

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

March 12, 2003

6:30 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 ADFG TO DNR

- HEARD AND HELD

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

OWEN GRAHAM, Executive Director
Alaska Forest Association
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of EO 107, and attempted to counter allegations that fish culverts were improperly installed on forest service land.

GEORGE WOODBURY
Woodbury Enterprises
Wrangell, Alaska

POSITION STATEMENT: Testified in support of EO 107 as a means to restore balance, develop resources, and boost the state's economy.

DAVID PERSON, Ph.D.

Ketchikan, Alaska

POSITION STATEMENT: Urged the committee to rescind EO 107, and provided the committee with comparisons between the permitting processes of ADF&G and DNR.

JACK GUSTAFSON

Ketchikan, Alaska

POSITION STATEMENT: Offered six reasons to oppose EO 107.

MIKE SALLEE

Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

JASON GRAHAM

Anchorage, Alaska

POSITION STATEMENT: Provided comments and asked the committee to take action to reject EO 107.

CATHERINE SENUNGETUK

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

JAN KONIGSBERG

Trout Unlimited

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 on behalf of the Alaska field office of Trout Unlimited.

LEO KEELER

Anchorage, Alaska

POSITION STATEMENT: His testimony opposing EO 107 was read by Dorothy Keeler.

MEAGAN BOLTWOOD

Anchorage Waterways Council (AWC)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

JIM STUBBS

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and the transfer of habitat functions to DNR.

BRUCE HARDING, Mayor

City of Wrangell

Wrangell, Alaska

POSITION STATEMENT: Testified in support of EO 107 and the governor's efforts to improve the economy of the state.

SPENCER SEVERSON

Sitka, Alaska

POSITION STATEMENT: As a member of the Southeast Alaska Dive Fisheries Association (SARDFA), objected to SARDFA's endorsement of EO 107.

LON GARRISON

Sitka, Alaska

POSITION STATEMENT: Provided comments and urged the committee to prohibit EO 107 from proceeding.

KHRYS DUDDLESTON

Girdwood, Alaska

POSITION STATEMENT: Provided comments and asked that steps be taken to reject EO 107.

STEVE ALBERT

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and asked the committee to vote against it.

CEVIN GILLELAND

Chugiak, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments and a description of three projects he was involved with as a habitat biologist in order to explain that EO 107 is based on faulty information, and urged the committee to sign the joint resolution and reject EO 107.

EDWARD W. WEISS

Chugiak, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments and asked the committee to vote down EO 107 and EO 106.

GEOFFREY Y. PARKER, Attorney at Law

Counsel, Alaska Sportfishing Association;

Vice President, State Council of Trout Unlimited

Anchorage, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments regarding its budget and personnel aspects.

JOHN NELSON TRENT

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and asked the committee to prevent it from becoming law.

BOB ZACHEL

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of EO 107.

ARTHUR HUSSEY, Executive Director

Northern Alaska Environmental Center

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and asked the committee to take action to oppose it.

RUSSELL DEFOREST

Fairbanks, Alaska

POSITION STATEMENT: Provided comments that EO 107 erodes the public trust and asked the committee to not support EO 107.

DAVID P. JANKA, Owner/Operator

Auklet Charter Services

Cordova, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and urged the committee to reject it.

JOHN SISK

Juneau, Alaska

POSITION STATEMENT: Testified that he did not support EO 107 and spoke on the issue of habitat management as it relates to the fishing industry.

BEN KIRKPATRICK

Juneau, Alaska

POSITION STATEMENT: After noting that he is habitat biologist, relayed that there are several reasons for not approving EO 107.

CATHERINE POHL

Juneau, Alaska

POSITION STATEMENT: During discussion of EO 107, noted that she is a habitat biologist with ADF&G but testifying on her own behalf that among other things, EO 107 will not do what it is intended but will instead result in a degradation of habitat and loss of federal funds.

DALE KELLY, Executive Director

Alaska Trollers Association (ATA)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

MIKE ROBBINS

Alaska State Employees Association (ASEA) Local 52
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and urged the committee to take action to reject it.

CELIA ROZEN

Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of EO 107 and asked the committee to support the special concurrent resolution disapproving EO 107.

WADE WILLIS, Owner

Vision Quest Adventures

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107.

SCOTT THORSON

Anchorage, Alaska

POSITION STATEMENT: Testified in support of moving the habitat division to DNR.

JOE MEEHAN

Anchorage, Alaska

POSITION STATEMENT: Provided comments and suggested that the committee should prevent EO 107 from being implemented.

JEANNE WALTER

Chugiak, Alaska

POSITION STATEMENT: Provided comments and asked the committee to disapprove both EO 107 and EO 106.

AARON BENJAMIN

Talkeetna, Alaska

POSITION STATEMENT: Provided comments during discussion of EO 107.

ERIC MUENCH

Ketchikan, Alaska

POSITION STATEMENT: Provided comments, testified in support of EO 107 and in opposition to HSCR 1, and urged the committee to support EO 107.

JILL JACOB

Ward Cove, Alaska

POSITION STATEMENT: Provided comments and requested that the committee vote in joint session to disapprove EO 107.

SHELLY STALLINGS
Ketchikan, Alaska

POSITION STATEMENT: Provided comments and asked the committee to deny EO 107.

DAVID CARTER, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Provided comments, remarked that EO 107 is not a good idea, and asked the committee to keep habitat issues under the purview of the ADF&G.

JOSEPH R. SULLIVAN, Ph.D., Program Director
Yukon River Drainage Fisheries Association (YRDFA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and requested that the legislature block EO 107.

PAULA TERRELL
Juneau, Alaska

POSITION STATEMENT: During discussion of EO 107, testified on her own behalf as a commercial fisherman that EO 107 ought to be overturned.

GINNA PURRINGTON
Alaska Wildlife Alliance (AWA)
Anchorage, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments, spoke of the DNR's current backlog of over 700 water rights applications, and asked the committee to disapprove of the executive order switching permitting authority from the ADF&G to the DNR.

JOSH PEIRCE
Anchorage, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments, listed some specific applications that are currently in DNR's backlog, and suggested that EO 107 will neither streamline the process nor save the state money.

RUTH BAUMAN
Anchorage, Alaska

POSITION STATEMENT: Provided comments and said she supports the concept of EO 107.

DAMIAN WALTER

Chugiak, Alaska

POSITION STATEMENT: Testified that he disapproves of EO 107.

MARK FINK

Anchorage, Alaska

POSITION STATEMENT: Provided Comments and urged the committee to disapprove EO 107.

WILLIAM H. DENNERLEIN

Anchorage, Alaska

POSITION STATEMENT: During discussion of EO 107, provided comments, noted that the governor's habitat transition team never met with the Division of Habitat and Restoration, and urged the committee to oppose EO 107.

MARYELLEN OMAN, President

Anchorage Audubon Society

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of EO 107 and stated that the Anchorage Audubon Society is firmly opposed to Executive Order 107 and supports SSCR 1 and HSCR 1.

VALANNE GLOOSCHENKO, MSc.

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to EO 107 and asked the committee to disapprove it.

ACTION NARRATIVE

TAPE 03-23, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting, which had been recessed on March 11, 2003, back to order at 6:30 p.m. Representatives Holm, Seaton, Lynn, and Weyhrauch were present at the call to order. Representatives Dahlstrom, Berkowitz, and Gruenberg arrived as the meeting was in progress.

EXECUTIVE ORDER 107 - TRANSFER OF HABITAT FUNCTIONS FROM ADFG TO DNR

Number 0033

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

Number 0080

OWEN GRAHAM, Executive Director, Alaska Forest Association, testified in support of [EO 107]. He stated his belief that having one agency acting to ensure that there is responsible development will adequately protect the environment and reduce the cost of government.

OWEN GRAHAM referred to recent allegations that some 70 percent of the fish culverts on forest service land were improperly installed and now block fish passage. He opined that the truth is that most of the culverts in question were properly installed, following the standards that were in place at the time. He explained that the forest service had informed him that the old standard was in conformance with a memorandum of understanding (MOU) between the state and the forest service. Then, when the current standard was adopted, the forest service also adopted it and, at that time, estimated that some 70 percent of its existing culverts might need to be upgraded. He told the committee that the forest service is currently spending approximately \$2 million a year examining and, where necessary, upgrading the older culverts.

OWEN GRAHAM stated that he thinks it is unfair and dishonest to use misinformation to try to block the proposed streamlining of state government, and he encouraged the committee to contact the forest service for confirmation what he'd just told them.

Number 0185

GEORGE WOODBURY, Woodbury Enterprises, indicated that he is a forest consultant from Wrangell, Alaska. He stated his support of [EO 107] and whatever else the governor thinks is necessary to streamline and restore balance to the management of the state's resources in order to once again see resource development and the resulting economy.

Number 0253

DAVID PERSON, Ph.D., after noting that he is a research biologist with the Division of Wildlife Conservation, Alaska Department of Fish & Game (ADF&G), told the committee that he is testifying on his own behalf. He stated that he has not seen

any compelling evidence or information provided by the governor's staff that justifies [EO 107], adding that all the allegations and innuendo put forward by the governor and his staff fall flat when investigated. Furthermore, examination of the [Division of Habitat and Restoration ("Division of Habitat")] reveals a dedicated, professional staff doing the job expected of it.

DR. PERSON opined that the statements "blasting" the Division of Habitat and Restoration say more about the mindset and character of the governor's administration than they do about the division. Furthermore, he relayed, [EO 107] appears to him to be nothing more than a punitive effort to punish the division and staff for doing their job.

DR. PERSON continued:

Last Friday, Commissioners [Kevin] Duffy and [Tom] Irwin refused to discuss any of the charges made against the division. They said that those issues were in the past and ... [that] it's time to move forward. That is the same dysfunctional behavior displayed by a man who beats his wife and then tells her the next day, "Honey, never mind the black eyes, forget the past, it's time to move on."

DR. PERSON stated that every habitat biologist whom he knows has been chronically overworked trying to protect Alaska's vital fish and wildlife habitats. He said that there are not enough habitat biologists now to do the job effectively; therefore, scaling down staff and moving the division into another department will not create greater efficiency or maintain quality. He emphasized that quality, not efficiency, is what matters, and suggested that EO 107 will result in a "rubber-stamp proposal."

DR. PERSON said that many of the comments he has heard come from those who do not understand the laws of protecting the state's fish and wildlife resources, or who have no clue about the process of getting permits. He suggested that the place to start gaining efficiencies - rather than dismantling the Division of Habitat - would be to educate the public regarding its responsibilities and help it be prepared to enter the process of getting permits. He added, "Of course, if the goal is really to gut the laws and rubber stamp the projects, then the administration doesn't need any habitat biologists - just lawyers."

Number 0409

DR. PERSON relayed the following:

A few years ago, my colleagues and I needed to build a cabin on a remote island, to create a base camp for a research project. We selected unused state land for the project and applied for a permit to build. [The Department of Natural Resources (DNR)] informed us that it would take three (indisc. - coughing) years to process our application.

DR. PERSON also relayed that a few years ago, timber planters for DNR drafted a project proposal for timberland on Prince of Wales Island. They described populations of red squirrels, porcupines, and snowshoe hare. Mr. Person stated that none of those species live on the island. He added: "Apparently, DNR staff writing the sections ... of the proposal never visited the site or did their homework. It took a habitat biologist to point out their mistake."

DR. PERSON, in conclusion, urged the committee to reject EO 107.

Number 0482

JACK GUSTAFSON told the committee that although he is a habitat biologist employed by ADF&G, he is testifying on his own behalf. He listed the following reasons for his opposition to EO 107: First, the Division of Habitat is mostly federally funded. He asked, "Why decrease their staff and eliminate federal funding that currently (indisc.)?" Second, the executive order will not streamline the process because most of the work [the division] does requires coordination of other employees within ADF&G, not DNR. He said that involving DNR in all that [the division] does will complicate the process and compromise efficiency, and provided an example.

MR. GUSTAFSON continued listing his reasons for opposing EO 107: Third, valuable fish and wildlife habitat will be needlessly damaged. He warned that the impacts on fish and wildlife as a result of [EO 107] will be much greater than the average person might imagine. Fourth, the plan may backfire because, as the state backs out of resource protection, the federal government will start playing a more authoritative role. He told the committee that [the division] currently works with several federal agencies, adding that everyone benefits from such a

cooperative approach. He said that there could be many unintended consequences of eliminating the Division of Habitat, and offered an example.

MR. GUSTAFSON stated his fifth point: EO 107 is being implemented through intimidation and misinformation rather than through fair and balanced dialogue. He told the committee that habitat biologists were placed under a gag order in December; when they received any calls from the media, they were instructed to tell the reporters that they would get back to them regarding their questions. Those questions, he said, were then sent up to the governor's office for a response. He stated that the gag order on political appointees has been lifted, but the gag order on habitat biologists is still in effect.

MR. GUSTAFSON offered his final reason: The public has been misled as to why this action is being taken. He relayed that in his state of the state address, the governor had said that [EO 107] is necessary because the Division of Habitat delayed or opposed certain developmental projects. Mr. Gustafson explained that one of the examples given was a review that he'd handled, and the division did not delay or oppose that project. He stated that the governor's characterization, broadcast across statewide television, was erroneous.

Number 0700

CHAIR WEYHRAUCH requested that Mr. Gustafson submit the remainder of his testimony in writing and include copies of the gag orders that were received.

Number 0775

REPRESENTATIVE BERKOWITZ remarked that he would like to see whose gag order it was and why it was imposed. He opined that someone from the administration should be present to listen to the testimony regarding the executive order. He emphasized that when the [administration] support bills or executive orders, it ought to be present.

CHAIR WEYHRAUCH relayed that he'd previously told DNR representatives that they did not have to come. He said he would make certain that Mr. Gustafson's comments would be forwarded to them, and that he would get comments in response.

Number 0905

MIKE SALLEE testified that he was born in Ketchikan and has resided there most of his life. He said that for the past two decades, he has worked on boats up and down the coast of Southeast Alaska as a longline fisherman. He noted that he is represented by the Alaska Longline Fishermen's Association (ALFA), which opposes EO 107.

MR. SALLEE told the committee that he has also been involved in harvest diving for the past two decades. He indicated that there is an organization of harvest divers and, while it has come out in support of EO 107, the support is not unanimous - many divers are incensed by the executive order.

MR. SALLEE said that he has also owned and operated a small sawmill for the last 20 years, providing lumber for over 100 clients, including neighbors, people in other parts of Southeast Alaska, and clients outside of the state. He continued:

The governor has surrounded himself with several former timber industry lobbyists, timber industry legal counsel, a former pulp mill manager, [and] a former regional forester. In short, a corporate green team heavily weighted toward the timber industry. In noting the habitat biologists laid off, it appears the Murkowski team did not like the message delivered by those biologists and is responding by disposing of the messengers.

Reducing habitat personnel, as the governor has done in Ketchikan, Sitka, Anchorage, Juneau, and elsewhere, will mean fewer hours in the field and, therefore, less data upon which to base enforcement. From my layman's perspective, there are two parts to law: the written statute and, equally important, the enforcement part. We can have great statutes, but they're utterly useless if activities in [the] field are not monitored and enforced.

Over the last several days, I've heard and read numerous innuendos and complaints about [the Division of Habitat]. Every complaint that has been significant, or specifically identified, has been thoroughly explained and rebutted by ADF&G personnel. I can only conclude that [the] executive order is not about streamlining, it's about rubber stamping. Please bring to a floor vote a resolution to reject EO 107. Our fish and wildlife is too valuable to be

making a decision geared primarily toward tending favors from those in power.

Number 0967

JASON GRAHAM asked that the committee take action to reject EO 107 and keep the authority and responsibility to protect fish within the ADF&G. He opined that the ADF&G is the most appropriate agency to manage the state's permit system that protects the habitat which produces the fisheries resources that benefit Alaskans. He noted that the ADF&G's statutory purpose is to manage, protect, maintain, and, where possible, extend the fish and game resources in the interest of the economy and general well being of the state. He said that the value of the state's commercial, sport, and subsistence fisheries exceed that of all other industries except the oil industry.

JASON GRAHAM stated that fish habitat loss and migrational blockages are the number one reason [that] anadromous fish populations have declined to disastrous levels in the United States. He said: "Habitat loss is forever. Habitat protection is relatively inexpensive compared to restoration. Please don't change a system that is efficient and works."

Number 1026

CATHERINE SENUNGETUK, testifying on behalf of herself, told the committee that she has lived in Alaska for 27 years and works as an elementary school nurse. She stated that she is testifying because she cares about the state and its future beyond the current generation. She asked the committee to accept a resolution to disapprove EO 107, and that the executive order be allowed onto the floor for a vote in joint session.

MS. SENUNGETUK said that one reason to override EO 107 is that there is a high risk that it will negatively impact fishing in Alaska, including sport, commercial, and subsistence fishing. She stated that fish are Alaska's greatest and most sustainable renewable resource. She asked, Why would the state risk this renewable resource in an act which would undo the oversight that has been in place since statehood and which was integral to Alaska becoming a state? She said that if the Division of Habitat is gutted, there will be no safeguards in place for fish and fish habitat. She added that DNR's mission is to develop, rather than manage, protect, and maintain.

MS. SENUNGETUK, noting that she has heard many promises and assurances from DNR and those who support EO 107, said, "Just because someone gives us careful verbal reassurances, once authority is in place, anything can happen." To illustrate this point, she noted that when Governor Frank Murkowski was criticized recently regarding his proposed \$10 tax on each new studded tire, although he'd run for office "on no new taxes," his response was, "Well, you don't have to drive." She asked, "Are we also going to say, 'You don't have to fish'?"

Number 1119

MS. SENUNGETUK proffered that another reason to override EO 107 is that loss of habitat will have a [negative] impact on tourism too - another of Alaska's most renewable resources. She stated that EO 107 will essentially take away the ability of ADF&G to uphold its mission to protect, maintain, and improve the fish, game, and aquatic plant resources of Alaska. She opined that [EO 107] does not show good stewardship; if Alaska ever wants to attempt to solve the subsistence issue, [EO 107] is not a good first step, neither towards the state's example of leadership to the federal government, nor in the actions of the state towards the Alaska Native peoples and anyone who fishes in Alaska. She reiterated her request that the committee accept the resolution to disapprove EO 107, and that EO 107 be allowed to come to a vote in joint session.

Number 1157

JAN KONIGSBERG said he was testifying on behalf of the Alaska field office of Trout Unlimited, adding that Trout Unlimited is the largest coldwater fish and watershed conservation group in the country. He referred to a recent press conference when Commissioners Duffy and Irwin were asked about habitat division personnel refuting the governor's allegations. He noted that Commissioner Duffy had said that those statements refuting the governor's allegations were simply opinions, and that Commissioner Irwin said something about, "Perception is reality." Mr. Konigsberg suggested that such statements, as were made by the commissioners, is "a very convenient way to run a government."

MR. KONIGSBERG noted that yesterday, Commissioner Duffy, in response to Representative Berkowitz's question about whose idea this was, acted like he didn't know. Mr. Konigsberg remarked that if EO 107 is really such a great idea, the person or persons who thought it up should take credit; likewise, if it's

really a bad idea, they ought to accept the responsibility. He posited that the Division of Habitat is not the only thing that is being transferred out of the commissioner's office at ADF&G - integrity is also being transferred out.

MR. KONIGSBERG turned to the subject of efficiency. He referred to getting rid of half the positions in the Division of Habitat and transferring them to DNR for the sake of efficiency. He suggested that if efficiency in government is prized above all else, wouldn't downsizing the legislature by one half and consolidating it into a unicameral body be worth considering? On the same note, he said he would like an explanation as to why DNR has taken more than six months to decide what it will do about Afognak Native Corporation loggers having cut trees all the way down to the stream bank. He clarified that he is not saying that DNR is shirking its duty or abusing its public trust; rather, DNR is responding slowly, and perhaps there are reasons for that. In other words, he explained, efficiency is not necessarily the paramount value. He opined that the only type of government that values efficiency above all else is a Fascist government, adding that a representative government is supposed to take its time and be deliberative.

MR. KONIGSBERG concluded by suggesting that everyone agrees with former President Reagan when he said, "Trust, but verify." He told the committee that if EO 107 is accepted, Trout Unlimited has plans to set up a monitoring program to evaluate specific projects to ascertain how well those projects conform to the law. He stated that [Trout Unlimited] opposes EO 107 and hopes that the legislature will turn it down.

CHAIR WEYHRAUCH told Mr. Konigsberg that he will be particularly interested in the results of Trout Unlimited's monitoring efforts.

Number 1316

LEO KEELER had his testimony read by Dorothy Keeler, who said that although Mr. Keeler's testimony is on behalf of himself, she thinks it is important that the committee know that he is the real estate specialist for the Chugach National Forest; has served as the operations and logistics chief during the Exxon Valdez Oil Spill and testified as an expert witness during the trial; and has two decades of work experience as an expert in federal permitting and easement.

MR. KEELER'S testimony read in part:

I am writing to oppose passage of the governor's Executive Order 107, directing the combination of "Habitat" and DNR. I've been in Alaska for over 20 years and, through my federal job dealing with land, have had numerous opportunities to work with both the habitat division of ADF&G and [with] DNR. I have always found DNR extremely difficult to work with and never responsive to problems. The long history of DNR's budget being reduced has only made the problem worse.

Recently, I was told if I wanted DNR to act on my request for road access, ... I would need to provide the funding to hire someone to do their paperwork. With their attitude that "those that pay get service," only large companies will gain the attention of DNR's staff and thus the permits they need. This process will prevent diversification of our economy through developing small business.

The logging of Native lands throughout Alaska is a prime example of poor environmental oversight by DNR staff. The DNR forester from Glennallen was responsible for assuring the Iyak Corporation's logging near Cordova was done improperly.

CHAIR WEYHRAUCH, noting that the committee had time restraints, interrupted Mrs. Keeler to make certain she would send Mr. Keeler's complete testimony to his office.

Number 1430

MEAGAN BOLTWOOD, Anchorage Waterways Council (AWC), said that the AWC is opposed to EO 107 because it believes it is not in the public's best interest. She noted that the full version of her testimony had been submitted to the committee. She continued:

[The] AWC has worked with both ADF&G and DNR to initiate and complete several restoration projects throughout Anchorage. In our experience, ADF&G has taken a proactive approach to protecting fish and wildlife, by working with us to restore Ship Creek. [The] ADF&G's [Division of Habitat] has been helpful, knowledgeable, and supportive of our efforts. The gag order imposed by the Murkowski administration has hurt

our relationship with ADF&G's habitat biologists and stalled several restoration projects.

[The] AWC has had difficulties working with DNR. When we urged DNR to adjudicate decade-old water right applications on Ship Creek, DNR responded that they had neither the staff nor the funding to process these applications. Thanks to the assistance of ADF&G, these applications are now being processed. My question is this: Why would the state give additional responsibility to an agency that is unable to carry out its existing mandate? Nowhere in its mission does DNR adequately address fish and wildlife concerns and the protection of the public's use of these resources. Unless DNR changes its mission, it is unlikely that fish and wildlife will receive the same protection under EO 107.

Even with the promises of restructuring and commitment to the environment, this transfer will create disturbance, confusion, and unnecessary hostility. The [Division of Habitat] has successfully worked with industries, agencies, organizations, and citizens within its existing permitting authority. [Executive Order 107] is designed to fix a problem that doesn't exist. This transfer is a waste of time and money. This so-called agency streamlining led to habitat destruction in the Lower 48. ... Support the existing checks and balances that have established Alaska as the model for fisheries management. Keep the endangered species act out of Alaska by opposing EO 107.

Number 1553

JIM STUBBS told the committee that he is a 32-year resident of Alaska and a constituent of Representative Bob Lynn, and that he has worked from Prudhoe Bay to Ketchikan. He stated that his reason for coming to Alaska was because of the state's rugged beauty and hunting and fishing opportunities, adding that he wanted to raise his family in this environment. He said that the use of the state's hunting and fishing resources are important to his family, as well as to "all the people of the state of Alaska." He opined that habitat is the key to the production of Alaska's salmon stock, adding that proof of this is in the states of Washington and Oregon, where the loss of

habitat has taken away the wild fish, and fish (are now) produced in plastic buckets.

MR. STUBBS told the committee that he is a member of the Anchorage Fish and Game Advisory Committee, which represents nearly 50 percent of the population of Alaska. He relayed that at the advisory committee's February meeting, it's members voted unanimously against the transfer of the Division of Habitat to the DNR, and sent a letter to the governor voicing its concern. He emphasized that the advisory committee takes the issue seriously, as well as do the members of the Anchorage community. He also relayed that he has traveled to various job sites for his work, where he has heard various members of the voting public voice their concern and disbelief at the perceived attack on the habitat of Alaska. Most of those people, he said, have come to the state because of their love for the outdoors, and he suggested that they don't want to see their enjoyment of hunting and fishing diminished. He said, "This is the hottest topic I've seen since the discussions of the Exxon Valdez fiasco."

MR. STUBBS noted that extensive research in the Pacific Northwest has shown that the loss of habitat is disastrous. He asked the committee to consider the value of fish and wildlife to generations to come, as a resource that belongs to all Alaskans, not just a chosen few. He stated his opposition to the transfer [of the Division of Habitat to DNR] and said that he hopes the committee will reject EO 107.

Number 1688

BRUCE HARDING, Mayor, City of Wrangell, testified that he supports EO 107. He stated that it makes good sense to have fish habitat, game protection, stream preservation, and forest stewardship as part of DNR's Division of Forestry. He opined that in the future, having these responsibilities in one department will allow for improved planning and more efficient and effective management of the state's natural and renewable resources. In addition, he said, he supports Governor Murkowski's willingness to look at the state's issues with fresh eyes and bring new and creative solutions to [the] current state of affairs. He said that these solutions will help reenergize the state's economic engine, particularly in Southeast Alaska. Noting that Wrangell is a resource-based community with a very depressed economy, he said that he feels there is sufficient opportunity to rebuild Wrangell's economy using the renewable resources available in Southeast Alaska, without endangering

environmental habitat. In conclusion, he opined, "A sound environment is impossible without a sound economy."

Number 1758

SPENCER SEVERSON testified that he has been a harvest diver in Alaska since 1981. He reminded the committee that when ADF&G's budget "began to slip in the mid-90s," a suggestion was made to form the Southeast Alaska Regional [Dive Fisheries] Association (SARDFA), so that the divers could tax themselves and finance their own fishery. Since that time, he noted, the organization seems to have come under the control of a few individuals who seem intent on using the membership roll as a lobbying tool to advance their own agenda. He stated his opinion that since membership in the organization is not optional, it should not be endorsing policies or candidates, adding that that no one he has spoken to within the organization has been consulted concerning his/her opinion on [EO 107].

MR. SPENCER opined that moving the Division of Habitat to DNR is a huge mistake that will lead to chaos and habitat destruction. He continued:

DNR's mission as an industry advocacy agency is legitimate; [however,] putting habitat protection under [DNR's] purview is anathema. To use my name and the names of 600 others who ... were not consulted, to advance the policy of three individuals who comprise the executive committee is to blatantly misrepresent our membership. I ask you to please disregard the so-called SARDFA endorsement. And speaking as an individual, I ask you to do everything in your power to keep habitat viable and in the purview of environmental professionals.

Number 1832

LON GARRISON noted that he has been employed as a fisheries biologist for the past 15 years in the private, nonprofit sector, working on salmon enhancement. Through his work, he noted, he has dealt with ADF&G on a regular basis, and many of the projects he is involved with require Title 16 permits. He mentioned that he has never had difficulty obtaining the necessary permits in a timely manner, nor been regulated to a degree that seemed excessive. Furthermore, he said that the system has worked well.

MR. GARRISON stated that he has had the opportunity to work with habitat biologists on several projects, involving potentially large impacts to anadromous [salmon] habitat. He said two examples of this mitigation work were conducted when the Haines airport was improved and expanded and, most recently, along the realignment of the Haines highway. He continued:

Without the support and persistence of habitat biologists in the Haines area, the extensive mitigation work carried out along the Haines highway, from mile 31 to mile 38, may not have taken place, and certainly would not have been successful. We could have lost nearly eight miles of complex and valuable chum and coho salmon spawning habitat, with nothing to show for it, except a bunch of gravel pits full of water and [of] no use to ... any fish in the area.

MR. GARRISON said that he fortunately does not have to focus on rehabilitation as many of his counterparts in the Pacific Northwest do. He explained that this is because Alaska has been "jealous" about its protection of fisheries habitat and associated riparian areas. He said that EO 107 is an obvious play by the governor and his administration that is designed to forfeit the health of some of Alaska's natural resources for the short-term monetary gain of a selected few. He said that while he agrees that [the state] must do more to develop its natural resources for the long-term health of its economy, he views EO 107 as a short-sighted maneuver, clearly aimed at those who helped finance the governor's election to office. He continued:

This order removes a necessary set of checks and balances that the founding legislature saw as an important process to ensure the wide use and development of our many natural resources and the protection of our fish and wildlife.

In conclusion, at a time when this governor and his administration should be working to legitimately support, protect, and promote the sustainability of Alaska's salmon fisheries, he is kowtowing to special interests at the expense of the people of Alaska and their resources. ... If we cannot trust this governor to uphold his campaign pledges to ... fully fund education and not impose new taxes, are we to believe his administration will be any more honest than he? Can we trust the new commissioner of the Department of Natural Resources to be fully objective in developing

and regulating our natural resources widely? I have serious doubts. I urge you to ... prohibit the executive order from proceeding.

Number 1974

KHRYS DUDDLESTON told the committee that she is an Alaskan resident and an assistant professor of biology in the Department of Biological Sciences at the University of Alaska Anchorage. She told the committee that she is testifying as a concerned citizen in opposition to EO 107 and will be submitting longer written testimony. She continued:

Our fish and wildlife resources are critical to sport, commercial, and subsistence users, as well as supporting many businesses based on tourism. In addition, our salmon runs directly effect hundreds of species of wildlife. Residents of Alaska depend on fish and wildlife, either directly or indirectly, for their livelihood and wellbeing. Consequently, the protection of habitat that supports healthy populations of fish and wildlife is not only necessary, but should be a priority to the state.

The Alaska Department of Fish & Game has effectively protected fish and wildlife habitat for over 40 years. It is because of the dedication and scientific expertise of its staff and its statutory authority granted under Title 16 that our salmon runs have not disappeared at the hands of development. Contrast this to salmon runs in the Pacific Northwest, and it is clear that our present system works well.

Yesterday I wrote a letter to my Senator, the Honorable Con Bundy. He replied via email this morning saying ..., "Alaska's fiscal gap is a primary concern these days, and a large number of Alaskans are demanding more efficiency from their government." He also stated that: "As I did with the Knowles administration, I prefer to allow the governor to develop his own administration. Afterward, if there are problems that arise, we can then work for a legislative fix."

I take issue with these statements for two reasons. First, time immemorial has proven that being proactive costs less in the long run than being reactive.

Examining habitat and fish populations in Oregon and Washington and those states' desperate and expensive attempts to restore habitat and wild salmon runs is [a] modern testament to this. Second, if reorganization of government in this manner is followed by the need for legislative fixes, then how can that be viewed as streamlining and increasing the efficiency of government?

If EO 107 is allowed to stand, it will haunt Alaska forever. ... Please keep the future of our most precious resource - fish, and those whose lives depend on fish - foremost in your mind. Their future is at stake ... and you have the power to save them by keeping permitting authority under Title 16 where it belongs - in the hands of the Alaska Department of Fish & Game. Please request a joint session and vote to reject EO 107.

Number 2096

STEVE ALBERT stated that he fully respects the Alaska State Constitution and the ability it affords the governor to reorganize the executive branch. However, he opined, EO 107 is poor public policy and represents a punitive action initiated by a segment of the timber industry and its friends in the administration. He said that the implications of the reorganization have many far-reaching impacts beyond those to the Division of Habitat and Restoration ("Division of Habitat").

MR. ALBERT indicated that he is reminded of DNR's state timber sale program on the Kenai Peninsula wherein the cost of bringing a timber sale to bid exceeds the receipts to the general fund. He predicted that the cost to the government, the public, industry, developers both large and small, and landowners, will be huge. He asked: Where are the benefits, and who will pay for all the computers, field equipment, and extra office space associated with this reorganization? Presently, habitat permits are free and expedient, he noted, and asked, how project proponents will view DNR's \$200-\$500 permit fees. How will developers respond to absorbing the cost of having to wait even longer for their permits? He pointed out that an individual putting in a culvert will be paying the same for a permit as would a large timber company.

Number 2169

MR. ALBERT opined that any reasonable manager would request completion of a long-term, cost-benefit analysis before a reorganization of this magnitude is implemented, and would identify the standards by which to measure increased efficiency. In addition, a rate comparison between DNR and ADF&G should be done. The legislature and the public need information about these elements in order to make an informed management decision.

MR. ALBERT pointed out that Section 45 of EO 107 includes language that states that ADF&G employees with peace officer status delegated before June 23, 1983, will continue to accrue service credit as a peace officer under AS 39.35 after the transfer, as long as employees remain in a position described in that subsection. He relayed that he opposes the reorganization [described in EO 107], and that he hopes that the committee will bring a resolution to the floor and have the courage to vote against [EO 107].

Number 2210

CEVIN GILLELAND told the committee that he is the area habitat biologist for the Matanuska-Susitna ("Mat-Su") area, Prince William Sound, and the Copper River Basin. He said he is not testifying as a representative of the state. He added, "And contrary to what some may want to believe, this is not about my job, it's about the future of fish and wildlife in Alaska." He stated that it is Alaska's fish and wildlife that are being put in extreme danger and that will suffer as a direct result of EO 107.

MR. GILLELAND relayed that he has been involved in three of the projects proffered by the governor as the reason why ADF&G's permitting functions should be moved to DNR. He stated that the effect of such a move will be to eliminate ADF&G's ability to protect fish and game, not only because permitting will be [removed from] ADF&G's expertise, but also because ADF&G will have no mechanism by which to have input on projects that don't require fish habitat permits but which may still affect fish and game resources, such as requests from local government, the U.S. Army Corps of Engineers, and the Environmental Protection Agency (EPA). He said that the previously mentioned projects "are real projects, but the information presented to the press and the public is not." He listed the projects as: The Tok cutoff highway upgrade, the Glenn-Parks interchange, and the Power Creek hydroelectric project in Cordova.

MR. GILLELAND went on to say that on the Tok cutoff, it was alleged that ADF&G had at first no objection, but then changed its comments, which resulted in project delays. However, when the Department of Transportation & Public Facilities (DOT&PF) requested "scoping comments" on the highway upgrade, there was no mention of stream diversion or wetlands impact. Approximately a year later, the ADF&G was notified by the U.S. Army Corp of Engineers that there was going to be a stream diversion of a clearwater tributary to the Copper River, and 24 acres of wetlands next to the Copper River was going to be filled. In light of those changes, if the ADF&G hadn't changed its comment, it wouldn't have been doing its job.

MR. GILLELAND noted that with regard to the Glenn Parks interchange, the governor said that the Alaska Coastal Management Program (ACMP) consistency finding was issued in March 2001, and that ADF&G didn't issue permits for 16 months. However, this statement by the governor is simply incorrect, he opined, pointing out that the first discussions of the Glenn-Parks interchange project didn't take place until June 2001, after DOT&PF hired its consultant. The consistency finding was issued on March 27, 2002 - not 2001 - and it required that the plans and specifications be submitted by the contractor at least 30 days before construction.

MR. GILLELAND, in response to a notice from the chair that his time was up, summarized by urging the committee to sign the joint resolution and reject EO 107.

Number 2312

REPRESENTATIVE BERKOWITZ stated that although he appreciates that there are many people who want to testify, because Mr. Gilleland is apparently one of the individuals who's been "singled out," he thinks it's only fair that Mr. Gilleland be allowed to respond to the allegations against him by completing his testimony regarding the three [projects].

Number 2370

MR. GILLELAND, referring to the previously mentioned Power Creek hydroelectric project, indicated that the governor's press [release] showing a picture of the contractor washing a rock, and implying that ADF&G was responsible, was inaccurate. He clarified that ADF&G had not required the contractor to wash the rock; instead, a contract employee for Cordova Electric took it upon himself to wash that rock.

MR. GILLELAND explained that ADF&G's permit prohibited downstream pollution of important anadromous fish spawning habitat in Power Creek, Hatchery Creek, and Iyak Lake. He continued:

Despite assurances from the contractor that the diversion channel would carry the flow - up to 4,000 [cubic feet per second (cfs)] - when they tried to divert 300 cfs, the channel failed in an hour. It polluted miles of spawning habitat where sockeye salmon had just begun to spawn. I sent you photos of that in my comments yesterday. Despite the assurances of the contractor that if anything went wrong they could immediately re-divert Power Creek into the natural channel, it took them 16 days to do that. They blamed us for slowing this project down.

MR. GILLELAND indicated that when [the contractor] redesigned the diversion channel, he himself had talked to the southcentral regional hydraulic engineer at DOT&PF.

TAPE 03-23, SIDE B

Number 2370

MR. GILLELAND indicated that plans were finally submitted for "re-diversion" and the project went smoothly. He said: "Despite what the governor and his press secretary have said, we helped on all these projects; they would have gone nowhere without us - and we saved the contractor on the Glenn-Parks project over \$1 million."

Number 2342

EDWARD W. WEISS remarked that there are numerous reasons to reject EO 107, including: increased cost to the state, private citizens, and industry; inefficiencies in government; and the loss of fish and wildlife habitat. Most of these points have been previously mentioned by other testifiers, he noted, and are outlined in his written testimony. Mr. Weiss said that he would like to reiterate some of the previously stated testimony of former commissioners Carl Rosier and Frank Rue, as well as that of Mr. Gilleland and Mr. Persons, and of Mr. Hannon from last night. He said that [their testimony] contained all factual information.

MR. WEISS continued:

From the start, this has been a campaign of retribution and misinformation put forth by the governor's chief of staff, the governor himself, and, more silently, by industry representatives. This has been fueled by misinformation from various sources, including the DNR commissioner's misinterpretation of "the Frasier (ph) report." It's also been fueled by the apparent indifference on the part of the [ADF&G's] commissioner, while his staff's credibility [is] attacked and his responsibilities to protect fish and wildlife are sold down the river. I am a habitat biologist, and it's been a privilege and an honor to work with the staff of the [Division of Habitat], as well as the other divisions within the [ADF&G].

MR. WEISS said that the above-mentioned staff is made up of a dedicated group of highly skilled Alaskans with a lot of integrity, and with a belief in serving the people of Alaska. He asked that the committee vote down not only EO 107, but also EO 106, because they jointly [affect] fish and wildlife protection for the state. He referred to the testimony of Mr. Sturgeon on the previous night stating that he has to receive two culvert permits for every culvert. Mr. Weiss said that that is not true: Mr. Sturgeon receives one permit, and it comes from ADF&G.

Number 2200

GEOFFREY Y. PARKER, Attorney at Law, Counsel, Alaska Sportfishing Association; Vice President, State Council of Trout Unlimited, offered the following:

One of the things that strikes all of us here ... is that the facts are not on the side of this EO. The facts have clearly demonstrated that the governor is in error with every one of the examples he uses. When the governor has his facts wrong, how can the public trust the assertion that the protection of fish and game will remain the same once it goes over to DNR? Here's why it won't: Take a look at the budget - ADF&G's habitat budget is \$12.4 million of which \$2.2 million is general funds [GF].

The governor's proposed operating budget will eliminate the division totally and replace it with only \$3.5 million of [GF] in the habitat management

and permitting function in DNR. This difference is \$9 million less, so DNR will not do the same job. Then ask, "What will DNR use to do the job? [Alaska Department of Fish and Game, Division of Habitat] has boats, computers, and other equipment all paid for with "federal Dingle-Johnson, Wallop-Breaux, [and] Pittman-Robertson funds." They can't go to DNR because of the financial restrictions that go in those statutes; they have to remain in [ADF&G].

So now start thinking about other costs. With vastly less money and apparently no equipment, DNR will not and cannot be in the field. The budget tells you also that you can't trust the governor's assertions. We hear about a lot about "efficiency." You all know by now that it's an average 14 days to process a permit in ADF&G, [and] 99 percent are granted. The report from the mineral industry, to which Mr. Irwin refers, actually ... says that Alaska is rated very high for its present regulatory scheme. Then you hear again, as the previous spokesman just said, [that] Mr. Sturgeon misled you into believing that there are two permits required, when in fact there's only one. ...

Please think also about the staff. You will not get the same quality of staff in an agency that doesn't manage fish and wildlife. These will be analogous to biologists that you have in the [U.S. Army] Corp of Engineers or the Federal Highway Administration. They won't publish; there's no professional advancement for biologists in that kind of field. Lastly, think about the impact. It's going to be in Southcentral Alaska because that's where most of the permitting occurs. It doesn't occur from timber, mining, or oil and gas; it occurs from ordinary activities. Finally, what you should ask, as has been asked, "Whose idea is this?" That's the person you should have in front of you.

Number 2073

JOHN NELSON TRENT relayed that he is testifying on his own behalf, and went on to say:

I am a wildlife biologist in the Division of Wildlife Conservation. I have also been a continuous resident of this state for 50 years. I am strongly opposed to Executive Order 107 because it offers no reasonable

assurance that the quality of habitat protection that we now have can be maintained under the proposed new organizational structure. I know that Executive Order 107 is intended to "fix" certain communication and coordination problems in terms of permitting efficiency. However, what is not broken and does not need to be fixed is the high standard of fish and wildlife habitat protection that has been achieved in Alaska for over the last four decades.

I am also concerned that it may take many years, possibly decades, before we can fully assess the true consequences of this administrative action. In my experience, wildlife and fisheries habitat condition is generally difficult to assess from the outset. Human-caused habitat degradation can be equally difficult to detect, let alone rectify or mitigate. The permanent loss of anadromous fish habitat in states like Washington and Oregon is the nightmare example of what we do not want to have happen here in Alaska.

In summary, I urge you to act in a manner that would either prevent this executive order from becoming law or to find a way to significantly re-craft it. If neither of these options is feasible, then at the very least, there need to be long-term, quantitative evaluation measures, operated by a neutral party, to evaluate the effects of this reorganization. Thank you for this opportunity to speak before you.

Number 1996

BOB ZACHEL said he supports moving the Division of Habitat and Restoration ("Division of Habitat") out of ADF&G. He elaborated:

I think there is a good parallel between the Division of Oil & Gas and the [Division of Mining, Land, and Water] - who do permitting - [and] the [Division of Geological & Geophysical Surveys] - who do the research, the science. These three divisions are kept separate so the politics of permitting do not take the [place] of science. It is vitally important to have good, clean information to which we as people add such factors as economy, environment, and social considerations to come up with a decision. ... Having

[the Division of] Habitat, the permitting branch, and [the ADF&G], the research branch, all in the same [department] allow for a relationship that in my opinion presents many chances to skew the science.

Federal funding of the [Division of Habitat] has taken away the legislature's, and therefore the people's, ability to hold the division accountable. I encourage you to put "Habitat" in its own division and appoint a director who does not see resource development as a threat to the environment, and [who] operates under the philosophy that the environment is best protected when the legitimate consumptive needs of society are met in orderly fashion. It is my opinion that ... not protecting the environment will likely cost [the governor] a second term. Protecting the environment and promoting development at the same time will likely earn him a second term. Thank you.

REPRESENTATIVE SEATON asked for a clarification.

MR. ZACHEL replied:

It's my understanding that [ADF&G] does primarily scientific research. [With the Division of] Habitat, one of their main responsibilities is permitting. I think permitting gets political. I think having those two organizations ... under the same umbrella ... -- I'd like to see those broken out into separate divisions.

REPRESENTATIVE SEATON remarked, however, that EO 107 puts the research in the Division of Habitat under DNR, so everything will still be under one organization.

Number 1937

ARTHUR HUSSEY, Executive Director, Northern Alaska Environmental Center, said that his organization does not support EO 107. He elaborated:

While we understand some of the (indisc.) for permitting, we believe that EO 107 is an insufficiently thought out policy and sets a poor precedent for effectiveness and management of both [DNR] and [ADF&G]. [The Alaska Department of Fish & Game] and DNR serve different although complimentary

purposes, and blurring their roles will result, or may result, in persistent legal and constitutional difficulties. The proposal to transfer [the Division of Habitat and Restoration] to DNR would seriously weaken the state's ability to manage salmon and other fish and wildlife on a sustained yield basis as mandated in the [Alaska State Constitution].

[The Department of Natural Resources] has a mandate to promote, develop, and permit development of Alaska's natural resources. [The Alaska Department of Fish & Game], on the other hand, has a mandate to manage, protect, maintain, and preserve the fish and game and aquatic plant resources of the state. We have a system, currently, of checks and balances that places fish and wildlife habitat protection on equal standing with development interests, and allows an opportunity to debate issues. [Executive Order 107] would inappropriately alter this delicate balance. We also agree with statements [regarding] the efficiency of [ADF&G] in the permitting process, and urge you to adopt measures to oppose EO 107.

Number 1807

RUSSELL DEFOREST said he is concerned that this proposal, when passed as an executive order, will further erode public trust in the public process. He elaborated:

I think that if this proposal were to accomplish the goals that the governor claims they would - ... streamlining permitting and increasing transparency and accountability in the process - it should have been submitted as a bill, where it would be subject to the full process. The governor, in his campaign for election, used a great deal of anti-environmentalist rhetoric, and I think that this proposal is born out of that kind of rhetoric, which places the environment and economy on opposite sides of the spectrum. And I think that passing this executive order furthers that myth.

We really need to be working toward resolving environment and resource development difficulties in a more round-table and respectful manner, so people can understand that environment and economy need to work together in this state. ... We're all familiar with

the amount that this administration has already eroded the public's trust through a number of proposals. This is just one more brick in that wall, and it comes across very easily to the public as nothing more than political grandstanding, and I ask you to not support it. Thank you.

Number 1733

DAVID P. JANKA, Owner/Operator, Auklet Charter Services, said that he does not support EO 107, and urged the committee to reject it. He elaborated:

This change does not come from the people, it doesn't come from an agency, it doesn't come from the legislature. It's an executive order, and this executive is no friend to the environment and in turn no friend to the protection of habitat. I can understand that some streamlining can make things more efficient, but this is a substantial change and it's outrageous. With all the plans that Governor Murkowski has spoken of for roads, and mining, and oil development, to make a change like this is insulting to Alaskans.

I, like so many of Alaskans, have taken offense with the badmouthing of [ADF&G] that has taken place from the governor's office and recently on a ... local radio talk show by Representative John Harris of Valdez in reference to a Power Creek project here in Cordova. That project had tremendous cost overruns and construction delays and even a tragic death of a worker - none of that had anything to do with [ADF&G, Division of Habitat and Restoration]. And another thing: if it wasn't for [ADF&G], that project would not be what it is today, which is a project that everyone in this town is extremely proud of - an incredible facility, and everything is taken care of perfectly there - and [it's all] thanks to [ADF&G].

And what I worry about are projects now on the eastern side of the Copper River delta - home of ... Alaska's premier wild salmon, the Copper River Red - for oil exploration. With this change, I'm really, really concerned [with] how our fish and wildlife protection will take place If we're looking at efficiencies and streamlining things, why don't we keep the Senate

and eliminate the House, and we can get through with this process quicker. I thank you very much for your time and for your keeping us all on task. Good evening.

Number 1632

JOHN SISK relayed that he has a background in fisheries and wildlife biology, has a master's degree in forestry, and has recently worked for the Knowles Administration as a special assistant, both in ADF&G and in the governor's office. He said he does not support EO 107. He then paraphrased from his written testimony, which said in part [original punctuation provided]:

Strong fish passage and habitat programs, combined with abundance based harvest management, have an economic dimension that helps us provide fishing opportunities and explore & develop new markets. Fish in the hold and money in the bank. Two examples in which I have experience are the Pacific Salmon Treaty (PST) and the Marine Stewardship Council (MSC) Sustainable Fishery label.

During the PST, our neighbors in the Pacific Northwest and British Columbia attempted to misrepresent the Southeast Alaska salmon fisheries as "pirates" who were "over harvesting" the northern migrating salmon that spawn in rivers in B.C., Washington and Oregon. The real story, however, was that dams on the Columbia and Snake Rivers, combined with lack of "buffer strips" of timber along salmon streams, depleted some of the northwest runs. Habitat and fish passage, not fishing, are their challenges. One of their proposals would have closed entire Alaska salmon fisheries, with little or no benefit to the salmon runs listed as "threatened" or endangered" in the Pacific Northwest.

Thanks to Alaska's history of commitment to fish passage ("Title 16"), buffer strips on spawning and rearing streams, and harvest management that assures plenty of fish return to the rivers to spawn, we were able to rebut the Outside misrepresentations of our fisheries, and redefine the negotiations more to Alaska's advantage. As a result in 1999 we achieved 10-year harvest sharing agreements that, while not ideal, are much more favorable to Alaska fishermen

than many thought possible to achieve. Today our fishermen - sport, commercial, subsistence and recreational - enjoy an abundance of harvestable salmon. Food on the table, fish on the line and in the hold, and money in the bank.

MR. FISK went on to say that without the integrated program currently in place, Alaska would not have the abundance of fish for harvesters today. That same program allowed Alaska to get certified as sustainable by the Marine Stewardship Council. This certification is really paying off, he opined, in terms of niche high-end markets, which a number of fishermen and processors are taking advantage of. Although no panacea, this certification helps members of the industry make money. He suggested that EO 107 will weaken the current program, and urged members to consider carefully the impact on working Alaskans the current program has.

Number 1476

BEN KIRKPATRICK relayed that he has worked for "the department" as a "fish tech" and a fish biologist, and is currently the "Haines area habitat biologist." He said that with the current departmental reorganization that is taking place, most of the research aspects will stay in ADF&G rather than moving to DNR. He said that there are a lot of good reasons for not going along with EO 107 or EO 106, and he elaborated:

One of the main things that I've seen over my years working for the department is, almost everybody - whether it's a commercial fisherman, [a] sport fisherman, a developer - ... really values our resources. ... One of the things I have noticed is - whether it's human nature, greed, "the American Way" - ... it does seem that we do need to keep on eye on people, at least have the threat that that's going to happen. And I think with the 30 percent cut, it least in Southeast, of the permitting biologists, that that is going to be a serious thing we're going lose if this current structure is carried forth. And just one last thing to wrap up is, I will be very glad to provide ... a copy of the, quote unquote, "gag order" that was passed on to us, in an e-mail version - I'd be glad to send that to you.

REPRESENTATIVE SEATON asked whether currently, a biologist goes on site before a permit is issued.

MR. KIRKPATRICK estimated that such is done at least 90 percent of the time, and remarked that that has been one of the division's strengths and keys to its success, since its sister agencies as well as federal agencies depend on the information gathered.

Number 1337

CATHERINE POHL testified on her own behalf but noted that she is a habitat biologist with ADF&G. She mentioned that she agrees with everything that prior ADF&G personnel have said. She went on to say:

One of the challenges you have, I think, in looking at this is that the world of project review and the language of the regulation involved is very complex, and it's kind of hard to understand how the substance of habitat protection happens. I mean, how do you protect this habitat? You read the statutes and they're extremely general, and [so] you don't really know how you get from "A" to "B" - how do you get the on-the-ground protection - and what assurance are you going to have that ... a reasonable amount of protection is what you're going to have, or that anything like our current protection is what you're going to have.

And I guess I would say, from my knowledge of habitat permitting and project review, I am confident in saying that Executive Order 107 will not result in streamlined permitting. It will gut habitat protection and degrade habitat. It will discredit the state; create chaos, inefficiency, and delays; and may endanger emerging and economically important programs. ... [Executive Order 107] will result in a loss of state credibility, perhaps handicapping subsistence and development negotiations. Right now, we don't have hydro review - the [Federal Energy Regulatory Commission (FERC)] person was among the five of nine habitat biologists laid off in Southeast.

... There will be other effects down the road including liability to ADF&G for expanding wildlife programs related to tourism and recreation; even the "SWG/CARA" funds come with an umbrella goal of conservation planning for non-game species. That

means looking at habitat. ... There are all kinds of considerations that I have not heard brought up; there are going to be regulatory confusions, there are going to be [losses] of federal funding. It will just be a disaster in addition to all the on-the-ground damage that will occur because of loss of field review and loss of site presence and loss of institutional support for habitat protection. Thanks very much.

Number 1168

DALE KELLY, Executive Director, Alaska Trollers Association (ATA), said that the ATA opposes EO 107 and agrees with many of the previous comments. She went on to say:

I feel that my ... job here tonight is [to] try to engage you in a conversation and persuade you to discuss with the governor ... other options that may exist to Executive Order 107. [The ATA] strongly encourages streamlining government [and] cost savings measures that will benefit the state and its residents; we applaud the governor for looking for options to do just that. But we also point out that other governors have looked at these options in the past and have turned away from them: Governor Sheffield, Governor Hickel. Governor Hickel had a review done of [the Division of Habitat] in 1992, and decided that it really wasn't in the state's interest to do this.

Former [Department of Environmental Conservation (DEC)] commissioner, John Sandor, recently submitted a letter on HB 78 discussing the three commissioners' permit authorities and how he strongly suggested those remain intact. I think that there are a lot of folks, including five commissioners of [ADF&G], that are telling you that there are significant flaws with Executive Order 107. That said, I've spend a lot of time talking to ... past governors, division heads, [and] commissioners of [ADF&G] about this matter, and I do believe that there can be improvements made to the system of permitting as we now know it.

And I think that we can accomplish the governor's goals, and the goals of the people of the state to protect our resources, by engaging in some sort of forum that brings all the affected ... parties

together to come up with some ideas. And we have a few for you. What I've found in talking to folks is, number one, I think a lot of the charges made against [ADF&G] are really better laid on other types of permitting; many of the concerns that we've heard raised here in the last three nights have involved the Alaska Coastal Management Program [ACMP]. That is a system that's been in place for 30 years and definitely is in need of an overhaul, and you will hear that from any number of sources, from the governor's office to the environmental community - ... everybody in between admits that the appeals process in the ACMP is a nightmare and needs to be fixed.

Number 1013

MS. KELLEY continued:

There are no Title 16 implementing [regulations] in place at this point in time, and a lot of time you'll hear concerns about inconsistencies in permitting processes. Well, it's true. But one of the reasons the inconsistencies exist in the permitting process is that it has allowed developers to negotiate with the [ADF&G] to sometimes get a better process for everybody. My understanding, from members of the oil industry, is [that] in fact they've kind of veered away from wanting implementing [regulations] because they fear that they might be in position where they'll have less flexibility with their permitting process.

And I don't want to speak on the oil industry's behalf, certainly, but we're just hearing different things from different people that perhaps there are other ways of going about this. So we would suggest ... putting together a legislative package, working with affected public; crucial elements would be maintaining Title 16 authority and due deference provisions for the [commissioner of ADF&G]. We truly believe that that's an important process for checks and balances.

MS. KELLEY, in response to a question, said she would be happy to assist legislators with putting together the aforementioned legislative package. In summary, she said:

This is of huge concern to our association. I represent the only salmon fishery in the state of Alaska that's presently managed under the Endangered Species Act, directly relative to habitat destruction in the Columbia River basin. We know what it means to lose a resource that we rely on. It's a business decision that's been made, in that state, that's affected not only their own residents but our residents.

We're proud of the system that we've established here in our state, and ... we think the structure was very well thought out by the makers of our [Alaska State] Constitution and the original legislature. We think there's always improvements that can be made, and we want to be part of that; we would like to make Alaska a friendly place to do business but also tough with respect to maintaining the important habitat values that we have. We think that's a business decision that will pay off in the long run as it has to date. Anything that we can do to further that and get the different interest groups talking together to have a better business climate, ... we stand willing to help.

Number 0765

MIKE ROBBINS, Alaska State Employees Association (ASEA) Local 52, after noting that he is an attorney with a master's degree in ocean/marine affairs, stated that the union is opposed to EO 107 and urges the committee to take action to reject it. He went on to say:

A couple of constitutional issues come to mind: separation of powers doctrine. Article II ... of the Alaska [State] Constitution says that the legislature's empowered to enact the laws. The executive branch is to carry out and implement those laws according to Article III Forty-three years ago, the legislature established the [ADF&G and the DNR], each with a role designed to balance different public interest objectives. In the 1970s, the legislature passed statutes concerning public employees and the retirement system. In 1983, [the legislature] passed a statute giving [ADF&G] employees a 20-year retirement package.

The executive order attempts to amend and repeal these laws. This is an unconstitutional violation of the separation of powers doctrine as well as the merit principle, which is also recognized by the Alaska [State] Constitution, and the right to have an unimpaired retirement system, which is also recognized by the Alaska [State] Constitution. Unfortunately, the governor's state of the state speech made the statement that, quote, "the habitat division was the sole agency opposing and delaying legitimate projects important to the state."

We already know from prior testimony here, from people who were referred to in the governor's statements, that only a very small percentage of applications are actually denied, and none of those had to do with the projects mentioned. At the governor's press conference on February 3, other unfortunate remarks were made alleging that [Division of Habitat and Restoration] employees dragged their feet, they were inflexible, and they made open, quote, "protection input on the basis of personal viewpoints." Those remarks [are] unfortunate in that apparently they're not based on facts. ...

Number 0587

I'll summarize by pointing out that the merit principle is also incorporated into the collective bargaining agreement involving Article 14, and Article 12 suggests that reorganization cannot be used for the purpose of eliminating jobs or constructively discharging employees. Both of those articles have been violated by Executive Order 107. The union would urge you to do the right thing, which is to disapprove Executive Order 107. Thank you.

REPRESENTATIVE BERKOWITZ asked Mr. Robbins whether he or anyone he knew is considering taking legal action.

MR. ROBBINS replied: "It depends on whether filing lawsuits and grievances are legal actions."

REPRESENTATIVE BERKOWITZ remarked, "Well, they're not illegal as far as I'm concerned."

MR. ROBBINS stated that a grievance will definitely be filed, and that the final decision on whether to file a lawsuit has not been made though it is being strongly considered.

Number 0473

CELIA ROZEN, after noting that she works for ADF&G, said she is speaking on her own behalf. She went on to say:

I'm here to speak as a private citizen who is very interested in sustaining the legal and historical precedents in this state. Reading through the Alaska constitutional convention this weekend, I saw similar arguments flying through College, Alaska, in 1956 that I hear from Juneau in 2003 as to how to divvy up natural resources management. These lawmakers were equally concerned about growing the state and making the most of our natural resources. In the end, these lawmakers left the first legislature with all the decisions regarding the structure of government to oversee the natural riches of our state. Repeatedly at the convention, the answer was: "Let's leave it up to the legislature." Nowhere did it say: "Oh, let the governor decide."

To put it simply, the first legislature decided to have a separate department of fish and game to conserve according to the principles of sustained yield, and a department of natural resources to oversee the common use of these resources. This responsibility of sustained yield, which flows from the constitution, was vested in the newly created department of fish and game. The founders of this state were especially concerned with the perpetuation of fisheries. We all know that preservation of habitat is integral to fishery management. I want to make the argument that [ADF&G's] authority over sustained yield flows from a constitutional mandate that was sealed by legislative action. I see this as a very vivid continuum of legal authority stemming from the action of these founders.

Number 0345

MS. ROZEN continued:

How can one hastily-conceived and politically motivated executive order trump the combined power of constitutional law and legislative action in one fell swoop? The executive branch does not have the muscle to bulldoze down the state's legal foundations - an EO is a midget among these legal giants. We are also left with Article III, Section 22, which states that state agencies and their functions must be according to major purposes. Sustained yield in terms of fisheries would be a major purpose of a fishery agency, not a natural resource development agency. The state's founders said, "Leave it to the legislature." Now you are the lawmakers; now you have [the] responsibility to create laws that can be justified and make sense.

Remember the words of Bob Bartlett in his keynote speech to the constitutional convention: "Fifty years from now, the people of Alaska may very well judge the product of this convention not by the decisions taken upon issues like local government and apportionment, but rather by the decisions taken upon the vital issue of resources policy." Those 50 years have not run out yet, but we're getting close. Let's not sacrifice the hard work, careful thought, and sheer brilliance that went into the forming of this state government, (indisc.) by current political fancy. Please do what's right for this state and leave the complete power over sustained yield of fisheries with the [ADF&G] and leave your own legacy of good lawmaking for our future generations. Please get behind the special concurrent resolution in your committee and allow a floor debate of the entire legislature to occur. Thank you [for] this opportunity to testify.

Number 0218

WADE WILLIS, Owner, Vision Quest Adventures, mentioned that he is a current permit holder for activities governed by the Division of Habitat and Restoration, and that he has permits acquired under "the DNR system"; therefore, he has had experience regarding the permitting process of both entities. He also noted that he is a member of the Alaska Wilderness Recreation & Tourism Association (AWRTA). He said he strongly opposes EO 107. He went on to say:

The permitting process is obviously working. We have 43 years to evaluate how it has been working. It has gone from a ... fisheries resource that was destitute to one that now supports a huge tourism ... industry and it also supports a commercial fishing and subsistence industry. So, the current permitting process has been proven to work. Why would the legislature want to use an executive order to dismantle such a successful, proven doctrine? An executive order is not necessary to streamline the permitting process.

Murkowski is boldly trying to force his pro-business stance down the throat of Alaska residents by denying public involvement and legislative oversight. Small businesses have not been involved in his closed-door meetings. We were not there. It was a closed door decision by a small group of Murkowski "groupies" that represent only big business interests at the expense of the citizens of Alaska. ... It indeed only represented the Department of Fish & Game and the commissioner, [who] ... wouldn't even tell you whether or not he supported it ... - he doesn't believe that the legislature is important enough to be told that
....

Number 0055

SCOTT THORSON said he supports moving the habitat division over to DNR. He went on to say:

The one group of people that we've been missing has been industry. I think you really need to kind of ask yourself why that is, and ... I think that there is a fair amount of ... concern among industry that if they really speak up, that ... they'll kind of have to pay for it later if this ... move over to DNR doesn't really take place.

TAPE 03-24, SIDE A

Number 0001

MR. THORSON opined that the governor ought to be given an opportunity to manage the executive branch the way that he sees fit, and suggested that others should get behind the governor's decision to move the Division of Habitat and Restoration to the DNR.

Number 0059

JOE MEEHAN thanked the committee for the opportunity to testify on EO 107. He went on to say:

I'm sure everyone here this evening recognizes the importance of our natural resources. Alaska's fish and wildlife are the lifeblood of our history, our economy, our recreation, and our lives. As an Alaskan, I expect my elected and appointed officials to create and enforce laws that protect and conserve fish and wildlife populations and their habitats. When it comes to conserving and managing these resources, we do not settle for anything but perfection.

The governor has stated that this restructuring is in an effort to streamline the state's permitting process, but his repeated justification is that certain habitat biologists in the [ADF&G] were unreasonably blocking legitimate development projects. If the governor thinks his staff is out of line, he should simply address these concerns through his chain of command, down to the offices or individuals of concern. If he thinks the state permitting process needs an evaluation and restructuring, he should start an honest evaluation of the program, and allow for ample public debate on the issue.

While these hearings provide for limited public input, the timeline of the executive order and the propaganda the governor has released to the media are not adequate for a legitimate public debate on this issue. The founders of our state government consciously created two different natural resource agencies: one for managing our fish and wildlife resources, the other for managing resources such as land and water. This structure allowed for the proper checks and balances that our fish and wildlife deserve, and has proven to be an efficient and effective method for assuring the protection of our fish and wildlife resources. The system isn't broken; it works just fine and doesn't need fixing.

Number 0179

MR. MEEHAN continued:

The proper place for biologists to be making decisions about potential impacts to fish and wildlife habitat is in the agency that manages and studies these resources. These permittees should be surrounded and supervised by other professionals who possess the knowledge and skills that they can draw from, in an agency that has the administrative and political support to make the tough decisions when it comes to habitat conservation. This support will not exist within the Department of Natural Resources, and we will see a long-term chronic erosion of the safeguards designed to conserve our resources.

Additionally, placing the permitting authority for fish and game resources in DNR will not only make the process less effective, it will make the entire process less efficient. It not only physically removes the permittees from the other fish and game professionals, but it adds a buffer as they try to communicate with other fish and game professionals back over [agency lines]. ...

The Governor's proposal will simply diminish the environmental safeguards that have protected our fish and wildlife resources since statehood, and [do it] in the interest of lowering [the] habitat protection bar for industry interests. This proposal is bad for fish and wildlife, [and] bad for Alaskans. It is not in the best interest of the state. It is your responsibility, as the representatives of the people of this state, to assure the protection of our fish and wildlife resources. You can do this now by preventing Executive Order 107 from being implemented. Thank you.

Number 0320

JEANNE WALTER thanked the committee for the opportunity to comment on Executive Order 107. She went on to say:

I am speaking as a resident of Alaska and as a registered voter. My background is toxicology and biology and, as such, I have worked for the Department of Interior, [the] State of Alaska, several universities, and industry - in particular, the paper

industry. I am also a board member for the Pacific Northwest International Erosion Control Association, and [that] board is presently preparing a letter to submit to the committee. I view this transfer as a paramount issue in the compliance of state law for fish and wildlife resources. The original intent of Executive Order 107, as stated, was to streamline permitting while protecting (indisc. - equipment malfunction).

[Not on tape, but in the witness's written testimony, was: This will not be possible under EO 107 for the following reasons: Alaska Department of Fish & Game (ADF&G) Habitat and Restoration Division staff process 2000 permits a year averaging] a 14-day turnaround. Only 0.5 percent of these permits [were denied in 2002]. I urge you to acquire these records and view them for yourself. The turnaround time described includes the time from when a complete application is submitted, to when the permit is issued. This turnaround time average includes all projects, not just a select few as has been suggested. The Alaska Department of Natural Resources [DNR] water permits take much longer, with as many as 700 permits being backlogged; the backlog is expected to be finished by 2007 at the earliest.

Number 0469

The [ADF&G] and DNR have different missions, and the checks and balances of these two departments to protect fish habitat will not occur under Executive Order 107. Commissioner Irwin and acting Commissioner Duffy stated that 22 habitat division staff received pink slips on March 7, releasing them from state employment as of May 1, 2003. Additionally, 12 currently vacant positions will be eliminated. Decreasing the staff by 30 percent will decrease site inspection, monitoring, restoration efforts, and mitigation suggestions, and will slow down the permitting process. The only way to speed up the permitting process under these cuts will be to rubber stamp permit acceptance ... without proper review.

MS. WALTER concluded:

... I would just like to point out that the ANWR [Arctic National Wildlife Refuge] development vote is presently very close in our nation's capital. Many members have been swayed to vote in favor of ANWR development due to the success and professional integrity of the [ADF&G's] habitat and restoration division's permitting responsiveness. I believe with such a drastic change in permitting and the dismantling in the [ADF&G] habitat division, Representatives and Senators will vote against opening ANWR to exploration drilling. If ... Executive Order 107 passes, I will spend all my time educating our nation's Leaders on the effects of this executive order. Is it worth risking ANWR development under a new and questionable permitting section? I will assure you, many people believe it is not, and these people vote. Please note that I am for responsible development, and I will finish by summarizing: Please bring Executive Order 107 to the floor of a joint session and vote to disapprove it and EO 106.

Number 0550

AARON BENJAMIN said he wished to speak about the ADF&G and what he referred to as an abuse of the department's power. He elaborated:

I have been accused of environmental crimes, and threatened with fines and litigations for things that I didn't even do, having to do with a permit that [ADF&G's] sport fish access division had. And they knew full well exactly everything that I was doing there; I was dredging out a boat launch, and then a habitat biologist came in and threatened me with all this stuff. And then he had to find out later that [ADF&G] was the ... permit holder, so the guy didn't even do the homework there. But what really torqued me was the idea that this man was going to use these draconian efforts to turn me into a criminal on this thing. And ... I wrote letters to Commissioner Rue about it, ... which were not very well -- I think he wrote some letters back that weren't really addressing what I asked him about.

But anyway, this same habitat biologist pulled the same stunt on Mark O'Brien (ph) with [the Department of Transportation & Public Facilities] on a project up

here after the thing had already gone through the public process and gone through all the permitting. The job went out to bid with a contractor and was in the middle of being constructed on the road, and this same biologist pulled the same stunt with threats and litigation and fines, and this man never even went to any of the public meetings, which I went to for two years here.

And ... this has just gotten out of hand that these guys could just jump out and bypass all the public stuff that everybody else has to abide by, and this threatening with fines and litigation and strong-arm tactics. ... To summarize it, these guys need a collar put on them and to be held accountable for extreme environmental viewpoints and for interpreting the law as they see fit, ... and no American citizen should ever have to put up with the kind of stuff that I went through, and Mark O'Brien.

Number 0697

ERIC MUENCH said that he supports Executive Order 107. He went on to say:

The charges that transferring habitat concerns to DNR will leave fish and game unprotected and that DNR will simply act as an advocate for development is simply wrong. As a 40-year Alaska forest engineer, I have been on a great many Forest [Resources and Practices] Act inspections, some with DNR, Division of Forestry, people, as well as [ADF&G] people and DEC people; some with just the Division of Forestry and [ADF&G] when DEC lost their personnel; and some simply with [the Division of Forestry] people. And I have found that [the] Division of Forestry personnel that I have associated with on these projects have been every bit as concerned and protective of water quality and anadromous habitat as the people from other agencies.

[The] DNR is the state's land and permitting agency for almost all purposes: water rights, land leases, land sale, tideland permits. rights of way and other similar actions are all under DNR administration. Only habitat permits for stream crossings fall under [ADF&G]. With qualified engineers, foresters, and biologists on staff, DNR can do that job just as well

and a great deal more efficiently. So I would urge you to support Executive Order 107. And by the way, I oppose [HSCR 1]. Thank you.

Number 0822

JILL JACOB thanked the committee for the opportunity to comment. She went to say:

How efficient is it to gut our state of the brains behind the state's habitat division of the [ADF&G] - its biologists? How efficient will it be to have habitat review performed by [the] Department of Natural Resources personnel, who have no foundation, training, or background in wildlife science? [The ADF&G] biologists are the people actively working in the field. They are the ones who have the expertise to gauge the effects, of a project, on habitat. If you allow this administration to the cut the brains out of our state agencies, you will be cutting out the heart of Alaska. Our state is its wildlife - something lost to the rest of our country [and], indeed, to a great deal of the rest of the world.

[You can] streamline development anywhere, and end up with irreversible loss of habitat and, consequently, the wildlife it supports. Try fishing in one of California's anadromous fish streams, or finding the bear [portrayed] on its state flag. Joseph Krutch (ph) once said, "If people destroy something replaceable made by mankind, they are called vandals; if they destroy something irreplaceable made by nature, they are called developers." Why would anyone agree to jeopardize the quality of life in Alaska: our hunting, fishing, or subsistence gathering? Most of us can't afford, nor do we choose, to do our hunting and fishing in Scotland or Texas. Please vote in joint session to disapprove this shortsighted Executive Order 107. Thank you.

Number 0921

SHELLY STALLINGS, after remarking that he has lived in Alaska for 26 years and has two children and three grandchildren that were born in Alaska, went on to say:

I want our current generation to leave Alaska's wildlife as healthy as it is now, for these future generations. We live in Alaska, the largest state in the union with the largest amount of wildlife habitat and, unarguably, the largest numbers of wildlife: fish, which swim in our ocean, lakes, and streams; birds, which fly in our skies and roost in our trees; and other animals, large and small, which depend upon adequate habitat to live in our state. The governor of this state proposes to dismantle the habitat division of [the ADF&G]. This change does not make sense. It is a poorly thought-out proposal. It is a proposal which should be opposed by the state legislature.

Mr. Murkowski was not forthright when he campaigned for the office of governor of Alaska on a platform of not taxing the people of Alaska to solve the state's budget problems. Mr. Murkowski was not forthright when he campaigned on a platform where he said education would be his number one priority as governor and that he would ensure education in this state would be fully funded. It is my belief that Mr. Murkowski is not being forthright when he claims that Executive Order 107 is primarily to make government more efficient. I believe he is attempting to gut the protection of wildlife in Alaska provided by the [ADF&G] habitat division. [The ADF&G] and, in particular, the [Division of Habitat and Restoration] is not broken; it does not need to be fixed. I ask you to deny this executive order. Thank you for the opportunity to speak.

Number 1053

DAVID CARTER, Attorney at Law, indicated that he would be testifying on his own behalf. He remarked that although he's heard a lot ADF&G employees testify in opposition to EO 107, he's not heard any DNR employees testify at all, either in favor or in opposition. He opined that placing habitat protection under the purview of DNR would be as incongruous as placing timber sales under the purview of ADF&G. He said that as an attorney, he knows that checks and balances are important and it is therefore important to leave the Division of Habitat and Restoration under the ADF&G. If DNR doesn't do a proper job of addressing the issues and thus winds up in litigation, he remarked, since litigation is not synonymous with efficiency,

the legislature would be helping the governor out by overriding EO 107. He added that EO 107 "is special interest tinkering by forestry and timber interests," and that EO 107 is not a good idea. He concluded by saying that as elected representatives, the legislature should not allow EO 107 to stand, adding, "Put habitat issues back where they have been and belong, with the [ADF&G]."

Number 1130

JOSEPH R. SULLIVAN, Ph.D., Program Director, Yukon River Drainage Fisheries Association (YRDFA), indicated that he would be reading excerpts from a letter the YRDFA's executive director recently sent to Governor Murkowski. He began:

Dear Governor Murkowski, commercial and subsistence fishers, (indisc.) constitute the membership of the Yukon River Drainage Fisheries Association, depend upon good returns of salmon to the Yukon River for their livelihood, their lifestyle, and traditional culture. We feel that your intent to move the permitting functions of the [ADF&G's Division of Habitat and Restoration] into the [DNR] threatens to diminish this livelihood, lifestyle, and culture. The past several years have seen seriously low salmon returns that threaten these things if they continue in to the future. Most recently, the primary cause (indisc.) seems to have been poor ocean conditions, but it is survival at all stages of the salmon's life cycle that ultimately determines whether there will be sustainable harvests in the future for us and for our children.

DR. SULLIVAN went on to say:

The missions of the [ADF&G and the DNR] are fundamentally different, as you can see from their respective Internet web pages. The ADF&G mission reads: "The Alaska Department of Fish and Game's mission is to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska. The primary goals are to ensure that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and development of these resources are in the best interest of the economy and well-being of the people of the state."

DR. SULLIVAN pointed out that in contrast, the mission statement of the DNR reads: "To develop, conserve and enhance natural resources for present and future Alaskans." He said that the YRDFA would like the governor to withdraw Executive Order 107. In lieu of that, however, YRDFA requests that the legislature block EO 107.

Number 1279

PAULA TERRELL indicated that she is testifying on her own behalf as a commercial fisherman. She said:

My husband and I have been Alaska trollers for over 20 years; we're some of the small guys, and I'm asking you to overturn Executive Order 107. It might look good in the short term, but in the long term, I think ... this could have devastating effects on our habitat. And the trollers, which we are one, really rely on habitat protection, as do all fishermen. I think the witness to that is when ... the Forest [Resources and Practices] Act was first being proposed, the fishermen, who generally do not weigh in on things, ... came out in droves to help make that a good Act with habitat protection. We rely on [ADF&G], we have supported [ADF&G], we do not always like what they do, but they are basically the bulwark for us. And I fear that putting ... habitat permitting functions over in DNR will really erode that, and it will erode the trust.

I was very grateful to hear Commissioner Irwin say to the United Fishermen of Alaska board that the habitat division and their input ... with the Fort Knox permitting was probably one of the major reasons that that mine was permitted and there weren't lawsuits for it. That was probably extremely true. ... I would ask one question of the DNR commissioner ...: If indeed this is going to be done, and there is going to be separation, ... then would he consider - or would the administration consider - having them do a mandate for that office which would put fish and wildlife protection as their top priority mandate for that office? That is not the mandate [of] DNR, but would they do that? Then I would feel a lot more comfortable. And I would also support what Dale Kelley said, that I think there is a lot that can be

done from a management and a regulatory basis, but I would like it to be done after you voted down the ... executive order

Number 1430

GINNA PURRINGTON, Alaska Wildlife Alliance (AWA), noted that she was speaking on her own behalf as well as that of the AWA. She said:

Alaska has [a] wealth of state and national parks and preserves. It's obvious that we Alaskans realize the value of unspoiled habitat and preserving our priceless wildlife. Ultimately, Alaska may succeed in wildlife and fishery conservation efforts where the Lower 48 has failed. Executive Order 107, however, has the potential to permanently undermine that goal. There's a fundamental inconsistency in granting habitat permitting authority to the Department of Natural Resources - the department charged with the responsibility to develop resources, not protect them. The [ADF&G] has held permit issuing authority since statehood for good reason. They provide an essential system of checks and balances that result in responsible development decisions.

Furthermore, Executive Order 107 is a solution for which Governor Murkowski has failed to identify a legitimate problem. The [ADF&G] has proven remarkably efficient as a permitting process in comparison to the [DNR]. Last year, the average time ADF&G took to issue Title 16 permits was only 14 days. The DNR, on the other hand, currently has a backlog of 700 water rights applications, which are 20 years old or older. Removing permitting authority from the capable hands of the [ADF&G] to the [DNR] is a not a viable solution to expedite habitat permits. It's likely to instead only cause further delays and unforeseeable detriment to critical fish and wildlife habitat. The Alaska Wildlife Alliance, of course, is very concerned with wildlife habitat.

I urge you, and the Alaska Wildlife Alliance urges you, to vote in joint session to disapprove of the executive order switching permitting authority from the [ADF&G] to the [DNR]. That's the end of my testimony, thank you.

MS. PURRINGTON, in response to a question, said that the AWA considers the ADF&G's Title 16 permits to be comparable to the DNR's water rights applications.

Number 1574

JOSH PEIRCE thanked the committee for the opportunity to comment. He went on to say:

As we have heard over the last two nights, there is overwhelming opposition to Executive order 107. ... Commissioner Irwin has assured us that critical field inspections will continue with this transfer. I am curious how this will happen with the closing of two district offices in Ketchikan and Sitka and a reduction in staff of 22 people. Will the state really save money flying habitat biologists from Juneau to Ketchikan and Sitka? Of course not. There is no money for this, and these field inspections will simply not occur. ... We have heard over and over in testimony how incredibly efficient the habitat permitting process already is. The facts are impressive with most permits currently being issued within 2 weeks.

For comparison I conducted a very brief search of DNR's public web site, and I found some very interesting things. I'll give you five examples: ... an application for a grazing permit dated 1993; ... an application for a public easement permit dated 1980; an application for a land disposal dated 1994; an application for a water right dated 1998; and, most impressively, ... ADL [Alaska Division of Lands] 68071, a 1974 application for a coal prospecting permit - this application was filed 29 years ago. It seems Commissioner Irwin should be busy addressing this backlog and not worrying about how he is going to take an already extremely efficient group of permittees from ADF&G [Division of Habitat and Restoration], reduce their staff by 22, and magically make them more effective. ...

Commissioner Irwin and industry representatives assure us habitat will be protected. I am curious what they are basing these assurances on. What we have heard the last two nights, from highly educated experts with

many years of experience in wildlife and fisheries management, is a very different story. Governor Murkowski speaks of making decisions based on sound science, yet a move such as this flies in the face of sound science. ...

The experts are here and have testified before you that ... this move will have a detrimental effect on salmon. In conclusion: if allowed to take effect, EO 107 would strip an extremely valuable management tool from the ADF&G. This proposed move has been poorly planned and we can expect [it] will be poorly executed. There are no efficiencies to be gained in such a move. The habitat division has a stellar record of efficiency and we should not dismantle a system which has served Alaskans so well. There are no streamlining benefits in this (indisc - equipment malfunction).

[Not on tape, but in the witness's written testimony, was: I am here tonight to urge you to pass a joint resolution rescinding EO 107.]

Number 1710

RUTH BAUMAN relayed that she and her husband own a home in Anchorage and a remote parcel of land in the interior. She went on to say:

We very much enjoy Alaska's pristine outdoors, and would like to see the state remain this way now and for future generations. I am not speaking for any former or present employer; I am speaking on my own behalf, and I would like to share with you some of my direct experience on the issue of Executive Order 107. I was staff to the Alaska Board of Forestry for six years during the 1990s. The [Board of Forestry] includes representatives from all of the interest groups: commercial fisheries; ... organizations in the environmental, mining, ... recreational, and ... forest industry; natives; a fish or wildlife biologist; and a professional forester.

These professionals took unpaid time off from their regular jobs to travel to meetings to address the issues covered under the Forest Resources and Practices Act [FRPA]. Naturally, agency employees

were paid and their travel costs were covered by the state. The primary agenda items included discussions of issues concerning sound forest management and established land use planning procedures. During that period of time, the [Division of Habitat and Restoration ("Division of Habitat")], among others, presented their perspectives on proposed timber harvests on private, federal, and state land.

[The Division of Habitat] issued a report that caused an uproar in the media because they claimed FRPA was not working. Consequently, the board was required to hold public forums much more often than usually considered under FRPA. It added more to the process of planned timber sales. I have a sense of deja vu here now in this meeting; it seems these discussions have not gone very far. By the time the timber sales were finally through that process, it often resulted in the state offering smaller timber sales, and many of the (indisc. - equipment malfunction).

Number 1813

KEN ADAMS thanked the committee for the opportunity to comment. He went on to say:

I'm with a small group of concerned fishermen. I'm a commercial [salmon] fisherman and I have been so for about 30 years; I've lived in Cordova for more than 22 years. And we're adamantly opposed to [Executive Order 107]. I think this is more than a permitting issue. There is a flip side to this, and I think equally important is the reduction [in] oversight capability that the transfer of the habitat division to DNR presents. We've read in the press: the reduction of 22 positions, [which] would be lost in the transfer, and some of these are field positions. I recall speaking several years ago with the habitat biologists; there were three habitat biologists within the ADF&G who were responsible for the entire Southcentral area, so we're looking at even [more] reduced capabilities there with the loss of 22 positions. ...

I ... and my fellow fishermen ... are highly regulated - I'm not looking for less regulation - this system we have in place works fine. The result of the

regulation we have is resource and habitat protection. ... I've lived [in Cordova] prior to the EVOS - Exxon Valdez oil spill - the spill event. I've lived here during and afterwards, and I am well aware of the laxity which preceded EVOS. ... There's a laxity here, and I don't like what I'm seeing. This climate of laxity that resulted in the EVOS event, I'm afraid we're running a parallel because of [a] lack of vigilance that this transfer may result in. So, rather than lose our oversight capabilities, we need to hold the line here. If Murkowski needs funds, he better find other sources.

Number 1913

DAMIAN WALTER said that he disapproves of EO 107 on four points. He elaborated:

One, on the basis of the basics of government: one, that we have checks and balances, and by doing this move or merger with DNR, you're removing that basic standard of checks and balances. Second, every differing interest has the right for representation; each individual, organization, minority, majority, race, creed, et cetera have the right to have an equal voice. That's what [the Division of Habitat and Restoration] helps provide. [Third], we the public have not been provided all sides and all the facts on these cases, accusations, and claims that the governor has made that the Division of Habitat and [ADF&G] have done.

Without this proof, this is only rumor, and this is not what our government is based on and built on. Proof of this is in these testimonies that I've heard this evening and other evenings. Fourth, I challenge our legislators to seek out the truth on this issue of EO 107, and investigate to prove or disprove Governor Murkowski's claims and rumors. You all have the power to do this. And last, representatives, you are our voice and are responsible for seeking the truth. Thank you for your time, and I believe that you guys can do this. Thank you.

MS. BAUMAN, after being reconnected, continued her testimony:

[From] what I've seen and experienced, moving the Habitat permitting process under DNR's commission ... would be more productive, more streamlined, more efficient, and it would save the state money. For these reasons, I support the intent contained in EO 107. I recognize the order is not altogether popular, but I appreciate the strong, hard look that EO 107 has forced [upon] Alaskans to find better ways of doing business. Thank you for holding this hearing

Number 2015

MARK FINK relayed that he is employed as a habitat biologist for the ADF&G but is speaking on his own behalf. He went on to say:

I urge you to disapprove Executive Order 107, thereby retaining within [ADF&G] the function of conserving fish and wildlife habitat. To save time, ... I will not repeat many of the things that have already been mentioned; I do concur with them. The governor [has] stated a need to streamline permitting and has suggested that the [Division of Habitat and Restoration] is a bottleneck in this process. The facts do not support this assertion. If, however, the governor wants to shift [the] balance ... towards resource development, the more reasonable approach would be to appoint a like-minded ADF&G commissioner and [Division of Habitat] director that will vigorously pursue the administration's programs.

Dissecting out the habitat protection function from [the ADF&G] would hamper efforts to manage fish and wildlife under the sustained yield principle. Animals need habitat. [Executive Order] 107 makes no better sense than if someone proposed to move the Division of Oil & Gas into [the ADF&G]; it doesn't make sense. One quick thought. Often, [on issues such as these,] I go to someone very near and dear to me ... - my father, Tom Fink. I must admit we've had numerous, spirited discussions on habitat and the effects of development. But on this issue of EO 107, even my father - the very conservative Republican, Tom Fink - believes moving the permitting functions of the habitat division to DNR is a bad idea. Ask him for yourself. Again, I urge you to do the right thing for the people who elected you and disapprove EO 107. Thank you.

Number 2085

WILLIAM H. DENNERLEIN relayed that although he is the immediate former director of the Division of Habitat and Restoration, he would be speaking on his own behalf as a 30-year Alaskan with more than 25 years in the field of resource management. He mentioned that he has spent more time in the DNR than in the ADF&G, and more time working outside government than inside. He went on to say:

I would like to put six points on the record very quickly. ... One, this is not about the habitat division; EO 107 transfers the two core authorities of the [ADF&G], and for the first time in Alaska's history, the commissioner of [ADF&G] will have no legal authority to protect fish habitat in Alaska. Number two, the governor's characterization of projects used [as] examples to justify this order are so inaccurate as to be ludicrous. I do not recognize projects that my signature is on the project agreement.

Number three, EO 107 will not enhance good science in decision making. It will weaken it. Habitat permittees will be separated, by agency and physically, from colleague biologists in ADF&G with whom they work on a daily basis and from best-practices ongoing research in which they participate now. Point number four, the states used as examples are apple/orange comparisons in law, staffing, and resources. I just recently returned from Oregon; I would be happy to discuss Oregon with the governor.

Point number five, if EO 107 produces efficiency, it will be at the cost of effectiveness. But don't expect efficiency. Reduced staff will not be able to get out into the field and respond to project needs that inevitably come up - unexpected challenges. Secondly, no one has talked about the word "design build," a major trend in project management in which many important design and construction elements are not known up front and the issues are worked [out] in the field by biologists and project managers. Glenn-Parks interchange is a "design build" project - that's an example.

Number 2180

MR. DENNERLEIN concluded:

And finally, the federal agencies such as [U.S.] Fish and Wildlife Services and the [U.S. Army] Corps [of Engineers] are required by federal law to consult directly with the recognized fish and wildlife agencies of the state; they usually defer to us, but we should expect them to become more active. And every single project in the governor's EO example and his "get Alaska moving" speech are federal aid projects with federal requirements and federal handles. In closing, I would just say, if the process is terrible, the transition team never met with [ADF&G] directors - the habitat transition team never met with [the Division of Habitat and Restoration]. There's been no public consideration or discussion by the administration [of] any other steps that could improve [the] process. So I urge you to oppose [EO 107].

REPRESENTATIVE GRUENBERG, turning to Mr. Dennerlein's second point, asked him to clarify what he meant.

MR. DENNERLEIN replied:

I spent an enormous amount of time on the Glenn-Parks highway project with my staff; it was elevated to directors. It's a difficult project, it required elevation, it required going to the commissioners, and Joe Perkins would tell you today if he were here that we did the right thing to push them and it had to go to him - he was the only person who could commit federal highway money to solve the fisheries problem. ... That's the way the system works. And my signature's on letters and agreements, and the description that has been given of that process by the governor, I couldn't even recognize it.

Number 2268

MARYELLEN OMAN, President, Anchorage Audubon Society, said that the Anchorage Audubon Society is firmly opposed to Executive Order 107 because the society believes that the executive order will seriously weaken protections for important fish and wildlife habitats around the state. She went on to say:

Title 16 - Fish and Game - was promulgated at statehood and, indeed, protection of fishery resources was a driving force behind statehood. Responsibility for fisheries was assigned to ADF&G for good reason: We need to protect the vital fish and wildlife resources of this state. [The] ADF&G and [the] DNR have different and conflicting missions, and are both necessary. [The] ADF&G's priority is fish, wildlife, and their habitats. [The] DNR is the state's lead development agency. Responsibility for fish and game is not part of the DNR mission.

The commissioner of ADF&G is required to have knowledge of the protection of fish and game resources, and one of the functions of that office is to protect fish and game resources and have the necessary power to accomplish this. [Executive Order 107] strips the commissioner of this power. No specific job qualifications for making habitat-permitting determinations at DNR are specified in EO 107. As habitat biologists retired or took other positions, these duties could be delegated to low-level non-professionals with little or no biological training.

At ADF&G, professional biologists are responsible for evaluating permit applications and issuing habitat permits. If EO 107 is allowed to stand, executive branch checks and balances will no longer exist. Habitat produces wealth for the state of Alaska, and fish habitat loss will affect the currently lucrative industries of tourism and fishing. There are many more points I could make, but you've heard them all before my testimony and I would simply say that Anchorage Audubon [Society] supports the Senate and House resolutions - SSCR 1 and HSCR 1 - which would override the governor's unwise Executive Order 107.

Number 2353

VALANNE GLOOSCHENKO, MSc., thanked the committee for the opportunity to address this topic. She went on to say:

As a biologist with a master's degree in aquatic biology, I have worked for many years as a wetlands specialist, and most recently in the (indisc.) federal

regulatory capacity. I strongly object to Governor Murkowski's proposal to move habitat permitting from the [ADF&G] to the [DNR]. I believe this would seriously impair our habitat protection as it now exists and cause grievous environmental impacts to Alaska's fisheries and wildlife. My duties are predominantly in Southeast Alaska, and I must say I support Mr. Dennerlein supposition that the federal regulatory handle absolutely depends on those [ADF&G] biologists. I am extremely dependent on colleagues from [ADF&G] who essentially are my eyes [and ears, telling me where eelgrass is, telling me where projects are likely to ground at low tide.] [The previous bracketed portion was not on tape, but was taken from the Gavel to Gavel recording on the Internet.]

TAPE 03-24, SIDE B

Number 2373

MS. GLOOSCHENKO continued:

And I particularly work with biologists in Ketchikan, Craig, Sitka, and Juneau. They are a bulwark in all of our programs. I'm here tonight as a private individual, but I also have a letter from another colleague who works ... in the same area ... who could not be here this evening. I would like to also make the point, and you've heard this already this evening, that the Governor has claimed [that the ADF&G Division of Habitat and Restoration] permit biologists are inefficient. However, the facts, as we have heard, prove just the opposite: the average time for processing is - at no direct cost to the applicant and may likely be if it's moved to DNR, which charges for permits - ... only 14 days. Our concern is, if DNR takes over permitting, there'll be fewer personnel to process permits and the workload will be greater. This will significantly affect the state's ability to protect fish and fish habitat. So we ask you, please disapprove Governor Frank Murkowski's [Executive Order 107] for the benefit of now and future generations. Thank you.

CHAIR WEYHRAUCH closed public testimony on EO 107 for the evening.

REPRESENTATIVE BERKOWITZ made note that a representative from the administration, Mr. Phelps, had been present during testimony. He asked Mr. Phelps to investigate a Wall Street Journal article, which said the issue of state oversight of the environment has become a part of the national debate over whether congress should allow drilling in ANWR. Representative Berkowitz said he would like to know whether there were any discussions or anything written, prior to the promulgation of EO 107, regarding the impact that moving the habitat division to DNR would have on efforts to open ANWR - "whether this might provide fodder for those opposed to opening ANWR." He also relayed that he would like to know who the driving force behind EO 107 is.

CHAIR WEYHRAUCH indicated that information would be forthcoming. [EO 107 was held over.]

ADJOURNMENT

Number 2289

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 8:56 p.m.