

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

May 3, 2019

1:19 p.m.

MEMBERS PRESENT

Representative John Lincoln, Co-Chair
Representative Geran Tarr, Co-Chair
Representative Grier Hopkins, Vice Chair
Representative Sara Hannan
Representative Ivy Spohnholz
Representative Chris Tuck
Representative Dave Talerico
Representative George Rauscher

MEMBERS ABSENT

Representative Sara Rasmussen

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 43 (FIN)

"An Act extending the termination date of the Big Game Commercial Services Board; relating to a person's eligibility to hold a registered guide-outfitter license, master guide-outfitter license, class-A assistant guide license, assistant guide license, or transporter license; and providing for an effective date."

- MOVED CSSB 43 (FIN) OUT OF COMMITTEE

HOUSE BILL NO. 138

"An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 116

"An Act relating to the renewal or extension of site leases for aquatic farming and aquatic plant and shellfish hatchery operations."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 43

SHORT TITLE: EXTEND BIG GAME BOARD; OUTFITTER LICENSE

SPONSOR(s): SENATOR(s) WILSON

02/04/19 (S) READ THE FIRST TIME - REFERRALS
02/04/19 (S) RES, FIN
02/20/19 (S) RES AT 3:30 PM BUTROVICH 205
02/20/19 (S) Heard & Held
02/20/19 (S) MINUTE(RES)
02/27/19 (S) RES AT 3:30 PM BUTROVICH 205
02/27/19 (S) Moved SB 43 Out of Committee
02/27/19 (S) MINUTE(RES)
03/01/19 (S) RES RPT 4DP 1NR 1AM
03/01/19 (S) DP: BIRCH, KIEHL, COGHILL, GIESSEL
03/01/19 (S) NR: BISHOP
03/01/19 (S) AM: REINBOLD
03/13/19 (S) FIN AT 9:00 AM SENATE FIN 532
03/13/19 (S) Heard & Held
03/13/19 (S) MINUTE(FIN)
03/29/19 (S) FIN AT 9:00 AM SENATE FIN 532
03/29/19 (S) Heard & Held
03/29/19 (S) MINUTE(FIN)
04/09/19 (S) FIN AT 9:00 AM SENATE FIN 532
04/09/19 (S) Moved CSSB 43(FIN) Out of Committee
04/09/19 (S) MINUTE(FIN)
04/10/19 (S) FIN RPT CS 3DP 4NR NEW TITLE
04/10/19 (S) DP: VON IMHOF, MICCICHE, WILSON
04/10/19 (S) NR: STEDMAN, SHOWER, WIELECHOWSKI,
BISHOP
04/17/19 (S) TRANSMITTED TO (H)
04/17/19 (S) VERSION: CSSB 43(FIN)
04/22/19 (H) READ THE FIRST TIME - REFERRALS
04/22/19 (H) RES, FIN
04/29/19 (H) RES AT 1:00 PM BARNES 124
04/29/19 (H) Heard & Held
04/29/19 (H) MINUTE(RES)
05/03/19 (H) RES AT 1:00 PM BARNES 124

BILL: HB 138

SHORT TITLE: NATIONAL RESOURCE WATER DESIGNATION

SPONSOR(s): REPRESENTATIVE(s) KOPP

04/17/19 (H) READ THE FIRST TIME - REFERRALS
04/17/19 (H) RES, FIN

04/29/19 (H) RES AT 1:00 PM BARNES 124
04/29/19 (H) Heard & Held
04/29/19 (H) MINUTE(RES)
05/03/19 (H) RES AT 1:00 PM BARNES 124

BILL: HB 116

SHORT TITLE: AQUATIC FARM/HATCHERY SITE LEASES

SPONSOR(S): REPRESENTATIVE(S) STORY

03/27/19 (H) READ THE FIRST TIME - REFERRALS
03/27/19 (H) FSH, RES
04/12/19 (H) SPONSOR SUBSTITUTE INTRODUCED
04/12/19 (H) READ THE FIRST TIME - REFERRALS
04/12/19 (H) FSH, RES
04/16/19 (H) FSH AT 10:00 AM GRUENBERG 120
04/16/19 (H) -- MEETING CANCELED --
04/23/19 (H) FSH AT 10:00 AM GRUENBERG 120
04/23/19 (H) Heard & Held
04/23/19 (H) MINUTE(FSH)
04/25/19 (H) FSH AT 10:00 AM GRUENBERG 120
04/25/19 (H) Moved SSHB 116 Out of Committee
04/25/19 (H) MINUTE(FSH)
04/26/19 (H) FSH RPT 7DP
04/26/19 (H) DP: TARR, VANCE, KOPP, EDGMON, NEUMAN,
KREISS-TOMKINS, STUTES
05/03/19 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

SENATOR DAVID WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of CSSB 43(FIN), restated the purpose of the bill.

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of HB 138, provided additional information for the committee to review.

JENNIFER CURRIE, Senior Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 138.

EARL CRAPPS, Manager
Domestic and Industrial Utilities Section
Wastewater Discharge Authorization Program
Division of Water
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 138.

NILS ANDREASSEN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 138, provided a PowerPoint presentation titled "Tier 3 Designation Impacting Community Development."

REPRESENTATIVE ANDI STORY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of SSHB 116, introduced the bill.

GREG SMITH, Staff
Representative Andi Story
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Story, sponsor, answered questions related to SSHB 116.

GAROLD "FLIP" PRYOR, Fish and Game Coordinator
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SSHB 116.

MARTY PARSONS, Director
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SSHB 116.

JULIE DECKER, Executive Director
Alaska Fisheries Development Foundation, Inc. (AFDF)
Wrangell, Alaska

POSITION STATEMENT: Testified in support of SSHB 116.

ALPHEUS BULLARD, Attorney

Legislative Legal Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SSHB 116.

ACTION NARRATIVE

[1:19:41 PM](#)

CO-CHAIR JOHN LINCOLN called the House Resources Standing Committee meeting to order at 1:19 p.m. Representatives Tuck, Hannan, Spohnholz, Hopkins, Tarr, and Lincoln were present at the call to order. Representatives Talerico and Rauscher arrived as the meeting was in progress.

SB 43-EXTEND BIG GAME BOARD; OUTFITTER LICENSE

[1:20:36 PM](#)

CO-CHAIR LINCOLN announced that the first order of business would be CS FOR SENATE BILL NO. 43(FIN), "An Act extending the termination date of the Big Game Commercial Services Board; relating to a person's eligibility to hold a registered guide-outfitter license, master guide-outfitter license, class-A assistant guide license, assistant guide license, or transporter license; and providing for an effective date."

CO-CHAIR LINCOLN stated that the committee had not received any amendments for CSSB 43(FIN) and said it is the intention of the co-chairs to take final action on the bill today.

[1:21:11 PM](#)

SENATOR DAVID WILSON, Alaska State Legislature, speaking as the sponsor of CSSB 43(FIN), said the Big Game Commercial Services Board provides a valuable service to the community and the state. He further said the board plays an important role in managing the activities of the commercial game hunters and the interests of the state's wildlife resources. He thanked the committee for hearing the bill.

[1:21:56 PM](#)

CO-CHAIR TARR moved to report CSSB 43(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

[1:22:15 PM](#)

The committee took an at-ease from 1:22 p.m. to 1:23 p.m.

[1:23:26 PM](#)

CO-CHAIR LINCOLN asked whether there was any objection to the motion. [There being no objection, CSSB 43(FIN) was reported from the House Resources Standing Committee.]

[1:22:17 PM](#)

The committee took an at-ease from 1:22 p.m. to 1:26 p.m.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[1:26:47 PM](#)

CO-CHAIR LINCOLN announced that the next order of business would be HOUSE BILL NO. 138, "An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

CO-CHAIR LINCOLN stated that this is the bill's second hearing before the committee and that at the first hearing the committee took invited and public testimony. He said the co-chairs do not intend to move the bill out of committee today.

[1:27:18 PM](#)

CO-CHAIR LINCOLN closed public testimony on HB 138.

[1:27:27 PM](#)

CO-CHAIR LINCOLN noted that the following questions were posed by committee members at the bill's first hearing: 1) how other states designate Tier 3 waters and its impacts to local municipalities; 2) whether the Department of Environmental Conservation (DEC) currently has the authority to designate Tier 3 waters, and 3) how other states designate Tier 3 waters. He directed attention to the following documents in the committee packet: a legal memorandum regarding designating a Tier 3 waterbody by ballot measure, a memorandum from DEC on how other states designate Tier 3 waters, and a [legal] memorandum regarding the [current] statutory authority of DEC to designate Tier 3 waters.

[1:27:57 PM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, sponsor of HB 138, said the aforementioned memorandums should answer the committee's questions.

The committee took a brief at-ease.

[1:29:12 PM](#)

CO-CHAIR LINCOLN inquired whether Ms. Currie of the Department of Law (DOL) could describe the legal memorandums.

JENNIFER CURRIE, Senior Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), replied that those are not her memorandums and it might be more appropriate for Legislative Legal Services to introduce them.

CO-CHAIR TARR said the committee would like to go over the same two things with the DOL that are in the legislative legal memos because at the first hearing there were some points of disagreement and the committee wants to ground truth it with DOL. Regarding the first issue of whether a designation could take place through a citizen initiative, she related that Alaska Legal Services says no because of the common property resource allocation issue. In regard to the second issue of whether DEC currently has the authority to designate [Tier 3 waters], she related that according to Legislative Legal Services, the department does have that authority. She requested the DOL's response or the administration's position on those two matters.

[1:30:46 PM](#)

MS. CURRIE addressed whether HB 138, as written, would prohibit initiatives from being filed with respect to designation of Tier 3 waters. She responded:

Legislation doesn't have the ability to cut off ... the right to file an initiative. And so the Department of Law plays an integral role in deciding whether or not an initiative is an appropriation. And at this point, we're not in a position to adjudicate a hypothetical situation where a Tier 3 might be ... brought forward through initiative, but I wouldn't say that it cuts off the opportunity.

[1:31:51 PM](#)

CO-CHAIR TARR drew attention to the memorandum in the committee packet dated May 1, 2019, from Emily Nauman, Deputy Director, Legislative Legal Services, regarding Outstanding National Resource Water: Initiative. She read aloud the first two paragraphs on page 1, which state [original punctuation provided]:

You asked whether, if HB 138 passed, the law would preclude designation of outstanding national resource water by initiative.

The short answer is, under the recent Alaska Supreme Court holding in *Mallott v. Stand for Salmon*,¹ an initiative probably could not be used to designate outstanding national resource water without violating art. XI, sec. 7 of the Constitution of the State of Alaska, regardless of whether HB 138 passes.

CO-CHAIR TARR asked whether Ms. Currie is saying that the DOL's position is that that is incorrect.

MS. CURRIE answered, "I would say that the Department of Law's position is that whether or not it was an appropriation would depend on the facts of the initiative itself and we're not prepared to offer an opinion about whether every Tier 3 water designation brought by initiative would be an appropriation."

[1:32:49 PM](#)

CO-CHAIR LINCOLN offered his understanding that, if the question is set aside of whether a Tier 3 waterbody can be designated by ballot initiative, the main underlying point is that any sort of statutory change wouldn't have an impact on the ability for citizen-led initiatives to take place.

MS. CURRIE replied, "I believe that's correct."

[1:33:30 PM](#)

REPRESENTATIVE HANNAN recounted Ms. Currie's statement that Ms. Currie was unclear as to whether all ballot initiatives that would do Tier 3 designation would be found unconstitutional. She requested Ms. Currie to elaborate on the circumstances for why some would and some would not.

MS. CURRIE responded:

I believe that the individual circumstances of a Tier 3 designation would or could affect whether or not the Department of Law would determine that it was an appropriation or not. And so I think that we can't wholeheartedly say, as [Legislative Legal Services] has, that it's likely that every initiative brought to designate a Tier 3 would be an appropriation.

REPRESENTATIVE HANNAN said that that is the point she is confused by. She requested a hypothetical example of how one designation could be an appropriation and another one wouldn't be an appropriation.

MS. CURRIE answered she is hesitant to do that because the Department of Law has a distinct role in determining whether or not an initiative is an appropriation or not. So, she continued, she wouldn't want to opine about that without something concrete being proposed.

REPRESENTATIVE HANNAN stated she is unsure of what would be the legal factors that would determine whether or not it is an appropriation. She asked whether it would depend on the size of the river, the acreage impacted, the number of people affected, the cost, or the amount of the legal taking.

MS. CURRIE replied that she thinks all of those things could be factors. She said she also thinks that technology, geography, and many other things could come into the equation.

[1:36:28 PM](#)

CO-CHAIR TARR remarked that this is very confusing and said the committee had hoped to work through these details. She requested Ms. Currie's reaction to page 2, first paragraph, of Ms. Nauman's May 1, 2019, legal memo, which states in part [original punctuation provided]:

The department has described the standard; "if a water were to be designated by the state as a Tier 3 water, new or increased discharges that would lower or degrade the existing water quality would not be allowable unless they were temporary or limited."⁶

Because this standard would likely completely prevent the legislature from permitting projects that result in the permanent destruction of outstanding national resource water, a court is likely to find that an initiative nominating outstanding national resource water constitutes an unconstitutional appropriation.⁷

MS. CURRIE responded that she disagrees. She continued, "I disagree that there is a way to categorically say that, without having a specific river to consider."

CO-CHAIR TARR stated it is interesting to have two conflicting thoughts on this. She said she wants to ensure that there is always an opportunity for citizen participation, whichever route the legislature chooses. This is a challenge, she continued, given [Legislative Legal Services] says that at least through this process that wouldn't be a way for the citizens to participate, but Ms. Currie is saying that it depends. She inquired whether Ms. Currie could look at the current five nominations and evaluate those.

MS. CURRIE answered she thinks it would be inappropriate for the Department of Law to opine on the rivers that have been proposed when they haven't been proposed by initiative, because if they were to come by initiative and DOL were to have already offered an opinion that would be prejudicial.

CO-CHAIR TARR offered her appreciation for Ms. Currie's answer.

[1:39:57 PM](#)

The committee took an at-ease from 1:40 p.m. to 1:46 p.m.

[1:46:16 PM](#)

CO-CHAIR LINCOLN brought attention to the memorandum in the committee packet dated May 2, 2019, from Emily Nauman, Deputy Director, Legislative Legal Services, regarding the statutory authority of the Department of Environmental Conservation (DEC) to designate Outstanding National Resource Water (ONRW). He read aloud page 2, paragraph 2, first sentence, which states [original punctuation provided]:

Ultimately, I believe it is likely a court would find that the department has the statutory authority to designate or manage a water as an ONRW.

CO-CHAIR LINCOLN asked Ms. Currie if she has read this memo.

MS. CURRIE replied she looked at the documents available to her two hours ago, but this memorandum was not among them. She said she has since looked at the memo briefly, but hasn't had a chance to go into it in depth.

[1:47:22 PM](#)

REPRESENTATIVE HANNAN drew attention to the memorandum in the committee packet dated May 3, 2019, from Earl Crapps, Department of Environmental Conservation (DEC), regarding a review of other states' approach to Tier 3. She read aloud from the last sentence in the memo, which states [original punctuation provided]:

Currently, the department is aware of four states: Idaho, Indiana, Maine and Montana, where the authority for Tier 3 designation resides with the Legislature.

REPRESENTATIVE HANNAN inquired whether in any of those four states it is exclusively a legislative designation or whether there is a process that those legislatures must use to make that determination.

[1:47:57 PM](#)

EARL CRAPPS, Manager, Domestic and Industrial Utilities Section, Wastewater Discharge Authorization Program, Division of Water, Department of Environmental Conservation (DEC), responded that for those four states it is not exclusive, there is a process before legislative approval.

REPRESENTATIVE HANNAN presumed the process isn't the same in each of the four states and requested Mr. Crapps to describe the process for each state prior to a legislative designation.

MR. CRAPPS answered that for the most part in general there is an agency, board, or commission review before those nominations are then forwarded to the legislature for final approval.

REPRESENTATIVE HANNAN asked whether those legislatures are looking at a score and an evaluation that are done for designation by an agency, board, or commission. She further asked whether receiving a certain score is required to pursue the designation or whether the legislature has total latitude regardless of what the agency, board, or commission recommends.

MR. CRAPPS offered his understanding that the legislature has the latitude regardless of what is provided to it.

REPRESENTATIVE HANNAN inquired as to the consistency of complying with the recommendations given to the legislatures in those states.

MR. CRAPPS replied it would be widely varied. For example, he continued, Idaho is one of the four states identified and Idaho's legislature has not yet designated a Tier 3 water.

REPRESENTATIVE HANNAN asked how long Idaho has had its process in place.

MR. CRAPPS responded it varies by state and he will have to provide that information to the committee at a later date.

[1:50:57 PM](#)

CO-CHAIR TARR referenced the May 2, 2019, Legislative Legal Services memorandum, and stated that there is conflicting information as to whether DEC can currently do this and whether the legislation is necessary. She asked whether the administration has a position on that.

MS. CURRIE answered that DOL's position is that it isn't as clear a conclusion as the memorandum would present. The reason, she said, is that the designation of a Tier 3 water contains many other factors besides water quality and purity, which is what DEC was delegated authority to make decisions on. Because of that, she continued, DOL thinks it is unclear as to whether DEC currently has the authority to do those designations.

[1:52:23 PM](#)

CO-CHAIR LINCOLN stated there is a need for more time to review the information. He said the Alaska Municipal League (AML) has prepared a presentation for today in response to the committee's questions at the bill's first hearing [on 4/29/19].

[1:52:53 PM](#)

CO-CHAIR TARR related that the bill as originally introduced in the other body [SB 51] was supported by the administration. In [SB 51], she continued, designation had to be reviewed by three departments and then go to the legislature for approval. She

posed a scenario in which there would be an opportunity for agency designation or legislative approval and pointed out that in this scenario citizens could go to the legislature if they believed an agency was being unresponsive. She asked whether the Department of Law has a position or thoughts on the idea of this kind of a dual process.

MS. CURRIE replied she would have to see the wording of any amendment and does not have an opinion one way or the other.

[1:54:18 PM](#)

NILS ANDREASSEN, Executive Director, Alaska Municipal League (AML), explained that his PowerPoint presentation titled "Tier 3 Designation Impacting Community Development" is a follow-up to his 4/29/19 testimony on HB 138. Turning to slide 2, he said his starting point is similar to the Department of Law's in regard to "adjudicate hypotheticals," in that AML is being asked "to determine ... what that impact looks like for a community without that community and that question in front us." He said the bill, as he understands it, is to determine whether the legislature is the appropriate body to make decisions related to Tier 3 designations. Separately and differently, it is not about whether an actual Tier 3 designation has impact or value or what those would be, he continued.

MR. ANDREASSEN stated he is basing a lot of his understanding on the work done by DEC and that slide 3 is a snapshot of a number of DEC documents related to Tier 3 designation. He said the first statement is the starting point and read it aloud: "If a water were to be designated by the state as a Tier 3 water, new or increased discharges that would lower or degrade the existing water quality would not be allowable unless they were temporary or limited." This impacts communities in many different ways, he continued, and across the board across the state.

[1:56:33 PM](#)

REPRESENTATIVE TUCK said it is pretty well known that the legislature has the ultimate decision making authority to use specific public assets for specific purposes. He asked whether what is being reviewed today is that the legislature does have that authority.

MR. ANDREASSEN replied that that is his understanding of the bill's intent. He said the question asked of him was the

municipal impact, or the relationship between municipalities and local governments and HB 138.

CO-CHAIR LINCOLN related that there was a question at the bill's first hearing on the impacts to municipalities for different types of projects and that Mr. Andreassen had agreed to follow up with answers to those questions.

REPRESENTATIVE TUCK drew attention to the first bullet point on slide 2, which states: "The question raised by HB138 is whether the Legislature is best-suited to determine impact" He said he thinks the legislature has the ultimate decision just naturally and by the state's constitution. He noted he was unsure whether it was this issue that would be reviewed today or the impact on municipalities.

[1:57:48 PM](#)

MR. ANDREASSEN moved to slide 4 and resumed his presentation. He said the roles of municipalities are many and so he looked at the 165 cities and boroughs that are members of AML that are incorporated as cities or boroughs, or as political subdivisions of the state, and examined their intersection with water. He reported that 112 municipalities have the power to manage their water systems, 111 have the power to manage and have responsibility for sewer and wastewater, 72 have adopted the power to manage their ports and harbors, 109 have adopted the power to manage their landfills and solid and hazardous waste, 108 have adopted powers related to road construction and maintenance, and 2 have adopted powers related to flood control. Each of these intersects with a Tier 3 designation, he pointed out. However, he added, it is not across the board in terms of how municipalities have adopted powers - only 12 local governments have no powers related to any of these, so 7 percent aren't responsible in a way that intersects with a Tier 3 designation, and 93 percent of city and borough governments in the state would potentially be affected by Tier 3 designation. Additionally, he noted, AML's understanding is that fish waste or processing facilities and other things upon which communities might depend as a tax base could be impacted, as well as gravel pits for local infrastructure, road construction, and building materials. Further, he added, there are questions around barge traffic or fuel delivery to the extent that they are not temporary impacts.

[1:59:53 PM](#)

REPRESENTATIVE HANNAN inquired whether AML looked at the five current nominations for rivers and how many municipalities or organized governments those intersect with.

MR. ANDREASSEN responded he has a forthcoming slide that will address that.

[2:00:10 PM](#)

MR. ANDREASSEN continued his presentation and addressed slides 5-7. He said he looked at the Village Safe Water program, which addresses other communities beyond incorporated cities that might have water and wastewater needs, and that the slides depict the priority projects listed within the program. He pointed out that a number of communities are waiting on first service or upgrades to service, both of which could potentially add to discharge related to waterbodies. So, he said, it is incredibly significant to incorporated cities and boroughs and communities around the state, including those that are still waiting for water and wastewater management. He suggested that this is probably something better for DEC to follow up on in the future as HB 138 is further considered.

REPRESENTATIVE HANNAN asked whether first service means the village currently has no municipal or local government water service and therefore individual homeowners would be using honey buckets or would have septic systems or wells of their own.

MR. ANDREASSEN answered that that is his understanding. He added, "It might be less that there is no municipal service or there is no service in that community, or that there is an expansion of service in the community different than an upgrade to those facilities."

[2:02:23 PM](#)

MR. ANDREASSEN turned to slide 8 and discussed the communities that could be potentially impacted by the current nominations for Tier 3 designation. He qualified he doesn't have the [five] Tier 3 nominations in front of him, but that the communities on slide 8 are near to, or related to, nominated waterbodies. He said the slide illustrates the different types of communities (different powers, obligations, and responsibilities) related to any one waterbody. He qualified he doesn't have a clear picture of the Chandalar River, but noted [Fort Yukon] is incorporated, in an unorganized borough, with responsibilities [for water, landfill, and solid waste]; and [Venetie and Beaver] are

unincorporated so don't have responsibilities, and are in unorganized boroughs. Regarding the Yakutat Forelands, he said the City and Borough of Yakutat has a full suite of responsibilities [sewer, water, landfill, ports/harbors, roads], and has an ordinance objecting to the nomination. Regarding the Chilkat River, he stated that the Haines Borough is incorporated [with responsibilities of sewer, piped water, ports/harbors, roads] and that Klukwan is unincorporated in an unorganized borough. Regarding the Kuktuli River, he said the different communities have different responsibilities [Newhalen and Nondalton are each responsible for sewer, water, landfill, roads, and Lake and Peninsula Borough ports/harbors; Iliamna is unincorporated and in the Lake and Peninsula Borough]. He opined that in the case of an unincorporated community in an unorganized borough, the question of a Tier 3 designation is placed on the legislature as that borough's assembly.

2:05:47 PM

MR. ANDREASSEN displayed slide 9 and related AML's justification for legislative approval related to HB 138. He stated that for AML it starts in the constitution, and the members he has talked with have said they would prefer that power. As shown by his review of communities related to the current nominations, making it a local decision would be challenging, he continued. This body, he said, gives those communities/stakeholders an opportunity to air the challenges, concerns, and questions they have in front of policymakers responsible for making those decisions. He pointed out that the majority of APDES [Alaska Pollutant Discharge Elimination System] permits are issued within an organized borough, which has the capability and capacity, along with DEC as a regulator, in a way that might not be had in the unorganized borough. An unorganized borough doesn't have an assembly other than the legislature, he reiterated, which gives the legislature a different obligation than in an organized borough. There is extensive impact to local governments across the state, he continued, but not all of these are regulated by DEC. The legislature, he added, is in a strong position to work with DEC to fully vet with public input any proposal designating a water of national significance. He said the naming of water of national significance speaks to him as going beyond an agency decision, and is similar to the role of the U.S. Congress in naming national parks and other conservation units. He maintained that while the decision can be made with best science and public input, it is a political decision that is appropriate to be made by the legislature.

CO-CHAIR TARR pointed out that APDES is the Alaska Pollution Discharge Elimination System and that the State of Alaska has primacy under the [federal] Clean Water Act for that responsibility, which is a whole part of this conversation in terms of delegation of authority and who gets to do that.

MR. ANDREASSEN turned to slide 10 and continued to discuss AML's justification for legislative approval related to HB 138. He stated the legislature has created and named conservation units in Alaska, including the designation of 120 park units and 13 marine parks. Given this, he said, it shouldn't be different when it comes to waters of national significance. He noted he was pleased to provide invited testimony during the bill's first hearing and that public testimony was also taken then. When it moves beyond hypotheticals to a designation, he continued, AML will be at the table to talk about what it would look like for each community.

[2:08:02 PM](#)

REPRESENTATIVE TUCK asked whether a future legislature could reverse a previous legislature's designation of a Tier 3.

MR. CRAPPS replied that that is not detailed in the Clean Water Act. He related that the Environmental Protection Agency's (EPA's) opinion is that there is no precedent for that, so the possibility for a Tier 3 designation to be undesignated is available and would be on a case-by-case basis.

[2:09:12 PM](#)

REPRESENTATIVE HANNAN recounted that this issue has been around for a while and the AML has taken a stance on whether impacted communities should have a formal stop in the process. As the bill is currently written, she noted, it would be up to the legislature, 60 people exclusively, to make that decision. She asked whether AML believes communities should have any say in the process as a formal check-off, involvement, engagement, consultation, or should just be engaged in the political process so a community that has power might have a say, but a small isolated community that is unincorporated would have no say. She further asked whether the communities have weighed in on this element.

MR. ANDREASSEN responded AML has not tackled this specifically but would be happy to weigh in on that at the appropriate point in further consideration of HB 138. He said the committee

structure of the legislature is relevant, meaningful, and produces a lot of that stakeholder engagement that makes things accessible and hopefully produces outcomes consistent with the public interest.

REPRESENTATIVE HANNAN recalled Mr. Andreassen stating that the community of Yakutat had issued a resolution in opposition to Yakutat Forelands. She inquired whether any of the other communities have offered input into any of those other nominations. For example, she noted, Klukwan has weighed in with its support of a designation.

MR. ANDREASSEN offered his belief that others have weighed in, but without having that before the committee it is hard for him to poll AML's members for that feedback as it would be on a case-by-case basis. He added he would appreciate a weighted consideration when it comes to municipal government as he thinks that would be valuable.

[2:11:20 PM](#)

CO-CHAIR TARR recounted that when the legislature passed the enabling statutes after the citizen initiative legalizing marijuana, the legislature gave a local option component. She asked whether this same kind of model would be something that AML could support or whether AML has another suggestion for how giving weighted support to communities could be accomplished.

MR. ANDREASSEN answered that AML would definitely consider an elegant solution like that for working with the legislature to ensure local control and voice in designating a water of national significance.

CO-CHAIR TARR pointed out that in the case of a designation by statute, any statute can be repealed and so there would be a process for that. She requested clarification from Mr. Crapps regarding his statement that there isn't any precedent for "undesignation."

[2:13:38 PM](#)

MR. CRAPPS replied he was just speaking to the Clean Water Act and it doesn't specify that, so whatever is the process that states arrive on is what the Tier 3 process will be.

[2:14:02 PM](#)

CO-CHAIR LINCOLN clarified that the designation of a Tier 3 is a federal designation and the federal government has asked states to come up with a nomination and designation process. So, he explained, if the [Alaska State Legislature] were to ask for a designation through statute and then the legislature rolled back the statute, it would not automatically compel the federal government to roll back the designation. There is nothing right now in federal law that prevents that, he continued, but there is also nothing that specifies a procedure or explicitly authorizes [the federal government] to do that. He pointed out that situations with any ambiguity and multiple positions on the topic are going to end up in court. So, he said, at this point it is a foregone conclusion that if the state were to have a designated Tier 3 and then tried to roll it back, it would have to go to court and get settled there.

CO-CHAIR LINCOLN noted that each committee member appreciates the importance of HB 138 and its topic and that there is no intention to rush this process this session. He said more will be learned during the interim and HB 138 will be addressed in a responsible way during the next legislative session.

[HB 138 was held over.]

[2:15:35 PM](#)

The committee took an at-ease from 2:15 p.m. to 2:31 p.m.

HB 116-AQUATIC FARM/HATCHERY SITE LEASES

[2:31:48 PM](#)

CO-CHAIR LINCOLN announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 116, "An Act relating to the renewal or extension of site leases for aquatic farming and aquatic plant and shellfish hatchery operations."

[2:32:07 PM](#)

REPRESENTATIVE ANDI STORY, Alaska State Legislature, sponsor, explained that SSHB 116 would simplify the Department of Natural Resources (DNR) lease renewal process for aquatic farms that grow products such as oysters, kelp, and other shellfish. She continued:

If enacted, HB 116 would help Alaska-based aquaculture businesses succeed by shortening the lease renewal

process. Aquaculture is an industry with a lot of promise and Alaska with more coastline than all the other states combined has a bountiful potential. The Alaska Mariculture Taskforce set a goal of making this a \$100 million industry in the next 20 years. As you can see from the flowchart in your bill packet, requirements to permit and operate an aquatic farm, or related hatchery, is complex. The most rigorous and time-consuming portion of the approval process is the DNR aquatic farming site lease, both the original lease and the subsequent renewal. Due to recent increases in the number of aquaculture farm applications - there was one application in 2016, 17 applications in 2017, and 16 in 2018 - coupled with recent cuts to agency staff, it now takes an average of 18 months or more to approve an aquatic farm lease. By simplifying the renewal process, we can reduce risk for businesses making significant capital investments and reduce the workload on overstretched agency staff. House Bill 116 aligns the lease renewal process for aquatic farms to the process used for other DNR leases. This would significantly shorten the first renewal process while still allowing appropriate regulatory oversight, public engagement, and appeals of DNR's decisions. I would like to mention that this bill would not affect leases for salmon hatcheries. As a new legislator, I am pleased with how this bill began and how it was developed. Shortly after taking office I was contacted by a constituent who is currently in the process of transferring an aquatic farm lease, a process that would not be affected by this bill. They shared their experiences with the lease transfer process and suggested a few possible changes that might help applicants. During subsequent conversations DNR staff mentioned the streamlining of the aquatic farm renewal process as a way to reduce uncertainty for applicants and increase agency efficiency.

[2:35:51 PM](#)

REPRESENTATIVE TUCK inquired whether hatchery includes salmon hatchery.

REPRESENTATIVE STORY replied no.

REPRESENTATIVE TUCK observed there was a title change from one version to another version of the bill where it states shellfish hatchery. He asked whether the only change was the title.

REPRESENTATIVE STORY responded yes, the title was specifically changed because people were thinking the bill did include salmon and she wanted to make it clear that [salmon hatchery leases] wouldn't be affected.

REPRESENTATIVE TUCK requested the committee be shown how the process currently works.

[2:36:41 PM](#)

GREG SMITH, Staff, Representative Andi Story, Alaska State Legislature, on behalf of the sponsor explained that when applying for a DNR lease to use public lands for a private purpose, aquatic farm leases are under a separate section of statute. Most leases given by DNR are under AS 38.05.070, he said, which includes general leases for things like cabins, lodges, fish processing plant docks, hydroelectric facilities, grazing, and other uses where the state grants a private entity rights to public land.

MR. SMITH brought attention to the aquatic farm application flow chart in the committee packet and stated that the first application for a lease goes through a large public notification and comment process that can be found in AS 38.05.945. He explained aquatic farms get up to a 10-year lease, and near the end of that 10-year lease a renewal can be applied for but that it currently involves a very lengthy public comment process. However, he pointed out, general leases can be renewed by the director under a shortened public comment process if the lease is in good standing and is determined to be in the best interest of the state.

MR. SMITH said the sponsor's understanding from DNR in terms of the impacts on the applicant of the [proposed] change, is that the applicant [for an aquatic farm lease renewal] would still submit similar information to DNR. But the [proposed] benefit, he continued, would be that under the AS 38.05.945 notice it would take about 90 days for the shortened, optional lease renewal process rather than taking 18 months for renewal.

[2:40:27 PM](#)

REPRESENTATIVE TUCK offered his understanding that the leases [for aquatic farms] are good for 10 years. He inquired whether there are any records for lease renewals that have been denied.

MR. SMITH answered that, according to DNR, the department has never denied an aquatic farm lease renewal under the current process.

CO-CHAIR LINCOLN asked how many have been renewed.

MR. SMITH replied he doesn't know the total number of lease renewals. He said an impetus for this bill is that the number of lease applications has increased significantly in recent years and those will be coming up for renewal 10 years after the initial lease was started. So, he continued, probably only a handful of lease renewals have been happening every year, but the concern is that 10 years from now there will be 17-20 lease renewals.

[2:42:11 PM](#)

REPRESENTATIVE HOPKINS offered his understanding that there are a fair number of aquatic farms in Southcentral and Southeast Alaska. He inquired whether there is productivity or the potential for development in other coastal areas of the state or along lakes.

MR. SMITH responded he doesn't know and deferred to the Alaska Department of Fish and Game to provide an answer.

GAROLD "FLIP" PRYOR, Fish and Game Coordinator, Alaska Department of Fish and Game (ADF&G), confirmed there is potential in other areas, but that he cannot say specifically where concentrations of interest are located.

[2:43:10 PM](#)

REPRESENTATIVE RAUSCHER asked whether there is a typical amount of land involved or whether the amount varies. He further asked whether the amount is a lot of land, and, if so, the reason why.

MR. SMITH answered that the amount varies significantly, with some of the largest being over 150 acres and some with acreage in the single digits. He deferred to DNR to provide specifics.

MARTY PARSONS, Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), confirmed

there is a wide variety from the single digits up to 200 acres. He explained it depends upon what the individual is farming; for example, spat for oysters is confined to a penned area that doesn't take up much state tideland, whereas kelp needs hundreds of acres to produce a large volume of the product.

[2:45:14 PM](#)

REPRESENTATIVE HANNAN recalled the statement that SSHB 116 does not impact salmon or finfish hatcheries as opposed to shellfish hatcheries. She inquired whether these two types of hatcheries are linked together under the current statute such that they both have the same lengthy renewal process as was described [for aquatic farms], or whether finfish hatcheries fall under the general leasing statute.

MR. SMITH replied that a variety of mechanisms are used for the land that salmon hatcheries utilize. He offered his belief that the nonprofit Douglas Island Pink and Chum, Inc. (DIPAC) hatchery is an agreement between the City and Borough of Juneau and DIPAC. He offered his further belief that others are situated on private land ...

REPRESENTATIVE HANNAN interjected that they all are on public land [in this case]. She reiterated her question of whether salmon hatcheries fall under the same current statute as shellfish hatcheries for a lengthy renewal process, or fall under the general leasing statute's shortened renewal process.

MR. SMITH offered his understanding that when salmon hatcheries require a DNR lease and when that lease is renewed, it is typically done under AS 38.05.070, the general lease statute.

REPRESENTATIVE HANNAN concluded that only shellfish hatcheries have been held to this lengthy renewal process.

MR. SMITH responded only shellfish and other aquatic organisms like kelp, but not salmon hatcheries.

[2:47:39 PM](#)

CO-CHAIR LINCOLN opened invited testimony.

[2:47:54 PM](#)

JULIE DECKER, Executive Director, Alaska Fisheries Development Foundation (AFDF), testified in support of SSHB 116. She said

AFDF has been spearheading an effort to develop the mariculture industry in Alaska. She stated that through the governor's Mariculture Taskforce a comprehensive statewide plan for developing the industry has been completed, with a goal to grow a \$100 million industry in 20 years. She noted the industry would be applicable in Southeast, Southcentral, Kodiak, and Southwest Alaska, and that currently there are farms in Kodiak. She offered her understanding that there has been at least one farm application for near Sand Point. A positive result of the Mariculture Taskforce's work has been increased private sector interest in aquatic farming, she said. The recent interest has increased applications to the state, she continued, which has led to a backlog and increased the processing time from about 12 months to about 24 months as DNR works through the applications.

MS. DECKER noted that the initial application process is very rigorous. She said DNR consults with multiple agencies and considers user conflicts, biological concerns, habitat concerns, marine mammal protection, navigation hazards, public comment periods, and others. If an application makes it through this process and is approved, she continued, the farm must, after 10 years, go through a renewal process that is at a higher standard than other industries and other leases, which is what is being talked about. She stated SSHB 116 would be a good step in the direction to efficiently develop this industry because it would reduce the workload at DNR; prioritize DNR's staff time on the new farm lease applications, which would help grow the industry; and give more certainty to farmers who have invested in infrastructure during the first 10 years of the lease.

[2:51:09 PM](#)

REPRESENTATIVE RAUSCHER drew attention to the flow chart for the existing process and asked whether the sponsor has one for what the bill is addressing.

REPRESENTATIVE STORY replied that the main process being talked about in this flow chart is within the box labeled "DNR *Aquatic Farm Lease". She said a main point is that people put up a lot of capital to start their farm and it takes three to seven years to get to the spot of knowing whether the farm is going to be viable. The renewal comes at 10 years, she continued, and currently for this second step the farmer must go through the whole rigorous process again. She said [SSHB 116] would make the [first] renewal simpler and smoother for everyone, and then at 20 years the farmer would have to go through the whole

original process again [for renewal]. She deferred to ADF&G to elaborate further.

MR. PRYOR responded that the aforementioned is an accurate description of what is going on with the flow chart.

[2:53:04 PM](#)

CO-CHAIR LINCOLN restated Representative Rauscher's question as to how the proposed change to the renewals would affect the flow chart. Co-Chair Lincoln asked whether the steps in the proposed changes are captured on the flow chart, or some steps would be eliminated, or how it would vary under the proposed changes.

MR. PRYOR answered, "I believe you just take the last line of the flow chart and where it says you get approval then you go to the bottom line. After the 10 years you would just start over at that bottom line again."

CO-CHAIR LINCOLN asked whether it is at the line labeled "DNR Final Decision".

MR. PRYOR replied, "That's my understanding."

[2:53:44 PM](#)

REPRESENTATIVE RAUSCHER inquired how the shorter process would be enacted; for example, whether it would be enacted with an application or whether it would be an understanding that it is going to happen. He further inquired whether at 20 years it would be by going through the whole thing again with an application process.

REPRESENTATIVE STORY responded that for the 10 years the applicant goes through the rigorous process, and then the farmer would still have to fill out an application and practically do a lot of the same steps. She said it's just that there would be a shorter public review process involved, and that there would still be regulatory oversight and opportunity for the public to weigh in, and DNR would hear any appeal of it.

[2:55:03 PM](#)

REPRESENTATIVE HANNAN requested Mr. Pryor to describe the difference in the current leasing process between a shellfish hatchery and a finfish hatchery and how it would be different under SSHB 116.

MR. PRYOR offered his understanding that [SSHB 116] would bring this more on line with how the finfish leases work - when it comes time to renew, rather than starting at Step A in the flow chart the renewal would go through the commissioner, and the commissioner would look at the renewal and make the decision there without going through the top five or six steps.

REPRESENTATIVE HANNAN surmised that currently finfish farms are allowed to have the shortened renewal process and it is only shellfish hatcheries and farms that have been unable to do this for DNR renewals.

MR. PRYOR answered that that is his understanding.

REPRESENTATIVE HANNAN asked whether shellfish farms are limited to a 10-year lease by practice or by statute. She further asked whether finfish hatcheries are limited to [a 10-year lease].

MR. PRYOR replied he is unsure how that works.

REPRESENTATIVE HANNAN asked what the average length of [time] is for finfish hatchery leasing locations.

MR. PRYOR responded that he doesn't know.

[2:57:18 PM](#)

REPRESENTATIVE RAUSCHER read aloud from a letter he received, which states in part: "Leave the word "Renewal" in as critical for [relevant] considerations in AS 38.05.083 ... Please do not remove the opportunity of [relevant] consideration upon renewal of an oyster farm. We are just beginning to understand all the repercussions this presents, as farming in our navigable waters grows...." Representative Rauscher requested a response from the sponsor because he would like to understand the concern and how it equates to where the sponsor is at with the bill.

MR. SMITH, on behalf of the sponsor, offered his understanding that in terms of the function of the bill, "or renew" must be removed throughout AS 38.05.083 or it will always be triggering the more extensive public comment period. He pointed out that the shortened renewal process available for other types of DNR leases with equal or significant potential impacts on public lands is an optional choice for the director of the Division of Mining, Land and Water. He said he understands from DNR that it would be case dependent, such that if a leasee wasn't following

stipulations of the lease, or if there were significant problems with neighbors and the public, and there was a lot of clamor about a lease for any type of reason, the director doesn't have to choose the [proposed] shortened lease renewal process and could choose to use the process as outlined from the beginning of the flow chart. He offered his further understanding that if there are issues with a lease, upon renewal [the department] could make changes to that lease.

REPRESENTATIVE RAUSCHER inquired whether the bill states that there is an option to choose [the longer lease renewal process] if there is a problem.

MR. SMITH offered his understanding that that optional choice is found in the bill on page 1, Section 1, line 5, which states, "The director may renew a lease issued under this section". He pointed out that the word "may" is used as opposed to "shall".

REPRESENTATIVE RAUSCHER asked whether anyone else interprets that to mean the same thing. Responding to Co-Chair Lincoln, he requested Mr. Smith to restate this question.

MR. SMITH responded that the question is, "Where is it stated in statute that this expedited lease renewal process is an optional decision?" Responding further to Representative Rauscher, he said it is stated in the bill on page 1, Section 1, line 5.

REPRESENTATIVE RAUSCHER inquired whether the word "may" gives [the director] that power.

[3:01:20 PM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, said if the question is, "What provides the director with the discretion to decide to renew a lease?" Mr. Smith is correct that it is the word "may" on page 1, line 5, of the bill.

[3:03:04 PM](#)

CO-CHAIR LINCOLN drew attention to page 2, lines 7-9, which state: "The commission, for good cause, may deny an application for issuance [OR RENEWAL] of a lease under this section but shall provide the applicant with written findings that explain the reasons for the denial." Noting that "or renewal" would be deleted under this section, he asked whether being able to deny

an application for "issuance" of a lease, but not for "renewal" of a lease, has any relevance to the question right now.

REPRESENTATIVE RAUSCHER answered that he thinks the questioning was whether input from the community was still in there. He offered his belief that [Mr. Smith] was addressing that if there seems to be a problem that [DNR] would revert back to the process of asking the community. He inquired whether his understanding is correct.

MR. SMITH replied that his understanding from DNR is that the public can weigh in during the initial lease and also at renewal.

CO-CHAIR LINCOLN stated he would hold public testimony until the bill's next hearing and noted that there is one more invited testifier yet to be heard by the committee.

[3:04:39 PM](#)

REPRESENTATIVE TUCK offered his understanding that the initial [aquatic farm application] process would remain the same, and then there would be the renewal. He said his concern is page 2, Section 3, lines 7-10, and asked whether it would still stand that the commissioner could deny the renewal of a lease. He pointed out that "or renew" would be deleted and further asked whether the commissioner's ability to deny a lease for renewal would be taken away.

[3:05:10 PM](#)

REPRESENTATIVE STORY replied, "We are taking out the renewal here, but in the statute that we refer to earlier ... it still can be denied in the renewal process that we would be switching to, if they had any cause for that." She welcomed clarification in this regard from ADF&G or anyone else online. She added, "There can always be a reason for denying the renewal, it would just be it's expedited."

REPRESENTATIVE TUCK requested that the person who answers the aforementioned question also address whether the commissioner can deny a person who is in the middle of a lease.

[3:06:40 PM](#)

MR. BULLARD responded that in this case it would be the director and the director would have the latitude to deny a lease on

renewal under AS 38.05.070, which is where the renewal process is moving from AS 38.05.083. He said if the director determines that the lease is not in the best interests of the state the director should not renew the lease. He stated he doesn't know the answer to the second question of whether that can happen in the middle of a lease term.

CO-CHAIR LINCOLN requested Mr. Pryor to respond to the question of whether a lease can be terminated mid-lease.

MR. PRYOR replied he is unable to answer the question off the top of his head. Responding further to Co-Chair Lincoln, he agreed to follow up and provide the committee with an answer to the question.

[3:08:28 PM](#)

CO-CHAIR LINCOLN reiterated that he would hold testimony from the public and from the second invited testifier until the bill's next hearing.

[3:08:43 PM](#)

REPRESENTATIVE TALERICO related that he has experience dealing with these leases with municipal government as well as privately. He offered his belief that under statute, violations of the lease terms can result in forfeiture of all of the lease provisions.

[SSHB 116 was held over.]

[3:09:33 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:09 p.m.