the Fishway Act in more depth. This is basically a fish passage act that requires that any obstruction built across a stream provide for adequate fish passage. It applies to all species, not just anadromous fish, and all resident fish populations like grayling and rainbow trout. If a culvert is being put, they ensure that it doesn't block fish passage and require a long-term commitment from the contractor or project proponent to maintain that passage. It applies only to fish passage not to other activities in resident fish waters like docks, for instance, motorized stream crossings, and stream bank protections.

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SENATOR VON IMHOF said one of the previous speakers said that none of DEC's permits had been contested in court and asked if ADF&G had any judicial problems with its permits like people saying the culvert was built improperly or is not sufficient for fish to move through.

MR. BENKERT replied that some culverts weren't put in properly and those are identified by DOTPF or the Alaska Railroad and corrected in collaboration with the entity that constructed them. In the case of the Railroad, sometimes it takes a little while to see how bad the fish passage problem really is. Reassessment is done by modeling a predominant "design fish" from the stream into the program with velocity measurements. That fish is run through the model to make sure it can get back through the pipe.

SENATOR VON IMHOF said she is hearing that they check the culverts once they are finished to make sure that salmon and other fish are moving adequately up the stream and asked if that process seems to be working okay.

MR. BENKERT answered yes. He added that a program in the Sportfish Division has that as its primary task. Really bad culverts are a priority.

COMMISSIONER COTTEN added the State of Alaska installed lots of culverts some time ago that are in dire need of replacement and the funding for these comes from different sources. For example, Crooked Creek on the Kenai Peninsula is probably 40 or 50 feet

below the surface of the highway and they are waiting for highway funding to fix that. About \$5 million in Exxon Valdez restoration funds was secured to correct a culvert that was put in the wrong place. Either a culvert's conditions have changed, or they just need to be replaced for some reason.

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MR. BENKERT said it's not just the ADF&G. They have good partners for culvert replacements like the U.S. Fish and Wildlife Service for design and funding, Alaska Sustainable Salmon funding, National Fish Habitat Partnership, and local habitat partners.

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SENATOR WIELECHOWSKI asked what sort of enforcement tools ADF&G has to enforce permit violations now.

MR. BENKERT replied that both statutes they work under are Class A, nonbailable citations, that require a mandatory court appearance.

SENATOR WIELECHOWSKI asked, "misdemeanor?"

MR. BENKERT answered yes. That is one of the reasons they try to work with folks who have made a mistake or don't know what they are required to do. Sometimes landowners have a lakeshore property and laser level their bank taking the whole riparian zone out and put a boat ramp in without any permits. He works with those guys to come up with remediation for the site, because they want to comply and realize they have made a mistake. The department will give them a permit to conduct the remediation and will monitor it to make sure it has been conducted properly.

For more egregious situations where someone is maybe a blatant discharger or knows they shouldn't be doing something and does it anyway, they use the Alaska Wildlife Troopers to enforce the statutes. They will issue a notice of violation which can be given directly to the violator or to one of the troopers to issue on their behalf. Then it's just a matter of getting the district attorney involved and taking it to court.

SENATOR WIELECHOWSKI said throwing someone in jail as the only available penalty seems a little harsh and asked if they would benefit from having some civil violation penalties for the person who just doesn't want to do anything but at the same time you don't want to throw in jail.

MR. BENKERT replied they tried to get a couple of bailable citations through the legislature four or five years ago and were not successful. But yes, they do see a benefit in having bailable citations for less egregious crimes.

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MR. BENKERT said next he would cover the Anadromous Fish Act, AS 16.05.871, the focus of the initiative. This jurisdiction applies to any kind of activity that is happening in anadromous fish bearing water bodies and applies to any live states; so, it doesn't matter whether its eggs in the gravel, an adult returning to spawn, or anything in between. It is limited to areas below the ordinary high-water line of an anadromous stream or water body. The water bodies must be in the Anadromous Waters Catalogue, the department's tool to identify what water bodies in the state that do have anadromous fish. A team goes out annually to assess and sample various areas of the state, typically covering about 40,000 square kilometers a year, to see if new water bodies should be entered into the catalogue. Other consultants do it, too, those who are working on a large project, for instance, federal agencies and other state biologists. There is an annual nominations period for new streams into the catalogue; the new one should come out in June.

SENATOR WIELECHOWSKI asked if he has any idea of what percentage of anadromous rivers, lakes, and streams are in the catalogue.

MR. BENKERT replied that they had looked a lot at that but didn't have a really good answer. But the Sportfish website has an estimate of 50 percent, which varies between watersheds. The percentage is higher in urban areas like the Matanuska Borough where the Susitna/Watana Hydro project generated a lot of biologists collecting additional information. Some places are a really low priority such as national parks where there isn't much chance of development occurring.

He explained that they use criteria in doing this analysis. The state has a lot of waters that just aren't accessible to anadromous fish like high alpine lakes with a big waterfall. Those need to be accounted for, so there is an elevation limitation. Anadromous fish have not been seen above about 1,100 meters. So, they don't sample there just because there is very low likelihood of encountering anadromous fish. It all adds up to the fact that a lot of waters in the state that are included in that 50 percent just don't have much likelihood of containing anadromous fish.

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SENATOR WIELECHOWSKI asked how ADF&G handles receiving an application for a project on a stream or lake that is not listed in the catalogue, but the department suspects it's anadromous.

MR. BENKERT replied that they "look pretty hard." For example, the Department of Transportation and Public Facilities (DOTPF) was replacing some culverts on the Parks Highway around Broad Pass and the stream had been sampled three or four times for fish and nobody found any anadromous fish; they found resident fish but not anadromous fish. The reason it was sampled so much is that ADF&G thought it looked like fish should be there. Then both gas line projects proposed to go through the same place and so both ASAP and AKLNG consultants sampled that creek, as well. The Habitat Division went up there and still didn't find anything. Prior to issuance of the permits they went up again with DOTPF and didn't find anything. It came time to permit the project and he sent a biologist up there one more time, because he was there anyway. He put a minnow trap in that stream and got two juvenile cohos. So, it took five sampling events to identify anadromous fish. When it looks fishy, the department will do everything it can to get in and try to document anadromous fish. Culverts are still required to provide fish passage whether there is an anadromous system or not; fish passage is for all fish.

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SENATOR WIELECHOWSKI asked the average cost to survey a stream.

MR. BENKERT guessed a typical survey would be one guy for a day, whatever that would cost, but remote locations with helicopter supported surveys get expensive really quick.

He said the process of how they issue Fish Habitat Permits is:

- The applicant submits a plan and specifications to the division
- The division reviews the plans and consults with other staff and divisions for what they know and have concerns about
- The division works with the proponent to try to avoid any impacts if there are special concerns and negotiates to get a better project.

The timelines for issuing permits vary widely. Sometimes a permit can be issued quickly because it's not controversial. Some projects take years of pre-project permitting just to get to the place where they can put in an application. That usually occurs on a large project. A complicated project for a large

bridge project with multiple components would require more back and forth with engineering and environmental staff at DOTPF to get a "good handle" as to what is going on on the ground. The division has the ability to issue emergency exemptions under AS 16.05.891 such as in the instances of flooding and preventing washouts of bridges.

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MR. BENKERT said their permits have a couple typical stipulations for protection of the resources; timing windows for construction projects is a major one. The standard window is May 15-July 15, because the smolts have already migrated out and there is typically no eggs in the gravel and the adults haven't returned to spawn. Their highest bar is to protect spawning fish.

The diversion fish passage bypass has the same stipulations. The diversion plan has to be approved to ensure fish passage continuously through the project. They work with the Department of Environmental Conservation (DEC) on sediment control and require revegetation and stabilization of any bare banks with native vegetation to make sure they get a jump-start on being stabilized.

The department requires notification from these projects before they divert, so a biologist can go out and make sure everything is being done properly. The division can remove the fish for them if they know in advance of the project. They inspect continuously to make sure that the project follows the permit explicitly and adjust for problems. They can issue field permits if a project runs into a problem: if a solution looked good on paper but didn't turn out so good on the ground, for instance. This would avoid shutting the project down and going through the application process again.

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MR. BENKERT said that concluded his explanation of current business practices. Their cost statement contained the new duties and functions if the initiative passes. First, the initiative presumes anadromy on all waters and, therefore, any waters in adjacent riparian areas are subject to the Anadromous Fish Act. Currently, their jurisdiction is at the ordinary high-water mark; they have little jurisdiction in riparian areas. They currently don't catalogue a stream that is connected to an anadromous stream; they need a "fish in hand" to show a stream really contains anadromous fish.

The way the initiative is written, if the proponents disagreed with the assumption that it's an anadromous system, they could request a site-specific determination that his staff or some qualified biologist would have to go out and determine. That is an unknown cost as they don't know how exactly that would work, yet.

CHAIR GIESSEL said he mentioned that they don't categorize waterbodies that are above a certain elevation and asked if the initiative would require the department to do that.

MR. BENKERT replied that is the assumption: it's not specifically clear, but the way it's written, all waters would be anadromous.

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One of the big components of the initiative is developing a public notice process and it requires noticing "all permits, applications, or amendments to permits." It also requires separate permits for many diminimous activities now covered under a general permit (for things that a lot of people do). For instance, a known anadromous stream crossing, because it is a good place to cross. The department doesn't want to have to issue 250 permits to individuals who cross that stream. The general permit has stipulations to make sure they are crossing the stream correctly and the initiative would require them to notice those, as well. Also, they are not sure what "any major anadromous habitat permit assessments" means, but they would need to go out and determine if fish were there potentially. It's unclear what that would entail, but it is obviously a new duty that requires figuring out the intent. Any major fish habitat applications not just the permit would also have to be noticed.

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SENATOR BISHOP asked how long the public notice period is and if that decision is left up to him.

MR. BENKERT replied if the initiative were to pass, he believes that a regulation package would have to be developed to guide some of the general requirements and that would include those timelines.

SENATOR WIELECHOWSKI referred to section 3 of the initiative that says, "The commissioner shall specify in regulation anadromous fish habitat". So, he presumes the commissioner could say anything above ordinary high-water (OHW) could be presumed

to not be anadromous. It goes on to say in the absence of any specification the commissioner shall presume that it's anadromous, but that's a rebuttable presumption. Right? The commissioner is given quite a bit of leeway to specify in regulation what is anadromous and what's not.

MR. BENKERT responded that that language is vague.

SENATOR WIELECHOWSKI responded that it says, "The commissioner shall specify in regulation anadromous fish habitat", and that's not vague, at all.

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MR. BENKERT continued that the initiative would require written authorization for an individual to operate under the general permit, and that's not necessarily the case now. Currently, the department requires having the permit in one's possession to know what the rules are, but it doesn't need to be authorized prior to its use.

New duties they would have to perform under the initiative would be determine whether a fish habitat permit is a major or minor permit (page 3) and that criteria is unclear. The department would have to respond and address all the public input on major fish habitat permits. It would also have to collect fees equal to the cost of service for major permits, which would probably apply to the site-specific determinations he alluded to earlier. They do not currently have such a fee schedule.

The department would have to determine whether a performance bond is necessary for a project, something they currently do not do (DNR and DEC have that ability, but ADF&G doesn't) and determine if the proposed activities are likely to cause substantial damage to anadromous habitat, something they do currently but the initiative's guidelines would be much more codified. It would have to determine if the anadromous fish habitat will recover if restored within a reasonable period of time.

MR. BENKERT said under the initiative, regulation would have to specify what activities do not require a permit and that would be an interesting list to develop, because they would have to come up with everything that wouldn't require a permit and if it's not on the list, then it does require a permit.

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In conclusion, Mr. Benkert said, the passage of the initiative would require hiring additional staff including habitat biologists, an analyst programmer, and program technicians to implement and handle the additional workloads. They also think it would be a good idea to have a public education component, just to let the public know the department has expanded its jurisdictional authority and that folks that didn't need permits before would need them now. The department believes a regulation package would be required as a companion to this initiative and that could take at least two years working with the Department of Law (DOL), and then the legislature would have to adopt the new regulations; then they would have to be implemented.

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SENATOR MEYER asked what he anticipates implementing this initiative would cost and commented that it could affect several current development projects, which could mean they won't happen and jobs would be lost in the process.

MR. BENKERT replied that they have estimated implementing the initiative would cost \$1.3 million per year for several years until it gets up and running. Obviously, they would still need to hire and maintain a higher level of staff to work with the new statute.

SENATOR MEYER asked how much more it would add to a major project like the gas pipeline.

MR. BENKERT replied that a major project like that would have a reimbursable services agreement (RSA) attached to it already, so the state is compensated for its time. It may cost the project applicant more money, because of the additional criteria they would have to look at. It would not cost the department any additional money.

SENATOR MEYER said the state is the one who owns the project now, so it would cost the state a lot more.

MR. BENKERT agreed and added that another good example would be the Susitna Hydro project.

SENATOR MEYER commented that it would also impact all the DOTPF roads and projects.

MR. BENKERT agreed and added that the true cost of implementing the initiative is unknown at this point.

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SENATOR VON IMHOF asked if the current system is working and if the proposed changes to Title 16 would make it better or worse.

MR. BENKERT replied that the current system is working; they have permitted many projects throughout the state and haven't had too many problems with those projects. It is a large concept to evaluate.

CHAIR GIESSEL asked Commissioner Cotten what he thought.

COMMISSIONER COTTEN responded that the answer is in the eye of the beholder. Some view it as an improvement; others feel that things are working fine now. It's a matter of opinion.

SENATOR VON IMHOF said she was asking his opinion.

COMMISSIONER COTTEN said they are cautioned to not appear to be an advocate for or against the initiative.

CHAIR GIESSEL reminded committee members that asking his opinion is crossing a line.

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SENATOR WIELECHOWSKI asked what ADF&G currently allows as mitigation for damage to salmon habitat.

MR. BENKERT replied the department follows the same mitigation sequence as other state departments and federal agencies, and the number one thing is to avoid an impact altogether. Then to minimize - negotiate to try to get certain components of it to change so that it's not going to create much of an issue. What can't be minimize they mitigate for. Mitigation is crafted for each individual project; it all depends on what kind of project it is and what is available to mitigate. Often, mitigation can't occur in the immediate vicinity, so they look at other projects as close to the disturbance as possible. Replacing bad culverts bank stabilization could be a mitigation component. A good example of this is the Fort Knox Mine in Fairbanks. Part of their mitigation 15 or 20 years ago was to reclaim a bunch of old placer mining sites below the project and turn them into a beautiful wetland complex that is used by fish and wildlife resources extensively.

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SENATOR WIELECHOWSKI asked what he requires of the permittee if there is damage to salmon habitat; what if there are actually fewer salmon?

MR. BENKERT replied that several things can be done: develop alternative habitat to compensate for the loss of the damaged habitat and artificial spawning channels could compensate for some section of habitat. Taking fish out of the picture is something they don't want to see, and they are trying hard to mitigate for habitat loss, at the very least, to replace what has been disturbed with something that will function the same. That could be enhancing a bad piece of stream or bank stabilization for old placer mine sites that disturbed fish habitat 20 or 30 years ago that will actually increase the fish population. In these cases, the people who did it are long gone; the guy conducting the mitigation wasn't the cause. These restoration projects are monitored.

[4:38:54 PM](#)

SENATOR WIELECHOWSKI asked if replacing wild runs with hatchery runs is a successful technique.

MR. BENKERT replied that there are some new hatchery techniques that haven't been used in Alaska, but the West Coast isn't using production hatcheries and it hasn't worked out on the Columbia River. They continue to pump millions and millions of dollars into those hatcheries without a whole lot of recovery.

The National Marine Fishery Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA) fisheries have been working with local proponents on something called "conservation hatcheries," which is "a very intense hatchery situation" where they genetically pair fish that are at a low-density level to recover the endangered run. It is a much more selective technique as far as developing a hatchery to not really supplant a wild population but to reestablish it, because they go out and try to find what is left of the wild fish population and use animal husbandry to maintain that genetic diversity and to reestablish that run.

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SENATOR STEDMAN asked if the sports and subsistence fishermen and tourists who go up and down the river banks on foot, crossing and kicking dirt in them and other things, would be subject to these permits. He also asked if a motorized boat that has a jet drive would need a permit.

MR. BENKERT replied that current statute says a motorized activity within an anadromous stream, although there are exceptions. On the Kenai River, for instance, local entities have riparian exclusion zones and have built walk-ways to offset human disturbance on the banks. The department works with State Parks and local entities to identify that and try to remediate those sites and get folks going down the right direction.

SENATOR STEDMAN asked if this initiative would change any of that criteria.

MR. BENKERT replied it depends on the interpretation of the wording.

SENATOR COGHILL said in many of the spawning areas people will be floating in canoes and other shallow draft boats that disturbs the bottom. He asked if that would be a new issue he would have to look at.

MR. BENKERT replied it could be.

[4:43:27 PM](#)

SENATOR BISHOP asked how he would rank ADF&G's permitting system with the peers he interacts with.

MR. BENKERT replied that he is familiar only with a couple other states' permitting systems and Alaska is the only state that has the two-tiered system differentiating between anadromous fish and resident fish. California deals with all fish the same way. Alaska has chosen to elevate the protection of anadromous fish above the resident fish in the state.

SENATOR BISHOP remarked that the record salmon runs over the years proves that point.

CHAIR GIESSEL followed up on what she heard Senator Stedman ask about the map with the yellow dots indicating anadromous streams and asked if subsistence hunters that cross streams all the time on ATVs will need to get permits and how would that be managed.

MR. BENKERT replied they probably would unless there is a site-specific determination requiring an anadromous fish habitat permit. He clarified that the yellow dots indicate sampling points.

[4:46:07 PM](#)

SENATOR WIELECHOWSKI said on the point of boats going up and down and people walking along the rivers, that AS 16.05.871 basically says the same thing: if you're going to operate a wheeled, track, or excavating equipment; if you're going to pollute, change the flow of a bed or specified river, lake, or stream; divert, use, or obstruct: those all currently require contacting the commissioner.

MR. BENKERT replied that is correct if that water body is in the Anadromous Waters Catalogue.

CHAIR GIESSEL thanked him for the very interesting presentation and Commissioner Cotten for being before the committee. She invited the Department of Environmental Conservation (DEC) to provide its presentation next.

4:47:19 PM

WADE STRICKLAND, Manager, Wastewater Discharge Authorization Program (WDAP), Department of Environmental Conservation (DEC), said his presentation is structured to give a little bit of an overview of water quality standards (WQS), which is their basis for protecting aquatic and wild life, the statutory and legal framework for the permitting program, the nuts and bolts of the permitting program, and a closing slide on the impacts of the initiative.

MR. STRICKLAND said Alaska water quality standards are science-based and the main way that DEC maintains and protects water quality and habitat. They designate existing uses of the water, which includes protection of all life stages of aquatic life. They establish acceptable levels of pollutants known as "water quality criteria." That is done both numerically (parts per million (ppm) and narratively (you shall not cause a sheen on the water body). A third prong of the WQS talks about an enhanced review for discharges to high quality waters.

Water Quality Standards (WQS) are set through a public process. They are public noticed, which includes a response to comment document on the regulations (regs). The Department of Law (DOL) reviews the regs for consistency; the commissioner adopts them, and the lieutenant governor files them; and then the regs are actually sent to the Environmental Protection Agency (EPA). They can't be used in the APDES permitting process until they have been approved by the EPA. Their approval process is in consultation with other federal services, endangered species service agencies, and tribes.

Water quality standards are used to identify polluted waters through stream and other water body sampling events. To recognize high quality waters, the numeric and narrative limitations are then transposed into the permits to ensure that any discharges are authorized such that they protect and maintain water quality. The WQS themselves are found in the R70 regulations.

[4:50:58 PM](#)

MR. STRICKLAND said the Alaska Pollutant Discharge Elimination System Program (APDES) stems from the Clean Water Act and the National Pollutant Discharge Elimination System Program (NPDES). Section 402 of the Clean Water Act Program authorizes states to request approval to administer the NPDES. Forty-six states have that authorization. Alaska was the 46th state to get it, and as of July 1, Idaho will be the 47th state.

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MR. STRICKLAND said DEC started working to secure primacy to administer the NPDES in the late 1990s and after a long and involved process, received authority to administer the program beginning in October 2008. The program was taken over in four phases; the fourth and final phase was the transfer in October 2012. Statutory authority is provided in AS 46.03 and APDES regulations are found in chapter 83.

He said approximately 4,000 facilities are covered under the APDES Program: they have both individual and 26 general permits, which authorize 3,400 of them. The types of facilities that are covered are oil and gas, mining, seafood, timber, municipal treatment works, discharges from power generating facilities, and many more.

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Under the Clean Water Act (CWA), the permits are restricted to only five years. So, sometime in the fourth year the department receives a permit renewal application from the proponent. DEC reviews the application to see if anything has changed at the facility and what the potential impacts of the wastewater discharge is to the receiving water. They consider the pollutants that would be discharged and special characteristics of the receiving water and any aquatic life that are present.

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Slide 18

For discharges to fresh water they review ADF&G's Anadromous Waters Catalogue to determine if the water body is listed as

anadromous. If the water body is listed as anadromous, the permittee is not eligible to receive a mixing zone per currently approved EPA water quality standards. A mixing zone is a limited area in the water body where wastewater is allowed to mix in the near area of the outfall with the ambient water before meeting state water quality criteria. If the area is determined anadromous, the WQS basically say no mixing zone is authorized and all the state water quality criteria must be met at the end of the pipe.

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Slide 19

MR. STRICKLAND said this slide includes some of the standard provisions in an APDES permit. The permits are customized based on the industry being permitted and whether there are sensitive receiving water requirements. These can fluctuate but generally that is what one sees in a permit.

The first page of the permit has his signature on it, which makes it a legal document, and says the permittee is responsible for complying. The permit has both numeric and narrative limitations on the discharge. Industrial permits, especially for oil and gas and mining, require the entire facility and treatment to use best management practices and to operate at the most optimal level. Municipal treatment plants have operational plans with very similar requirements.

The NPDES or the APDES program per the Clean Water Act is a self-monitoring and reporting program. The permit has extensive monitoring, record keeping, and reporting requirements. Because it's a legal document, the reporting requirements are under the penalty of perjury. All APDES permits have standard conditions including duty to comply and duty to allow DEC on-site inspections.

MR. STRICKLAND said their permits come with annual or one-time fees.

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Slide 20

He said their individual and general permits go out for a variety of different reviews. A letter to potentially affected tribes and local governments in the area of the discharge is sent. All the governments and tribes are notified for statewide general permits.

They then prepare the draft permit and provide that to the permittee and state and federal agencies for a 10 business-day applicant review period. During that time, the DEC can meet with anyone who wants to discuss the permit documents, although they do not respond to those comments in writing. It's more of working with stakeholders to further develop the next stage of the draft permit, and that is the permit that is released for public notice. The draft permit is associated with a fact sheet that describes the legal and technical basis for the permit. They are public noticed for a minimum of 30 days. Typically, the more complex general permits are extended and depending on the season, if they are proposing to go to public notice on a seafood permit in the middle of summer, they will extend it because everyone is busy with competing priorities. So, they often do 60-day public notices for general permits.

All major and general permits are public noticed in a newspaper of local circulation. For statewide general permits, that means hitting Juneau, Anchorage, Fairbanks, and sometimes for oil and gas permits the North Slope will be included.

The program description in their 83 regulations for the APDES program talk about having public meetings and hearings should there be significant interest or if the department determines that it's appropriate to do so. After that, they will prepare a formal written response, the comment document, for all major comments. They will then issue a proposed final permit for a five-day applicant review, which isn't like the comment period. It is more of "this is their last chance to take a look at it and meet with us to make sure they understand the intent of the permit, and catch any typographical errors, and things of that nature." Then they issue the permit.

[4:59:59 PM](#)

Slide 21

Once the permit is issued (for up to five years), if anyone disagrees with his decision, they can administratively appeal to the commissioner, and after a certain time if they do not administratively appeal, then they can appeal to Superior Court.

[5:00:33 PM](#)

Slide 22

During the five-year permit cycle, a separate Compliance and Enforcement Program will inspect the facilities during the permit term. They will review records, both on-site and submitted reports during the permit term. Because it's a self-

monitoring report program, there is an emphasis on making sure all the submittals are definitely looked at in the permit term.

MR. STRICKLAND said in the standard conditions and 83 regulations and at the end of all permits there is a requirement to timely notify DEC of any non-compliance events that potentially threaten public health or the environment. For less dire non-compliance events there is a five-day written follow-up instead of a quicker response.

During the permit period the permit can be opened and modified based on new information, or if an application was found to be false, it can be terminated.

5:02:02 PM

SENATOR COGHILL asked if it's up to the permittee to figure out requirements and commented that the fact that they are already cooperating extensively at this point is interesting.

MR. STRICKLAND answered that they coordinate extensively with ADF&G and DNR on certain permits with known overlapping areas of concern. For the larger projects the OPMP makes sure the permittee is aware of the state agencies' multitude of requirements.

5:03:35 PM

Slide 23

Impacts to DEC relating to the potential passage of the initiative:

The initiative has a rebuttable presumption that all waters in Alaska are anadromous and to be consistent with currently EPA-approved mixing zone regulations, no dischargers to fresh water would be eligible for a mixing zone.

DEC would have to work with ADF&G to review all existing permits with fresh water to see if the initiative allows for a case-by-case analysis to rebut the presumption. If they found that facilities were discharging to anadromous-receiving waters, those facilities would have to upgrade their treatment facility to meet water quality criteria at the end of the pipe, which would increase the complexity of the treatment systems, which would require engineering plan reviewers to look at more detailed plan sets. It would require increased coordination by permit writers to work with ADF&G to look at all these different sites and to draft new permits that would have new limitations.

Therefore, their cost statement included hiring a new permit writer and an engineer.

[5:05:34 PM](#)

SENATOR MEYER asked if their budget would increase if the initiative passes.

MR. STRICKLAND answered that the cost statement says it would increase by about \$270,000.

SENATOR MEYER asked if it is safe to assume that there would be additional cost to municipalities, too. For instance, if the Anchorage Waste Water Utility (AWWU) in Anchorage upgraded or changed their system, would they have to meet this initiative, or do they have to make the current system meet the initiative as far as the discharge from the end of the pipe.

MR. STRICKLAND replied if a discharge is being made into anadromous waters and the treatment facility is not sufficient to meet water quality criteria at the end of the pipe, yes, they would have to upgrade. And those tend to be expensive.

SENATOR VON IMHOF asked if there is no upgrade or change to the project, yet the permit is being renewed, if the initiative passes, what existing projects would be affected.

MR. STRICKLAND answered that language at end of the initiative talks about renewals and indicates that initiative requirements would be triggered based on permit renewals. It's hard to quantify. Most large mines don't have mixing zones or if they do, the receiving water has been sampled robustly to determine if there were anadromous fish to begin with. Existing large mines are not of great concern.

SENATOR VON IMHOF asked about the 4,000 small mines.

MR. STRICKLAND replied that there are 4,000 APDES permittees, which includes the whole spectrum of oil and gas mining, and small villages that discharge. The existing permits with their diligent follow-up aren't of great concern, but a number of facilities were inherited from the EPA that are "backlogged permits." Some of those have not been looked at for a long time, and those are more concerning.

[5:09:23 PM](#)

CHAIR GIESSEL asked about the initiative's impacts on water use for ice roads on the North Slope.

MR. STRICKLAND replied that ice roads are more of a DNR function. However, one of their permits has a little bit of overlap but they defer largely to DNR.

CHAIR GIESSEL said she wanted to follow up on Senator Meyer's question about the waste water treatment plant in Anchorage that has a waiver, because they require a mixing zone. She asked if that was correct and if the initiative would no longer allow that.

MR. STRICKLAND answered that the Anchorage Asplund Wastewater Treatment Facility has a "Clean Water Act Section 301 (h) Waiver." EPA authorized certain communities that discharge to marine waters to apply for these waivers back in the 1970s and he believed the sunset for application was in the late 1970s or early 1980s. So, no new facilities can apply for the waiver, but as their further permit reissuance occurs every five years, EPA is required to look at their waiver and that is currently being evaluated. Those discharges that have that waiver are only to marine waters, and since the initiative only affects fresh water, he didn't see a concern about the Asplund mixing zone going away.

He added that the waiver is to secondary treatment standards, which is a requirement for all publicly owned treatment works and municipal discharges. The waiver says, "if you discharge from one of these facilities you have to meet a certain level of treatment," but section 301(h) says if you have these types of receiving water conditions: high flushing or if wastewater discharge mixes and discharges quickly, you may not have to spend the money to treat to this level.

CHAIR GIESSEL pointed out that salmon do exist in Cook Inlet and asked if he was saying the initiative does not apply in that fish-bearing water?

MR. STRICKLAND replied his read is that the initiative talks about anadromous fresh water. Their mixing zone regulations still do contemplate all life stages of different aquatic life, so they still would consider the salmon in that receiving water when they look at the mixing zone authorization.

CHAIR GIESSEL thanked Mr. Strickland and Commissioner Hartig for their very information presentations and invited DNR Commissioner Mack to provide his presentation.

[5:13:01 PM](#)

Slide 25

DNR COMMISSIONER MACK said the department's mission is to develop, conserve, and maximize the use of Alaska's natural resources consistent with the public interest. Really, what they do is manage all state-owned land, water, and natural resources with the exception of fish and game on behalf of Alaskans.

He said they have an interesting dueling responsibility: one is making sure that subsurface resources are maximized for the benefit of the State of Alaska and then to try to do that consistent with the qualities that all Alaskans enjoy on the surface. It's very clear from testimony that they rely very heavily on the Alaska Department of Fish and Game (ADF&G) and Department of Environmental Conservation (DEC) when it comes to fish management and water quality and in many cases, he looks to their guidance and expertise.

[5:15:19 PM](#)

Slide 26 poses the question of how DNR contributes to the protection of fish and wildlife resources. They have three broad land use planning processes in three large categories. The largest category is general state lands, which cover a vast majority of the state's portfolio of land and water. In most of those cases, some sort of planning document has been developed over time. He had a list of 8 or 10 pages of the titles to the actual plans and a short synopsis. One of the most important plans is the North Slope area-wide plan. It was a plan for development on the North Slope put together in conjunction with local communities, stakeholders, and industry input. The plan is obviously geared towards resource development, but it has a strong component of subsistence use, as well, which is very important to the local communities there.

COMMISSIONER MACK said the department also has authority for state parks, which are established by this body through statute. In some cases, the benefit of a state park is that legislators get to design what they want to see, identify the contours of what the park will look like and the rules of engagement and use. State Parks has a broad statutory framework and inside that is a park plan, and in many cases, local advisory boards and people who provide input.

The department has forest lands, as well, that exist on general state lands but are a particular type of state land, the State Forest, which the department manages.

In addition, Commissioner Mack said, they have land and water authorizations, which are a little different from what they have heard from ADF&G and DEC. Typically, DNR is an agency that parcels out leases and manages and authorizes uses of land and water. When they sit at the table and contemplate those permits and authorizations, they are really looking to ADF&G and DEC to decide what the impacts are with respect to fish and water quality standards. His job is to contemplate what the term of the lease is, what its benefit are, and what the access terms are.

COMMISSIONER MACK stated that in Alaska it sometimes feels like the process has dueling plans. DNR is the prime state agency for creating land use plans and in many cases, the federal government - the National Park Service (NPS), the U.S. Fish and Wildlife Service (USFWS) (which has a plan for the 1002 area), the Bureau of Land Management (BLM) has a plan which includes the National Petroleum Reserve-Alaska (NPR-A) and the Kenai Wildlife Refuge. So, the department often looks at the state's objectives in broad terms and makes sure they are working on the plans as the state develops and continues to grow.

[5:19:06 PM](#)

Slide 27

HEIDI HANSEN, Deputy Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, said this slide speaks to the fact that by statute DNR is required to prepare land use management plans that cover the use and management of the land. Area plans are generally the broadest plans; the management plans cover areas that have high use such as the Hatcher Pass Management Plan. Site-specific plans are utilized in areas where there isn't an existing area or management plan.

[5:19:55 PM](#)

Slide 28 flags the coordination between the Alaska Department of Fish and Game (ADF&G) and the Department of Natural Resources (DNR). DNR's land use planning processes incorporate significant opportunities for agency and public participation and comment throughout the process.

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She said slide 29 speaks to some of the activities related to state parks, which include habitat for fish and wildlife. In the instance of the Kenai River Special Management Area, a lot of riverbank restoration work, boardwalks, and infrastructure were put into place to protect habitat. This was all done in

consultation with ADF&G. Signage that echoes the conservation message is coordinated, as well.

MS. HANSEN said the Fish and Game Troopers and Park Rangers are all authorized to enforce fish and game regulations, which is seen predominantly in the Kenai, but happens all over Alaska.

[5:21:53 PM](#)

Slides 30 & 31

KYLE MOSELLE, Associate Director, Office of Project Management and Permitting (OPMP), Department of Natural Resources (DNR), Juneau, Alaska, continued explaining that the Forest Resources and Practices Act (FRPA) applies to all non-federal land in the state of Alaska and legislatively designated state forest lands. The specific intent in FRPA relates to protection of riparian areas from significant adverse effects from timber harvest activities and provides for adequate preservation of fish habitat. Those are balanced with economic activities derived from forest resources. This sets up a situation where they need to work with partner agencies, ADF&G and DEC, to fully implement the intent.

He said the Board of Forestry oversees FRPA and has a spectrum of interests ranging from conservation to timber to mining to wildlife interests. He said ADF&G, DNR, and DEC together hold up FRPA.

[5:23:39 PM](#)

Slide 32: Land and Water Authorizations

MR. MOSELLE said a lot of uses are generally allowed uses by state regulation. A provision in 11 AAC 96.025 speaks to all those generally allowed uses which do not require a written authorization; it says, "must minimize disturbance to fish and wildlife resources."

The written permits, authorizations, and approvals cover a number of things: floating docks, weirs, uses of water, mineral exploration, placer mining, and a gamut of uses on state land and water. The DNR Division of Mining, Land, and Water will consult with DEC and ADF&G on enforceable conditions that can be added to the written authorizations for those activities if there is a need to address a fish or wildlife habitat or possible impact issue to those resources. The same goes for easements and leases, he said, but those have a higher level of authorization because it is an individual right to the person or entity.

SENATOR VON IMHOF said she feels like they have a comprehensive understanding of land and water authorizations and permits go with the other departments, and it looks like the process is working. It protects salmon and allows commerce to continue: people can build a dock, enjoy a recreational cabin, make a living placer mining, hunting, trapping, and guiding. She asked what needs to be fixed.

MR. MOSELLE responded that he shared her perspective. The agencies do well as far as recognizing that each one has individual authorities, yet from a users' perspective they are overlapping authorities and subject them to a number of laws and regulations. If an individual user contacts one of the three agencies here today, that agency will put them in contact with the others and give them a brief explanation of what they need to do. Larger projects need a conscious effort to coordinate agencies and that's where OPMP comes into play. The three agencies strive to work together at the various levels; it's not by accident.

SENATOR VON IMHOF said interagency coordination is happening now and this initiative doesn't necessarily create it.

MR. MOSELLE replied yes; that coordination is already happening at various levels. The initiative will affect the statutory authority of only one of the three agencies, ADF&G, but the interagency piece will continue. The need to work with that department will not change, but their level of review and activity might.

[5:28:49 PM](#)

SENATOR COGHILL said it looks like OPMP would go into places where an extensive review is needed like for an Environmental Impact Statement (EIS) and permits are already open to very extensive reviews. Was he missing something?

MR. MOSELLE replied that he wasn't missing anything but clarified that the Environmental Impact Statement (EIS) is a document that stems from the National Environmental Policy Act (NEPA), a federal law that is triggered in one of three ways: that the proposed activity is on federal land, that it requires a federal authorization, or it is using federal funds. It is not a state process. However, when NEPA is triggered for a proposed activity, the state has a framework that allows the three state agencies to plug into that process as a cooperating agency. That gets to the question of how the state authorizations fold in

with the federal process for reviewing the potential environmental impacts.

SENATOR COGHILL said he knows that almost everything that uses water in Alaska has to go through a 404-wetland mitigation permitting process that gets nearly to a level of an EIS.

MR. MOSELLE responded that Alaska has around 63 percent of the nation's wetlands, so it's fairly hard to do anything in Alaska that doesn't require a 404 authorization from the Corps of Engineers.

SENATOR COGHILL said he was just trying to demonstrate that almost everything done in Alaska is either greenfield, federal land, or some land use planning that requires a lot of oversight.

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SENATOR WIELECHOWSKI asked if DNR lets the U.S. Army Corps move forward on an expedited schedule with NEPA permitting when use of state lands and waters has not been authorized by Alaska.

COMMISSIONER MACK asked if he was referring to the project proposed by Pebble.

SENATOR WIELECHOWSKI replied either that or any other project.

COMMISSIONER MACK answered they work with stakeholders in the state to ensure that if a federal project is impacting state lands that they appropriately participate. The recent issue that has come up is a scoping period proposed by the Corps of Engineers with respect to that project, and the DNR has asked for more time to be included in the process to make sure that stakeholders have a very thorough chance to engage.

As a general matter, DNR deals with large projects in Alaska that typically have some federal component triggering NEPA. The next part of the analysis is whether an Environmental Impact Statement (EIS) or an EA is needed, and the state is usually heavily engaged in those. The department makes sure the state's voice is heard and makes clear what they think the federal agencies should do and how they should do it. Some federal agencies are easier to work with than others.

[5:34:31 PM](#)

SENATOR WIELECHOWSKI said the legislature has issued dozens of resolutions in support of development in the ANWR and the NPRA,

but the state has not authorized the Pebble Mine Project. So, why would the state allow the Army Corps to go in on an expedited basis to work on it?

COMMISSIONER MACK replied they have asked for additional time in the scoping process for that project and he thinks the state should speak about the project, because it is an issue of high public concern in Alaska. Their general perspective is that the Corps of Engineers has been an agency which has worked through many delicate issues in Alaska, but every project comes with its characteristics and the department will make sure that the state's interest in that case - it's on state land - is fully engaged.

SENATOR BISHOP remarked that some folks differ with the Corps of Engineers' interpretation of the '87 field manual's definition of wetlands.

CHAIR GIESSEL asked if permitting for ice roads will be more stringent if the initiative passes.

[5:37:12 PM](#)

BRENT GOODRUM, Director, Division of Mining, Land, and Water, Department of Natural Resources (DNR), Fairbanks, Alaska, answered that whenever the water resources section gets an application for water use, they always contact ADF&G and DEC. If the initiative passes, ADF&G's requirements might change and that could impact permitting for ice roads on the North Slope.

[5:38:20 PM](#)

CHAIR GIESSEL asked if the generally allowed uses listed on slide 32 would change under the initiative.

MR. MOSELLE replied that they wouldn't necessarily change, because they are identified expressly in regulation. Although it is not an exhaustive list. Some authorities could overlap for written authorizations where they consult with ADF&G and DEC, so there could be some interplay.

[5:39:11 PM](#)

Slide 33 Land and Water Authorizations

COMMISSIONER MACK said this slide points out that DNR is custodian of the molecules of water and relies on ADF&G and DEC to decide the sufficiency of the quality of the water and the amount of water which is required to remain in the stream so that it continues to be receptive to reproduction of fish, if

that is the case. A process is established in statute with criteria. The Division of Mining, Land, and Water determines appropriateness of an application to issue an in-stream flow reservation to protect some of the water.

COMMISSIONER MACK said a corresponding issue is a water appropriation, which is when an entity needs to use water for a particular purpose in a particular area or temporarily use some water. The department relies very heavily on ADF&G for informing those types of decisions.

[5:42:04 PM](#)

MR. MOSELLE said slide 34 reiterates complex project coordination activities that happen any time multiple agencies need to be involved because of their individual statutory and regulatory authorities. This is where the OPMP will come into play. Typically, they coordinate for transportation, oil and gas, mining, or alternative energy projects and they do this by forming multi-disciplinary agency teams to review the applications. They try to identify issues early, be creative in addressing them, and ensure that as they address an issue for one agency they are not creating a conflict for another.

MR. MOSELLE summarized their main points: DNR manages all state-owned land, water, and natural resources except for fish and game on behalf of Alaskans. DNR contributes to the protection of fish and wildlife through its land use planning and permitting processes, and coordinates with ADF&G and DEC, specifically, on management plan guidelines, authorizations, and permit conditions related to fish and wildlife resources.

Because he is a visual learner, Mr. Moselle said he likes diagrams and the last slide is a visual representation of that coordination; at the very center is the Office of Project Management and Permitting (OPMP). Aside from ADF&G, DEC, and DNR, it is surrounded by the Department of Health and Social Services (DHSS), Department of Law (DOL) (to advise regulatory agencies in the executive branch), and the Department of Revenue (DOR) (advising on proof of financial responsibility). He offered to answer questions.

[5:45:45 PM](#)

SENATOR VON IMHOF thanked them for the "great" presentations and commented that after listening to them she has grave concerns about this initiative. She thinks it will affect the state economically. At this time, Alaska has a very robust permitting process and something like this initiative will hammer

unnecessary layers on it. Aside from the big commercial projects, she wonders how this initiative would affect the small home builder, the placer miner, projects to build hiking trails, and the small businesses that are already paying the high cost of health care and energy, that will now have layer upon layer of delays and permits.

SENATOR MEYER asked what financial impact this initiative would have on DNR.

COMMISSIONER MACK replied that DNR is not included in the cost estimate.

SENATOR BISHOP editorialized on ice-road water use. The state has a comprehensive permitting system going above and beyond federal requirements. It is well coordinated and well run. Talking about a fiscal note, he remarked how one facilitates access to a Point Thomson or an Alpine and not hit the bottom line to the State of Alaska!

CHAIR GIESSEL thanked everyone again for their presentations and asked for any closing remarks.

MR. BENKERT said he appreciated the opportunity to speak with the committee today. The three departments work very closely together to make sure project is the best possible. Sometimes it's a very long process, but they really try to cover all their bases.

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SENATOR COGHILL wondered if the initiative's ambiguities will cause a new liability for litigation.

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CHAIR GIESSEL said she was "very impressed" with the biologic sciences the departments are applying to the permitting process in guarding Alaska's water and fish resources. It informs the committee and the public, which is key, because advocating regulation of these resources to the ballot box can creates some very serious outcomes that are not particularly helpful. "That is why the best protection of liberty is an informed electorate, as one of our founders once said."

She adjourned the Senate Resources Standing Committee meeting at 5:53 p.m.