

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 13, 2023

3:30 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Cathy Giessel, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Scott Kawasaki
Senator James Kaufman
Senator Forrest Dunbar
Senator Matt Claman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE JOINT RESOLUTION NO. 5 (FSH)
Urging the United States Secretary of Commerce, the National Marine Fisheries Service, the Alaska Department of Fish and Game, and other federal and state agencies to defend the state's fisheries, including the Southeast Alaska troll fishery.

- MOVED CSHJR 5 (FSH) OUT OF COMMITTEE

SENATE BILL NO. 67

"An Act relating to firefighting substances; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 49

"An Act relating to the geologic storage of carbon dioxide; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 5

SHORT TITLE: ALASKA FISHERIES; TROLL FISHERIES

SPONSOR(S): REPRESENTATIVE(S) HIMSCHOOT

02/10/23 (H) READ THE FIRST TIME - REFERRALS
02/10/23 (H) FSH
02/14/23 (H) FSH AT 10:00 AM GRUENBERG 120
02/14/23 (H) Moved CSHJR 5(FSH) Out of Committee
02/14/23 (H) MINUTE(FSH)
02/15/23 (H) FSH RPT CS(FSH) 7DP
02/15/23 (H) DP: C.JOHNSON, MCCORMICK, CARPENTER,
MCCABE, STUTES, HIMSCHOOT, VANCE
03/01/23 (H) TRANSMITTED TO (S)
03/01/23 (H) VERSION: CSHJR 5(FSH)
03/06/23 (S) READ THE FIRST TIME - REFERRALS
03/06/23 (S) RES
03/13/23 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 67

SHORT TITLE: PFAS USE FIREFIGHTING

SPONSOR(s): SENATOR(s) KIEHL

02/10/23 (S) READ THE FIRST TIME - REFERRALS
02/10/23 (S) RES, FIN
03/01/23 (S) RES AT 3:30 PM BUTROVICH 205
03/01/23 (S) Heard & Held
03/01/23 (S) MINUTE(RES)
03/13/23 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 49

SHORT TITLE: CARBON STORAGE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/27/23 (S) READ THE FIRST TIME - REFERRALS
01/27/23 (S) RES, FIN
03/10/23 (S) RES AT 3:30 PM BUTROVICH 205
03/10/23 (S) Heard & Held
03/10/23 (S) MINUTE(RES)
03/13/23 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE REBECCA HIMSCHOOT, District 2
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HJR 5.

THATCHER BROUWER, Staff
Representative Rebecca Himschoot
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 5 and presented the sectional analysis.

AMY DAUGHERTY, Executive Director

Alaska Trollers Association

Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 5.

TIM O'CONNOR, Mayor of Craig and Vice President

Alaska Trollers Association

Craig, Alaska

POSITION STATEMENT: Testified in support of HJR 5.

DANI EVENSON, Extended Jurisdiction Program Manager

Alaska Department of Fish and Game

Juneau, Alaska

POSITION STATEMENT: Provided supporting information for HJR 5.

JOE LALLY, Staff

Prince William Sound Regional Citizens Advisory Council

Valdez, Alaska

POSITION STATEMENT: Testified in support of SB 6.

MICHELLE MEYER

Alaska Community Action on Toxics

Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 67.

ADAM ORTEGA

Alaska Community Action on Toxics

Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 67.

PATRICE LEE

Alaska Community Action on Toxics

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 67.

PAM MILLER

Alaska Community Action on Toxics

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 67.

TIM SHESTEK, Senior Director

State Affairs

American Chemistry Council

Sacramento, California

POSITION STATEMENT: Provided supporting testimony for SB 67.

HALEY PAINE, Deputy Director
Division of Oil and Gas
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Presented Sections 14 through 39 of the sectional analysis for SB 49.

JOHN CROWTHER, Deputy Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information during the hearing on SB 49.

ACTION NARRATIVE

[3:30:52 PM](#)

CO-CHAIR CLICK BISHOP called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Kawasaki, Claman, Dunbar, Kaufman, Co-Chair Bishop, and Co-Chair Giessel. Senator Wielechowski arrived during the course of the meeting.

HJR 5-ALASKA FISHERIES; TROLL FISHERIES

[3:32:09 PM](#)

CO-CHAIR BISHOP announced the consideration of CS FOR HOUSE JOINT RESOLUTION NO. 5(FSH) Urging the United States Secretary of Commerce, the National Marine Fisheries Service, the Alaska Department of Fish and Game, and other federal and state agencies to defend the state's fisheries, including the Southeast Alaska troll fishery.

He stated the intention to hear the bill and look to the will of the committee.

[3:32:32 PM](#)

REPRESENTATIVE REBECCA HIMSCHOOT, District 2, Alaska State Legislature, Juneau, Alaska, sponsor of HJR 5, introduced the legislation speaking to the following prepared statement:

HJRS urges federal and state agencies to continue to defend Alaska's fisheries, including the Southeast Alaska troll fishery.

This is important because the lawsuit filed by the Seattle-based Wild Fish Conservancy that targets the local Southeast Alaska salmon troll fishery is a threat to a way of life. Southeast households rely on salmon as a food source, communities depend on salmon to support the salmon and tourism sectors that are pillars of the economy. There is every reason to protect these fish.

The fear is that this is an attack on one that may become an attack on all. . Rather than examining the pollution, vessel traffic, dams in salmon streams and other pressures on the areas in their area, the Wild Fish Conservancy has attacked the local troll fleet of Southeast Alaska, 1,000 miles away. I'd like to explain who the trollers are and what the lawsuit contends.

Data from the last 100 years shows that trolling is one of the most sustainable fisheries there is. It involves about 1,500 fishermen who bring about \$85 million into the local economy. Each fish is caught with a hook and line. The bycatch is the most limited of any fishery. Trolling is a low barrier fishery, so almost all Southeast communities, including Meyers Chuck, have at least one troller. Each trolling vessel is a family business, and each family business supports local schools and local economies.

REPRESENTATIVE HIMSCHOOT deferred to Thatcher Brower to provide additional information.

[3:35:15 PM](#)

THATCHER BROUWER, Staff, Representative Rebecca Himschoot, Alaska State Legislature, Juneau, Alaska, stated that he is a commercial troller who fishes in the summer and he also serves on the Alaska Trollers Association Board of Directors. He conveyed the following in support of HJR 5:

- In 2019, the National Marine Fisheries Service conducted a consultation and issued a Biological Opinion under the Endangered Species Act (ESA) that considers what effect implementing the fishing regimes, negotiated by the Pacific Salmon Commission (Treaty), will have on species listed as threatened or endangered under the Endangered Species Act.

These species include Chinook salmon and Southern Resident Killer Whales. An Incidental Take Statement was issued, which allows the fisheries to be conducted under State of Alaska authority using measures which are believed necessary to minimize impacts on listed stocks.

- On March 18, 2020, the Wild Fish Conservancy, a Washington-based organization, filed a complaint against the National Marine Fisheries Service seeking to invalidate the 2019 Biological Opinion.
- Wild Fish Conservancy sought to halt the production of Chinook salmon by Columbia River hatcheries that were intended to increase prey availability to the Southern Resident Killer Whales. Wild Fish Conservancy also sought to invalidate the Incidental Take Statement that covered the Southeast Alaska troll fishery.
- In September 2021, Magistrate Judge Michelle Peterson issued a Report and Recommendation finding that the analysis governing the Columbia River prey increase program was flawed under federal law, and that the Incidental Take Statement governing the Southeast Alaska troll fishery was therefor also legally deficient. Judge Richard Jones adopted Magistrate Peterson's Report and Recommendation on August 8, 2022.
- National Marine Fisheries Service is rewriting the Biological Opinion, but it will probably [take] some time.
- Since the adoption of the magistrate's Report and Recommendation, the parties engaged in briefing on what the remedy for National Marine Fisheries Service's violations should be. Judge Peterson issued a second Report and Recommendation on December 13, 2022. That Report and Recommendation would invalidate the Incidental Take Statement for the Southeast Alaska troll fishery with respect to the winter and summer fisheries, putting those seasons in jeopardy.
- U.S. District Court Judge Jones is now deliberating on the U.S. Magistrate Judge Peterson's Report and Recommendations for the remedy and will likely make a decision in the near future.
- If the judge rules in the plaintiff's favor, there is an opportunity for the case to be appealed to the 9th Circuit Court of Appeals.

[3:38:24 PM](#)

At ease

[3:38:42 PM](#)

CO-CHAIR BISHOP reconvened the meeting and opened public testimony on HJR 5.

[3:39:05 PM](#)

AMY DAUGHERTY, Executive Director, Alaska Trollers Association, Juneau, Alaska, testified in support of HJR 5. She stated that the Southeast troll fishery predates any data keeping by the Alaska Department of Fish and Game (ADF&G) and during Territorial Days. She said this fishery is subject to the treaty allocation and the Board of Fisheries and it was doing well until the Wild Fish Conservancy filed a lawsuit. Since then, ATA has been doing everything possible to keep Southeast trollers fishing. She noted that the congressional delegation filed an amicus brief based on the economic importance of the troll fishery to the entire Southeast region that includes Yakutat.

[3:41:22 PM](#)

TIM O'CONNOR, Mayor of Craig and Vice President, Alaska Trollers Association, Craig, Alaska, testified in support of HJR 5. He stated that Craig is the main port on Prince of Wales Island, which has a total population of just under 4,000. The commercial seafood landings at the port total 21 million pounds and have a value of \$22.7 million. The port is ranked 30th in the nation for poundage and 52nd for valuation based on the top 137 ports in the US. Since logging has all but disappeared on Prince of Wales Island, commercial and sport fishing are mainstays of Craig's economy. The Wild Fish Conservancy lawsuit targets the troll industry, but if it's successful all gear groups are at risk. He said the Alaska Trollers Association and the City of Craig need the state to commit resources to help stop the lawsuit and protect the state's right to manage its fish resources. That right is in jeopardy. He highlighted that the City of Craig recently passed Resolution 23-03 supporting ATA's defense against the WFC lawsuit. He urged the committee to support HJR 5.

[3:43:42 PM](#)

DANI EVENSON, Extended Jurisdiction Program Manager, Alaska Department of Fish and Game (ADF&G), Juneau, Alaska, stated that she also serves as the Pacific Salmon Treaty Coordinator. This makes her the department's point person on the Wild Fish Conservancy lawsuit alongside Aaron Peterson from the Department

of Law. She continued her testimony speaking to the following prepared remarks:

This case is a challenge to the National Marine Fisheries Service (NMFS) Biological Opinion for the Southeast Alaska salmon fishery - the document that gives Alaska Endangered Species Act (ESA) "incidental take" coverage and allows our Pacific Salmon Treaty salmon fisheries to operate. The State of Alaska and Alaska Trollers Association (ATA) intervened in the case to defend Alaska's fisheries and interests.

The lawsuit was brought by the Wild Fish Conservancy, a conservation organization based in Washington State. The suit specifically attacks Alaska's management of its Chinook salmon troll fisheries under the Pacific Salmon Treaty. The lawsuit argues that the Southeast Alaska Chinook troll fishery threatens the survival of several ESA-listed Chinook salmon stocks in Washington and Oregon, and the endangered Southern Resident Killer Whales that depend on Chinook salmon for food. The Federal Court in the Western District of Washington ruled in favor of the Wild Fish Conservancy supporting their claims.

3:48:59 PM

The Wild Fish Conservancy disputed the provision of the BiOp [Biological Opinion] that required \$118 million of federal funding be provided for mitigation actions to support Chinook salmon hatchery production to increase prey for killer whales, Puget Sound habitat restoration, and Puget Sound conservation hatcheries. These actions not only allow Alaska fisheries to continue in the face of ESA concerns, but also provide mitigation to allow salmon fisheries in the lower 48 to proceed. This lawsuit does not attack similar fisheries that occur off the coasts of Washington and Oregon, despite similar impacts.

The District Court Judge ruled on behalf of the Plaintiff- Wild Fish Conservancy - citing that NMFS violated its obligations under the ESA [Endangered Species Act] and NEPA [National Environmental Policy Act] in issuing its incidental take statement.

Key Points from the Judge's order on summary judgment included:

1. NMFS's actions require certain mitigation
2. NMFS failed to create a binding mitigation measure that described "in detail the action agency's plan to offset the environmental damage caused by the project" for the prey increase program.
3. NMFS's failure to make a jeopardy determination on the prey increase program for the Chinook salmon ESUs violated its obligations under the ESA
4. NMFS violated NEPA requirements in issuing the ITS.

Present Situation

The lawsuit is currently in the "remedy" phase. U.S. Magistrate Judge Michelle Peterson issued a report and recommendation (R&R) and proposed order mid-December. The magistrate recommends:

- (1) the Biological Opinion be remanded to NMFS to remedy ESA and NEPA violations,
- (2) portions of the 2019 SEAK BiOp that authorize "take" of SRKW and ESA-listed Chinook salmon resulting from commercial harvests of Chinook salmon during the winter and summer seasons (excluding the spring season) of the troll fisheries be VACATED.

In other words, removing ESA coverage for these fisheries while NMFS fixes the flawed BiOp. The magistrate judge denied Plaintiff's requests to vacate the portion of the BiOp on the prey increase program and to enjoin implementation of that program. The parties have completed briefings on their objections to the magistrate's report and recommendation regarding the appropriate remedy, and last week, Alaska's congressional delegation filed an amicus curae brief to provide support to the troll fleet. This portion of the case will be under consideration by the District Judge in the near future.

3:51:36 PM

This litigation is still active and what happens next is in the hands of the judge. In the meantime, fisheries are proceeding as normal and ADF&G staff have offered assistance to NMFS to help re-write the BiOp since time is of the essence.

Viewpoint

The State of Alaska abides by the terms of the Pacific Salmon Treaty and the Biological Opinion that is tied to it and it is troubling that this ruling singles out our fisheries. We have a responsibility to look out for our fisheries and the Southeast coastal communities and families that rely on them. We will defend the right for our fisheries to operate while the NMFS addresses the rewrite of their Biological Opinion and that includes appealing any adverse decision that unjustly only targets our fisheries.

Further, Alaska will not tolerate the suspension of its fisheries while other west coast fisheries equally impactful to killer whales and dependent upon the hatchery mitigation actions contained in the Southeast Alaska Biological Opinion, but not the target of this lawsuit, are allowed to proceed. *If this decision sticks, we will be looking at having all fisheries that affect these salmon being treated equally under the law.*

[3:54:03 PM](#)

SENATOR CLAMAN said he wasn't clear about what the judge ruled on in favor of the plaintiff and the remedy that was sought.

[3:54:14 PM](#)

SENATOR WIELECHOWSKI joined the committee.

MS. EVANSON said key points on summary judgement included that part of the \$118 million mitigation package was the annual requirement to provide NMFS with no less than \$5.6 million per year for hatchery production. The judge said this couldn't be guaranteed because congressional appropriations are annual. NMFS also failed to create binding mitigation measures that provided a detailed description of the action agency's plan to offset the environmental damage caused by the project for the prey increase program. The question was whether ESA listed species in the area were impacted by the increase in hatchery fish. NMFS is addressing this in separate biological opinions for each hatchery. She said NMFS's failure to make a jeopardy determination on the prey increase program for the listed Chinook salmon violated its obligations under the Endangered Species Act and that NMFS violated the National Environmental Policy Act requirements in issuing its incidental take statement.

SENATOR CLAMAN said he'd continue the conversation offline.

[3:57:10 PM](#)

At ease

[3:57:21 PM](#)

CO-CHAIR BISHOP reconvened the meeting.

[3:57:32 PM](#)

SENATOR KAWASAKI asked whether other fisheries were impacted by the ruling.

MS. EVANSON answered no; the ruling only targets the troll Chinook salmon fisheries in Southeast Alaska that take place in the summer and winter months.

[3:58:11 PM](#)

SENATOR DUNBAR commented that if the troll fishery can be a target, there is no question that other gear types will be challenged in the future.

He asked how the Wild Fish Conservancy justified targeting the Alaska troll fishery and not the troll fisheries in Washington and Oregon.

MS. EVANSON replied that the Wild Fish Conservancy targeted the Southeast Chinook troll fisheries because the state's biological opinion had the \$118 mitigation package; \$56 million went to prey production and that troll fishery was tied to it. She speculated that the reasons included that that's where the lion's share of the harvest is and that the WFC board is largely comprised of sport fishermen. The thought process could be that without the Chinook troll fishery, the hatchery production from the Lower 48 wasn't necessary; one would offset the other. She said the reality is that all fisheries on the western seaboard rely on the mitigation measure; a foregone harvest in Southeast, doesn't equal a commensurate level of fish available to killer whales.

[4:00:55 PM](#)

CO-CHAIR BISHOP opened public testimony on HJR 5; finding none, he closed public testimony. Finding no further questions or comments, he solicited a motion.

[4:01:17 PM](#)

CO-CHAIR GIESSEL moved to report the CS for HJR 5, work order 33-LS0338\U, from committee with individual recommendations and attached fiscal note(s).

[4:01:30 PM](#)

CO-CHAIR BISHOP found no objection and CSHJR 5 (FSH) was reported from the Senate Resources Standing Committee.

[4:01:37 PM](#)

At ease

SB 67-PFAS USE FIREFIGHTING

[4:03:28 PM](#)

CO-CHAIR BISHOP reconvened the meeting and announced the consideration of SENATE BILL NO. 67 "An Act relating to firefighting substances; and providing for an effective date."

[4:03:45 PM](#)

CO-CHAIR BISHOP opened public testimony on SB 67.

[4:04:03 PM](#)

JOE LALLY, Staff, Prince William Sound Regional Citizens Advisory Council, Valdez, Alaska, testified in support of SB 67. He paraphrased the following prepared statement:

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or Council) would like to express our support for Senate Bill 67 PFAS Use & Remediation; Fire/Water Safety. Because of the relatively narrow focus of PWSRCAC's mission, our interest in SB 67 is limited to the Aqueous Film Forming Foam (AFFF) that is stored at the Valdez Marine Terminal, and on some of the related vessels, for the purpose of suppressing fires.

The Council is an independent nonprofit corporation whose mission is to promote the environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990, and our contract with Alyeska Pipeline Service Company. PWSRCAC's 19 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Alaska Native, recreation, tourism, and environmental groups.

AFFF contains perfluoroalkyl and polyfluoroalkyl substances (PFAS) that are known for their persistence in the environment and harmful effects to people and animals. Any release of AFFF could result in the contamination of drinking water and state waters, including Prince William Sound. PWSRCAC is aware of PFAS-containing firefighting substances that are available and used to fight fires at oil and gas-related facilities in Alaska, including the Valdez Marine Terminal.

While we are mindful of pollution impacts that could result from a catastrophic fire, we are also concerned about environmental harm that could result from fire suppression, or the testing of suppression systems, using PFAS-containing substances. In 2021, there were two spills of AFFF at the Valdez Marine Terminal, associated with maintenance and fire-system testing activities, but thankfully neither spill reached the marine waters of Port Valdez and Alyeska was able to detect, respond, and mitigate both spills expediently. Therefore, the Council supports proposed language that would empower the Alaska State Fire Marshal to restrict the use of firefighting substances that contain PFAS in the state if he or she determines an alternative non-PFAS substance is available. Such a determination would be based on an alternative firefighting substance being approved by the federal Occupational Safety and Health Administration.

A secondary matter of concern that could be mitigated by the passage of SB 67 stems from the past appropriation of \$9,425,000 from the Oil and Hazardous Substance Release Prevention and Response Fund (Response Fund or Fund) for the purpose of responding to releases of PFAS statewide. It is proper for the State to respond and deal with such hazardous substance releases. However, while the statutes do allow the Alaska Department of Environmental Conservation to use the Response Fund to assess the releases of PFAS that pose an imminent and substantial threat to the public health or welfare, or to the environment, it was never intended to pay all the long-term costs of remediation after the initial emergency has passed.

A danger of using the Response Fund for long-term PFAS remediation is that every dollar spent on such activity reduces the amount available for swift response to an oil spill or other hazardous substance release disaster. The overarching purpose of the Fund is to allow for a speedy and full response to an acute disaster such as an oil spill. However, using the Fund for long-term PFAS remediation could easily drain the Fund to zero and could result in the State being less able to respond immediately to an oil spill or chemical release.

The language contained in SB 67 that proposes a new section of Alaska law (46.03.350) could lead to a complete ban on the use of PFAS-containing substances in Alaska. This would reduce future budgetary pressure on the Response Fund and make the State better prepared to deploy the Fund to respond to non-PFAS spill disasters.

[4:07:56 PM](#)

MICHELLE MEYER, Alaska Community Action on Toxics, Juneau, Alaska, testified in support of SB 67. She stated that she grew up in Yakutat and was a cancer survivor. Yakutat was a large military base during World War II and it has residual PCB and dioxin that continues to cause concern. The water is contaminated by PFAS resulting from the use of the firefighting foam used at the airport. PFAS is known to cause cancers such as testicular, kidney, bladder, and acute lymphoblastic leukemia in children. The latter was her cancer diagnosis as an adult, which is rare. She believes the cancer was caused by PFAS exposure from drinking well water at the school that was near the Yakutat airport. She said her father, brother, husband, and son have been volunteer firefighters in Yakutat and she worries about their exposure to PFAS. It is in their turnout gear and the foam that is used to suppress fires, even though nontoxic biodegradable alternatives are available. She thanked the committee for supporting SB 67.

[4:11:20 PM](#)

ADAM ORTEGA, Alaska Community Action on Toxics, Juneau, Alaska, testified in support of SB 67, which would phase out the use of PFAS firefighting foams. He identified military bases and airports throughout the state as the largest source of PFAS, which has contaminated the drinking water for thousands of Alaskans. Passing SB 67 will help to phase out these forever chemicals.

[4:12:20 PM](#)

PATRICE LEE, Alaska Community Action on Toxics, Fairbanks, Alaska, testified in support of SB 67. She reported that the Golden Heart City has four kinds of PFAS in the municipal water source. Combined, it exceeds the far too lenient standard of 70 parts per trillion. She said there are scores of lakes that are too contaminated with PFAS to be fished. She cited contamination in Pile Driver Slough and the Rolling Stone gravel pit, both of which are well documented by DEC. She said the plume is moving toward the Salcha River and Harding Lake.

MS. LEE asked how the state expects to prevail in the lawsuit it filed against DuPont if it doesn't even pass a law to ban the further use of PFAS. She also suggested the committee expand the bill to include a safe drinking water standard.

[4:14:44 PM](#)

PAM MILLER, Alaska Community Action on Toxics, Anchorage, Alaska, testified in support of SB 67. She described the legislation as an important first step to turn off the tap of pollution that is contaminating the drinking water for people from the North Slope through Southeast. These forever chemicals continue to be used dispersively, even when there are safe, effective, and certified alternatives.

MR. MILLER stated that in 2019 Alaska Community Action on Toxics identified about 100 sites throughout Alaska that were contaminated with PFAS. Today, DEC has identified 469 sites that have PFAS contamination in soil and/or water. This is a serious public health issue because exposure to these toxic forever chemicals can cause health problems at levels of less than 1 part per trillion. She emphasized the need to protect all Alaskans by ensuring they have safe water to drink. She urged the committee to pass SB 67.

[4:18:27 PM](#)

TIM SHESTEK, Senior Director of State Affairs, American Chemistry Council, Sacramento, California, testified in support of SB 67. He stated that his organization has supported similar legislation in other states to restrict the use of PFAS firefighting foam for training and testing purposes. He said SB 67 recognizes that the oil and gas industry may need to use PFAS foams to combat large quantity flammable liquid fires, and ACC would encourage the committee to consider whether there may be other facilities that need the same accommodation in a real-

world emergency. He offered to work with the committee on this issue.

[4:19:46 PM](#)

CO-CHAIR BISHOP closed public testimony on SB 67 and held the bill in committee awaiting an updated fiscal note.

[4:19:58 PM](#)

At ease

SB 49-CARBON STORAGE

[4:21:00 PM](#)

CO-CHAIR GIESSEL reconvened the meeting and announced the consideration of SENATE BILL NO. 49 "An Act relating to the geologic storage of carbon dioxide; and providing for an effective date."

She stated the intention to continue the 3/10/23 review of the sectional analysis for SB 49.

[4:21:43 PM](#)

HALEY PAINE, Deputy Director, Division of Oil and Gas, Department of Natural Resources (DNR), Anchorage, Alaska, continued the sectional analysis for SB 49, starting with Section 14 on slide 22.

Section 14 (DNR/DOG)

Adds new sections to AS 38.05 Alaska Land Act as Article 15A Carbon Storage Exploration Licenses; Leases (proposed AS 38.05.700-795); detailed summary on next slide

MS. PAINE directed attention to the theoretical timeline for a CCUS project on slide 23 that overlays the different components of the bill. It notes the points that a carbon storage exploration license and a carbon storage lease come into play. The yellow arrow highlights that Section 14 applies after the initial screening and at the start of the feasibility phase.

Section 14 Detail:

AS 38.05.700

Policy statement that it is in the public interest to promote geologic storage of carbon dioxide

AS 38.05.705

Provision for applicability carbon storage statutes and authority for DNR to adopt regulations to implement these statute

AS 38.05.710

Allows the commissioner to issue carbon storage exploration licenses on state land and establishes work commitment obligations, minimum economic terms, bonding requirements, default provisions, renewal provisions, and the escalation of minimum economic terms.

- 5-year exploration license term
- Conversion of the license to a lease upon fulfillment of work commitment, acquiring storage facility permit from AOGCC, ability to meet commercial terms

AS 38.05.715

Procedures for issuance of a carbon storage exploration license. These are modeled after existing procedures for oil and gas exploration licensing under AS 38.05.133.

- Identify land, minimum work commitment, economic terms, 90 days for competing proposals
- Written finding - including competitive process if competing proposals are submitted
- Subsection 715(h) provides a right-of-first-refusal opportunity for existing lessees under AS 38.05.135-181 (i.e., mineral lessees for coal, oil and gas, geothermal, or other exploitable minerals).

[4:26:30 PM](#)

CO-CHAIR BISHOP referenced section .710 and asked what the duration of the lease would be after the license is converted to a lease.

MS. PAINE answered that the lease is good for as long as the carbon storage facility is in operation, from construction through post-closure activities. She added that it's similar to the oil and gas lease model; there's a primary term that allows exploration work, but to hold the lease after that the company has to be engaged in actual production.

CO-CHAIR GIESSEL asked her to speak to subsection .710(h) which says dollar amounts shall change every five years.

MS. PAINE explained that subsection (h) provides an opportunity to reevaluate the statutory minimums for per acre and per ton injection charges and increases them in line with the consumer price index.

SENATOR CLAMAN questioned whether this wasn't an overly simple solution to price indexing.

MS. PAINE offered her belief and hope that it would be as functionally simple as outlined.

[4:27:37 PM](#)

JOHN CROWTHER, Deputy Commissioner, Department of Natural Resources, Anchorage, Alaska, added that, similar to other floor provisions in oil and gas leasing, it was conceivable that the department would pass regulation or negotiate leases that were higher than the statutory floor.

[4:28:19 PM](#)

MS. PAINE continued to describe the provisions in Section 14.

Section 14 - (DNR/DOG)

AS 38.05.720

Provision allowing conversion of an AS 38.05.715 carbon storage exploration license to a carbon storage lease.

AS 38.05.725

An oil and gas lessee converting from enhanced oil recovery to carbon storage must apply for a carbon storage lease.

AS 38.05.730

Requirements for plans of development and operations, and provision for unitization, as with oil and gas leasing.

AS 38.05.735

Payments from carbon storage licenses and leases are to be deposited in the general fund except for the amount allocated to the Permanent Fund under art. IX, sec. 15, of the Alaska Constitution.

AS 38.05.795

Definitions for specific terms used in the proposed Article 15A Carbon Storage Exploration Licenses; Leases

[4:29:50 PM](#)

CO-CHAIR BISHOP referenced the payment provision in section .735 and asked what percentage will go to the Permanent Fund.

MS. PAINE answered that for older leases 25 percent of mineral interests are allocated to the Permanent Fund and a newer generation of leases allocate 50 percent to the Permanent Fund. She deferred to the Department of Law to say where these leases would fall.

CO-CHAIR BISHOP said he'd like that information and Co-Chair Giessel agreed.

[4:30:40 PM](#)

MS. PAINE continued to slide 25, Sectional Summary: Secs. 15-31.

Section 15 (DNR/DOG)

Amends AS 38.35.020(a) to include carbon dioxide for pipeline transportation right-of-way (ROW) leasing purposes

Section 16 (DNR/DOG)

Amends AS 38.35.020(b) to allow the DNR commissioner to exempt pipelines from ROW leasing when transporting carbon dioxide for enhanced oil recovery or pressure support

Section 17 (DNR/DOG)

Conforming amendment to AS 38.35.122 to bring some carbon dioxide pipelines under the same title as "product" pipelines

Section 18-20 (DNR/DOG)

Amends AS 38.35.230 definition of "lease," "pipeline" or "pipeline facility," and "transportation" to include provisions for carbon dioxide

Section 21 (DNR/DOG)

Amends AS 38.35.230 to add a definition for "carbon dioxide" cross referencing the definition used in AS 38.05.795

CO-CHAIR GIESSEL asked if these sections were provisional and whether it was more likely that the storage would be located where the carbon was produced.

MR. CROWTHER responded that these sections conform carbon dioxide pipelines to the existing long and short-distance oil and gas pipeline regulatory system. DNR anticipates these carbon dioxide pipelines initially would be very short, but the provisions in these sections provide the authority to manage all the different pipeline scenarios.

[4:32:51 PM](#)

CO-CHAIR BISHOP asked if AS 38.35.020(a) in Section 15 was for a new standalone pipeline.

MS. PAINE said yes; the provision authorizes new rights-of-way leases for constructing a pipeline.

CO-CHAIR BISHOP asked how it would work if the new pipeline was within an existing right-of-way for an in-use petroleum pipeline.

MS. PAINE answered that DNR's rights-of-way are for non-exclusive access.

[4:34:15 PM](#)

MS. PAINE continued to Sections 22-30 on slide 25

Sections 22-30 (AOGCC)

Conforming amendments separate AS 41.06 into two articles - one for geothermal and one for carbon storage (AS 41.06.005-060).

[4:34:45 PM](#)

SENATOR WIELECHOWSKI questioned the reason for the new paragraph (b)(2) in Section 16 that exempts the construction or operation of a pipeline transporting carbon dioxide within a field for the purpose of an enhanced oil recovery project or field pressurization measures.

MR. CROWTHER explained that AS 38.35.020(b) exempts those pipelines from the requirement to acquire a specific right-of-way lease, but it does not exempt the pipeline from the regulation associated with operations within a development site.

MS. PAINE added that infield gathering lines within a unit currently are exempted from the requirement to obtain a right-of-way lease.

SENATOR WIELECHOWSKI asked if this was limited to operations within a unit or field.

MR. CROWTHER said he would follow up with specifics about the jurisdiction, but in practice most those operations have been in the context of an existing development or authorization.

SENATOR WIELECHOWSKI said he was curious about whether this could affect private property rights.

MR. CROWTHER clarified that the authorities under discussion are for the purpose of leasing out state lands for the purpose of siting infrastructure associated with a project. This does not authorize placing infrastructure on private lands, although there are processes for an operator to seek such an authorization and for adjudication.

[4:37:44 PM](#)

MS. PAINE continued to Section 31 on slide 25.

Section 31 (AOGCC)

Adds new sections to AS 41.06 as Article 2. Carbon Dioxide Injection and Storage beginning at AS 41.06.105. Detailed summary on slide after next.

MS. PAINE directed attention to slide 26 that shows the same theoretical timeline for a CCUS project but with a yellow arrow that points to where the AOGCC carbon storage permit fits. That authority is detailed in section 31.

[4:38:33 PM](#)

MS. PAINE advanced to slides 27-28, Section Detail: Section 31 (AOGCC).

Section 31 Detail:

AS 41.06.105

Contains a policy statement that it is in the public interest to inject carbon dioxide into oil and gas reservoirs in a manner protective of waters and reservoir integrity; recognizes that in the event cooperation of mineral interest holders in an area

cannot be obtained, regulatory procedures that enable cooperative management are required

AS 41.06.110

Provides AOGCC jurisdiction over carbon dioxide storage facilities to prevent waste, protect correlative rights, and ensure public health and safety; "waste" is defined in AS 41.06.210

AS 41.06.115

Concerns AOGCC's authority to carry out the purposes and intent of AS 41.06.105-210 (a) contains an expansive statement of AOGCC's jurisdiction over persons and property necessary to carry out the purposes and intent of AS 41.06.105-210 - the state's police power (b) allows AOGCC to suspend its statutes as to lands committed to federal units, provided the conservation of resources is provided for (c) contains a list of specific AOGCC regulatory authorities (d) wells drilled for carbon dioxide are subject to AOGCC's jurisdiction under AS 31.05 unless specifically covered by AS 41.06.105-210 (e) AS 41.06.105-210 do not limit DNR's authority over (1) carbon storage exploration licensing or leasing; or (2) approval and management of carbon storage units or operations that include state land

AS 41.06.120

Provides that waste is prohibited in a carbon storage facility or reservoir

[4:40:04 PM](#)

AS 41.06.125

Provides permit requirements for storage facilities

AS 41.06.130

Creates a public hearing requirement for storage facility permits issued by AOGCC - notice is given to property owners within ½ mile

AS 41.06.135

Specifies the criteria for the AOGCC to approve a carbon storage facility permit

AS 41.06.140

Allows AOGCC to include parameters, limitations, or restrictions in a permit and to protect and adjust

rights and obligations of persons affected by geologic storage

AS 41.06.145

Concerns amalgamation of property interests for storage facilities

CO-CHAIR BISHOP requested additional explanation of the provision in section .145.

MS. PAINE explained that if a property owner does not consent to a storage facility, AOGCC has the authority to amalgamate the subsurface property interests and allow the use of the storage facility as long as the nonconsenting owner is properly compensated. The oil and gas statutes have a similar provision.

MS. PAINE continued to review the details of Section 31.

AS 41.06.150

Creates specifications for recording a carbon storage facility certificate to put future property purchasers on notice

AS 41.06.155

Creates statutory requirements for AOGCC to ensure environmental protection and reservoir integrity in storage facilities and reservoirs

AS 41.06.160

Clarifies preservation of rights, including deconfliction of development of other minerals by drilling through or near a storage reservoir

AS 41.06.165

Provides authority for AOGCC to collect fees and establishes the "carbon dioxide storage facility administrative fund" under the general fund

AS 41.06.170

Specifies that storage operators hold title to injected carbon dioxide until a certificate is issued under AS 41.06.175, including liability for damage associated with injected carbon dioxide

AS 41.06.175

Specifies the eight factor criteria for certificate of completion a transfer of title of CO₂

[4:43:45 PM](#)

SENATOR DUNBAR asked her to speak to 1) the state's liability if a storage facility is wrongly certified as complete and 2) what happens if the company has gone bankrupt.

MS. PAINE answered that the state would have the ability to hold the company liable, just as it can today. If the company is no longer in business, the funds that are paid into the carbon storage trust fund over the life of the project would provide protection.

SENATOR DUNBAR observed that the difference in the carbon storage context, is that the state has title to the CO₂ that is both an asset and a liability. The liability is that the state has to make sure it doesn't leak.

[4:46:32 PM](#)

MS. PAINE advanced to slide 29 and continued to review the details of Section 31

AS 41.06.180

Provides authority for AOGCC to collect a "carbon storage facility injection surcharge" for post-closure administration to be deposited in the "carbon storage closure trust fund" established in AS 37.14.850 (bill Sec. 4)

AS 41.06.185

Provision for AOGCC to impose civil penalties for violations of its carbon storage statutes

AS 41.06.190

Excludes AOGCC's carbon storage statutes from enhanced oil recovery (EOR), except for when an EOR-related reservoir is converted to a storage reservoir

AS 41.06.195

Authority for AOGCC to enter into agreements with other government entities and agencies for carbon storage purposes

AS 41.06.200

Authority for AOGCC to determine amounts for injection and storage, including EOR; provides for fees and applicability for credits and other carbon management goals

AS 41.06.210

Definitions for terms used in AOGCC's carbon storage statutes

[4:48:01 PM](#)

SENATOR WIELECHOWSKI questioned the reasoning for using the term "carbon dioxide" in the definition of "carbon dioxide."

MR. CROWTHER said a certain quality and composition of carbon dioxide is necessary for the safe administration of an injection and storage project, so the definition tries to indicate that it is a technical term that is used throughout the statute.

SENATOR WIELECHOWSKI asked if the definition was standard within the industry.

MR. CROWTHER answered that the program is modeled on the standard recognition that carbon dioxide must be of a suitable quality and purity to be safely managed in these storage facilities. He offered to follow up with how other states have defined the compound.

SENATOR WIELECHOWSKI said he'd be curious to hear about other states, because the definition in the bill seemed very unusual.

MR. CROWTHER restated that he would follow up with information from other states and DNR's thoughts on conforming the definition to the intent.

[4:50:42 PM](#)

SENATOR DUNBAR asked whether the bill, as currently drafted, could be used to inject and store any other kind of gas.

MR. CROWTHER said there are efforts to manage other byproducts from industrial activities, but the only focus for geologic sequestration is carbon dioxide.

SENATOR CLAMAN commented that these leases are the reverse of a typical oil and gas lease because those leases only last as long as it's economic to get the product out of the ground. For carbon storage, the company is obligated to manage the storage facility indefinitely. He asked what in the legislation addresses the lessee that decides to go home after 10 years.

MS. PAINE responded that while there isn't an end date for the project, the model is able to predict how much CO₂ a reservoir is

able to take over a certain number of years. If the operator is able to demonstrate that the plume is no longer migrating and there's no danger of a leak 10 years after injection has ceased, AOGCC may grant a site closure certificate. There is no requirement to do so; 10 years is just the earliest in the post injection period that the operator could apply for a title transfer.

SENATOR CLAMAN summarized that before a company goes home after it has injected CO₂ to the capacity of the storage reservoir, it must apply and show AOGCC convincing evidence that the gas is fully contained and won't migrate.

MS. PAINE agreed.

SENATOR CLAMAN continued that if there were a problem after that, any corrective action would be the state's responsibility.

MS. PAINE answered the state is ultimately responsible as the landowner, but the idea is that the regulatory and statutory requirements for inspections, monitoring, and the post closure trust fund would avoid that sort of problem.

[4:55:17 PM](#)

SENATOR WIELECHOWSKI noted that the bill talks about carbon, carbon storage, and carbon dioxide; he asked if those terms are intended to be used interchangeably.

MR. CROWTHER agreed that the terms were used interchangeably, and conveyed that the House version of the bill was amended to make the terminology consistent.

[4:55:57 PM](#)

SENATOR DUNBAR asked if he had an explanation for the zero fiscal note from the Department of Revenue (DOR).

MR. CROWTHER asked whether he was talking about revenues or expenses.

SENATOR DUNBAR said he thought it was expenses.

MR. CROWTHER said DNR and DOR believe the program can be managed with the existing staff. However, that could change in years to come, and if that happened a request would be forthcoming at that time.

[4:57:21 PM](#)

SENATOR KAWASAKI asked about enhanced oil recovery wells, the difference between Class II and Class VI wells, and how that determination is made.

MS. PAINE answered that, at present, an enhanced oil recovery well is dedicated to that purpose. But when that well is used for geologic storage, it has to be a Class VI well because the concentration of CO₂ will be very different. The EPA currently is working on the rules that govern the transition from one well class to the other, but right now there is just the statement that when the safety and protections designed for the well are no longer applicable for Class II, it's necessary to transition to Class VI.

SENATOR KAWASAKI noted that the language says the commission will adopt the regulations even though the federal government hasn't said what it will do on Class VI wells, so the AOGCC will have to take that up at some point.

MS. PAINE agreed.

[4:58:59 PM](#)

MS. PAINE continued to slide 30 to describe Sections 32-39.

Sections 32-35 (DNR/Parks)

Conforming amendments to parks and recreational facilities laws (AS 41.21)

- Wood-Tichik - excluded
- Willow Creek - permitted
- Kenai River Management Area - permitted
- Alaska Chilkat Bald Eagle Preserve - excluded

Section 36 (DNR/DOG)

Adds new subsection AS 44.37.020(d) for DNR to administer storage facilities and stored carbon after certificate of completion is issued under proposed AS 41.06.175 (bill Sec. 31)

Section 37-39 (DNR/AOGCC)

General provisions for authority to adopt regulations, title change for chapter AS 41.06, and effective date of the legislation

[5:00:12 PM](#)

CO-CHAIR GIESSEL noted that the committee would work with DNR to reschedule the individuals who had been invited to testify.

5:01:00 PM

There being no further business to come before the committee, Co-Chair Giessel adjourned the Senate Resources Standing Committee meeting at 5:00 p.m.