

**ALASKA STATE LEGISLATURE  
SENATE RESOURCES STANDING COMMITTEE**

February 17, 2020

3:30 p.m.

**MEMBERS PRESENT**

Senator Peter Micciche, Chair  
Senator John Coghill, Vice Chair  
Senator Click Bishop  
Senator Cathy Giessel  
Senator Joshua Revak  
Senator Scott Kawasaki  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 145

"An Act relating to the registration of commercial fishing vessels; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 70

"An Act repealing the ocean rangers program; and providing for an effective date."

- HEARD & HELD

PRESENTATION: SPILL PREVENTION AND RESPONSE (SPAR) PROGRAM BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 145

SHORT TITLE: REGISTRATION OF BOATS: EXEMPTION

SPONSOR(S): SENATOR(S) MICCICHE

01/21/20 (S) PREFILE RELEASED 1/17/20

01/21/20 (S) READ THE FIRST TIME - REFERRALS  
01/21/20 (S) RES, FIN  
02/14/20 (S) RES AT 3:30 PM BUTROVICH 205  
02/14/20 (S) Heard & Held  
02/14/20 (S) MINUTE (RES)  
02/17/20 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 70

SHORT TITLE: REPEAL OCEAN POLLUTION MONITORS/FEE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/22/19 (S) READ THE FIRST TIME - REFERRALS  
02/22/19 (S) RES, FIN  
03/13/19 (S) RES AT 3:30 PM BUTROVICH 205  
03/13/19 (S) Heard & Held  
03/13/19 (S) MINUTE (RES)  
03/18/19 (S) RES AT 3:30 PM BUTROVICH 205  
03/18/19 (S) -- MEETING CANCELED --  
02/17/20 (S) RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

JASON BRUNE, Commissioner

Alaska Department of Environmental Conservation (DEC)

Juneau, Alaska

**POSITION STATEMENT:** Provided a PowerPoint on SB 70 relating to Cruise Ship Environmental Monitoring.

EMMA POKON, Deputy Commissioner

Department of Environmental Conservation (DEC)

Juneau, Alaska

**POSITION STATEMENT:** Answered questions and reviewed the sectional analysis for the proposed committee substitute (CS) for SB 70, version U.

DENISE KOCH, Director

Spill Prevention and Response

Department of Environmental Conservation

Juneau, Alaska

**POSITION STATEMENT:** Delivered a PowerPoint on the Spill Prevention and Response (SPAR) program.

**ACTION NARRATIVE**

3:30:23 PM

**CHAIR PETER MICCICHE** called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to

order were Senators Revak, Bishop, Kawasaki, Kiehl, Coghill, Giessel and Chair Micciche.

**SB 145-REGISTRATION OF BOATS: EXEMPTION**

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CHAIR MICCICHE announced that the first order of business would be SENATE BILL NO. 145, "An Act relating to the registration of commercial fishing vessels; and providing for an effective date."

CHAIR MICCICHE said the committee previously heard a presentation on SB 145 and took public testimony. He advised that a committee substitute was prepared but it contains several errors, so the committee will not take it up today. After determining no one wished to testify, he informed members that he will keep public testimony open on SB 145.

[SB 145 was held in committee.]

**SB 70-REPEAL OCEAN POLLUTION MONITORS/FEE**

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CHAIR MICCICHE announced the next order of business would be SENATE BILL NO. 70, "An Act repealing the ocean rangers program; and providing for an effective date."

CHAIR MICCICHE said the Department of Environmental Conservation (DEC) has asked for a change to SB 70 and a committee substitute was drafted. He solicited a motion.

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SENATOR COGHILL moved to adopt the committee substitute (CS) for SB 70, work order 31-GS1117\U, as the working document.

CHAIR MICCICHE objected for discussion purposes.

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JASON BRUNE, Commissioner, Alaska Department of Environmental Conservation (DEC), Juneau, Alaska, stated that the initial draft of SB 70 eliminated the Ocean Ranger Program, whereas the proposed committee substitute would reinvent it. He began a PowerPoint on the cruise ship environmental monitoring program that is proposed in the committee substitute.

COMMISSIONER BRUNE said the goal is to modernize DEC's approach to monitor cruise ship emissions and discharges, which was modified by an initiative process 12 years ago. The program put

in statute significant specificity that normally is set by regulation. The changes will incorporate a number of recommendations the department received from legislators and the public. It will incorporate new technology and upgrade some community wastewater discharge systems in communities visited by the cruise industry.

COMMISSIONER BRUNE reviewed slide 2, A Modernized Approach:

- ⇒ This bill clarifies that the cruise industry will be regulated in a similar manner to other industries
- ⇒ Existing statutes limit DEC's ability to effectively monitor cruise ship emissions and discharges
- ⇒ This CS maintains DEC's current authority and adds flexibility for how it is used.

COMMISSIONER BRUNE reviewed slide 3, Current Program Challenges and Inefficiencies:

- ⇒ There were typically 22 ocean rangers on vessels throughout a summer season
- ⇒ Ocean rangers performed in-port and underway observations
- ⇒ DEC staff spent majority of time going through ocean ranger reports
- ⇒ Ocean rangers looked for potential non-compliance with marine discharge and pollution requirements and to ensure proper sanitation, health, and safety practices for passengers and crew
- ⇒ Ocean rangers were observers, not inspectors, and passed concerns to DEC for further investigation

He explained that between 3 and 5 of the 22 ocean rangers employed throughout a summer season were Alaskans. One requirement was that ocean rangers must be marine engineers, but there were insufficient numbers of residents who were qualified, so DEC hired retired marine engineers from the Lower 48.

COMMISSIONER BRUNE noted that the ocean rangers also looked at sanitation and health practices, such as pools, sneeze guards, and nail salons.

COMMISSIONER BRUNE reviewed slide 4, Current Program Challenges and Inefficiencies:

- ⇒ Over 12 years, DEC has spent roughly \$40 million on the ocean ranger contract. During that time, six of the DEC issued Notices of Violation (NOVs) were attributable to ocean ranger observations.

He reported that \$1 million of the roughly \$3.5 million per year was paid to cruise ships for ocean ranger berths. Only six of 264 NOVs [notice of violations] were attributable to ocean ranger observations, whereas a number of violations were self-reported by the industry. He suggested that if this were a general fund program, the state would have eliminated it a long time ago. He said DEC hopes to make it a much better program.

In response to Senator Coghill, he explained that NOVs are notice of violations that are typically exceedances in air or water emissions or discharges. Most of the NOVs were not formal because the proposed violations either lacked sufficient information to make a determination or the issues are covered under federal or other jurisdictions.

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COMMISSIONER BRUNE reviewed slide 5, CS Bill Overview:

- ⇒ Simplified fee structure
- ⇒ Moving detailed statutes to regulation ×  
Incorporating technology
- ⇒ Updating wastewater systems in port communities through a grant or loan program

He reiterated that the department will be using current technology in its program and will update some wastewater systems in port communities through grant or loan programs similar to the Village Safe Water (VSW) program.

COMMISSIONER BRUNE turned to slide 6, Current Fee Structure [This slide also contained a table that illustrated the current fee structure]:

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- ⇒ Commercial Passenger Vessel Environmental Compliance Fee (CPVEC) funds DEC's work overseeing cruise ships

⇒ Ocean ranger fee funds management and operation of the ocean ranger program

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COMMISSIONER BRUNE turned to slide 7, which listed the current passenger vessel fee structure in [AS 46.03.480(b)(1)-(10)]. He said the fee schedule was confusing and tedious. For example, the per berth fee is \$750 for vessels with a capacity of 500 but not more than 999 passengers. The fee schedule in this statute sets fees depending on vessel berths that range up to 3,500 passengers.

He read the current fee structure in the table on slide 6 that showed that the fees for the CPVEC program are scaled per lower berth fee based on range of berths at \$.070 to \$1.75.

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COMMISSIONER BRUNE reviewed slide 8, Proposed Fee Structure:

- ⇒ New fee would take effect in 2021 cruise season
- ⇒ All vessels over 50 berths pay \$5 per berth Large vessels pay roughly the same, small vessels will see an increase in fees and an increase in oversight
- ⇒ The fee would be reduced by \$1 per berth for any ship that maintains a DEC-approved electronic wastewater monitoring system

COMMISSIONER BRUNE said the new, simpler fee structure would become effective for the 2021 cruise season. All vessels would pay the same fee per berth to fund the Commercial Passenger Vessel Environmental Compliance (CPVEC) program. The department performed an analysis of the cost, and the large vessels would pay about the same and the smaller ones will see an increase in fees and oversight. He said DEC will reduce fees by \$1 per berth as an incentive for any ship that maintains a DEC-approved electronic wastewater monitoring. DEC considered requiring electronic wastewater monitoring, but the federal government informed the department that it could only incentivize it.

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SENATOR KAWASAKI asked how many vessels would currently qualify as over 50 berths.

COMMISSIONER BRUNE responded that he would follow up with that information but the newer systems are incorporating this

technology. He remarked that if it's possible to tell from Houston, Texas whether valve 485 of the Trans-Alaska Pipeline System (TAPS) is open or not, the DEC should be able to use technology to know whether a valve is open on a cruise ship from Miami or somewhere else. He reported that some of the older ships do not have that technology built in and have manual systems. He offered to report back to the committee.

SENATOR KAWASAKI asked if the DEC approved electronic wastewater monitoring system would be in regulation.

COMMISSIONER BRUNE answered yes. Incorporating it in regulation would give the department more flexibility as technology evolves than having to come back to the legislature for statutory changes.

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CHAIR MICCICHE asked if vessels with less than 50 berths were previously exempt.

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EMMA POKON, Deputy Commissioner, Department of Environmental Conservation (DEC), Juneau, Alaska, answered yes. She said there is a definition for commercial passenger vessel that makes that clear.

CHAIR MICCICHE said it was interesting to see that the changes resulted in one lost berth. This language relates to all vessels over 50 berths whereas the previous language applied to all vessels under 50 berths. He asked the DEC to review this.

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SENATOR KIEHL calculated that the incentive for a 2,400 passenger vessel operating 15 trips would yield \$35,000 to \$38,000 per year at \$1 per berth. He said he had no sense for what it would cost to outfit a ship like that or how long it would take to recover those costs, but he questioned whether the incentive was adequate.

COMMISSIONER BRUNE answered that he posed that question to Mike Tibbles, Alaska representative from Cruise Lines International Association (CLIA), who will report the answers from its members.

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COMMISSIONER BRUNE reviewed slide 9, Staying Current with Technology and Environmental Standards:

- ⇒ This CS removes sections of statute that are overly detailed and do not allow for changing technology and environmental standards
- ⇒ Requires DEC write regulations that address the items removed from statute
- ⇒ Putting requirements in regulation allows DEC to respond to future improvements in waste treatment and monitoring technologies
- ⇒ New technology could provide for 24/7 electronic monitoring of ships' discharge ports

He said the deputy commissioner will cover this in more detail. He stated that when the initiative passed, it contained specifics not normally contained in regulation. As the technology evolves, the department will potentially be able to monitor 24/7 without people on board the vessels.

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COMMISSIONER BRUNE reviewed slide 10, Local Water Quality Disparity:

- ⇒ Large cruise ship permit allows up to 40 fecal colony forming units per 100 ml.
- ⇒ Local wastewater treatment facility permit allows up to 1.5 million fecal colony forming units per 100 ml.
- ⇒ Many of the over one million yearly cruise ship passengers will use onshore restrooms when visiting Alaska ports

He said he believes in consistency and if the state has a high standard for industry, it should also have a high standard for itself. Currently the allowances for cruise ships is 40 fecal colony forming units (cfu) per 100 ml, but some coastal communities can discharge 1.5 million cfu/100 ml. Even though he does not propose increasing the cruise ship allowances, the state must address the disparity in local communities. Many of the systems were built long before the tourism industry grew. The cruise industry had 1.2 million passengers in 2019, and this year projects that figure to grow to 1.5 million. These visitors must either use boat or shoreside facilities, so communities need to upgrade their shoreside systems.

COMMISSIONER BRUNE reviewed a table on slide 11. He said the bill would create a program similar to other systems, such as Village Safe Water (VSW). Communities will submit a proposal and show it has "skin in the game" by raising resident utility rates or by showing contributions made by their local assemblies. DEC will rank the proposals by their impact on the environment, so an older system will score higher.

He explained that DEC estimates it has \$10 million in funds and will use roughly half the annual receipts of \$12-13 million to assist communities. It does not sound like a lot since many Southeast Alaska communities' systems will cost \$40 to \$50 million. This would not pay for the systems, but it could provide an incentive for system upgrades through low interest loans or grants, he said.

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CHAIR MICCICHE recalled a few years ago the state repealed the zero discharge rule for vessels. At the time, the state struggled when it realized how many 301(h) waivers were in Alaska. He asked if the department has long-term goals to move beyond waivers in Alaska.

COMMISSIONER BRUNE responded that slide 11 provides a cross section of some communities with waivers. He noted Juneau does not have a waiver. He explained that the Clean Water Act 301(h) waivers allow communities, including Anchorage, to only treat their sewage at the primary level. A number of communities in the U.S. with 301(h) waivers, such as Honolulu, San Diego, and San Francisco have all upgraded their systems to secondary or tertiary treatment. Ideally, the state should treat its water at a tertiary level. However, the estimated cost for Anchorage to upgrade its system is \$1.5 to \$ 2 billion. He related that the science shows that there is a very large natural mixing zone with the huge tides in Anchorage. He did not anticipate Anchorage would use these funds to upgrade its treatment plan. For now, DEC will focus on Southeast Alaska communities, he said.

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CHAIR MICCICHE agreed that it was time for the state to begin to hold discussions with communities. He expressed interest in emphasizing the consistency discussion rather than in having Anchorage convert.

COMMISSIONER BRUNE remarked he often has heard that DEC closes beaches due to fecal coliform issues. People mistakenly think the problem is coming from the cruise ships when DEC scientists identify the sources are from the local wastewater treatment plants in those communities.

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SENATOR GIESSEL recalled that five years ago, the Environmental Protection Agency (EPA) required Unalaska to upgrade its facility. She asked why these other communities did not need to do so.

COMMISSIONER BRUNE said the EPA has an interest in upgrading the 301(h) waivers throughout the U.S. He was unsure why Unalaska was targeted, but the organization is working its way through its list. Anchorage is one of the larger communities remaining. He suggested that the EPA is ticking off communities that have the largest risk to human health. He offered to research this and follow up with more information.

CHAIR MICCICHE asked him to send the information to the committee.

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SENATOR KAWASAKI expressed interest in the volumes coming out of local communities and the cruise ship industry.

COMMISSIONER BRUNE agreed to provide the information. He acknowledged that the overall impact of discharge in water matters.

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COMMISSIONER BRUNE reviewed slide 12, Shoreside Facility Upgrades:

- ⇒ A portion of the collected fees will be used to support improvements to shore-based wastewater treatment facilities in port communities
- ⇒ DEC will establish a grant/loan program to provide financial assistance (i.e., maybe in the form of a revolving loan fund)

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COMMISSIONER BRUNE reviewed slide 13, 2020 Cruise Ship Season and Beyond:

- ⇒ Marine engineers (DEC staff and contractors) will perform initial and annual inspections on ships operating in Alaska as early in the season as possible
- ⇒ Marine engineers and/or DEC inspectors will perform both random and targeted inspections in-port and underway

He reported that the department's \$900,000 fiscal note would allow it to provide marine engineers to perform initial and annual inspections. He compared it to an as-built survey for a house, such that the inspectors would assess the ship to verify systems and identify any "magic pipes" the ships may have. He said early season inspections will provide consistency.

COMMISSIONER BRUNE said the deterrent factor of having someone on the ship does not play out since a company that wants to do something nefarious will do so while the ocean ranger is sleeping or inspecting the galley. He envisioned the department would conduct its inspections the same way as it does for other state regulated industries such as mining, oil and gas, community wastewater treatment facilities, and fish processing facilities.

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SENATOR KIEHL recalled that Commissioner Brune previously stated one of the weaknesses of the ocean ranger program is that the rangers were observers and not inspectors, in part, because they were contractors. He asked if the contractors performing initial inspections will be inspectors or if DEC staff will need to follow up.

COMMISSIONER BRUNE responded that the department currently has one marine engineer on staff and hopes to add one more. DEC staff inspectors will conduct initial inspections and they will have the ability to issue Notice of Violations (NOVs). Also, DEC will have staff in close proximity to immediately address any issues that arise for inspections not done by staff.

SENATOR KIEHL asked what he meant by close proximity.

COMMISSIONER BRUNE said he envisioned that the inspectors would be in Juneau to inspect the three to five ships per day. The marine engineer on staff in Juneau would oversee the inspection. However, DEC staff will conduct inspections throughout the year.

COMMISSIONER BRUNE reviewed slide 14, 2020 Cruise Ship Season and Beyond:

- ⇒ DEC Inspection, Monitoring, and Compliance
- ⇒ 4 new DEC positions
- ⇒ 10 DEC staff available for the cruise ship season to review reports and conduct in-port and underway inspections, compliance and enforcement actions
- ⇒ Inspections will be random and targeted

He explained that the department would replace the 22 ocean ranger positions with four new positions or the equivalent of 10 fulltime positions. This staff would conduct inspections under the marine engineer's supervision. He offered to flesh this out a little more and provide the information to the committee.

COMMISSIONER BRUNE said he anticipated that ships with newer technology would not need inspections as often since the department will have more information from them. However, the new technology will not happen in the first year or two. He said DEC inspects good actors less, and bad actors more frequently.

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CHAIR MICCICHE asked what kinds of responsibilities the four positions would have in the off season.

COMMISSIONER BRUNE replied the inspectors would inspect oil and gas, fish processing, and wastewater facilities in the state and he hoped these employees would be cross trained to do so. Similarly, since the department will only hire four new positions, the other six employees would be cross trained to conduct inspections on cruise ships.

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COMMISSIONER BRUNE reviewed slide 15, Additional Changes:

- ⇒ Repeals and re-enacts 46.03.480(c) addressing fee schedule for State of Alaska vessels
- ⇒ Repeals citizens' suits
- ⇒ Conforming changes

COMMISSIONER BRUNE said AS 46.03.480(c) gives the commissioners of the Department of Environmental Conservation (DEC) and the Department of Transportation and Public Facilities (DOTPF) the authority to negotiate fees to charge ferries for their berths. To date, that amount has been zero and he proposes to keep it the same, but Legislative Legal Services attorneys wanted to repeal and reenact the provisions as part of this bill.

COMMISSIONER BRUNE said the citizens' suit provision was never used.

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COMMISSIONER BRUNE reviewed slide 16, Effective Dates. He said the bill has staggered effective dates. There is an immediate effective date or retroactive to April 1, 2020 for the repeal of the ocean ranger statute and fees for DEC's activities. DEC will transfer those fees to its activities immediately. The single \$5 fee and new regulations would be in place by January 1, 2021.

- ⇒ Staggered effective dates will allow for continuity over the summer of 2020, and give DEC time to draft necessary regulations.

He explained that DEC considered both this season and next season when it set the effective dates to provide consistency.

CHAIR MICCICHE restated that DEC will keep its current fees in place this summer and implement new fees on January 1, 2021.

COMMISSIONER BRUNE clarified that the current fees are roughly \$5 and next year's fee switches to the flat \$5 fee.

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COMMISSIONER BRUNE recapped fees in slide 17, Fiscal Impacts:

- ⇒ Revenue: Large ships see little change, fees go up for small vessels in 2021
- ⇒ Contract for marine engineer inspections will be considerably lower than for ocean rangers
- ⇒ Attached fiscal note includes expenditure authority for the 2020 cruise season
- ⇒ Personal services and other support costs for four new positions add to DEC's baseline budget

- ⇒ Expect future capital appropriation in grant authority to improve water quality near communities

COMMISSIONER BRUNE recalled that the fees for smaller vessels was \$60,000. The fiscal note for DEC requests \$900,000 supplemental authority for the 2020 cruise season. He anticipated that DEC would submit future capital appropriation requests for the low-interest loans created in the program.

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SENATOR BISHOP asked if the four new positions were lateral transfers or if the plan was to hire new staff. He further asked if DEC has started recruiting.

COMMISSIONER BRUNE answered that he does not yet have the authority to recruit. Once the bill passes the department will hire from within or hire new staff.

SENATOR BISHOP asked for his projection on how long it will take to fill the new positions.

COMMISSIONER BRUNE said current staff has significant expertise, but will need some training. He offered to follow up with more information.

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COMMISSIONER BRUNE reviewed slide 18, What will Not Change:

- ⇒ DEC's authority to conduct inspections at reasonable times and ability to get a warrant if necessary
- ⇒ DEC's vessel registration system, which is required for all passenger vessels with over 50 overnight berths
- ⇒ Air emission monitoring program
- ⇒ The large cruise ship wastewater discharge general permit
- ⇒ The small cruise ship and ferry best management plan requirements
- ⇒ Sampling or reporting requirements
- ⇒ What may not be discharged to Alaska's environment

COMMISSIONER BRUNE said the agency has the authority to conduct inspections and it uses a system, method 9, to take shore based records for the air emission monitoring program. They plan to move this component to the air division where it is better placed.

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EMMA POKON, Deputy Commissioner, Department of Environmental Conservation (DEC), Juneau, Alaska, paraphrased the sectional analysis for the proposed committee substitute (CS) for SB 70, version U:

Section 1 - Amends AS 46.03.460 to clarify that DEC has organizational flexibility to regulate cruise ships with personnel from different DEC divisions (air, water, etc.) and directing DEC to adopt regulations implementing the simplified environmental compliance statutes.

Section 2 - Repeals and reenacts AS 46.03.463 to simplify and broadly consolidate existing subsections (a) - (c), (e), and (f) and (h) into a single subsection, enabling DEC to set specific discharge limits and requirements in regulation.

She said Section 2 broadly consolidates a lot of the specificity currently in AS 46.03.462 and 46.03.463. She continued:

Section 3 - Amends AS 46.03.465(a) to provide DEC with flexibility to establish the form and timing for cruise ships to report to DEC.

Section 4 - Amends AS 46.03.465(c) to clarify DEC's authority to inspect vessel wastewater and air emissions systems.

MS. POKON said that to the extent there is any question about the authority, this provision will add clarity.

Section 5 - Conforming amendments to AS 46.03.465(d).

Section 6 - Amends AS 46.03.465(d) to authorize DEC to require certain reports in a particular form (e.g., electronic).

Section 7 - Conforming amendment to AS 46.03.465(h).

Section 8 - Conforming amendment to AS 46.03.465(i).

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MS. POKON reviewed Section 9, that establishes the simplified fee structure, setting up a \$5 per berth fee, with a \$1 reduction for vessels with an electronic monitoring system.

Section 9 - Amends AS 46.03.480(a) to establish a simplified environmental compliance fee of \$5 per berth per voyage on all commercial passenger vessels operating in state waters. This replaces both the \$4 fee for the ocean rangers and the matrix of general environmental compliance fees. This amendment also reduces the \$5 fee by \$1 for vessels that use electronic monitoring systems that will improve DEC's ability to efficiently oversee environmental compliance. As noted in Section 19, this amendment to the fee structure would become effective January 1, 2021.

Section 10 - Repeals and re-enacts 46.03.480(c) to conform to changes created by deleting clarifying language included with the fee structure in the repealed version of 46.03.480(b). This does not change the effect of (c) as it currently exists in statute.

She said this gives DEC some discretion when working with the Alaska Marine Highway System.

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Section 11 - Amends AS 46.03.482(c) to remove obsolete language and to broaden the stated purposes for which the legislature might appropriate the collected fees to include a grant or loan program created by Section 12.

Section 12 - Adds a new section, AS 46.03.483, authorizing DEC to create a grant or loan program to support improvements to shore-based wastewater treatment facilities necessary to serve visiting cruise ships and cruise ship passengers.

Section 13 - Repeals a number of detailed statutes governing commercial passenger vessels.

Section 14 - Repeals the ocean ranger statute, AS 46.03.476, separately so that it may have a different

effective date. This repeal will be retroactive to April 2020 (see Section 17) so that DEC can transition to staff inspections this season.

Section 15 - Transition language added to the uncodified law to authorize DEC to work on regulations before the majority of the bill becomes effective in January 2021.

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Section 16 - Includes language that clarifies that the \$4 fee collected under AS 46.03.480(d) may be used for funding services to passenger vessels, including regulatory services. This ensures DEC can collect the established fee this year to support the agency's cruise ship environmental compliance work notwithstanding the repeal of the ocean rangers statute.

MS. POKON reviewed Section 16, which includes language to clarify that fees collected under AS 46.03.480(d) can be used more broadly for the cruise ship compliance records rather than for ocean rangers.

Section 17 - Section 14 (repeal of ocean rangers requirement) is retroactive to April 2020.

Section 18 - Provides an immediate effective date for Sections 14 - 17 including intent language specifically for the summer 2020 cruise season (Section 16) and transition language providing authority to work on regulations (Section 15).

Section 19 - Provides a special effective date of January 1, 2021 for the majority of the bill; this ensures that DEC has time to adopt regulations before the repeals in Section 13 and other amendments become effective

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SENATOR GIESSEL referred to Section 13 and asked for a list of repealed statutes and what they repeal.

MS. POKON said AS 46.03.460(b) is repealed and it provided the DEC authority to adopt regulations with specific language about negotiated rulemaking. The revisions in AS 46.40.460(a) require DEC to put regulations in place. In terms of negotiated

rulemaking, this is already available under the Administrative Procedures Act (APA).

She explained that AS 46.03.461 provides detailed requirements for vessel registration, but these requirements are located in the bill under 46.03.460(a)(3). DEC plans to put the details for vessel registration in regulation.

MS. POKON continued with AS 46.03.462, which relates to terms and conditions of discharge permits now found in the revised language in AS 46.03.463. DEC will require the vessel permit for larger vessels or best management practices for smaller vessels consistent with current practice.

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MS. POKON said AS 46.03.480(b) repeals the matrix the commissioner referred to in his presentation. She said 46.03.480(d) refers to the \$4 fee for large vessels that currently goes for the ocean ranger program. DEC combined those two sections into a flat \$5 fee.

The next repealed section is AS 46.03.480(e), which places the liability for the fee on the cruise ship. The bill places the responsibility on DEC to adopt regulations.

MS. POKON said AS 46.03.481 refers to the citizens' lawsuit section that the commissioner referred to earlier. She said AS 46.03.482(e) states that the commercial passenger vessel environmental compliance fund is not a dedicated fund. She explained that there are limitations on how that fund can be used under federal law. DEC repealed this statute to reflect the department's understanding of those limitations.

She said AS 46.03.485 relates to a recognition program that authorizes DEC's permissive language. The department has not in recent history had an explicit effort towards that, but nothing prevents it from recognizing environmental compliance.

MS. POKON said DEC repealed definitions in AS 46.03.490(1) and AS 46.03.490(15) for agents for service of process and untreated sewage. These terms are no longer in the bill.

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CHAIR MICCICHE requested she provide the detailed list and an explanation of the repealed statutes to the committee.

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CHAIR MICCICHE said that the program primarily addresses effluent discharge. He related his understanding that DEC monitors air quality electronically more commonly than effluent discharge.

COMMISSIONER BRUNE answered that the monitoring of air emissions is via Method 9, which he did not think happens electronically. He noted people in Juneau install certain systems that provide data, but it is neither quality data nor the methodology used for the big cruise ships. He said it is more likely that very little electronic monitoring currently happens on air emissions.

CHAIR MICCICHE, noting that he said the EPA was interested in fewer EPA 301(h) waivers, asked whether he has heard of any programs that would stretch state dollars, such as obtaining significant federal match to move in that direction.

COMMISSIONER BRUNE indicated his intention to look for federal funding opportunities.

CHAIR MICCICHE asked whether DEC has tried to reward offshore operators in the electronic monitoring program since it could have a positive impact on water quality in state waters.

COMMISSIONER BRUNE replied he has not thought about that. He agreed that the standards should be the same in federal and state waters. He was unsure of what jurisdiction the state would have in outside state waters.

MS. POKON advised that it would difficult to enforce water quality outside state waters.

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CHAIR MICCICHE pointed out that jurisdiction only matters if the department regulates the activity, but not if DEC incentivizes it. He suggested that may be something to further evaluate.

COMMISSIONER BRUNE offered to think about that issue. He reported that in 2019, 14 of the 20 notices of violation that DEC staff or contractors issued were for wastewater discharges, six were exceedances and six were air NOVs.

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CHAIR MICCICHE asked for the nature of the six ocean ranger NOVs.

MS. POKON said she thought she might have that information in her e-mail.

CHAIR MICCICHE responded that she could provide it at the next meeting.

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SENATOR KAWASAKI asked for a breakdown of how many times someone made a complaint or observation to alert DEC, and not solely the number of official NOV's.

COMMISSIONER BRUNE said that if an exceedance occurs that requires a Notice of Violation (NOV), one is issued. It would not matter who made the observation.

SENATOR KAWASAKI clarified his interest is in knowing how many times someone observed something, but a formal NOV was not issued, such that perhaps it was unfounded.

COMMISSIONER BRUNE answered that the ocean ranger annual report should have that information and he would provide the information to the committee.

[4:27:05 PM](#)

SENATOR BISHOP asked if the department could complete the regulations in time to meet the current effective date.

COMMISSIONER BRUNE answered yes.

SENATOR BISHOP recalled that DEC has the authority to do unannounced inspections while the vessels are underway. He asked whether this would be by boat or helicopter.

COMMISSIONER BRUNE answered that DEC has several opportunities to conduct unannounced inspections. For example, they could board at Glacier Bay with National Park Service staff who give tours, or with marine pilots when they board the ships. He said DEC might show up and announce that the inspectors will be on board to Skagway.

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SENATOR KIEHL acknowledged that some inspections performed while underway are good. He asked if DEC will be able to obtain maritime credentials for all inspection staff, or if it would always mean tying up vessel staff for the duration of time on board.

COMMISSIONER BRUNE related his understanding that companies want DEC staff escorted while on board their vessels. He said he needs to work these details out with the companies.

SENATOR KIEHL said the commissioner described a good program but these details are not in the bill. The bill would authorize DEC to carry out its program and it provides the funding. He asked how the legislature can provide that much latitude.

MS. POKON replied this approach is consistent with how the department conducts its business for other regulated and permitted industries, including mining and shore-based wastewater facilities. She explained that there is a directive for DEC to protect water quality. She advised that DEC performs much of this work through a permitting system. Thus, the inspection schedule or exact standards are not set out in statute. DEC's enforcement staff schedules inspections and reviews the facilities self-reporting and follows up with enforcement when necessary. She agreed that the statutes lack specificity but are consistent with DEC's authority.

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COMMISSIONER BRUNE added that the department could provide a report if the legislature would like to review how the new approach and program has worked for the first year. He did not recommend requiring DEC to inspect a certain percentage of vessels. He said there is not any precedent for it in other industries. Further, having 10 DEC staff dedicated to early season and random inspections should give the legislature confidence in this group.

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SENATOR KIEHL said it's a bit of a checks and balances notion, but some of the things the legislature has previously written have cut the other way, so he was concerned about removing sideboards. For example, with the plans for small ships, DEC currently cannot require anything that would impose relicensing of a vessel or a new stability test. This bill would repeal that provision.

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SENATOR KAWASAKI said one of the repealed statutes relates to citizen lawsuits. He read a portion of the ballot initiative language, "It would authorize citizen lawsuits against an owner or operator of a large cruise ship, or against the Department of Environmental Conservation, for an alleged violation of any permit condition, provision of environmental statutes or

performance of duties." He asked if anyone has used the provision since 2006.

MS. POKON answered no; DEC is not aware of any instance where someone used that provision.

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CHAIR MICCICHE removed his objection. There being no further objection, version U was adopted.

CHAIR MICCICHE encouraged members to consider their concerns.

He said the original repeal did not contain a lot of solutions. He said he likes DEC's approach and believes it will improve water quality.

[SB 70 was held in committee.]

**PRESENTATION: Spill Prevention and Response (SPAR) program by  
the Department of Environmental Conservation**

[4:36:44 PM](#)

CHAIR MICCICHE announced that the final business would be a presentation on the Spill Prevention and Response (SPAR) program.

[4:37:10 PM](#)

DENISE KOCH, Director, Spill Prevention and Response, Department of Environmental Conservation (SPAR), Juneau, Alaska, began a PowerPoint on the Spill Prevention and Response (SPAR) program. She reviewed slide 2, SPAR's mission:

Prevent spills of oil and hazardous substances,  
prepare for when a spill occurs, and respond rapidly  
to protect human health and the environment

MS. KOCH said the plain English version is that SPAR works with its industry partners to try and prevent oil or hazardous substance spills. The division maintains its state of readiness through drills and responds to any spills. The division has a contaminated sites program that provides long-term monitoring of sites impacted by spills, in particular, petroleum contamination.

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MS. KOCH reviewed slide 3, Core Services:

⇒ Protect public health and the environment:

⇒ ensure that producers, transporters, and distributors prevent spills of crude oil and refined oil products and are fully prepared to clean up spills

⇒ respond to spills of petroleum and hazardous substances

⇒ identify, oversee, and conduct the cleanup of contaminated sites in Alaska, returning properties to safe and productive re-use

She related that SPAR works with producers, transporters and distributors on oil discharge prevention and contingency plans. SPAR actively participates with them on drills to maintain a state of readiness.

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MS. KOCH reviewed slide 4, Statutory Authorities:

It is the intent of the Legislature and declared to be the public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available (A.S. 46.08.030)

She identified this fund as the oil and hazardous substance release prevention and response fund, also known as the "oil haz fund." The legislature directed SPAR to always maintain a funding source for prevention and response.

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MS. KOCH reviewed slide 5, Statutory Authorities:

⇒ Funds from the Response Account are used to respond to spills or threats of spills that pose an imminent and substantial threat to Alaska (AS 46.08.040(1)(A))

⇒ Funds from the Prevention Account are used to:  
⇒ Respond, contain, cleanup, and monitor spills (AS 46.08.040(2)(A))

⇒ Address existing contamination (AS 46.08.040(2)(K))

⇒ Pay for the operating costs of the Division (AS 46.08.040(2)(B))

MS. KOCH said that under the broad umbrella of the "oil haz fund" are two accounts, the response account and the prevention account. The department notifies the legislature anytime it uses the response account. The current response account balance is \$29 million. By statute, the response account cap is \$50 million. The response account derives its funding by receiving one cent for each barrel of oil produced in Alaska.

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MS. KOCH characterized the prevention account as critical since it pays for SPAR's operations, including partnering with industry on plans and drills. It provides the primary source of funds for the contaminated sites program, although this program receives some federal grant funds.

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MS. KOCH reviewed slide 6, Prevention Account:

- ⇒ Prevention Account is funded by:
- ⇒ \$0.04 per barrel of crude oil produced
- ⇒ \$0.0095 per gallon of refined fuel
- ⇒ Balance has been decreasing for many years
- ⇒ Refined Fuel Surcharge was implemented in 2015 to address the decreasing balance
- ⇒ The Surcharge brings in \$1 million less per year than anticipated, in part due to exemptions for fuel purchases by municipalities and electric cooperatives

MS. KOCH said the state charges a \$.05 surcharge on oil produced in Alaska. As previously mentioned, \$.01 provides revenue for the response account. The prevention account receives the remaining \$.04 surcharge. In 2015, due to declining oil production, the surcharge collected was insufficient to fund the prevention account. Therefore, SPAR worked with the legislature to pass the refined fuel surcharge which charges .0095 cents per gallon of refined fuel. This surcharge provides a major revenue stream to the prevention account.

MS. KOCH related reasons the prevention account suffers from a shortfall. At the time the bill passed, the Department of

Revenue projected estimated revenues from the refined fuel charge at \$7 million, but DOR did not anticipate exemptions to the surcharge, such as fuel sold to municipalities and electric cooperatives. Further, DOR overestimated the amount of refined fuel sales in Alaska. The overall impact in refined fuel surcharge revenue results in \$1 million less than anticipated per year, she said. She pointed out other revenue streams for the prevention account are investment income and settlements. However, these sources do not provide the major revenue to the prevention account.

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MS. KOCH reviewed slide 7, Prevention Account Revenue Shortfall:

- ⇒ Prevention Account annual expenditures exceed the annual revenue
- ⇒ Prevention Account projected to run a deficit as early as FY2024
- ⇒ Reduce \$1,019.1 and 7 positions in FY21 budget
  - ⇒ -\$643.5 Prevention Account
  - ⇒ -\$375.6 Federal Receipts

She explained that programmatic growth is not driving the gap in revenue because the program has been stable. She said she looked at the division and proposed deleting seven positions reducing \$1,019,000 that is reflected in the Governor's FY 2021 budget. She acknowledged the challenges that budget cuts cause, but said SPAR should be able to make these reductions and still provide its core services.

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CHAIR MICCICHE said the legislature purposefully kept it tight when it passed the \$.0095 surcharge, which is less than a penny. The miscalculation from the DOR cut SPAR short very quickly, he said. One reason to assess the refined fuel surcharge was that it seemed fair to charge those more likely to use the services.

He said he has spoken to the Senate Finance Committee and Senator Bishop about this problem. He expressed interest in the proportional representation for the prevention account, such as the amount of expenditures directed to mom/pops or for residential. He wanted to be certain that the state would not create an additional burden on individual Alaskans who use the fuels that are causing some of the issues.

MS. KOCH offered to follow up with data. She acknowledged that she had similar questions. She said SPAR has large expenditures on military installations, but the federal government reimburses it for the work through RSAs [Reimbursable Services Agreement] or grants. She indicated that she focused on the non-reimbursed expenditures. She reported that 70 percent of SPAR's unreimbursed expenditures fall in categories other than oil and gas. These expenditures range from cleanups due to truck rollovers, ships on rocks, junkyards, home heating oil spills, and commercial properties. The oil and gas producers and refineries in Cook inlet and on the North Slope contribute about 50 percent of the revenue, but only 20 percent of the expenditures for cleanup. She offered to provide an expenditure report.

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SENATOR BISHOP said SPAR knows where the tanker rollovers are occurring. He noted he has discussed this with the [DEC] commissioner. He said he would like to see the administration work with the Department of Transportation and Public Facilities (DOTPF) to eliminate the hazards on the Richardson Highway.

MS. KOCH agreed that SPAR will work with DOTPF on that issue.

[4:52:46 PM](#)

MS. KOCH reviewed slide 8, FY 2021 Operating Budget Reductions:

- ⇒ Eliminate Class II Storage Facility Program (2 PCNs; Anchorage & Juneau)
- ⇒ Register facilities and provide spill prevention technical assistance
- ⇒ Fuel storage capacity 1,000-420,000 gallons non-crude
- ⇒ Not statutorily required
- ⇒ EPA continues to have regulatory oversight
- ⇒ Reduced Capacity in Training & Guidance Unit (2 PCN; Anchorage & Juneau)
- ⇒ Training for responders and staff
- ⇒ Regulations and Division guidance development

- ⇒ Reduced Capacity in Contaminated Sites (2 PCN's; Anchorage & Juneau)
- ⇒ Long term soil and water contamination cleanup
- ⇒ Reduced administrative support (1 PCN in Anchorage)

MS. KOCH reported that the seven proposed staff reductions consist of three filled positions and four vacant positions. She purposefully held positions vacant due to the revenue shortfall, she said. She directed attention to the elimination of the class II storage facility program. This consisted of a registration program that provided spill prevention technical assistance outreach, which was not statutorily required. Further, the EPA has a Spill Prevention, Control and Countermeasures Program (SPCC) with some overlap, so another entity can do the work.

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SENATOR KIEHL referred to the fuel storage capacity of 1,000 - 420,000 gallons of non-crude in the proposed elimination of the class II storage facility program. He asked if this was diesel fuel.

MS. KOCH answered that it is for non-crude oil, which includes diesel fuel.

SENATOR KIEHL asked what portion of the facilities move the non-crude refined fuel.

MS. KOCH answered that SPAR has a database consisting of approximately 2,000 facilities. She said the Spill Prevention, Control and Countermeasures Program (SPCC) is comparable to DEC's program, with a cutoff of 1,300 gallons or higher. She explained that SPCC covers a similar universe of tanks, including fuel storage facilities. These might be at rural schools or other facilities, but typically fuel storage of less than 420,000 relate to non-industrial use.

SENATOR KIEHL indicated he may wish to follow up on this this. He expressed concern about leaving Alaska's schools at the mercy of the EPA.

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CHAIR MICCICHE suggested that Senator Kiel would feel more comfortable after Ms. Koch shares information on the EPA's program. He characterized DEC's program as largely a database without much oversight. He suggested that she share this

information with the committee. He recalled that the program was somewhat redundant and eliminating it would not create a gap.

MS. KOCH agreed to provide the committee with information on the SPCC program. She acknowledged that the program provided some duplication.

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MS. KOCH stated that the work currently performed by the other deleted positions will be spread to other staff.

[4:57:48 PM](#)

MS. KOCH reviewed slide 9, Prevention Account Balance FY 2009 - FY 2025. This slide consisted of a graph that showed the prevention account actuals for FY 2009- FY 2020 plus projections from FY 2021 through FY 2025. She explained that the account had downward trends except it spiked in FY 2014 due to a settlement and in FY 2016 from passage of the refined fuel surcharge. Since then the revenues steadily drops due to the \$1 million shortfall. This graph reflects the revenue from the seven deleted positions. The account will run out in FY 2024 if nothing else changes.

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SENATOR BISHOP asked if the prevention account went to zero, whether anything would jeopardize the state's primacy to keep administering the state's program.

MS. KOCH answered that SPAR is not a primacy program, unlike the Division of Air Quality that has primacy under the Clean Air Act or the Division of Water with primacy over EPA's Section 402 program under the Clean Water Act. It is a little different since the federal government doesn't delegate this function. She characterized it as the state wanting to be involved in preventing oil spills and other future disasters.

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SENATOR COGHILL commented that the state needs to partner with the federal government on Arctic coastal issues. He asked for her assessment on Alaska's partnership with the federal government. He said that readiness could affect marine mammal issues.

MS. KOCH responded that the state has strong partnerships with the federal government. For example, industry, SPAR, EPA and the U.S. Coast Guard would comprise the unified command to handle operations and logistics. The EPA generally takes the lead on

inland spills and the U.S. Coast Guard takes the lead on coastal spills. She explained that the agencies have their own federal memorandum of understandings (MOU) to hash out jurisdictional issues.

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SENATOR KAWASAKI asked how SPAR is doing on collections from unreimbursed activities.

MS. KOCH answered that SPAR has a statutory obligation for cost recovery. She said cost recovery is 90 percent or higher for larger parties, such as industry, whereas the mom/pop, junkyard, or home heating oil spill has a much lower incidence of cost recovery of approximately 30 percent after a protracted period.

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CHAIR MICCICHE said slide 12, Prevention Account Projection FY 2009 - FY 2025 lists the revenues, expenditures, and balance projections. He said based on his experience as an incident commander in the private sector, SPAR is an asset. Prior to SPAR being on site, the response for the mom/pop businesses either did not occur or the spill would spread to adjacent properties. He said this organization helps small businesses who cannot afford to perform spill activities. He commended SPAR's work and said he hoped that the committee would take this seriously.

[5:07:00 PM](#)

There being no further business to come before the committee, Chair Micciche adjourned the Senate Resources Standing Committee meeting at 5:07 p.m.