

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 11, 2003

6:34 p.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Jim Holm, Vice Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Paul Seaton  
Representative Ethan Berkowitz  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

EXECUTIVE ORDER 107 - TRANSFER OF HABITAT FUNCTIONS FROM ADF&G  
TO DNR

- HEARD AND HELD

**PREVIOUS ACTION**

No previous action to record

**WITNESS REGISTER**

KEVIN DUFFY, Acting Commissioner  
Alaska Department of Fish & Game (ADF&G)  
Juneau, Alaska

POSITION STATEMENT: During the hearing on EO 107, explained the reorganization of ADF&G.

TOM IRWIN, Commissioner  
Department of Natural Resources (DNR)  
Juneau, Alaska

POSITION STATEMENT: During the hearing on EO 107, explained the role of DNR in the transfer of the habit division.

KERRY HOWARD, Acting Director  
Division of Habitat and Restoration  
Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on EO 107.

CHRIS KENNEDY, Assistant Attorney General

Environmental Section

Civil Division (Anchorage)

Department of Law (DOL)

POSITION STATEMENT: Answered questions during the hearing on EO 107.

PAM LaBOLLE, President

Alaska State Chamber of Commerce

Juneau, Alaska

POSITION STATEMENT: Testified in support of EO 107.

ALEX WERTHEIMER

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and offered his perspective as a fisheries biologist.

RON WOLFE, Corporate Forester

Sealaska Corporation

Juneau, Alaska

POSITION STATEMENT: On behalf of the Sealaska Corporation, testified in support of EO 107.

CARL ROSIER

Juneau, Alaska

POSITION STATEMENT: Testified as a concerned citizen and as a former commissioner of ADF&G in opposition to EO 107.

DAVE HANNA

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

AURAH LANDAU

Juneau, Alaska

POSITION STATEMENT: During hearing on EO 107, pointed out that no authority would exist for stream-buffer enforcement, protection, and monitoring on federal land, and explained the effects to the state as a consequence.

ERIC LEE

Petersburg, Alaska

POSITION STATEMENT: Testified to explain why efficiency and streamlining, as stated goals of EO 107, are inappropriate and

dangerous priorities for managing the habitat, and to ask the committee to overturn EO 107.

BRUCE BAKER

Auke Bay, Alaska

POSITION STATEMENT: Testified as a retired deputy director of the Division of Habitat and Restoration, urging the committee to reject EO 107.

FRANK RUE

Juneau, Alaska

POSITION STATEMENT: Testifying on behalf of himself and referring to his previous work experience for both DNR and ADF&G, explained why moving the Division of Habitat and Restoration out of ADF&G would lose efficiency; urged the committee to reject EO 107.

PAULA TERRELL

Alaska Marine Conservation Council (AMCC)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to EO 107; defined single versus multiple permits, listed questions for the committee to consider, and stated a list of minimum requests intended for the administration through the legislature.

GENE HARRISON

POSITION STATEMENT: Testified on behalf of himself regarding the loss of checks and balances resulting from EO 107 and to urge the committee not to support it.

LANCE TRASKY

Anchorage, Alaska

POSITION STATEMENT: Testified as a fisheries biologist with 30 years' experience, asking the committee not to change a system that is efficient and effective, but to reject EO 107.

DOUG HILL

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of himself to clarify the Fraser [Institute] report, to describe EO 107 as a serious threat to fish and wildlife, and to urge the committee to reject EO 107.

DAN ROSENBERG

Anchorage, Alaska

POSITION STATEMENT: Testified that he has worked for ADF&G for the past 20 years in what is currently the Division of Wildlife

Conservation, and described EO 107 as counterproductive to both Alaska's economy and its environment.

JOHN STURGEON

Koncor Forest Products  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of EO 107, saying he thinks it will bring more efficiency to state government.

BILL STEVENS, President  
Cassandra Energy Corporation  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of EO 107.

PAUL SHADURA II, President  
Kenai Fishermen's Association  
Kenai, Alaska

POSITION STATEMENT: Commented on reports relating to EO 107 and suggested ways to strengthen it.

DON CORNELIUS  
Petersburg, Alaska

POSITION STATEMENT: During the hearing on EO 107, testified as a retired ADF&G biologist in regard to the role of habitat biologists in applications for permitting and the link between agencies.

MIKE MILLIGAN  
Kodiak, Alaska

POSITION STATEMENT: Brought a fiduciary concern to the attention of the committee and said he is "somewhat cautious" and against EO 107.

TIM JUNE  
Haines, Alaska

POSITION STATEMENT: Testified as a 22-year commercial fisherman; urged the committee to soundly reject EO 107 and to increase the budget to the habitat division.

BILL HAUSER, Ph.D.  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 as a fisheries scientist with over 30 years' experience.

WILLY DUNN  
Homer, Alaska

POSITION STATEMENT: Testified that he thinks EO 107 will have long-term negative impacts on [Alaska's] fish and wildlife; will precipitate lawsuits; and is an issue that should be taken on by the legislature and the public, rather than by executive order.

NICKY SCARZI  
Homer, Alaska

POSITION STATEMENT: Testified on EO 107; questioned whether habitat biologists will be as readily accessible in DNR as they are in ADF&G, and answered a question regarding Title 16 permitting.

SETH LITTLE  
Alaska Center for the Environment (ACE)  
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of ACE to define the missions of ADF&G and DNR, to predict the effect of EO 107 on the existing system of checks and balances, and to urge the legislature to support the resolution to disapprove EO 107.

ERIC KNUDSEN, Ph.D.  
Anchorage, Alaska

POSITION STATEMENT: Testified as a professional fisheries scientist with over 20 years' experience to list three scientifically-based points that argue for a resolution to reject EO 107.

DALE PIHLMEN  
Ketchikan, Alaska

POSITION STATEMENT: Testified that he is against EO 107 as a proposal that would dramatically weaken protection of the areas essential to the fishing and tourism industries for the short-term gain of the timber industries.

MATTHEW LaCROIX  
Wasilla, Alaska

POSITION STATEMENT: Testified as one of 22 habitat biologists and permittees in ADF&G's Division of Habitat and Restoration who received a layoff notice; summarized the impacts the proposed executive order will have and asked the committee to support the joint resolution rejecting EO 107.

GARVAN BUCARIA  
Wasilla, Alaska

POSITION STATEMENT: Testified by citing references to the state constitution and asked the committee to reject EO 107.

**ACTION NARRATIVE**

**TAPE 03-21, SIDE A**

Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 6:34 p.m. Representatives Holm, Dahlstrom, Lynn, Berkowitz, and Weyhrauch were present at the call to order. Representatives Seaton and Gruenberg arrived as the meeting was in progress.

EXECUTIVE ORDER 107 - TRANSFER OF HABITAT FUNCTIONS FROM ADF&G TO DNR

[Contains discussion of HB 78]

Number 0033

CHAIR WEYHRAUCH announced that the only order of business was Executive Order (EO) 107, transferring habitat functions from ADF&G to DNR.

Number 0091

KEVIN DUFFY, Acting Commissioner, Alaska Department of Fish & Game (ADF&G), referred to a handout titled "Reorganization Proposal In Accordance With Executive Order No. 107" [in committee packets] that he said he'd summarize. He noted that under the category of functions moving to the Department of Natural Resources (DNR) there are 36 positions, including those for Title 16 fish passage and anadromous fish stream permitting; the anadromous waters catalog, a regulatory function; project-related research and monitoring; consistency reviews; ACMP [Alaska Coastal Management Program] plan review; review of 6217 documents; the coastal boundaries atlas; and Forest Resources and Practices Act ("Forest Practices Act") permitting.

ACTING COMMISSIONER DUFFY said within ADF&G are a certain number of habitat functions maintained and moved into other operating divisions. He noted that under the category of "functions moving to sport fish" are 18.5 positions, including those for the fish stream surveys and data base; various research and restoration projects; oil spill contingency plan reviews; ACMP support to the ADF&G commissioner; and [not included in the list on the handout] the Kachemak Bay National History and Research Reserve program.

ACTING COMMISSIONER DUFFY noted that under the category of "functions moving to wildlife conservation" are 5.5 positions, including those for special areas permitting; access defense; the "CARA/SWG" program; and the North Slope grizzly project. He noted that the two positions moving to the functions of "community fish" are for log transfer facility (LTF) dive surveys and mariculture leasing efforts. He noted that there is also one position in the ARLIS [Alaska Resources Library and Information Services] library in Anchorage, which will be moving under the Exxon Valdez Oil Spill (EVOS) trustee council structure that will be maintained at ADF&G.

Number 0282

ACTING COMMISSIONER DUFFY referred to the next set of pages in the handout. He explained that the first flowchart shows DNR and its area offices. He pointed out the chart for ADF&G and one for Kachemak Bay Research Reserve. He indicated that some charts were not included because they would cause confusion. He pointed out the wildlife-component chart and the EVOS-component chart, located on the next page of the handout.

ACTING COMMISSIONER DUFFY referred to the fourth page [after] the cover page, which shows anticipated layoffs and vacant positions to be deleted. He said 12 vacant positions aren't going to be filled, and this streamlining effort is anticipated to result in a layoff of approximately 22 employees. Noting that 36 ADF&G habitat positions will move to DNR, he said a remainder of 38 positions will move into other ADF&G divisions.

ACTING COMMISSIONER DUFFY referred to a flowchart on the next page that identifies a new structure under DNR. The following page shows the positions to be moved into the Division of Sport Fish and where they will be located. He noted that the last page of the handout is a press release. He reminded the committee that he and Commissioner Irwin did a "press availability" last Friday afternoon. He deferred further comments to Commissioner Irwin.

Number 0424

TOM IRWIN, Commissioner, Department of Natural Resources, began by giving the committee a background of the process to date. He said he feels that a select team was put together, made up of representatives from the habitat division and DNR, individuals who have worked on the "permit schemes," and various representatives from "the legal side." These individuals have

been meeting regularly in order to be prepared. He thanked all those involved for the incredible amount of work done. He noted that others were available to answer questions.

COMMISSIONER IRWIN highlighted his experience in business, permitting, and natural resources. He emphasized his belief that this change will work. He offered the belief that it's an appropriate, comprehensive idea that will be good for the state, for business, and for the environment. He said no one would be short-circuited through the process because each is vital. He said [EO 107] will facilitate efficiencies believed to be critical. He added that he welcomes the significant number of people who will be coming to DNR from the habitat division.

Number 0613

COMMISSIONER IRWIN referred to an organizational chart, the top of which shows the "Office of Habitat Management and Permitting." He explained that it has a direct line into the office of the commissioner and won't be "blended away" with another office with another department. He noted that the bottom of the chart shows seven area offices, a simplification from the previous system of having field and regional offices. What dictated the areas was the amount of work being done; these area offices will report "into an operations manager, into a director." Commissioner Irwin said he is convinced that competent people will move over and will get the full attention they deserve for protecting the habitat.

COMMISSIONER IRWIN disagreed with the notion that ADF&G wouldn't work with DNR and that there would be a complete separation. He said he and Acting Commissioner Duffy will work out a memorandum of understanding (MOU) to make sure nothing falls through the cracks. Stressing that there would be no sacrifice to [Alaska's] environment, he noted that he has three Alaska-born grandchildren for whom he wants two things: for them to be able to work in Alaska, and for Alaska to be as environmentally special for them as it is for him.

Number 0800

COMMISSIONER IRWIN referred to the Fraser [Institute] report. He said it is very sobering to read the report, which polls the major mining companies in the world yearly; he indicated the results for 2002 have been published and he is embarrassed for Alaska. The poll is in two parts: the resources, for which Alaska ranks very well, and the political perception, based on a

score of 0-100, with 100 being the best. Alaska "ranked" 50, he said. Commissioner Irwin remarked, "Whether it's perception or reality, they vote with their pocketbook. They're telling us now that the major mining companies find it more politically acceptable to do investment in both Russia and China than Alaska." Indicating Alaska needs to change that perception, he opined that [the state] can develop resources in a very responsible and effective manner while protecting the environment.

Number 0906

ACTING COMMISSIONER DUFFY said he and Commissioner Irwin have been working hard to ease the reorganization and transition of staff to DNR. He said ADF&G is very fortunate to employ many talented staff in its habitat division; their skills will still be available to maintain and protect the state's important fish and wildlife habitat resources in both agencies, under EO 107. He told the committee that Governor [Murkowski] has said the level of habitat protection will not be diminished, and "this is an expectation that all of us hold." He said he is working to ensure that those who are moving to DNR will continue to regularly have contact with ADF&G and their counterparts there. He noted that Commissioner Irwin had referred to an MOU that will be part of that structure.

ACTING COMMISSIONER DUFFY said some employees in ADF&G's habitat division feel their integrity has been challenged recently. He said, "I want to go on record as saying that your work speaks to your professionalism and your dedication, as professional employees for the State of Alaska." He added, "The important work that these people do in balancing responsible development with the long-term needs of fish and wildlife habitats and users of these resources will continue under this new executive order."

Number 1003

CHAIR WEYHRAUCH noted that Sitka doesn't have a regional office or field office where biologists are working. He asked, "Do they get subsumed in your flowchart here, to Juneau or Petersburg, Prince of Wales? Where do those folks go?"

COMMISSIONER IRWIN answered, "The state has a very straightforward bidding; we don't choose that. We've chosen the positions that we need to accomplish the work." He said a prioritization was made with respect to where the work needed to

be done; vacancies are shown on the charts in the handout. He mentioned seniority, the bidding procedure, and an opportunity to either remain in [ADF&G] or come over into "habitat."

CHAIR WEYHRAUCH asked if the Sitka office will close.

COMMISSIONER IRWIN answered yes.

CHAIR WEYHRAUCH asked Commissioner Irwin to respond to the following:

The argument has been made that with the state having a cadre of biologists in ADF&G doing permitting review that are now being transferred to DNR, ... the state, ... particularly on federally licensed projects like hydroelectric development, ... would be losing the expertise with [its] biologists, or losing the manpower to do the analysis, and then the permitting review would go to federal agencies like Fish and Wildlife Service, which would in fact slow down projects.

Number 1090

COMMISSIONER IRWIN responded that he clearly stands for the state doing everything it can on its own. He related his belief in state's rights and said he'd like to see the state doing more; for example, he feels strongly that the state should be doing its own National Pollutant Discharge Elimination System (NPDES) program. He deferred to his staff.

CHAIR WEYHRAUCH reiterated his question. He added that he is particularly concerned with the Lake Dorothy hydroelectric project.

Number 1154

KERRY HOWARD, Acting Director, Division of Habitat and Restoration, Alaska Department of Fish & Game, responded:

In the group of habitat biologists that will be moving to DNR, along with the Title 16 functions that you've heard, they will be performing both under "840" and "870." The same group of biologists will also continue to review land-use planning documents, whether they are federal or state, so the expectation

is, the biologists at DNR will continue to perform that function.

With hydro projects, the circumstance will continue to be what we have right now. Under Federal Energy Regulatory Commission, or FERC, they ... are required to seek the input of the Department of Fish & Game. That authority has always been vested in the Division of Sport Fish. That will continue to be there to the extent [that if] they want input from habitat biologist at DNR, there will habitat biologists at DNR that they can continue to work with.

CHAIR WEYHRAUCH stated the following:

I want some assurance [that] we're not going to slow down resource development and permitting by this, because that's essentially what I understand is a deficiency to expedite permitting and permitting review. So I don't want to, by default, say we transfer this and slow it down and defer to federal entities to review what the state should be doing in looking out for the state's interest. That to me is not in the state's interest.

Number 1220

MS. HOWARD, regarding the spread of functions that are moving to DNR, continued as follows:

We calculated that it would take, to do the exact work with the same number of people we have now, 44. We are moving over approximately 37 positions, and of the group that is being lost, many [are] in the management structure because we're simply downsizing. So, the office at DNR will no longer sustain a director, a deputy [director], an assistant, [and] three regional supervisors, who all have contributed time to that effort.

We're also losing some support staff at the lower end, but it's [hoped] that by moving to DNR, ... you gain some efficiencies by being able to use their [administrative] staff at that end. So, largely, the biologists and staff who work on those reviews will be moving over and can continue that function.

Number 1263

CHAIR WEYHRAUCH suggested that losing some of the local offices results in loss of a certain amount of local expertise such as knowledge of areas and habitats. He said, "I trust you're going to be traveling and not just doing everything by phone and fax. ... You've got to be on the ground looking at these areas in order to do your review. Is that correct?"

MS. HOWARD said yes; clearly, part of a habitat biologist's job is both pre-inspection and post-monitoring of projects. She said "we" know how critical that is to have projects done right. She said the challenge will be faced in having two area offices close in Sitka and Ketchikan. The workload from Sitka will likely spill over to the Juneau office, whereas the Ketchikan workload will probably be absorbed by staff in the Prince of Wales Island office. Therefore, she said, field visits will continue to be on a list of things habitat biologists do to complete their job.

Number 1353

CHRIS KENNEDY, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), responded to a question from Chair Weyhrauch. He said the main reason for the delegation of habitat-related authorities to a deputy commissioner [in the past] was to preserve the checks and balances of the Forest Practices Act. He continued:

The assignment of duties to a deputy commissioner or to the state forester is consistent with the way many other things are done in the Department of Natural Resources, where a number of duties are assigned, for example, to the director of the Division of Lands, by statute. In this case, before the EO, the Forest Practices Act sets up a series of checks and balances whereby the Department of Natural Resources, acting through the state forester, defers to the expertise of the Department of Fish & Game on habitat matters.

Since the habitat expertise will be moving over to the Department of Natural Resources, it was necessary to create two co-equal positions in the Department of Natural Resources so that that deference and consultation could take place, so that the functions that used to be assigned formally to the commissioner of natural resources are now assigned to the state

forester, and the functions that have come across from [ADF&G] are assigned to a deputy commissioner in the Department of Natural Resources. Each of those individuals will report to the commissioner of natural resources, who can resolve any disagreement between them.

Number 1446

CHAIR WEYHRAUCH asked if the commissioner of DNR is still "in the appellate loop, so to speak."

MR. KENNEDY answered that's correct. In response to a follow-up question, he said the final decision on permitting is "a little bit of a separate question and a little bit more complicated."

CHAIR WEYHRAUCH recommended that Mr. Kennedy not go into it right now.

MR. KENNEDY said that in forest practices, the commissioner [of DNR] is the ultimate referee.

Number 1476

ACTING COMMISSIONER DUFFY, in response to questions from Representative Berkowitz, said EO 107 was the administration's idea.

REPRESENTATIVE BERKOWITZ explained the reason for his question was because the transition advisory group recommended holding the decision until the new ADF&G commissioner is in place and the new director of the habitat division has had time to evaluate, which hasn't happened yet. He asked about the process that led to this decision. He asked if ADF&G was involved at the commissioner level or division director level, if there were meetings held, and, if so, what happened in those meetings.

ACTING COMMISSIONER DUFFY replied that he had discussions with the new administration on this particular issue, but isn't aware of a whole series of meetings where DNR participated. He said the governor's office made the call to move forward.

Number 1554

REPRESENTATIVE BERKOWITZ asked Acting Commissioner Duffy whether, in his conversations prior to the EO, he'd recommended for or against this approach.

ACTING COMMISSIONER DUFFY responded that options were considered, that he'd had some options in mind, and that the decision was made to proceed in this fashion. He worked for the governor when that policy call was made; thus it is his job to follow that decision.

REPRESENTATIVE BERKOWITZ clarified that he is trying to understand how a decision was made with such far-reaching implications if it were done over the recommendations of the acting commissioner. He asked what process was involved, who was consulted, and how far out these decisions were made.

ACTING COMMISSIONER DUFFY responded that it is not accurate to say the decisions were made "over the recommendations of the acting commissioner." He reiterated his involvement in discussions on options regarding how permitting could be streamlined. He said, "Ultimately, this decision was made by this administration, and so I'm following up, consistent with the details of the Executive Order 107."

REPRESENTATIVE BERKOWITZ questioned the logic of this order which implies, essentially, that ADF&G poses obstacles to resource development; he said it gives rise to the question of what is next. He asked whether ADF&G would ultimately be folded into DNR, for example, because, in essence, any ADF&G decisions that protect habitat, fish, or game pose a potential impediment to resource development.

ACTING COMMISSIONER DUFFY replied that it's certainly not a policy direction he would encourage as a representative of ADF&G.

Number 1672

COMMISSIONER IRWIN told Representative Berkowitz that the question "sounds like there's some kind of evil plan to overcome the environment." He said he strongly supports [EO 107]. He said he has found, in his career, that when groups of people get together - even though they are defending very different areas - communications and efficiency exist, and people solve problems. Commissioner Irwin stated the need to work closely with the federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers, for example. He mentioned having clear methods that blanket "the whole thing" so that people don't have to question where they're going, because there are clear steps

and timelines. He reiterated that the purpose is to keep business going and to protect the environment.

Number 1721

REPRESENTATIVE BERKOWITZ asked Commissioner Irwin if he was supportive of the administration's efforts prior to EO 107.

COMMISSIONER IRWIN replied that when he became acting commissioner, he became supportive of "anything you can do to merge groups together and eliminate layers" for the purpose of efficiency. He said he has experienced this during his 30 years of business life and that it applies here.

Number 1751

CHAIR WEYHRAUCH reviewed the purpose of the current committee in hearing EO 107. He said he is concerned about the effect on efficient operation of government; whether [EO 107] is in the state's interest; state and federal interaction; and the impact on public employees, for example. He asked Representative Seaton, as chair of the House Special Committee on Fisheries, to comment regarding [its focus on EO 107].

REPRESENTATIVE SEATON said that during an upcoming House Special Committee on Fisheries hearing on EO 107, the committee will consider the structure of this process and whether it can be counted on to protect habitat and fisheries.

Number 1830

REPRESENTATIVE IRWIN, in response to a question from Representative Seaton, explained that the deputy commissioner and the commissioner are represented in the "Office of the Commissioner" title in the chart.

REPRESENTATIVE SEATON said that is confusing. He noted that the mission of the commissioner of DNR is basically the development of [Alaska's] natural resources, and he stated his concern regarding moving from ADF&G's protection of fish and game habitat to a situation where the state is under the commissioner's mission to develop. He questioned whether some federal agencies would be able to "take the permits that we give, coming from an agency, if that's its mission." He stated his concern that there be a separate, identifiable mission for the deputy commissioner, and that it not be simply "the commissioner's office," because that's the appellate position.

Number 1872

COMMISSIONER IRWIN responded that he thinks it would be appropriate to expand the chart for the purposes of clarification. He said ADF&G is to protect wildlife, and DNR is to develop it [while still working to protect it]. He also commented that there are a lot of streams that ought to be state-owned. In response to a follow-up question by Representative Seaton, he concurred that there will "still be a director, but that upper body will be the deputy commissioner." He clarified that the director will have full authority, as does any director within DNR.

REPRESENTATIVE SEATON stated concern, based upon the opinions received from Legislative Legal and Research Services, that there's no deference given to ADF&G; in EO 107, there's no requirement that ADF&G even be notified of permitting requests, for example. He asked how that is going to be handled.

COMMISSIONER IRWIN responded that the real priority will be "through the very competent individuals in habitat working up this line." He said they have clear access to ADF&G for scientific advice, if they lack it. He indicated the expertise is "moving right in under a separate director." He continued as follows:

We made a clear decision not to blend this in to a different group. We wanted its own separate group of authority so they would have equal authority and power to protect the fish and/or wildlife, just as it's the other side to make sure we clearly provide for proficient, proper use of the land. And as this melds together and you have people working across these boundaries discussing [it], I am so absolutely convinced this works, because of the success we specifically have had at Fort Knox [gold mine]. Habitat and business and DNR - it worked very well.

Number 2040

REPRESENTATIVE SEATON related his understanding that nothing in EO 107 requires public notice of permits. He mentioned AS 38.05.945 and asked if DNR plans to establish public notice provisions.

COMMISSIONER IRWIN replied that he knows of no shortcuts on the DNR procedure and that he thinks the public has to be notified of what's going on. He mentioned accountability of the governor, the House, and the Senate, and said, "I took an oath to protect both sides, to represent the people of Alaska."

Number 2086

REPRESENTATIVE SEATON mentioned AS 38.05.945 and noted that the legal opinion he has says that those public notice provisions don't apply to anadromous stream permits and fish (indisc.) permits. That may require separate legislation, he suggested.

MS. HOWARD, regarding Representative Seaton's previously stated question regarding public notice on Title 16 permits, said, currently, at ADF&G, there are no public notice requirements for "840" or "870" permits. She said:

To the extent a project is undergoing review and requires multiple agency permits in the coastal zone, our part of the project covered by the 840/870 would be a part of the broader notice; but right now, there is no notice requirement for just simply single-agency permits issued by [ADF&G].

Number 2134

REPRESENTATIVE BERKOWITZ voiced concern that this is an executive order, rather than a statute or bill. He said [EO 107] enables the commissioner of DNR to deputize people as peace officers, which he opined is a "non-trivial thing." He related his concern that the legislature might be abrogating its responsibility by allowing this to continue as an EO, rather than a bill. He said he wonders if any legal research has been done on that subject. He added, "Certainly, our revisor of statutes wouldn't allow us to make that kind of modification; it's a substantive change in the law."

MS. HOWARD recommended that Mr. Kennedy address that.

REPRESENTATIVE BERKOWITZ asked Ms. Howard and Acting Commissioner Duffy if they have any reservations about the proposed move [of the habitat division to DNR]. He clarified that he'd asked that question to figure out how this came to pass and whether there are concerns.

MS. HOWARD responded that after the decision was made "to organize," she was asked to be involved on the interagency team to figure out how to make it happen; thus she wasn't involved until the decision had been made. As acting director at the Division of Habitat and Restoration, she said she has concerns. She stated her belief that the reorganization will be disruptive to the normal Division of Habitat and Restoration workload and will require many staff to do different types of jobs, will cause staff reduction, and will result in some poor staff moral. Notwithstanding that, she said the commissioners and staff of DNR have been very supportive of the reorganization and have reassured her that they want to do everything they can to ensure that the reorganization can work. Similarly, she stated, Acting Commissioner Duffy and all of the other directors at ADF&G have fully embraced the staff who will be remaining at ADF&G, and have assured her that they will do everything they can to ensure that the functions remaining at ADF&G continue to function well.

Number 2263

ACTING COMMISSIONER DUFFY said he thinks Ms. Howard's perspective was laid out pretty well. He said he, as acting commissioner, has been focusing on trying to minimize impacts on the people [in the department] while still creating a structure that works and protects the Title 16 responsibilities that are being transferred to DNR. He admitted that he had concerns, but said the concerns he had early on seem to be being minimized by the current structure being presented to the legislature. He added that time will tell. He said if EO 107 rolls forward, he is sure that "we" will be held accountable for any adverse impacts that are perceived. He reiterated support for EO 107.

Number 2327

REPRESENTATIVE SEATON asked if there is a due-deference provision for the deputy director of DNR, who will be responsible for habitat, as there currently is in ADF&G.

MS. HOWARD responded as follows:

In the current Forest and Resources Practices Act, [ADF&G] gets deference for fish passage issues. Under the EO, that deference would still be there, but it would be to the deputy commissioner at DNR and, in my assumption, all the authority vested in the deputy commissioner is going to be delegated down to the

habitat biologists who are actually doing the permitting work.

**TAPE 03-21, SIDE B**  
NUMBER 2370

MS. HOWARD mentioned ADF&G, "where the commissioner delegates his authority down to the habitat biologist."

REPRESENTATIVE GRUENBERG referred to page 18 lines 26-29] of EO 107, which read as follows:

**\*Sec. 34.** AS 41.17 is amended by adding a new section to read:

**Sec.41.17.905. Independent authority.** With respect to matters governed by this chapter, the deputy commissioner does not have supervisory authority over the state forester.

REPRESENTATIVE GRUENBERG asked whether that is at odds with Ms. Howard's previous answer.

Number 2341

MS. HOWARD answered:

Right now, under the Forest Resources and Practices Act, there's authority vested in the commissioner of DNR and the commissioner of ADF&G; that's delegated down to their staff who work on Forest Resources and Practices Act issues in the Division of Forestry and, currently, at the Division of Habitat and Restoration.

When you move [the] habitat division to DNR, to ensure that habitat division will have equal footing, the authority in the commissioner that they currently have for forestry matters at DNR is delegated down to the state forester, and then, in a like manner, the fish and game authorities will be vested in a deputy commissioner. And that's simply so the authorities are vested one step down from the final position at DNR, which is the commissioner. So no, it does not conflict with what I intended to say previously. I'm sorry if that was confusing.

CHAIR WEYHRAUCH announced that Mr. Kennedy was available once more by teleconference, and invited Representative Berkowitz to restate his previous question.

Number 2296

REPRESENTATIVE BERKOWITZ said he wants to know why the matter at hand came down as an EO, rather than a bill. He said he thinks there are some substantive changes that the legislature itself would not be allowed to carry forward. He offered one example regarding granting authority to the commissioner of DNR to deputize peace officers. He said he is curious as to the legal authority that would substantiate that as an executive order, as opposed to a bill.

MR. KENNEDY responded that looking at the EO order can be a little bit misleading; it looks as though it creates a lot of new statutory provisions "from scratch." However, he said that isn't so. Noting that the example given by Representative Berkowitz is the new Section 41.14.165, he explained that that is essentially verbatim, a restatement of law that is already on the books in AS 16.05.165. He noted that that section provides enforcement authority that goes with "840" and "870" permitting. In order to move that permitting to DNR and keep the statutory structure intact, he explained, it was necessary also to move the ability to enforce those provisions.

REPRESENTATIVE BERKOWITZ noted that Title 16 refers to ADF&G and the commissioner of ADF&G, whereas Title 41 refers to DNR and the commissioner of DNR; those are two separate entities. He related his understanding that this is a substantive distinction, not just a conforming change.

MR. KENNEDY agreed that this transfers those duties and functions from the commissioner of ADF&G and the department to DNR. He said that was the intent of the executive order. He added, "We believe that is in keeping with the governor's executive order authority."

Number 2195

REPRESENTATIVE BERKOWITZ observed that Title 16 authority to nominate peace officers still belongs to the commissioner of ADF&G. What EO 107 does is give the deputy commissioner of DNR authority to nominate peace officers, which is substantive. He voiced concern that this isn't just a switch in the law, but is a new law.

MR. KENNEDY respectfully disagreed. He said the enforcement authority that is moved to Title 41.14 is only enforcement authority relating to the "840" and "870" permits. Those permits will no longer reside in Title 16, so the authority will no longer be with the commissioner of ADF&G. He said, "It simply reappeared exactly as it was before, but now assigned to a different administrative unit."

CHAIR WEYHRAUCH highlighted the time constraints because of the large number of testifiers. He suggested that any other substantive question be submitted in writing; that [the commissioners] answer any questions expeditiously; and that any MOU between DNR & ADF&G be made available to the committee.

Number 2125

REPRESENTATIVE GRUENBERG referred to a legal opinion written to Representative Seaton, dated February 26 [2003]. He asked permission to quote from it and said:

There are two provision in the executive order where the governor appears to have exceeded his authority. First, in Section 5 of the executive order, a new section AS 41.14.165 is added to provide that a peace officer may issue a citation for violations of certain permits. Included is a requirement that the Alaska Supreme Court determines which misdemeanors, under the new AS 41.14, are appropriate for disposition without a court appearance. Also included in that section is a requirement that the court establish an advisory committee consisting of certain members, including judges and chairs of certain legislative committees.  
...

The governor's executive authority is a limited authority to restructure the executive branch of state government. That authority does not allow the governor to place duties on either the legislative or the judicial branch of government. In this case, both the Alaska Supreme Court and the legislature could completely ignore the requirements imposed by this section, because the governor does not have the authority to impose any duty on them [through] an executive order.

Second, in Section 45 of the executive order, a provision is added to protect certain [ADF&G] employees from losing their "police officers' retirement benefits" if they're transferred to [DNR] by the order. This section does not involve a reorganization of functions of the executive branch. Instead, it relates to the retirement benefits accorded to state employees under state law. No matter how well intentioned the purpose of this section may be, the governor does not have the power under an executive order to change laws regarding employee retirement benefits.

REPRESENTATIVE GRUENBERG requested a written response to that.

ACTING COMMISSIONER DUFFY said [ADF&G and DNR] are committed to answering the questions of the committee members "to the extent practical."

Number 1981

PAM LaBOLLE, President, Alaska State Chamber of Commerce, on behalf of approximately 700 business members and Alaska's local chambers of commerce, said those members support of EO 107 and believe the governor is doing what business people do every day: increasing the level of service, speeding up processes, cutting costs, meeting customer needs, and identifying efficient problem solving methods. She said they believe this will ensure a high standard of environmental protection, reduce the cost of government, and encourage future investment in Alaska while maintaining the high level of environmental protection; they believe environmental protection and natural resource development aren't mutually exclusive, but can and do work together; and they think reducing the cost of government through this consolidation is "something that we've all been looking for." She reiterated the previous remark of Commissioner Irwin regarding the future investment in Alaska being at stake if nothing is done to make the permitting process more efficient and user-friendly and to get business "rolling in Alaska."

Number 1886

ALEX WERTHEIMER testified that he is a fisheries research biologist and past president of the Alaska chapter of the American [Fisheries] Society. Over the past 25 years, he has worked on a variety of issues involving Alaskan salmon, and he has been lead author or co-author of several papers evaluating

the current status of Alaskan salmon. Those papers have documented the remarkable recovery of the resources from depleted levels at the time of statehood to the historically high levels of recent years. He continued:

I am frequently challenged by my colleagues in the Lower 48 to explain why, in most of Alaska, we have record abundances of salmon, in contrast to decline and endangered species listings of salmon throughout the Pacific Northwest. Are we doing something right in Alaska? Or are favorable environmental conditions simply masking inevitable impacts of development? Certainly, Alaska salmon have benefited from favorable environmental conditions in the North Pacific Ocean. In my view, enlightened fisheries and enhancement management policies have also been major factors contributing to the health of the resource.

Number 1799

MR. WERTHEIMER continued:

But the most important factor has been the systematic maintenance of habitat quality. Because Alaska has the habitat, management policies and enforcement to ensure escapement have resulted in recovery of spawning populations. Because we have the habitat, recovered populations have had the productive potential to respond to favorable ocean conditions, resulting in record runs.

At statehood, the Alaska legislature recognized the critical importance of maintaining habitat for salmon production, even at a time when salmon were in serious decline. They separated the task of resource development and habitat protection between the Department of Natural Resources and the [Alaska] Department of Fish & Game to create a system of checks and balances, and to ensure that both agencies have the expertise and regulatory power to accomplish their task. This system has worked remarkably well as evidenced by the current status of the resource.

I'm well aware of the legitimate need to develop and utilize Alaska's other natural resources, to provide increased economic opportunity in the state. As development pressure and scale increase, however, the

need for an effective system to ensure that impacts are minimized to the habitat that sustains Alaska's incredible salmon resource also increases.

I have served on the biological review team that evaluated the status of Chinook salmon in California and the Pacific Northwest for listings under the Endangered Species Act. I can assure you that the perceived burdens of the current system [are] nothing compared to the regulatory morass and the cost of attempting to restore runs decimated by habitat degradation.

Why gamble with one of the crown jewels of Alaska's renewable resources? I urge you not to abandon a system that has been so effective [in] fulfilling the mandate set by the original Alaska legislature, and to reject EO 107.

MR. WERTHEIMER, in response to a question by Chair Weyhrauch, confirmed that he also works with the National Marine Fisheries Service (NMFS).

CHAIR WEYHRAUCH told Mr. Wertheimer he appreciates his work in the fisheries area.

Number 1754

RON WOLFE, Corporate Forester, Sealaska Corporation, testified in support of EO 107. He said his perspective is based on his extensive experience with a state resource regulation of Alaska forest resources, through the Forest Resources and Practices Act, which he said continues to be one of the best in the nation. He continued as follows:

But we have experienced "disconnects" through the years from what otherwise is a remarkably successful consensus-based process. This transfer is an opportunity to repair those disconnects by bringing important interlocking affiliations between resource disciplines under one commissioner to achieve an improved administrative process.

In the same way that relationships and communications are improved between operators and agency personnel during field inspections, this transfer will create a closer nexus between the professionals for improved

organizational relationships. It is an opportunity to recalibrate agency perspectives through exchange of information, cross training, and to establish a closer physical proximity so a higher degree of efficiency can be attained at a time when state government must be more efficient.

While these opportunities exist, they must be based upon competent field inspections that include fisheries biologist representation. This process can create a foundation to support and maintain the high public confidence in our resource projection that we in Alaska enjoy today, while at the same time create the regulatory efficiencies vital to the rebuilding of our industries.

We look forward to our continued relationship with the [Alaska Department] of Fish & Game, with the functions that will be retained there for such things ... as science and research. This transfer will likely improve our relationship for the efforts after the permit functions have been transferred to the Department of Natural Resources.

Number 1630

CARL ROSIER told the committee that he was testifying as a concerned citizen and former commissioner of ADF&G. He stated that although he strongly supported Governor Murkowski's run for office, that doesn't mean he supports every decision the governor makes. He voiced strong opposition to the administration's efforts to gut the habitat authorities of ADF&G through EO 107. He told members:

As the previous commissioner of this department, I would characterize the removal of this authority as one demanding the commissioner to manage the department on a three-legged stool with only two legs - habitat being the third leg that is critical to the commissioner being able to carry out his constitutional and statutory mandates.

It's not easy to tell a friend he's wrong and oppose him on an issue that was an issue that was initiated for the right reason of streamlining government and better serving the public. Somewhere along the path, that original thought was lost, and the [Division of

Habitat and Restoration] became the object of a witch-hunt and political vendetta, by individuals during the administration, down a road that favored development expedience over fish and game resources.

EO 107 is the "cowboy" action we find ourselves with as a result of some extremely poor advice given the governor - the device that overrode the responsible advice given to him by his own appointed transition team for fish and game.

[As] a 48-year resident involved with fish and game management and a strong interest in good government, I want to assure the committee I'm not looking for my old agency to be excluded from consideration in the governor's plans to streamline government and stimulate the state's economy. There are, however, many critical state functions that require professional expertise to protect the state and public interest. The habitat provision to Title 16, along with the professional people [who] implement those statutes, are one of those critical functions.

Number 1502

MR. ROSIER continued:

I would add that those farsighted legislators in the early days of statehood worked hard to build that into the statutes for that reason. If fish are to be protected and flourish, as they certainly have since statehood, in the face of development, anything less than ADF&G's involvement increases risk and will, in the long term - despite all the best intentions - fall into declines in abundance, as has been demonstrated so well in so many other states.

EO 107 transfers all but a small number of habitat responsibilities from ADF&G to a new deputy commissioner in DNR and the state forester in DNR as well. The order removes ADF&G from virtually all support functions such as enforcement, technical advice to the Board of Forestry, and research needs. This new structure is an interesting approach, as I know no other state agency [where] a partially exempt deputy position has more authority than the commissioner. Deputy commissioners [are] generally

political appointees that may or may not have expertise beyond administrative, and partially exempt positions are not confirmed with the legislature.

Number 1450

MR. ROSIER continued:

EO 170 gives both the new deputy and the state forester regulatory authority, and the deputy is given "deputization" authority, the way I read it. The lack of legislative confirmation is, in my view, extremely poor public policy, as this process gives the legislature the opportunity to make sure that fish and game habitat is a standard (indisc.--coughing) commitment for confirmation. In this situation, both positions (indisc.--coughing) occur without legislative or public input. Despite this, these two political positions are given great decision authority [over] habitat, yet they may or may not have the expertise.

Delegation authority is, I believe, a delegation for the legislator to the heads of departments, who in turn can then further delegate authority to lower-level staffers. By setting up a structure with a deputy as the head of a function, it would seem that that individual would require the legislative authority in order to effectively carry out his or her responsibilities.

Number 1416

MR. ROSIER said numerous areas in [EO 107] concern him, and he'd list only a few at this time. For example, he referred to Sec. 41.14.165(f) and opined that it attempts to restrict the courts' ability to fine violators found guilty at trial to a maximum of the established bail amount. He asked, "Is it possible that an EO such as this can limit the court system in this manner?"

MR. ROSIER referred to Sec. 41.17.010, a "declaration of intent." He said, "I hope the legislature looks closely at this cleverly worded section, as it commit[s] to you, the legislator, to elevating timber to one of the most valuable resources, from which all other uses and resources flow." He opined that timber is important, but no more so than fishing, mining, tourism, and other uses that play important roles in Alaska's economy.

MR. ROSIER referred to Section 8 [page 9, line 28, through page 10, line 4], which covers the research functions of the new division. He said those needs are to be identified by the division, DEC [Department of Environmental Conservation], the new deputy, and the timber industry. He surmised that [ADF&G] falls in the category of "other affected agencies." He said the governor, in his sales pitch, has consistently said ADF&G would continue in its research role, but Mr. Rosier said the department certainly has no designated role in EO 107.

MR. ROSIER referred to Section 9 [page 10, lines 5-21] and commented that only the state forester [and] the new deputy and DEC have the authority to report on effectiveness, regulations, and best management practices adopted under AS 41. He added, "No role for the agency responsible for fish and game."

Number 1330

MR. ROSIER posited that there are significant numbers of other questions that should be answered before the legislature allows this transfer to go forward. He said the administration's justification for this very serious move has not been shown. He stated, "On the basis of very poor advice, the governor has been put in the position of trying to justify the action of what I would consider false examples of what has actually transpired in ADF&G field offices." He continued as follows:

Permit statistics, while not totally accurate, show a tremendous workload that is being accomplished in a fairly timely manner, with very few total denials of permit. With all due respect to Commissioner Irwin and his good assurances to suggest that fish and game will be protected in the absence of ADF&G from key functions and replace them with the industry development influence of DNR, coupled with dropping 22 positions from the permitting process while claiming expedited permit service to the public, I think truly challenges the intelligence of all Alaskans.

This entire matter is a management problem, not an issue to tear up a system that has served a state and all the resources well. Let's don't go about fixing a system that isn't broken, based on the flimsy evidence to date. ... Please pass the resolution denying this action to the governor, and perhaps we can begin to look at simpler solutions involving management

measures by the new commissioner, regulatory review, and, perhaps, centralizing for one-stop permitting permits.

Number 1247

REPRESENTATIVE GRUENBERG referred to page 8 of EO 107 and said the only change he sees in the current law is on page 9, line 19, where a couple of statutory designations are changed. He offered his belief that it is a technical change only, which wouldn't do anything substantive. He suggested that Mr. Rosier reconsider that section.

Number 1160

DAVE HANNA testified that he is a lifelong Juneau resident whose family has been in [Alaska] since the 1870s and has been involved in mining, fishing, timber, and construction development during that time. Mr. Hanna noted that he has worked in the construction industry for his entire life, acting as the lead person involved in planning, permitting, and developing various mining, timber, and construction development work in Southeast Alaska for the last 25 years. He said he has a fair amount of experience in dealing with regulatory agencies; not a day goes by when he does not have a project that's under review by "some government entity."

MR. HANNA said he has watched the process evolve over the years. In the last 25 years, he said, he doesn't believe he has ever failed to get an efficient, fair, expedient review from the Division of Habitat [and Restoration]. He added that he believes the division's process works fairly well. He noted that some of his projects "have the possibility of having large impacts on ... major fisheries that involve sport fish issues [and commercial] fish issues." He said he thinks the fact that habitat personnel "sit next door to" and work with those same divisions is one reason they work so effectively. He remarked, "They usually conclude their reviews at the same speed or, often, faster than a lot of the other regulatory agencies."

MR. HANNA indicated he'd had one problem with [ADF&G] in the past. He explained that he is involved with a nonprofit watershed partnership group that does a lot of good work, including restoration projects; the group had a restoration project that involved some new technology that "the folks from ADF&G up north" were not familiar with. He said, "It was their policy that if they weren't familiar with something, they

wouldn't act on it." He said, fortunately, his group had access to the commissioner's office, where [then] Commissioner Rue and his staff considered the project and realized it was a good one.

MR. HANNA said the problems that have been seen aren't process problems or system problems, but are policy problems. He remarked, "It's very analogous to what goes on with the big industries that we're concerned with - the industries that want assurances." Saying there are inconsistencies in regard to policies, he opined that the way to change existing problems is by changing the policies.

Number 1000

MR. HANNA said [the Division of Habitat and Restoration] staff seems to have a better record of processing its permits than the DNR staff does. He proffered that one of the reasons that it does work so efficiently is that it works hand in hand with [the Divisions of Sport Fish and Commercial Fisheries]. Under [EO 107], offices and positions will be lost, resulting in the loss of local knowledge; the permitting decisions will be based on a lack of knowledge, which will either slow the permitting process "or we're really invalidating, as far as the other agencies are concerned." Mr. Hanna said "we" are looking to be pro-development in the state, that more projects require more permits, and that a reduced staff will not get more permits out faster.

MR. HANNA said this administration is capable of fixing the policy problems with the current setup. He added, "This would be a short-term fix." He said industry really needs long-term assurances; therefore, he opined that the administration should help get guidelines firmly fixed, perhaps in statute. He mentioned a long-term legacy to leave the state and said administrations come and go. He said there has been no substantiation from the administration or commissioners regarding how [EO 107] will work better. He said other states that have adopted this model have lost their resources and have failing economies. He opined that it is a fiction that EO 107 will make things better. He encouraged rejection of this concept and EO 107.

Number 0818

AURAH LANDAU began by noting that she'd testified yesterday before the Senate Resources Standing Committee on behalf of Southeast Alaska Conservation Council (SEACC) and would submit

that testimony to the current committee. However, she specified that she was currently testifying on her own behalf. With regard to EO 107, she said no authority would exist for stream buffer enforcement, protection, and monitoring on federal land. The Forest Practices Act only applies to state and private land, and 97 percent of Southeast Alaska is in federal title. She said 80 percent of the fish caught around Southeast Alaska spawn in Tongass National Forest streams; if there is no authority for protecting the riparian areas, it would have quite an impact to Southeast Alaska communities and the commercial fishing there.

MS. LANDAU mentioned the Pacific Salmon Treaty. She said one of the foundations of that treaty is the assumption of healthy fisheries. She said, "We certainly don't want to have to renegotiate an international treaty just based on the assumption of potentially having problems or a major impact to our fisheries."

MS. LANDAU reported that several years ago SEACC went to Washington, D.C., to argue against the Endangered Species Act listing of several Columbia River salmon stocks, which helped to stop listing stocks that would have affected Alaskan fishermen. She said every now and then, SEACC gets calls asking if there are stocks that people are interested in potentially listing under the Endangered Species Act. She said the entire country looks at the fisheries [in Alaska], and if there is no authority for protecting fisheries on national forest land in Alaska, the scrutiny will be acute, and it will be difficult for the state to hold up a case that "the stocks are safe."

CHAIR WEYHRAUCH said he would personally study the legal issues that Ms. Landau raised and report them to the Department of Law.

REPRESENTATIVE BERKOWITZ asked Ms. Landau to submit more information regarding the instance of her assistance with the Endangered Species Act.

Number 0570

ERIC LEE testified that he is a commercial fisherman from Petersburg whose family has been involved in commercial fishing since his grandfather's arrival in 1902; he also subsistence hunts. He requested that the committee overturn EO [107]. He said the fishing industry is the backbone of the economy of Alaska and generates more jobs than any other industry in the state, including the oil industry. Tourism is also a big part of Alaska's economy and promises to play a larger role as time

goes on. Both industries are ultimately dependent on the quality of the habitat; therefore, protecting the future of these industries by protecting habitat is essential to ensure the health of the state's economy. He opined that it should be a top priority to ensure that [Alaska's] habitat is managed with the best possible science and an adequate staff to evaluate permitting issues.

MR. LEE said, if this transfer of the habitat division takes place, permitting decisions made in DNR will be prone to mistakes and oversights. Overworked employees working in an atmosphere of expediencies do make mistakes, and important considerations will not be addressed. Biologists without site-specific knowledge will be first to make decisions. Site-specific knowledge is essential in Alaska, where conditions vary so greatly, he emphasized. Noting that the stated goal of [EO 107] is efficiency and streamlining, he posited that these are inappropriate and dangerous priorities for managing the habitat that is so important to the state's economy and its way of life. He concluded, "Mandated efficiency is simply not the proper priority in this instance. Our goals in managing habitat should always be to manage it in the best possible way we can."

Number 1384

BRUCE BAKER testified that he retired from ADF&G 10 years ago, after serving with the department for 11 years as the deputy director of the habitat division. He urged the committee to bring to a floor vote a resolution to reject EO 107. He told members:

The state needs to maintain the checks and balances between ADF&G and DNR that have benefited ... the Alaskan economy since ... statehood. ADF&G's fundamental mission is to protect Alaska's fish and wildlife resources. DNR's fundamental mission is to develop the state's other natural resources. These two missions balance each other in a way that ensures adequate protection of the state's economically important fish and wildlife habitats while allowing natural resource development to proceed in a timely manner. By eliminating the permitting authority of one of these two agencies, the executive order eliminates these checks and balances.

The executive order is a solution looking for a problem. The timeliness of ADF&G's permitting is

exemplary. Of 1,926 Title 16 applications that ADF&G received last year, over 99 percent of the applicants either received permits or were told that they didn't even need to have one. The average processing time was only 14 days. If there's a development project that seems to be high-centered over a habitat-related authorization, there is already a process for department commissioners to quickly resolve the issue, consistent with the policies of whatever governor happens to be in office at the time.

What Alaska needs in order to promote its natural resource development, without costly permit delays or lawsuits, is to increase rather than eliminate habitat staffing, and to leave it in the department that has the bedrock of fish and wildlife expertise upon which to draw. The governor has criticized ADF&G for habitat permits for which he was given incorrect information.

For the record, I'll leave with you two ADF&G memoranda that provide corrected and specific information that the governor did not have available to him when he made his public statements. In closing, EO 107 is not so much about making state government more efficient as it is a thinly veiled effort to lower the habitat-protection bar for permit applicants.

Number 0156

FRANK RUE testified on his own behalf, listing his past work experience including nine years as a resource manager for DNR, seven years as the director of the division of habitat in ADF&G, and eight years as commissioner of ADF&G. He said he has respect for the professionals at DNR. He mentioned working with Commissioner Irwin when he was at Fort Knox on a very successful project. He said there have been a number of successful projects involving "an independent" ADF&G working with DNR [and] DEC. He indicated that the projects are done while fish and water quality are protected.

MR. RUE urged the committee to reject EO 107 and stick with the system that the original legislature that set up Alaska's statutes provided for the state to protect its incredibly important fish resources. He said it can't be forgotten that sport fishing is a \$600-million-a-year business. The value of

commercial fishing last year he estimated to be \$250 million. He pointed out that subsistence fishing is also very valuable to Alaskans.

MR. RUE said the reason given for [EO 107] is efficiency. He referred to the organizational chart and said, "With all due respect, you could remove all those layers in the existing [Division of Habitat and Restoration] if all you're going for is efficiency." For example, he noted that regional supervisors are removed [in EO 107], but instead could be removed from ADF&G and yet leave the staff and have a director and a commissioner. He said, "In terms of efficiency and removing layers, there's nothing about moving it to DNR that's magic. You can do that."

**TAPE 03-22, SIDE A**

Number 0001

MR. RUE indicated the discussion is not about coastal management and EO 106, but ADF&G's permitting authority inside the banks of streams that support salmon, rainbow trout, and grayling. Most of those permits are single-agency permits: just ADF&G. As for efficiency, [the permits] are out in 14 days, and there are not other agencies to coordinate with most of the time. He said, "So you're not going to get efficiencies by being next to DNR, and you're going to lose efficiencies by being away from commercial fish biologists, sport fish biologists, et cetera."

MR. RUE highlighted myths that minimize the impact on Alaska's fish. He clarified that this has nothing to do with personalities or individuals, but rather with which agencies have a mission and what that mission is. He said the first myth is that the level of protection will be the same. The second myth is that Oregon, with its combined fish and game and natural resources departments, should be Alaska's model for success. Regarding the first myth, Mr. Rue asked, "If protection is going to be the same, why move it?"

MR. RUE, regarding efficiency, said the only way to speed things up, given the incredible record of ADF&G's moving permits quickly, is to "get out a rubber stamp and just start stamping projects as they come in the door." He said he doesn't think that's a good way to do business. He told members [ADF&G] has been very good about doing field reviews and "pre-project working with developers, trying to design their project to fit that stream reach." He said, "The standard of protection won't be the same for this reason." He said the anadromous fish Act and the fishways Act have very broad discretionary standards, as

follows: what is important in anadromous fish habitat; what is proper protection of that habitat; and when it is necessary to provide a fishway. He said those are about the only standards that exist in law. [Through EO 107], those decisions would be made by a deputy commissioner in DNR, instead of the commissioner of ADF&G.

MR. RUE explained that the commissioner of ADF&G has a responsibility to "get out the catch," to provide for sport fishing, commercial fishing, subsistence fishing, and personal-use fishing. He stated his belief that because the legal mandate of the commissioner of ADF&G is to provide for these opportunities, the standard protection by that department will be higher than that of a deputy commissioner in the department whose mission is "to get out the cut, get out oil, get out mining, gravel, which are all very legitimate, but it's going to be a different standard." He said:

We tried this experiment in Alaska with the U.S. Forest Service. They refused to get fish and game permits. They had biologists in the agency, but without authority. The road engineer or the forester made the final decision on road crossings. We found, after years of persuasion, the [U.S.] Forest Service finally agreed to work with [ADF&G] and let us review their projects. We jointly went out, reviewed the Tongass roads condition, and found that 70 percent of the culverts that had been put in by the Forest Service, without [ADF&G] review, blocked or impeded fish passage of anadromous fish.

To their credit, the Forest Service has now signed an MOU with [ADF&G, which] will review all their projects, and to their credit, they're spending millions of dollars to fix those old problems. We can avoid those problems by keeping our current system as it is.

Number 0344

REPRESENTATIVE BERKOWITZ voiced his understanding that the presence of a vibrant habitat division was critical in getting NPR-A [National Petroleum Reserve-Alaska] leases, with the consent of the federal government. He asked Mr. Rue to explain how that came to pass and what "elimination of movement of the habitat division would mean."

MR. RUE offered his belief that the Clinton Administration and [then U.S. Secretary of the Interior] Babbitt opened up NPR-A for leasing in large part because the State of Alaska came up with a position to support oil and gas development there that protected key fish and wildlife resources. Because ADF&G was "on board," he said, he and then-Commissioner Shively went before the Resource Development Council and were jointly pushing the proposal for NPR-A, as two departments with statutory responsibilities saying, "We can protect fish."

MR. RUE added that he thinks this trust is critical - that the public believes their fish are being protected if ADF&G is involved. He questioned whether [the public] will have the same trust if ADF&G has no role in either buffer decisions or instream permit decisions. He added that he also believes the federal agencies will become more aggressive and not defer as much as they have in the past to ADF&G.

Number 0497

REPRESENTATIVE BERKOWITZ stated concern that EO 107 can be interpreted as a signal of retreat from the level of habitat protection, which may be critical in Alaska's ability to secure national cooperation when it comes to developing oil and gas resources. He said, "We have to remember that we do play on a wider stage than just for eternal consumption." He asked what the biologist do precisely, and why they are so critical for habitat's function.

MR. RUE answered that habitat biologists who are involved in permit decisions do two things. First, they do their homework so they understand what's going on on a particular stream where a project is proposed. They talk to the people who work in [the Division of] Sport Fish, who have a lot of knowledge gained from doing research, and to the people who work in [the Division of] Commercial Fisheries such as biologists, "so they know from a fish value perspective what's at risk." Then, when a developer comes in and asks for a permit, [the habitat biologists] understand the developer's needs. He continued:

I think you'll see that this is mostly borne out. They go out and they kick dirt with folks. As Mr. Hanna said, they know what it takes to get from here to there across a stream, and they know how to work with folks and give them ideas about how to do their job. [For example], where's a good place to put your road; what if you move it over here; what if you

have ... this kind of culvert versus that kind of culvert? They have a lot of in-the-field experience which they can bring to developers to help them get their project done while protecting our fish so that we have both roads, for instance, and fish. So they do those two things.

Number 0612

REPRESENTATIVE BERKOWITZ referred to the biologists who are losing their jobs. He said, from Mr. Rue's description, those biologists aren't interchangeable; [it isn't as simple as] hiring new people to replace them, because they have a reservoir of knowledge about particular watersheds and fish, for example, that can't be replaced overnight.

MR. RUE concurred that there is a lot of expertise that comes with experience. He said a lot of good biologists will, hopefully, stay if [EO 107 is carried out], and will continue to lend their expertise. He indicated the need to have a structure where new people are [hired] and trained. He opined, "I also think you'll lose that connection to the experience of biologists in the other divisions and their expertise; you'll have biologists housed in DNR who will become DNR employees, and they will lose that connection back to the information and the expertise of the other fish biologists who know a lot about those streams." He added that, in fact, they may know more about individual streams than a "habitat" biologist, because they are often out there doing surveys and running weirs, for example. He said [the Divisions of] Sport Fish and Commercial Fisheries biologists probably have more on-the-ground experience with a particular stream, which they can then transmit to the habitat biologists.

Number 0714

REPRESENTATIVE GRUENBERG said he sees that the Alaska constitution requires that fish shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses. He asked Mr. Rue if he sees any difference between this constitutional mandate and the other constitutional mandates under which DNR operates. He asked if there would be any potential conflict if habitat functions are moved to [DNR].

MR. RUE responded that the main conflict he sees is the one Mr. Rosier previously stated regarding the three-legged stool.

He highlighted the importance of protecting habitat, managing the fisheries by controlling the catch, having good research, and having a good public regulatory process to set fishing regulations. He said, "That's my four legs; you can do it in three."

MR. RUE said habitat is key to sustained yield. He informed the committee Alaska's salmon fisheries were just certified as sustainable by the Marine Stewardship Council, an independent certifying agency. He mentioned that Europe is starting to be concerned about sustainability, and he said one key principle to sustainable fish management is protecting habitat. He voiced his belief that if ADF&G is not worrying about salmon habitat "in the banks" and being involved with the buffer decisions, then sustainability will be at risk over the long term, perhaps in 10-40 years.

Number 0860

PAULA TERRELL, Alaska Marine Conservation Council (AMCC), testified that AMCC is a statewide organization with almost 1,000 individual members including fishermen, subsistence harvesters, marine scientists, conservationists, and small business owners, who are linked by a desire to protect and restore the ocean environment through sustainable fishing practices, habitat protection, and local stewardship. The board is made up primarily of commercial fishermen.

MS. TERRELL said AMCC opposes EO 107, which has only downside risks for fishermen. She noted that the statutes' moving is taking the authority away from ADF&G. Thus it will be up to DNR to decide whether ADF&G will be consulted, will be advised, or will have due deference, for example. She said fishermen have looked to ADF&G's habitat division for the protection of their fisheries, and have benefited from the balance provided by having both DNR and ADF&G involved. Noting that the mandates differ, however, she explained that ADF&G protects fish and wildlife, whereas DNR promotes development of nonrenewable resources.

MS. TERRELL remarked that Mr. Rue had previously alluded to something that is "a really large misconception which needs to be addressed." She pointed out that habitat-related permits are primarily single permits, rather than the multiple permits characterized as the problem by the governor and DNR. Thus this change won't get to the crux of what the governor and DNR say the problem is. She said multiple permits are the ones that

involve more than one state agency. They involve federal agencies and are generally for big projects. Thus in trying to resolve a problem of multiple permitting, moving Title 16 permitting is just not going to do it.

Number 1062

MS. TERRELL set forth several questions AMCC would like this committee to ask the administration. First, does EO 107 really address the problem the administration wants to resolve? If the problem is really multiple permitting, why is the administration focusing on the instream permitting process, which is just a question of what is happening in the streams? Second, will DNR's deputy commissioner continue the historical practice within [ADF&G] by the commissioner of delegating authority for making the initial permitting decisions to the habitat biologists, who are the ones that do the review and sign the permits? Would these decisions then become subject to the process repeats to the DNR commissioner? And how is that going to work? She continued:

The other question is - [Mr. Rue] alluded to this - the very broad discretion that the now [ADF&G] commissioner and, if this happens, the DNR commissioner will have. ... The commissioner will determine the waters in the state that are important for the rearing, spawning, and migration of anadromous fish, or the DNR deputy commissioner would decide what constitutes important habitat. ... This is broad discretion, and it's over there now in DNR under the executive order. ... Given the differing mandates, what safeguards would prevent this discretion from becoming unduly conflicted?

Number 1145

MS. TERRELL said, at a minimum, AMCC urges the committee and the legislature to request the following from the administration: a commitment by the governor that 1) the habitat biologists who are being transferred from ADF&G would be housed in this newly formed Office of Habitat Management and Permitting, and 2) that, under this reorganization, the deputy commissioner of DNR would delegate the authority for issuing and signing the anadromous fish Act and fishways Act permits to the habitat biologists who have been transferred, and who currently [have that authority]; and a commitment by DNR 1) to require the state forester to grant due deference under the Forest Practices Act to the Office

of Habitat Management and Permitting on issues relating to the harvest of streams within the 66-foot buffer on private land and the coastal zone, and 2) that there would continue to be the same level of permit monitoring, compliance, and enforcement as has previously existed.

Number 1223

GENE HARRISON testified in opposition to EO 107. He told the committee he has been an Alaskan resident for over 20 years and works as an artist and naturalist. He said the most troubling issue regarding EO 107 is elimination of the checks and balances needed to ensure a healthy environment for fish and game, which is the mission of ADF&G. The mission of DNR is to issue permits for development. He said it is also evident to him and to many of his friends why the governor wants this transfer and also the elimination of many positions relating to habitat, primarily, the biologists. He characterized the transfer of authority as putting the fox in charge of the henhouse. He said he has listened to those in favor of EO 107 testify that nothing's going to change; thus questioned why the change is being made.

Number 1341

LANCE TRASKY testified in opposition to EO 107. He told members he is a fisheries biologist who has worked for both the State of Michigan and the State of Alaska, with 30 years' experience as both a fisheries research biologist and a habitat biologist. He stated his belief that the change in EO 107 will result in a long-term decline of fish habitat in Alaska; it dramatically changes the existing balance between protecting the fish habitat and the activities that have historically impacted fish habitat. He said the First Alaska State Legislature established ADF&G and gave it the statutory responsibility to ensure that fish passage is maintained on all streams and that the productivity of all lakes and streams supporting salmon, steelhead, whitefish, and other anadromous fish is preserved.

MR. TRASKY said the anadromous fish Act and the fishways Act were designed to provide balance between nonrenewable resource development and the public's interest in maintaining the state's fisheries resources. He mentioned support of Alaska's sport, commercial, and subsistence fisheries. He noted that these laws were enacted and ADF&G was created because the legislature had witnessed the final collapse of the salmon fisheries in the Pacific Northwest and were well aware of the reasons why

fishermen, including subsistence users, lost their [resource]. He continued:

The legislators made a conscious decision to place the trust to maintain fish habitat in the hands of fisheries professionals in the new Department of Fish & Game, rather than in a Department of Natural Resources, for fish and habitat protection was just one consideration in a department with many competing interests. This was a reasonable decision, because Alaska's sport, commercial, and subsistence fisheries, and the businesses which support them, were and still are the largest non-governmental employers in the state, a major part of our economy and culture.

I have not seen any evidence of proper balance between fish and wildlife habitat protection and (indisc.) economic development has not occurred over the 40-plus years since statehood. In the last 25 years, the Department of Fish & Game has reviewed between 40,000-50,000 applications for large and small projects affecting (indisc.) streams that were likely to block fish paths.

Number 1462

MR. TRASKY mentioned the Brandy Lake hydro project and its culverts. He said records show that more than 99 percent [of the permits] were issued and only a fraction of a percent were denied. In 25 years, there have been only six formal appeals of ADF&G Title 16 permit denials for conditions. He said the vast majority of people who have received Title 16 permits from the [Division of] Habitat and Restoration are satisfied that they were treated fairly and that the projects were permitted efficiently; conversely, hundreds of decisions in DNR have been repealed and litigated in the same time period.

MR. TRASKY said currently the governor's resource cabinet resolves instances when there are unresolved disagreements between ADF&G and another state department or federal agency over the appropriate level of fish habitat protection for a project. Because these debates are currently part of the public process, the public or the coastal districts often weigh in. However, if all the fish habitat protection authority is transferred to DNR, any disputes will be settled internally between a DNR fisheries biologist and the directors of the Divisions of Forestry; Mining, Land and Water; or Oil & Gas.

Thus ADF&G will not have a say in the process, and it's unlikely the public will hear about [any such dispute].

MR. TRASKY said incremental habitat loss is the primary cause of the dramatic decline in wild, freshwater anadromous fish populations in the United States. By moving ADF&G's fish habitat protection statutes to DNR, the state would be adopting a resource management model that has historically failed to maintain fisheries habitat. He reiterated that the Pacific Northwest is a model for that [decline in fish populations] and has consistently failed to protect fish habitat. With regard to the Oregon model mentioned by Mr. Rue, Mr. Trasky said several Pacific Northwest states use the model that DNR's proposing. He told members:

The best source of empirical data illustrating the inherent flaws in this type of system, where all decisions are internalized, is the U.S. Forest Service. The U.S. Forest Service is a very large, well-funded agency tasked with developing timber and nonrenewable resources and conserving fish and resources and habitat in national forests. In addition to foresters, for many years the [U.S.] Forest Service has employed fish and wildlife biologists and hydrologists to help decision makers in the [U.S.] Forest Service balance competing interests on forestland.

However, a recent report by a governmental colleague found that up to 70 percent of all the stream crossings constructed on federally managed land in the Pacific Northwest over the last four years blocked fish passage. Fish (indisc.) and production on thousands of miles of former fish habitat has been lost, and this is a prominent part to the declines that we've seen.

Number 1610

MR. TRASKY asked the committee to reject EO 107 and to keep the authority and responsibility to protect fish habitat within ADF&G, the most appropriate agency to manage the state's permit system, since it protects habitat and produces the fish habitat that benefits so many Alaskans. He said the value of the state's fisheries exceeds the value of all the other industries in the state, except oil. He said fish habitat [loss] and litigation (indisc.) are the primary reasons that anadromous

fish populations have declined to disastrous levels in the United States.

MR. TRASKY told the committee that habitat loss is forever. He indicated that's what's keeping salmon fisheries in the Pacific Northwest from recovering, even after years of fishing closures and billions of dollars of federal and state restoration expenditures. He said habitat protection is relatively inexpensive compared with restoration. He asked the committee not to change a system that's efficient and [effective].

Number 1675

DOUG HILL told the committee that he is an Alaskan resident who is 44 years old. He said he supports responsible development; therefore, he strongly urges the committee to disapprove of EO 107, which he views as a serious threat to salmon; resident fish; fish habitat; wildlife supported by fish; habitat near shore and inland; and subsistence, sport, commercial, and personal use fisheries.

MR. HILL explained Alaska's ranking in the Fraser [Institute] report. He noted that during a March 7, 2003, administrative press conference and a March 10, 2003, Senate Resources Standing Committee meeting, he'd listened to Commissioner Irwin cite this report as a justification for EO 107; furthermore, Commissioner Irwin has publicly said, according to the report, that Alaska ranks 50 in attractiveness to mining exploration and investment for the past number of years has decreased in attractiveness to mining investment. Mr. Hill said neither statement is true. The number 50 is an index number. He clarified, "Companies are simply asked to consider 10 factors that determine the ability of select jurisdictions to attract exploration investment." He added that companies rate these 10 factors on a scale of 1 to 6.

MR. HILL noted that the Fraser [Institute] report provides three basic index numbers: a policy index, a mineral potential index, and an investment attractiveness index. The investment attractiveness index is a combination of the policy and the mineral protection indexes. He told the committee that the index number to which Commissioner Irwin referred was ranking only the policy index for the years 2002-2003. In those years, Alaska's policy ranking was rated higher than those of China, Ecuador, and Russia, for example. Mr. Hill noted that since the report has been in existence, Alaska "has increased." In 2001 and 2002, 38 out of 45 government geographical regions were (indisc.) for investments in Alaska. He continued:

I'm wondering why the commissioners have to refer to Chris Kennedy for simple policy procedure questions such as, "At what elevation will a contentious issue be raised." These are the guys [who] are supposed to be implementing these policies; these are the guys [who] are promoting and supporting this policy, and they have to refer to an attorney. This just doesn't make sense to me, and it's got me very worried.

MR. HILL asked that the fish and wildlife and humans that depend on it not be forgotten. He stated disapproval of Governor Murkowski's executive order [EO 107].

Number 1874

DAN ROSENBERG testified that he has worked for ADF&G for the past 20 years in what is currently the Division of Wildlife Conservation. He mentioned the importance of maintaining the interdivisional coordination within ADF&G, which he said leads to expedient permitting and sound resource management. Mr. Rosenberg applauded the professionalism of the many habitat biologists with whom he worked over the years. He said they have brought knowledge and experience that belongs within ADF&G.

MR. ROSENBERG voiced hope that EO 107 would be debated and ultimately dismissed as counterproductive to both Alaska's economy and its environment. He said Alaska has the mechanism in place to deal with any policy changes to the permitting process that may need addressing. He said the governor's authority will appoint a new commissioner to ADF&G and a new director to the habitat division. Saying the system has worked since statehood, through five governors, he opined that five former commissioners [of ADF&G, who had come out publicly in opposition to EO 107] would agree with him.

MR. ROSENBERG said different missions trigger healthy debate, and concepts get elevated to the director or commissioner level, where they are and should be resolved. He told members, "If you must change the policy - as every governor has the right to do - there's no need to change the process." He said [Alaska] needs thoughtful solutions to its economic and environmental concerns, not scapegoats. He said facts, not anecdotes, should precipitate change, and the facts show the current system works.

MR. ROSENBERG said Alaska is the only state that has a proven track rate of a sustainable fishery. Its fisheries and wildlife

are the envy of the world and an economic mainstay to tourism, commercial and sport fishing, and subsistence. He asked why anyone would want to jeopardize that by replacing a proven system with an untested one in an agency such as DNR that can't match habitat efficiency or biological expertise. He said the most favorable term he could couch this in is "penny wise and pound foolish."

Number 1968

MR. ROSENBERG concluded by reading from former Governor Egan's State of the State address to the legislature in 1960, as follows:

On January 1 of this year, Alaska Department of Fish & Game was handed the depleted remnants of what was once a rich and prolific fishery. From a peak of three quarters of a billion pounds in 1936, production dropped in 1959 to the slowest in 60 years. On these ruins of a once great resource the department must refill, our gain is that we can profit by studying the destructive practices, mistakes, and omissions of the past.

MR. ROSENBERG said this was the legacy given the state; however, ADF&G has rebuilt and maintained that fishery; that fishery was able to recover with good management because the Alaskan salmon habitat was not diminished. He concluded, "Let's not weaken [ADF&G] and make mistakes that, this time, may be irreversible. Alaska should be the model, not Oregon."

Number 2017

JOHN STURGEON, Koncor Forest Products, noted that he is currently on the board of directors for the Alaska Forest Association, the Resource Development Council, and the Nature Conservancy. He said he has been on the Board of Forestry for 18 years and has been state forester under two governors.

MR. STURGEON stated his support of EO 107, saying he thinks it will bring more efficiency to state government. He disagreed with testimony regarding DNR's being strictly a resource development agency and comparing [the entrusting of] habitat protection to DNR as "the fox guarding the chicken coop." He offered a private timber operator's perspective, saying DNR has always been the primary enforcement agency that has administered the Forest Practices Act since 1991, and has been the agency

with primary responsibility for salmon stream buffers. Habitat has had due deference on salmon streams and various tree selections, he asserted.

MR. STURGEON said the transfer of habitat permitting responsibilities to DNR will further a longstanding concept embodied in the Forest Practices Act: "one-stop shopping." He explained that when a timber operator complies with the Forest Practices Act, it automatically combines the Coastal Zone Management Program, the state's Clean Water Act, the federal Clean Water Act, and other statutes. He said it serves both the state and the operators and saves them both time and money.

MR. STURGEON referred to placement on "840" and "870" streams and said, "For these streams we still need two agencies to tell us how to put in the same exact culvert - even the most routine culvert project." He expressed hope that under the new system, agencies can finally get together and agree on a single set of standards on a routine culvert and how to place the culverts properly. Mr. Sturgeon said, with a large state deficit, he doesn't see how the checks and balances system is justified with two agencies traveling to remote logging operations to tell the timber operator how to put in the same, routine culvert. He told the committee the timber industry has said repeatedly that it has no problem providing adequate fish passage, but has "begged and implored" that it be done in an efficient and cost-effective manner.

Number 2119

REPRESENTATIVE BERKOWITZ pointed out that Mr. Sturgeon isn't testifying for habitat protection. He commended HB 78 to Mr. Sturgeon as an alternative solution for his permitting issue. That bill has a single application whereby whatever state agency first gets the permit would be responsible for "bicycling it around." He said he thinks that would solve some of the problems Mr. Sturgeon has raised; rather than try to move all the entities of government under on roof, [HB 78] would just move the permit application itself.

Number 2163

BILL STEVENS, President, Cassandra Energy Corporation, asked the committee to support EO 107. He said he has been in a "permitting mode" since October 2000, which he said has mostly been a federal situation, rather than a state one. He asserted that the Division of Habitat [and Restoration] cost him seven

months of additional permitting by the federal agencies "because of changes they wanted made." He remarked that he has heard stories about 14-day permit turnarounds, but said it certainly has nothing to do with any situation he's been in. He indicated that there are turf battles that draw out the process and he opined that the [delays] are all basically stem from [ADF&G]. He said he doesn't know if [EO 107] will solve the problem, but something needs to be done. He concluded, "I don't think it's putting the fox in charge of the chicken coop, but, frankly, I don't think anybody's in charge of the chicken coop right now."

Number 2265

PAUL SHADURA II, President, Kenai Fishermen's Association, read from his written testimony [included in the committee packet] as follows:

I would like to incorporate my remarks from the Senate Resource Committee in this testimony and, in addition, the survey analysis from the ADF&G [Division of Sport Fish]. Tonight I would like to comment on the document, "Reorganization Proposal In Accordance With Executive Order ... 107." Under "Functions Moving to Sport Fish," we find various research and restoration projects. The [Division of Sport Fish] has been extremely controversial in their habitat assessments within the Kenai River watershed. It has been noted by area residents, sport fishers, commercial fishermen, and others that the direction the division has taken on use issues on the Kenai River suppresses evaluation caused by boat wakes and other high-traffic conditions that destroy habitat for juvenile king salmon and other species.

Number 2298

MR. SHADURA continued:

Our legislators in our district are well aware of the department's conflict of interests that are apparent in Board of [Fisheries] decisions on in-river guide activity on the Kenai River.

In "Rates of Participation in Alaska's Recreational Fisheries," department personnel conclude: "It appears the division is not achieving its goal of increasing sport fishing participation rates." The

trend in this report pose[s] a serious threat to the fish and game fund. This fund provides direct and matching money for Alaska's sport fisheries. We must look to stabilize the contributions to this fund, especially from the sale of resident licenses, given potential volatility in nonresident license sales.

It is apparent that the Division of Sport Fish has a conflict in protecting a habitat that has a potential income stream that funds the department. This is an inherent flaw within the division and could be perceived by the public as a conflict of interest. It is the one reason why habitat assessments should be directed by a panel of impartial reviewers. The Division of Habitat [and Restoration] has been associated with a non-biased approach to habitat degradation that favors neither commercial or sport divisions or their users. We do not support the concept of "the fox watching the henhouse."

Our last suggestion to strengthen our governor's EO is that we believe that it is possible to use Article III, Section 25, to create a commission within ... DNR that will incorporate a review process that will allow expertise and balance to the regulatory permit process. The commission would have to go through the confirmation and the administration's appointee review process, thereby settling issues the public may have with protection and utilization of our resources.

Number 2363

DON CORNELIUS testified that he is a retired biologist who worked for the habitat division for 13 years, and for ADF&G for 24.5 years.

**TAPE 03-22, SIDE B**

Number 2367

MR. CORNELIUS said it has become apparent that many people don't understand how the division works, and it has become a scapegoat for developers who don't like permitting. He paraphrased his written testimony [included in the committee packet] as follows:

First of all, you need to consider that the reason the division was formed was to give ADF&G a voice in reviewing developmental activities which affect fish

and wildlife. Without coordinators, it was easy for the different divisions to provide conflicting and thus confusing comments. Professionals within ADF&G who understand the permitting system allowed other fish and wildlife staff to focus on their primary duties while maximizing the quality of the department's input.

As the division functions today, when habitat biologists receive applications for permits or environmental reviews, they serve as a focal point for input from the entire Department of Fish & Game. Any permit or project is routed around the offices under whose jurisdiction the project falls. Concerns and comments from commercial fisheries, sport fisheries, wildlife conservation, and subsistence staff all go into the equation.

MR. CORNELIUS highlighted that habitat biologists also function as "point men" for other agencies - the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency (EPA) - in responding to U.S. Army Corp of Engineers permits and other environmental reviews. He explained:

This is because of their local knowledge and ready access to input from other ADF&G divisions. Some projects that might otherwise be held up by other agencies are cleared without controversy because habitat staff answer and resolve concerns before they become issues. Again, this is ... because they have local knowledge.

Any projects that are held up are delayed for good reasons. They potentially have significant impact on fish and wildlife resources. Not all proposed development is benign. For every project the governor claims has been derailed by habitat staff, others should have been held up or even rejected. The political pressure on habitat biologists is intense, and Alaskans now live with permanent impacts that could have been mitigated or avoided.

I worry that moving the division to DNR will only increase this pressure. While the governor hopes to speed up permitting, moving some functions of the division to DNR and eliminating the rest is likely to

have the opposite effect. This action will break the link with ADF&G. No longer will "permitters" have ready access to biologists from the other divisions. Just communicating with ADF&G will become a logistical barrier.

MR. CORNELIUS, in response to a request by the chair, summarized that his primary concerns are regarding the break between habitat biologists working for DNR, "the department," and the loss of links with other agencies. He said he thinks previous testifiers have covered most of his other issues. He suggested the governor's justification to eliminate the division was pretty much unfounded and resembles a lynching in the Old South.

Number 2226

MIKE MILLIGAN, testifying on behalf of himself, said he is "somewhat cautious and against [EO 107]." He told the committee that he was active in local government for many years. He said he has a fiduciary concern regarding [EO 107]. Offering his understanding that federal Dingell-Johnson Act monies could be applied to an agency that manages fish and game, which [the Division of Habitat and Restoration] was using to pay for "some of this," Mr. Milligan asked the committee to investigate whether those monies could also be used by DNR. If not, he proposed, ADF&G will still be able to use the money, but not in the habitat division; in that case, new money would have to be found in order for DNR to run the division. Mr. Milligan said he believes the monies are from the sale of sporting equipment and must go to an agency that manages fish and game.

Number 2133

TIM JUNE testified in opposition to EO 107. He noted that he is currently the fisheries representative on the Board of Forestry and had been a special assistant to former Governor Knowles on oceans and watersheds. Mr. June urged the committee to soundly reject EO 107 and instead increase the budget to [the Division of Habitat and Restoration], not cut the budget and the number of biologists. Indicating the state has been doing this right since 1959, he highlighted the successful habitat and abundant fish populations and suggested [Alaska] needs to continue that policy in earnest. Noting that California, Oregon, Washington, and British Columbia are all struggling to restore lost habitat, he remarked, "Under the gun of the Endangered Species Act, that's not a simple task."

MR. JUNE mentioned the 1995 anadromous fish habitat report and explained that in 1995 a "regime shift" in the oceans shifted nutrients down to the Lower 48; those nutrients won't be shifting back to Alaska for another 15 years. He said, "The commission recommended that our charge, in the next 15 years, is to maintain our habitat so when those nutrients do come our way, we'll have the fish and the habitat that will be accessible to replace our fish population."

MR. JUNE told the committee he is a 22-year commercial fisherman and is testifying as such. He reminded members that the salmon industry is in deep trouble [economically] and that a task force and a number of other entities are looking at trying to improve it; he expressed gratitude that the major consideration is market-based. He encouraged the committee to investigate this and make the right decision for all Alaskans.

The committee took an at-ease from 9:07 p.m. to 9:09 p.m.

Number 2003

BILL HAUSER, Ph.D., testified that he is in support of [Alaska's] fishery resources, the unique habitats that are required to support them, and their long-term sustainability. He said he thinks this can best be accomplished by retaining the function of habitat protection within a resource conservation-based agency. Noting that he is a retired fish biologist from ADF&G but has never been a "permitter," he said, most importantly, that he is testifying as a fisheries scientist: he holds a Ph.D. in fisheries, with over 30 years' experience; is past president of the Alaska chapter of the American Fisheries Society, which includes over 400 fisheries scientists in Alaska; has been in Alaska 22 years; and has past involvement including fisheries enhancement and fish habitat enhancement projects and community education regarding the importance of good-quality fish habitat to preserve fisheries.

DR. HAUSER said fish is the most important [resource] in Alaska. He remarked, "If we care about the legacy of this resource for future generations, we must protect the production factor for that resource: good-quality fish habitat for spawning, rearing, escape, overwintering, and open passage and access and migration amongst these habitats." In addition, he noted, when the nutrients from anadromous fish populations are reduced or destroyed, other resident fish populations, birds, wildlife, and even streambed vegetation are diminished. He continued:

We've heard here tonight how the numbers of salmon returning to Alaska streams have been decimated over time, but they've rebounded with good management. More specifically, however, they have only rebounded in areas with healthy, intact habitat. If the habitat is missing, the fish populations cannot recover. Lost habitat sometimes can be repaired, but the cost of repair is far greater than the cost of protection. Even with repair, it can never be restored to the original condition; there is always a net loss.

Number 1920

DR. HAUSER continued:

Until now, these important fishery resources have had a measure of protection with equal consideration with development, or other important natural resources, through our open discussion with checks and balances. If the function of habitat protection is included in the Department of Natural Resources, whose primary mission is resource development, one can only assume that when decisions are made - which would be made internally and not publicly, with a smaller staff - ... this system will favor resource development at the detriment of our aquatic resources. Sometimes there may be large-scale losses, but small-scale losses will also accrue with each project and accumulate each year for a long-term ... loss.

DR. HAUSER said he disagrees with the previously stated testimony of Mr. Rosenberg, who suggested that "this proposed new process has not been tested." He indicated he has been told by people in Washington State that EO 107 resembles the approach that's been in place there, where anadromous fish runs have been depleted to about 3 percent of historic levels; this is attributed to the loss of habitat and degradation in a matter of just a few human generations. Dr. Hauser said, "Clearly, this system was tested and did not work in the state of Washington, and it is not clear why it will work in Alaska." He said this isn't the sort of legacy he envisioned. He asked the committee to reject EO 107 and retain the function of habitat protection within ADF&G.

Number 1830

WILLY DUNN noted that many potential testifiers [at the Homer Legislative Information Office (LIO)] had to return home; he expressed hope that members would read their faxed testimony and remember that many people around the state are very concerned about this. Mr. Dunn expressed concern that EO 107 will have long-term negative impacts on Alaska's fish and wildlife; those impacts may not be seen for 20 to 50 years. He said he wants his grandchildren to have jobs and enjoy Alaska, just as Commissioner Irwin stated. He added, "Forty or fifty years from now, when his grandchildren are in Alaska, I hope they're not saying, 'What was grandpa thinking when he did this!'"

MR. DUNN said he thinks EO 107 will also precipitate lawsuits. He said the [Division of Habitat and Restoration] is in place and works with industry. Although it's not always easy and straightforward, that's how government is. Mr. Dunn opined that a change to statute as broad and far-reaching as EO 107 really needs to be taken on by the legislature through thoughtful deliberation and an open public process, rather than through an executive order. He said Alaska is not a business. The effect will be upon people's lives and the future of wildlife in the state, as well as [Alaskans'] children and grandchildren.

Number 1724

NICKY SCARZI noted that she works for ADF&G's Division of Sport Fish, but is testifying on behalf of herself. She said she provides local expertise on the fisheries that she is familiar with to habitat biologists when they are dealing with permits; in return, when she or a member of the public needs response to an issue, she can talk with habitat biologists. If those biologists are moved to DNR, she said, she doesn't know what kind of responsiveness she will receive with regard to issues that she thinks are important. Ms. Scarzi said DNR has a mission different from ADF&G's, and she doesn't know that they will put the same emphasis on fisheries issues that the Division of Habitat [and Restoration] would put on the same issues if it were to remain in ADF&G.

REPRESENTATIVE SEATON, regarding Title 16 permits, asked Ms. Scarzi if she or someone from the [Division of Habitat and Restoration] visits that stream before giving permits.

MS. SCARZI answered that she doesn't see every permit the division deals with; if someone from the division isn't familiar with that stream and cannot go look at it, she or a member of her staff will visit the site.

Number 1610

SETH LITTLE, Alaska Center for the Environment (ACE), noted that ACE is Alaska's largest homegrown public-interest environmental organization, with over 8,000 dues-paying members. He told the committee:

We recognize the need to develop our state's resources, but also identify the responsibility to conserve and to protect the state's fish and wildlife resources. Alaska's economy and Alaskans depend on their unique fish and wildlife. Commercial and sport fishermen, hunters, trappers, hunting and fishing guides, subsistence users, and the tourism industry rely on healthy fish and wildlife.

In order to fully comprehend and assess the impact of the governor's proposal, the missions of ADF&G and DNR need to be understood; they are very different. [ADF&G's] mission is to protect and develop Alaska's fish and wildlife resources, while DNR's mission is to promote development of the state's resources. These two missions balance each other and work together to provide a system of checks and balances and an opportunity for fish and wildlife biologists to work with developers through the permitting process. That is why the First [Alaska] State Legislature created two separate resource agencies to manage the state's unique and diverse resources.

By moving the permitting authority to one agency, one agency is given [primacy] in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development. We believe that if [the] permitting function is transferred to DNR, the balance will be tilted away from habitat protection to the long-term detriment of our fish and wildlife resources. Under the proposed executive order, for the first time in Alaska's history, fish and game permitting and habitat protection will no longer reside in [ADF&G]. [ADF&G] will lose its authority and the [Division of Habitat and Restoration] will be eliminated, cutting 22 jobs and transferring 36 positions to DNR.

The executive order will change the standard of scrutiny. The system of checks and balances will be gone. There will be no need for DNR or industry to work out problems with [ADF&G]. The appeal process will be entirely through DNR. This is far more than a process change; this is a major, substantive, and statutory change.

Without review of plan and specifications, there's a substantial risk that many anadromous streams, as well as resident fish streams, will be blocked and a significant amount of fish production will be lost, as has already occurred throughout the Pacific Northwest.

Governor Murkowski's plan prevents fish and game biologists from speaking up about the impact on fish and wildlife habitat from industrial development. Under the super DNR, fish and game biologists and even ADF&G commissioner roles would only be advisory, with no power to prevent the stressing of habitat. All decisions would be made by DNR, the department responsible for development.

Number 1502

MR. LITTLE continued:

The cost of this proposal are [borne] on the backs of Alaska's fish and wildlife and Alaskan residents and (indisc.) who depend on them. The Murkowski Administration contends that [the Division of Habitat and Restoration] stands in the way of legitimate projects for personal reason. When Governor Murkowski's examples and habitat permitting history is examined in detail, it is clear habitat permitting is timely, especially in comparison with DNR, and the cited examples show how ADF&G is upholding the standards required to protect habitat under state law.

MR. LITTLE said if there are problems with personal views and actions impeding projects, then this is a management situation that should be handled through proper discipline. He indicated that the facts relating to issuing permitting don't point out a permanent problem. He also said it doesn't appear moving Title 16 permitting to DNR will speed up the process. He said, "With less staff, less balance, and less accountability, it appears that project proposals may lead to litigation and more delays."

He said ACE urges the legislature to bring the issue to the House and Senate floors to be debated and to support a resolution to disapprove EO 107.

Number 1442

ERIC KNUDSEN, Ph.D., told the committee he is a professional fisheries scientist with over 20 years' experience in management and research on pacific salmon, trout, and other fish and wildlife. He has conducted studies in Alaska and the Pacific Northwest, many of which focused on the effects of habitat alterations on the ecology and productivity of salmon and trout. He said he is a member of the American Fisheries Society and is the current past president of the western division of that society. He mentioned a copy of [the opinions of] that society, which he said he'd attached to his own submitted written testimony. He continued as follows:

There are three scientifically based points that, taken together, argue for a resolution to reject EO 107. First, there's absolutely no scientific doubt that healthy stream and riparian habitats are fundamental to the amount of salmon, steelhead, and other related fish and wildlife produced in the Alaskan watershed.

Second, a combination of solid science in Alaska and elsewhere, together with a long history of experience in the Pacific Northwest, clearly demonstrate that the gradual, incremental, cumulative effects of numerous, seemingly minor habitat alterations can lead to the destruction of the habitat base that supports productive salmon and other fisheries.

Number 1382

DR. KNUDSEN continued:

Third, a scientific research in the Pacific Northwest has led to the conclusion that it's much more difficult to repair stream and riparian habitats to their fully functional state than it is to simply protect the natural stream functions in the first place.

In regard to the State of Alaska administrative procedure that may be [of] most interest to the [House

State Affairs Standing Committee], it's extremely difficult to disengage the effects on habitat from the administrative process. The scientific basis for protecting habitat is largely indisputable. So, the effectiveness of protection completely depends on, first, the attitude of the commissioner or the agency responsible for the protection - the policy attitude, that is; second, the extent of protection allowed within that department or organization; and, third, the number of employees or resources that are put toward that protection.

It's impossible to judge how effectively habitat will be protected if the permitting functions are transferred from ADF&G to [DNR], but because the stated purpose ... is to speed and streamline development, I can only believe that habitat protection will be less effective.

DR. KNUDSEN suggested the potential problem perhaps lies in the administration's policy of wanting to speed development. Because [Alaska's] salmon resources are so important and solid scientific evidence demonstrates that healthy habitat is key to sustaining the salmon fisheries, he urged the legislature to reject EO 107 and retain habitat-permitting functions within ADF&G.

Number 1260

DALE PIHLMEN told the committee he is a long-time resident of Ketchikan and is against EO 107. He opined that it is a poor idea that will weaken protection of valuable salmon streams and spoil the aesthetic of valuable wilderness, with potentially disastrous economic consequences. Mr. Pihlmen said he has spent 20 years as a commercial fisherman and 20 years in the tour industry; both industries are dependent on the biological integrity of Southeast Alaska's ecosystems. He said streams in Southeast Alaska are an important element in the ecosystems and are essential for the economic well-being of both industries. Specifically, protecting [the state's] salmon streams is essential for future economic viability of the salmon industry.

MR. PIHLMEN indicated the state has had the benefit of good management from ADF&G, but pointed out that the level of abundance currently being experienced is the result of cyclic environmental factors that affect ocean currents, weather, and temperatures, but that aren't well understood. He said the

years of full return prompted major changes in the salmon industry such as limited entry and a private, nonprofit hatchery system. He warned that Mother Nature is fickle and the cycle of abundance could quickly change; as a result, salmon runs could dry up dramatically. He mentioned biological integrity of streams as well as support for the tourism industry, and said streams and uncut old-growth timber are the heart and soul of ecosystems in Southeast Alaska. He concluded:

As wilderness ... diminishes and the population increases, the value with these valleys increases exponentially. The value of timber and their streams in Southeast Alaska to tourism and the fishing industry far exceeds its value as timber harvested every hundred years. The governor's proposal would dramatically weaken protection of the areas that are essential to the long-term economic viability of the fishing and touring industries for short-term gain of the timber industries.

Number 1127

MATTHEW LaCROIX testified that he currently works in ADF&G in the Division of Habitat and Restoration as a habitat biologist and "permitter." He told the committee he was one of 22 employees who received a layoff notice last Friday. He asked the committee to support the joint resolution rejecting EO 107.

MR. LaCROIX said the committee members need to honestly examine the issue of whether the proposed transfer of Title 16 permitting authority out of ADF&G will benefit or harm the state. He opined that this is a question the legislature has the obligation to answer before the executive order is allowed to take effect. Mr. LaCroix said that in the business world, a company reduces its workforce only if it decreases production or if advances in technology allow fewer workers to produce the same or more. Saying the new habitat office in DNR claims it will be able to process the same number of permits with 22 fewer employees than it currently takes, he told members:

When you reduce permitting staff, you undermine the ability of remaining staff to issue meaningful permits, regardless of what department they've worked for. Very few of the permits that I personally wrote were off-the-shelf. Just like the fish habitat permits issued to Fort Knox that Commissioner Irwin has said such positive things about, most of these

permits were issued after hours of background research and consultation with applicants and staff from other departments and agencies. Often, we need to conduct field visits or collect biological data before a permit can be issued.

Number 1045

MR. LaCROIX continued:

The amount of time that we can currently spend working with applicants is characterized by the governor's stalling, but it means that few applications are ever denied. It also means that instead of superficially reviewing an application, in either approving or denying it as proposed, we can look for alternatives that benefit both the applicant and the environment.

MR. LaCROIX mentioned the Glenn Highway-Parks Highway interchange work that the governor has cited as one case where the [Division of Habitat and Restoration] "stalled" a legitimate project. Mr. LaCroix said nothing could be further from the truth. He indicated that staff had worked with contractors to modify the project in many significant ways that resulted in saving substantial amounts of money.

MR. LaCROIX summarized that this reorganization will lead to increased permit backlog, more permit denials, less effective permits with less monitoring and compliance, and permitted projects that will have greater environmental impact. This transfer of permitting authority will place the state's valuable fish and wildlife resources at risk and open up the state to lawsuits, while gaining nothing in exchange. He said members of this committee have an obligation to act in the best interest of their constituents and the state; in this case, that obligation requires nothing less than the rejection of [EO 107].

Number 0957

GARVAN BUCARIA paraphrased his written testimony [included in the committee packet] as follows:

The major theme that the governor has agreed to ... under the constitution is perpetuation of productive, healthy stocks of fish and wildlife available to the people, these are found in Sections 1, 2, 3, 4, and 16 of our state constitution, Article VIII, natural

resources. ... Before now, the executive branch of the state delegated responsibility for fish and game and their habitat to [ADF&G]. Now the governor's promulgation of EO 107 eliminates the commissioner of [ADF&G's] authority to protect aquatic habitat by deleting ... the [Division of Habitat and Restoration].

Shifting responsibility to DNR, "deputy commissioner/state forester" raises serious questions as to the wildlife and fisheries habitat oversight. Public perception is important. It would convey an impression of subordination of fish and wildlife habitat protection for development concessions.

I believe it is a mistake to implement EO 107, and I ask that the [legislature] exercise [its] role in the government district roles of checks and balances, and reject EO 107 on behalf of the people of Alaska. I also ask those members of the legislature who have to recuse themselves, who might have conflicts of interest concerning pending court cases involving permitting actions through [ADF&G] [Division of] Habitat and Restoration [to do so].

Why change something that works? On the second page [of the written testimony] I'll refer you to items 4, 5, and 6, which may have economic implications relative to the shift in authority for habitat protection.

[EO 107 was held over.]

#### **ADJOURNMENT**

Number 0803

The House State Affairs Standing Committee meeting was recessed at 9:36 p.m. [The meeting was reconvened March 12, 2003, at 6:30 p.m.]