

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 10, 2003

3:34 p.m.

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Ralph Seekins
Senator Georgianna Lincoln

OTHER LEGISLATORS PRESENT

Representative Paul Seaton
Representative Les Gara

COMMITTEE CALENDAR

Executive Order 106 - Coastal Policy Council and Office of
Coastal Management to DNR

SCHEDULED BUT NOT HEARD

Executive Order 107 - Fish Habitat Functions to DNR

HEARD AND HELD

PREVIOUS ACTION

EO 106 - No previous action to record.

EO 107 - No previous action to record.

WITNESS REGISTER

Mr. Kevin Duffy
Acting Commissioner
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Presented EO 107 for the Administration

Commissioner Tom Irwin
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Presented EO 107 for the Administration

Chris Kennedy
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions about EO 107

Aurah Landau
Southeast Alaska Conservation Council
419 6th St.
Juneau, AK

POSITION STATEMENT: Opposes EO 107

Bruce Baker
PO Box 211384
Auke Bay, AK

POSITION STATEMENT: Opposes EO 107

Bruce Schactler
PO Box 2254
Kodiak, AK 99615

POSITION STATEMENT: Supports EO 107

Owen Graham
Alaska Forest Association
PO Box 9023
Ketchikan, AK 99901

POSITION STATEMENT: Supports EO 107

Marilyn Crockett
Alaska Oil and Gas Association (AOGA)
121 West Fireweed Lane
Anchorage, Alaska 99503

POSITION STATEMENT: Supports EO 107

Roberta Highland
Kachemak Bay Conservation Society
3734 Ben Walters Lane #202
Homer, AK 99603

POSITION STATEMENT: Opposes EO 107

Bob Churchill
Alaska Fly Fishers
3415 Wentworth
Anchorage, AK 99508
POSITION STATEMENT: Opposes EO 107

Garvan Bucaria
PO Box 870298
Wasilla, AK 99687
POSITION STATEMENT: Opposes EO 107

Nancy Morris
No address provided
POSITION STATEMENT: Opposes EO 107

Doug Yates
No address provided
POSITION STATEMENT: Opposes EO 107

Tim Ciosek
PO Box 2911
Sitka, AK 99835
POSITION STATEMENT: Opposes EO 107

Julie Decker
Southeast Alaska Dive Fishery
Box 2138
Wrangell, AK 99929
POSITION STATEMENT: Supports EO 107

Gabriel Scott
Cascadia Wildlands Project
PO Box 853
Cordova, AK 99574
POSITION STATEMENT: Opposes EO 107

Frank Rue
7083 Hendrickson Rd.
Juneau, AK
POSITION STATEMENT: Opposes EO 107

Keith Bayha
10443 High Bluff
Eagle River, AK
POSITION STATEMENT: Opposes EO 107

Bill Stevens

Cassandra Energy Corporation
Kenai, AK
POSITION STATEMENT: Supports EO 107

John Winther
Box 509
Petersburg, AK
POSITION STATEMENT: Supports EO 107

Steve Borrell
Alaska Miners Association
3305 Arctic
Anchorage, AK 99503
POSITION STATEMENT: Supports EO 107

Mike Sallee
PO Box 7603
Ketchikan, AK
POSITION STATEMENT: Opposes EO 107

Paul Shadura
Kenai Peninsula Fishermen's Association
Soldotna, AK
POSITION STATEMENT: Encouraged members to improve EO 107

Tadd Owens
Resource Development Council
121 W Fireweed #250
Anchorage, AK 99503
POSITION STATEMENT: Supports EO 107

Scott Metzger
PO Box 999
Cordova, AK 99574
POSITION STATEMENT: Opposes EO 107

Robert Zyanich
Alaska Seine Boat Owners
726 O Place #201
Anchorage, AK 99501
POSITION STATEMENT: Supports EO 107

Deb Spencer
PO Box 619
Pelican, AK
POSITION STATEMENT: Urged the Legislature to fully review the impacts of EO 107 before taking action

Dick Coose
PO Box 9533
Ketchikan, AK 99901
POSITION STATEMENT: Supports EO 107

Dr. David Person
148 Beacon Hill Lane
Ketchikan, AK 99901
POSITION STATEMENT: Opposes EO 107

Dr. Eric Knudsen
5000 Whispering Spruce
Anchorage, AK 99516
POSITION STATEMENT: Opposes EO 107

Joel Bennett
Defenders of Wildlife
15255 Pt. Louisa Rd.
Juneau, AK
POSITION STATEMENT: Opposes EO 107

Paula Terrell
Alaska Marine Conservation Council
5025 Thane Rd.
Juneau, AK
POSITION STATEMENT: Opposes EO 107

Jan Dawe
Alaska Boreal Forest Council
PO Box 84530
Fairbanks, AK 99708
POSITION STATEMENT: No position on EO 107, asked questions

Dave Hanna
PO Box 20834
Juneau, AK
POSITION STATEMENT: Opposes EO 107

Jan Konigsberg
Trout Unlimited
1399 W 34th
Anchorage, AK 99503
POSITION STATEMENT: Opposes EO 107

Harold Heinze
2917 Jackson

Juneau, AK 99801
POSITION STATEMENT: Supports EO 107

Mike Robbins
ASEA Local 52
626 F Street
Anchorage, AK 99501
POSITION STATEMENT: Opposes EO 107

Bill Hauser
3621 Hazen Circle
Anchorage, AK 99515
POSITION STATEMENT: Opposes EO 107

Mack Meiners
Kodiak Seiners Association
Kodiak, AK
POSITION STATEMENT: Supports EO 107

Ben Kirkpatrick
521 W 12th St.
Juneau, AK
POSITION STATEMENT: Opposes EO 107

Maggie Wigen
General Delivery
Tenakee Springs, AK
POSITION STATEMENT: Opposes EO 107

Josh Pierce
6446 West Circle
Anchorage, AK 99516
POSITION STATEMENT: Opposes EO 107

Doug Hill
PO Box 220236
Anchorage, AK
POSITION STATEMENT: Opposes EO 107

Eric Lee
PO Box 858
Petersburg, AK
POSITION STATEMENT: Opposes EO 107

Neil MacKinnon
Hyak Mining Company
Juneau, AK

POSITION STATEMENT: Supports EO 107

Chip Dennerlein
1627 W 14th Ave.
Anchorage, AK 99501

POSITION STATEMENT: Opposes EO 107

Steve Albert
17708 Kiloaua
Eagle River, AK 99577

POSITION STATEMENT: Opposes EO 107

Katherine Paul
Juneau, AK

POSITION STATEMENT: Opposes EO 107

Ellen Simpson
2900 Porcupine Trail Rd.
Anchorage, AK 99516

POSITION STATEMENT: Opposes EO 107

Celia Rosen
3711 Amber Bay Loop
Anchorage, AK 99515

POSITION STATEMENT: Opposes EO 107

Jerry McCune
United Fishermen of Alaska
211 4th Street, Suite 110
Juneau, Alaska 99801-1172

POSITION STATEMENT: Supports EO 107

Rodger Painter
PO Box 20704
Juneau, AK

POSITION STATEMENT: Asked committee members to hold an oversight hearing next year to review how the transfer is working.

Cevin Gilleland
19136 Birchwood Loop
Eagle River, AK 99567

POSITION STATEMENT: Opposes EO 107

Larry Houle
Alaska Support Industry Alliance
4220 B St.
Anchorage, AK 99503

POSITION STATEMENT: Supports EO 107

Jeanne Walter
19658 Creek Way
Chugiak, AK 99567

POSITION STATEMENT: Opposes EO 107

Cindy Anderson
Serenity Circle
Anchorage, AK 99502

POSITION STATEMENT: Opposes EO 107

Daniel Sharp
2821 Cutwater Ct.
Anchorage, AK 99516

POSITION STATEMENT: Opposes EO 107

ACTION NARRATIVE

TAPE 03-10, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:34 p.m. Senators Wagoner, Stevens, Elton and Chair Ogan were present. Senator Dyson arrived shortly after the committee convened. The first order of business to come before the committee was EO 107.

EO 107 - FISH HABITAT FUNCTIONS TO DNR

MR. KEVIN DUFFY, Acting Commissioner of the Alaska Department of Fish and Game (ADF&G), told members that he and Commissioner Irwin were present to provide a description of the Governor's proposal to move the functions and positions of the Division of Habitat and Restoration from ADF&G to the Department of Natural Resources (DNR), along with a number of functions that will be incorporated into the Divisions of Sport Fish, Wildlife Conservation, Commercial Fish, and the Exxon Valdez Oil Spill (EVOS) office. He provided members with a handout detailing that proposal. He noted that one page of the handout provides a description of the anticipated layoffs and position deletions. The handout also includes a proposed organizational chart of DNR and a chart of where the habitat biologists will be located in the Division of Sport Fish.

COMMISSIONER DUFFY told members that he and Commissioner Irwin talked about some of these issues last Friday. He said the focus of EO 107 is to streamline permit processes. It will move a

significant number of habitat biologists who currently work for ADF&G to DNR. The Division of Habitat and Restoration has many talented biologists; he hopes that expertise is transferred to DNR through this effort so that the [two departments] have a relationship in which the streamline permitting functions with habitat biologists' presence is effective. He and Commissioner Irwin will sign a memorandum of agreement describing the new structure and how the relationship between ADF&G and DNR will work.

MR. TOM IRWIN, Commissioner of DNR, introduced the staff that worked on EO 107: Kerry Howard, Kevin Brooks and Randy Bates; and Nancy Welsh and Chris Kennedy (who were participating via teleconference). He told members that these staff members represent the "best of the best" and are from ADF&G, DNR, and the Department of Law (DOL). He welcomed the biologists who will be transferred to DNR.

COMMISSIONER IRWIN showed and described to members an organizational chart of DNR. The regional and field offices will be changed to seven area offices located in Anchorage, Kenai, Mat-Su, Fairbanks, Juneau, Petersburg and Prince of Wales. They will report to an operations manager who will report to a director linked to the Commissioner's Office, giving the habitat biologists a direct line to the Commissioner's Office. He told members that the memorandum of agreement is very appropriate. He and Commissioner Duffy feel the two departments will need a tie-in, which the memorandum will do.

COMMISSIONER IRWIN said he heard a presentation a few weeks ago named "Perception is Reality," which was based on the Frazer Report. That report is mining related but speaks for [the mining] industry in general. That report is a summary of the results of a poll of all of the large significant mining companies worldwide about the desirability of investing in mining activities in each state, province, and country throughout the world. Alaska, as a desirable location in which to invest, has dropped in that poll during the last several years. Last year, on a scale from zero to 100, public companies ranked Alaska 50th based on their perception of the desirability of investing here. He said that perception is reality - when people vote with their purses they take their exploration and development dollars elsewhere. He feels it is critical, in the messages DNR sends to the outside world, that the state has very efficient procedures that protect habitat and the environment. He stated, "With that said, we fully need to and we can and we

will change the perception and move resource development forward in our state."

CHAIR OGAN noted that Senators Seekins and Lincoln had excused absences and that Representative Seaton joined the committee. He then took questions for the commissioners.

SENATOR ELTON referred to the new DNR organizational chart and pointed out that the Sitka and Ketchikan habitat offices would be closed. He asked if any other habitat offices in the state would be closed.

COMMISSIONER IRWIN said he did not believe so.

SENATOR ELTON asked if the only new office is in the Mat-Su.

COMMISSIONER IRWIN replied, "These were designed based on workload. The groups that were together wanted to prioritize where the quantity of work was, what was required, and the decision was made that this is the most efficient, effective way that we can serve Alaska and access the permitting to the habitat." He affirmed the Mat-Su office is the only new office.

SENATOR ELTON said he has heard the Frazer Report mentioned before but he feels the Division of Habitat and Restoration move creates a certain amount of cognitive dissidence because both Commissioner Irwin and the Governor have pledged that no habitat degradation will occur. He said the only way Alaska will improve its rank of 50th would be to make changes that could degrade habitat. He asked how the business climate can be improved otherwise.

COMMISSIONER IRWIN said it is all about efficiency: people working together, communicative steps, streamlining, and conveying to the outside world that the state will not accept any degradation of habitat. He emphasized that people working together in the same groups communicate therefore the steps are much more efficient. He said this approach is based on the business and environmental success of large projects in Alaska.

SENATOR ELTON said it is difficult to separate the definition of "efficiency" from the definition of "layoffs." He said the handout shows that 14 biologist positions will be eliminated in this process. He thought that may not induce efficiency but instead may change a system that has processed 2,000 permits in 14 or 15 days each.

COMMISSIONER IRWIN said one thing to be mindful of is that the routine permits need to continue. Those are the simple permits that could be labeled as standard. He said on the other side of the coin are the large significant project issues that must be addressed. He said he has experienced, during his entire career, that when the right decision has to be made about critical issues, the process works when those involved work in the same areas, discuss the same issues and have the same priorities. He said it is important to understand that the habitat employees in DNR will have their own system of accountability, which is why that office was set up separately. He does not think, when one sees the people involved in those jobs, they will be concerned that DNR will run over the environment.

COMMISSIONER DUFFY asked Senator Elton to keep in mind that biologists do a whole host of activities, not just permitting. He explained:

It is very important to us that with this executive order that an adequate number of trained habitat biologists who deal with permitting are transferred over to DNR. There [are] a number of other functions within the department that aren't necessarily permitting and within that whole paradigm, Senator, is where there [are] some efficiencies and some reductions in staff. So, it is not necessarily just in the permitting arena but it's all the activities that the current Division of Habitat and Restoration operates.

CHAIR OGAN asked what statutory functions will be eliminated with this transfer.

COMMISSIONER DUFFY said no Title 16 permitting responsibilities will be eliminated.

CHAIR OGAN asked if everything the Division of Habitat and Restoration is required to do in ADF&G by statute will still be required under DNR.

COMMISSIONER DUFFY said that is correct.

CHAIR OGAN asked Commissioner Irwin to address a concern that he will be the "fox watching the henhouse."

COMMISSIONER IRWIN said he believes his record speaks for itself. He said DNR will still be accountable to the legislature

and the governor and he has never compromised the environment for business. By working with both interests in mind, he has created a situation where both sides have won in the past. He said this system has clear sideboards and DNR will be accountable. He pointed out that every commissioner who takes this oath of office swears to work for all people in Alaska.

CHAIR OGAN said, like many people, he lives in Alaska to hunt and fish and because he loves the natural resources. He said he will publicly commit to personally take action if someone can show him where the habitat has been damaged as a result of this transfer taking place. He said he is very pro-development but he does not want to see the resources that God has endowed Alaska with compromised in any way. He believes the Constitution set up a tension between the legislature and the executive branch; the legislature's role is to oversee what the executive branch is doing and to set policy.

COMMISSIONER IRWIN said he believes that is most appropriate.

REPRESENTATIVE SEATON informed the audience that the Fisheries Committee will be holding a hearing on EO 107 on Monday night from 7:00 to 10:00 p.m. He then referred to the DNR organizational chart and pointed out that all of the functions of the Office of Habitat Management and Permitting will be delegated to the deputy commissioner rather than the commissioner. He asked Commissioner Irwin what his function will be within that structure.

COMMISSIONER IRWIN deferred to Chris Kennedy for a detailed answer but said the purpose is to provide a mechanism for elevation. He explained:

The elevation - again, we kept them separate so you could still have the two competing entities - one may want development and one may want to protect habitat. We very much wanted that progression. You would get up to the deputy commissioner where you'd have one final elevation to the commissioner who again has the accountability to make sure both sides are protected.

REPRESENTATIVE SEATON asked if the deputy commissioner or the commissioner will have the authorities under the permitting process.

COMMISSIONER IRWIN again deferred to Mr. Kennedy.

SENATOR ELTON asked if the commissioner will be allowed to get involved in the decision making down the line since he will be the first point of appeal.

CHAIR OGAN announced an at-ease for the purpose of rearranging the room to accommodate the large number of participants. When CHAIR OGAN reconvened the meeting, he asked committee members to limit their questions to give the many people who have come to testify priority at this time. He then asked Mr. Kennedy to respond to Senator Elton's question.

MR. CHRIS KENNEDY, assistant attorney general, told members the overall thrust of the executive order was to preserve the separate functions of the habitat staff where those need to be maintained as an independent influence on policy. He said that is most true in the Forest Practices Act. The legislature set up a series of checks and balances between the habitat staff, who reported to the commissioner of ADF&G, and the forestry staff, who reported through the state forester to the commissioner of DNR. He explained that since both the habitat and forestry staff will reside in DNR, it was necessary to create a mechanism to preserve those checks and balances. To do that, the habitat staff has been assigned to the deputy commissioner of DNR, a new position, while the forestry functions have been assigned directly to the state forester. The two positions will be legally equal; the commissioner can resolve any impasse between them.

SENATOR BEN STEVENS asked if Senator Elton was asking whether the commissioner's decision will override the deputy commissioner's decision.

SENATOR ELTON said his understanding, under EO 107, is that powers are delegated to the deputy commissioner and the first point of appeal is to the commissioner. He questioned whether the commissioner could be involved in any of the new Division of Habitat and Restoration's processes.

SENATOR BEN STEVENS asked Commissioner Duffy whether the ADF&G commissioner currently has that same authority on these decisions.

COMMISSIONER DUFFY said historically, as decisions get elevated in the department, the commissioner makes the decisions on these types of issues rather than the deputy commissioner.

SENATOR BEN STEVENS asked if under the new structure, the commissioner will have overruling authority over the deputy commissioner's decisions.

COMMISSIONER DUFFY said he cannot answer that definitively from ADF&G's standpoint.

SENATOR BEN STEVENS asked the same question of Commissioner Irwin.

COMMISSIONER IRWIN asked that Mr. Kennedy clarify the procedure.

SENATOR BEN STEVENS said the point he is trying to make is that the commissioner always has the overruling authority in the decision making process in any department.

MR. KENNEDY said he believes the structure will be different now. The deputy commissioner's decision is the final agency action. An appeal would be made to the Superior Court. The deputy commissioner does report to the commissioner in the same way the governor could have intervened in the past in a dispute between the commissioners of ADF&G and DNR. The commissioner of DNR can now intercede or mediate a dispute between the state forester and the deputy commissioner.

MR. KENNEDY said he would have to talk about a specific instance to give a more direct answer on how the deputy commissioner would interact with the commissioner.

SENATOR BEN STEVENS said he would like a better definition and asked for an example.

MR. KENNEDY said a common example would be an anadromous stream permit under AS 16.05.870. If the staff denied a permit, a hearing would be held under the Administrative Procedures Act (APA). The hearing officer would recommend a decision to the deputy commissioner of DNR who would make the final department decision on that permit.

CHAIR OGAN announced that Representative Gara had joined the committee.

SENATOR ELTON said his understanding is that AS 44.37.011(b) provides that the deputy commissioner will make the decision and the first appeal would be made to the commissioner. His interpretation is that if the commissioner is the first point of

appeal, the commissioner could not be involved in decisions that were made up to the deputy commissioner level.

CHAIR OGAN asked Mr. Kennedy to get back to committee members with a response.

MR. KENNEDY told members he was not really speaking to the issue of whether the commissioner could be involved in the decision and said he would get back to committee members.

REPRESENTATIVE SEATON commented that EO 107 establishes the authority with the deputy commissioner, not the commissioner.

COMMISSIONER DUFFY said that both he and Commissioner Irwin have open door policies and would be happy to provide committee members with a thorough evaluation.

CHAIR OGAN announced the committee would take public testimony. He said that due to the large number of participants, the committee will have to limit the testimony time and that he would rotate throughout the legislative teleconference sites.

MS. AURAH LANDAU, representing the Southeast Alaska Conservation Council (SEACC), a coalition of 18 volunteer community conservation groups and 14 communities around Southeast Alaska, told members that SEACC's mission is to guard the integrity of Southeast Alaska's natural resources and to provide for sustained, balance use of them. SEACC has talked to people around the region to see how EO 107 will potentially impact communities. Those people have said that commercial charter operators and guides are dependent on the health of wildlife habitat. The forests and streams are enormous economic engines for the towns around Southeast. In 1953, Alaska was declared a natural disaster area because fish traps decimated the fisheries. Protection of fisheries resources was a driving force behind statehood and the first legislators wisely solved the problem of bad management by assigning fisheries to ADF&G to ensure that Alaska's renewable wildlife resources and habitat are managed on sustained yield principles. That is a sound approach that balances the interests of all Alaskans now and for future years.

MS. LANDAU informed members that Southeast residents want logging jobs but they want enforcement of straight laws that are designed to protect the resources. Many habitat permits are issued after consultation with development sponsors and private landowners and the original proposals are modified to create

better projects. If the Division of Habitat and Restoration is transferred to DNR, protection of wildlife habitat will not be on equal footing with resource development. Without balanced and knowledgeable oversight, projects could be permitted without modifications that benefit fish habitat, such as larger culverts and avoiding spawning areas. Fish habitat is lost one piece at a time; the cumulative effects have compounded impacts. Prevention of habitat loss is more economical than habitat restoration.

MS. LANDAU cautioned that one only has to look to the Pacific Northwest to see that salmon runs are only a fraction of what they once were, partially due to habitat loss. Those states are spending hundreds of millions of dollars to restore those habitats and most fishing jobs have vanished.

MS. LANDAU said an example of another way EO 107 could cause significant problems is in Section 18, which repeals the requirement that the state forester provide detailed plans of operations for logging. Those plans show stream crossings, anadromous and high value resident fish streams, buffers to be retained, and other ways to prevent non-point source pollution. This information is critical to people who live near a sale area as well as other agencies looking at the project to determine what other resources will be affected. Removing this type of public information ensures further conflicts between communities and developers.

MS. LANDAU said protecting fish and wildlife habitat is very important to all Alaskans. She thanked the committee for holding public hearings and stated there must be better ways to streamline permitting that do not eliminate vital checks and balances. She urged members to support the resolution opposing EO 107 and to bring it to the full Senate for a vote.

SENATOR DYSON asked what process SEACC used to verify that its members support the position Ms. Landau presented.

MS. LANDAU repeated that SEACC has 18 member groups and all SEACC decisions are made on the board level with representatives from each community. She explained, "This is something that they were concerned about and specifically spoke to us - asked us to get information about - get information to our members about with a series of many calls, lots of research into what potentially this could mean and then understanding what particular projects had been stopped and that sort of thing."

SENATOR DYSON asked if the decision to present a viewpoint was made at a board level and whether Ms. Landau was inferring that each board member went through a rigorous process to contact their membership.

MS. LANDAU said each board member uses a different process but they are elected by their groups and are comfortable in giving staff advice and recommendations.

MR. BRUCE BAKER, a Juneau resident, urged members to bring the resolution to reject EO 107 to the Senate floor for a vote. He said the state needs to maintain the checks and balances between ADF&G and DNR that have benefited Alaska's economy since statehood. ADF&G's fundamental mission is to protect Alaska's fish and wildlife resources. DNR's fundamental mission is to develop the state's other natural resources. These two missions balance each other in a way that ensures adequate protection of the state's economically important fish and wildlife habitats while allowing legitimate natural resource development to proceed in a timely manner. By eliminating the permitting authority of one agency, EO 107 eliminates essential checks and balances.

MR. BAKER opined that EO 107 is a solution looking for a problem because the timeliness of ADF&G's permitting is exemplary. Of 1,926 permit applications received last year, over 99 percent of the applicants either received permits or were told they did not need one. The average processing time was only 14 days. He pointed out a process is already in place that allows commissioners to quickly resolve issues consistent with the Governor's policies. He pointed out that DNR has a backlog of over 700 permit applications, some 20 years old, and 3,000 miscellaneous applications, such as water right transfers, that have yet to be processed. He noted the Administration plans to layoff 22 ADF&G habitat staff and transfer 36 others to DNR but believes to boost its natural resource development without costly delays and lawsuits, Alaska needs to increase, rather than eliminate, habitat staffing and leave it in the department that has expertise to draw on. He provided committee members with two ADF&G memoranda with specific information that was not available to the Governor when he made his public statements. He said that EO 107 is not about making state government more efficient: it is a thinly veiled effort to lower the habitat protection bar for permit applicants.

SENATOR ELTON asked Mr. Baker to describe his experience with the Division of Habitat and Restoration.

MR. BAKER told members he is currently a natural resources consultant and is testifying strictly on his own behalf. He retired from ADF&G 10 years ago, where he served as the deputy director of the Division of Habitat and Restoration for about 11 years. He said he is very familiar with the degree of commitment and interaction between the departments and how well the existing system works.

TAPE 03-10, SIDE B

MR. BRUCE SCHAETLER, testifying from Kodiak, said that EO 107 may save over \$1 million from the Commercial Fisheries budget. He completely supports the Governor's position on this matter and does not believe there will be any degradation of habitat. He agreed with Chair Ogan that the Legislature will call for a review if problems occur and stated support for EO 107.

MR. OWEN GRAHAM, representing the Alaska Forest Association, stated support for EO 107. He said the current permitting and Alaska Coastal Management Program (ACMP) commenting process under ADF&G is unnecessarily costly and contentious. Alaska needs an agency that encourages responsible development rather than an agency that believes in protecting the environment from development. State support for development is essential to restore resource industry jobs, particularly timber industry jobs. In addition, significant cost savings should result.

MS. MARILYN CROCKETT, Deputy Director of the Alaska Oil and Gas Association (AOGA), told members that AOGA spent 18 months identifying permitting programs that need updating and streamlining. Early in the process, AOGA adopted a guiding principle, which was to accomplish permit streamlining without compromising the environment or safety standards. That principle mirrors the Administration's proposals. These proposals are long overdue and will be giant steps forward in making Alaska more competitive with other resource development states and provinces. AOGA appreciates the work and commitment of the Governor and the Legislature to move forward in this area.

MS. ROBERTA HIGHLAND, Kachemak Bay Conservation Society (KBCS), stated opposition to EO 107. KBCS urges committee members to recommend overriding EO 107 and to keep the Division of Habitat and Restoration within ADF&G. Protecting fish and wildlife is a bipartisan issue: as the habitat of fish and wildlife goes, so go those resources. Salmon populations in the Lower 48 have been greatly reduced by habitat modification to the point of

endangered species status for some populations. Alaska's economic development needs the careful oversight of an independent watchdog that will protect the public interests by protecting its resources. Placing habitat permitting within DNR makes protection of fish and wildlife secondary to DNR's mission to conserve and develop state lands. ADF&G currently has habitat permitting authority over projects on various types of land ownership, including private and federal lands. DNR and ADF&G have very different mandates. K

MS. HIGHLANDS said that KBCS is further concerned with DNR's development mandate. The Title 16 requirements regarding fish passage will increase protection of our fisheries. An example of DNR's less than adequate protection of fisheries streams occurred in 1992 when the Division of Oil and Gas proposed a reduction or elimination of some production rig setbacks. The state will lose its system of checks and balances and the oversight of fish and wildlife. DNR's primary mission to develop land will take precedence. The physical separation of habitat biologists from ADF&G will make sharing of essential research more difficult, time consuming and expensive. The facts do not show any clear and convincing reasons to change the current system, a system that has worked well for more than 40 years.

MR. BOB CHURCHILL, Alaska Fly Fishers, told members that Alaska is one of the premier destinations for wilderness fishing experiences for people from all over the world. This industry not only brings dollars into the state, it also provides for a great many local businesses, both rural and urban. His concern with moving habitat biologists out of ADF&G is the contentious issue of buffer zones along streams and culverts. These agencies were intentionally placed in Alaska's constitution to provide accountability.

MR. GARVAN BUCARIA, a retired biologist, who worked for both state and federal agencies and on oil rigs, said he has seen some problems over the years such as mercury contamination of fish resources and forest areas denuded, principally in the [indisc.] reservoir in North Carolina. He is also aware of lead problems at the Red Dog mine. EO 107 is not compatible with objective decision-making. He referred to written testimony he submitted to members and said items 4, 5, and 6 relate to monies that might be encumbered because of shifting the organizational structure. He also noted that people are not necessarily compatible just because they work in the same agency.

CHAIR OGAN clarified that the Red Dog Mine has improved the quality of local streams to the point that fish are inhabiting them for the first time.

MS. NANCY MORRIS, a sports fisher from Bristol Bay, told members she has dealt with the permitting process several times and has never experienced efficiency problems with ADF&G. She expressed concern that EO 107 removes accountability because, "You cannot have two entities that are not in cahoots with each other being able to be objective." Development projects in the Bush are often initiated by outside interests; residents do not feel their interests are being looked after. She said she has never seen ADF&G work against development; instead, it has had a major role in taking steps to ensure responsible development. If ADF&G is removed from the permitting process, that will no longer be the case. She asked that the status quo remain.

MR. DOUG YATES, testifying from Fairbanks, expressed opposition to EO 107 because the transfer is egregious to the long-term best interests of the state. He said the move is a transparent effort to give more power and control to resource developers at the expense of Alaska's fish and game resources. Rather than make it easier to log and drill, the precarious condition of Alaska salmon should be considered. Throughout the Pacific Northwest, hundreds of salmon runs have gone extinct or are seriously depleted. The same will occur in Alaska if EO 107 takes effect. EO 107 protects corporations, not the people of the state.

MR. TIM CIOSEK, a Sitka resident, stated strong opposition to EO 107. Many of his friends are commercial fishermen, charter operators and guides. All of these people rely on a healthy and productive environment. This transfer will eliminate a critical system of checks and balances and any meaningful environmental review of proposed projects. In addition, the elimination of habitat biologists will result in weaker field review that will lead to permit delays. He asked members to disapprove EO 107.

MS. JULIE DECKER, Director of the Southeast Alaska Regional Dive Fishers Association (SARDFA), said SARDFA supports resource protection. SARDFA believes that a healthy resource is necessary to have a healthy industry. SARDFA is confident that DNR will fulfill the responsibilities of Title 16. EO 107 will protect fish and wildlife habitat and make government more efficient.

MR. GABRIEL SCOTT, Alaska field representative for the Cascadia Wildlands Project based in Oregon, said he would like to give a

concrete example of the impact EO 107 would have on the Katalla exploration project. The Cassandra Energy Corporation is proposing to explore for oil in the Copper River delta, an incredibly important fish habitat. All five species of wild Pacific salmon and two species of trout are at risk. That delta supports two fishing guide lodge businesses, as well as commercial and subsistence fisheries. EO 107 will kill salmon, breach the public trust, and result in increased conflict. All other agencies involved in the permitting process have relied extensively on the Division of Habitat and Restoration. The Division of Habitat and Restoration biologists have done a great deal of logistical planning work for the oil company. Those biologists have conducted three separate site inspections; no one else has with the exception of the USFS. DNR's biologists have never been to Katalla. The Cassandra Energy Corporation originally proposed bringing a couple hundred barge loads up the Katalla River, traveling over one-half mile of salmon spawning habitat. Division of Habitat and Restoration biologists conducted stream channel surveys on the river, which showed those areas are only three feet deep while Cassandra planned to use barges with a four to five foot draft. The Division of Habitat and Restoration issued a permit with stipulations containing the maximum size of the barge and the minimum depth of river travel. After EO 107 goes into effect, it is highly unlikely that any state official will ever monitor standard barge operations near spawning habitat. That means permit stipulations will have to be revised by someone with no knowledge of the Katalla River. The lead agency authorizing Katalla is the USFS, which bases many of its decisions on the Division of Habitat and Restoration's decisions.

MR. FRANK RUE, former commissioner of ADF&G, said EO 107 is a very significant issue that was dealt with by the first legislature of Alaska. The Division of Habitat and Restoration program has been in existence for 43 years, therefore EO 107 will make a significant change.

MR. RUE informed members that he worked for DNR for nine years and has nothing but admiration for DNR employees. He worked with Tom Irwin when he was with the Fort Knox mine, and feels Mr. Irwin did a great job getting the mine developed. Mr. Rue said he also worked as the habitat director for seven years under two administrations and was the commissioner of ADF&G for eight years. He stated that this issue is not about personalities; it is about how the Legislature wants Alaska's fish to be managed and where it wants to put the priority for that protection. He provided members with copies of two handouts: one a letter from

the last five commissioners of ADF&G; and a letter he wrote to Representative Gara in response to questions about the impact of this move and how it might play out. He then asked to address some of the myths that are causing people to be too comfortable with this transfer.

MR. RUE said the first myth is that the level of protection will remain the same. The second myth is that this approach has been successful in other states, such as Oregon. Regarding the first myth, he asked why transfer the division if the level of protection will remain the same? In response to the rationale that the transfer will result in a timelier permit process, the current average permit processing time is 14 days. On a recent Glen Highway project with 6,000 Coho per acre, ADF&G issued permits in two hours to enable the developer to get the project done quickly. He said he does not think the transfer will speed that up if 22 people are being laid off. It will only be faster if permits are issued with a rubber stamp. Regarding 107 instream permitting authority, DNR rarely has a presence, so the transfer will not remove layers of bureaucracy.

MR. RUE said the layers of protection will not remain the same because the standards of the Anadromous Fish Act and the Fish Ways Act provide a lot of discretion by containing terms like "to protect important anadromous fish habitat" and "to give it proper protection." In the Fish Ways Act, the commissioner determines when it is necessary to provide a fish way. When the first legislature passed that statute, it gave that discretion to the commissioner of ADF&G because the legislature wanted a cabinet level person responsible for getting out the catch. The legislature felt that person would give it the proper weight when decisions were made. If this change happens, the deputy commissioner of DNR, a department whose mandate is not to get out the catch, will make the decisions. DNR's mission to develop oil, gas, timber, and other resources is very legitimate. However, that downgrading of responsibility will give higher stature to a potato than to salmon spawning habitat. That potato will have a cabinet level commissioner to look out for the Division of Agriculture's interests. Salmon will have the deputy commissioner as their final advocate.

CHAIR OGAN said with all due respect, he believes the commissioner is looking out for the farmers more than the potatoes.

MR. RUE said the USFS refused to talk to ADF&G about instream structures for years and would not apply for Title 16 permits

because, as a federal agency, it argued that it had sovereignty. The USFS had internal biologists that looked at the road plans, but the road engineer or the forester in the U.S. Department of Agriculture made the final decision. The USFS and ADF&G finally signed a memorandum of understanding so that the USFS submitted all of its plans for stream crossings to ADF&G. ADF&G and the USFS did a collaborative survey in the Tongass and found that 70 percent of the culverts issued by USFS biologists impeded or blocked fish. That is when the USFS decided to work with ADF&G. ADF&G had a similar experience with the Department of Transportation and Public Facilities (DOTPF) and a lot of old problems are now being fixed.

MR. RUE's final point was that Oregon has been held up as a successful model. However, of the 300 stocks of Coho along the coast, about 100 are extinct. All of Oregon's stocks are on the endangered species list. EO 107 would make the responsibilities of ADF&G weaker than Oregon's Department of Fish and Wildlife in its authority to permit instream structures. In Oregon, DNR issues the permits but by law it has to give deference to the Oregon Department of Fish and Wildlife for the standards for the stream crossings. EO 107 takes ADF&G totally out of the picture. He said that ADF&G has acted in a timely manner when issuing permits and if problems occur, the Governor could appoint a new director of the Division of Habitat and Restoration. However, EO 107 makes a structural change and he expects a significant downgrade of fish and wildlife in 40 to 60 years.

5:08 p.m.

SENATOR ELTON asked Mr. Rue if he and Mr. Rosier would submit a written response to the committee on the question of whether federal agencies will do more of their own assessment work if EO 107 takes effect.

MR. RUE said he believes that federal agencies have often deferred to ADF&G more often in relation to EO 106, for gravel pits and North Slope wetland fills. He believes the federal agencies will take a much more aggressive approach if ADF&G has no voice. He noted the federal agencies have never involved themselves in instream permitting because ADF&G has done a good job of it.

SENATOR BEN STEVENS noted that Mr. Rue said he was the director of the Division of Habitat and Restoration under Governors Hickel and Cowper and asked how many people worked in the Division of Habitat and Restoration during that time period.

MR. RUE said the number was around 60 to 70.

SENATOR BEN STEVENS asked if Governor Knowles then appointed Mr. Rue as the commissioner of ADF&G in 1994.

MR. RUE said that is correct.

SENATOR BEN STEVENS asked Mr. Rue if he could recall the request for personnel in the Division of Habitat and Restoration in 1996.

MR. RUE said the Division of Habitat and Restoration staff was combined with the Exxon Valdez restoration staff that year.

SENATOR BEN STEVENS said the EVOS restoration had a separate BRU that year.

MR. RUE said he would have to research that information.

SENATOR BEN STEVENS asked if the statutory requirements of the Division of Habitat and Restoration's authority changed during Mr. Rue's tenure as director and commissioner.

MR. RUE said the statutory responsibilities did not change although some of the issues changed. He noted the statutes changed in 1989 with the Alaska Forest Practices Act, which put greater responsibility on ADF&G.

SENATOR BEN STEVENS asked what occurred in 2001 to 2002. He cited from the Division of Habitat and Restoration '96-'03 management plan and gave the following numbers of positions funded in the Division of Habitat and Restoration BRU:

- in 1996, 12 positions
- in 2000, 16 positions
- in 2001, 20 positions
- in 2002, [indisc. - tape change]
- In 2003, 69 positions.

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He asked why a threefold increase occurred between '01 and '02.

MR. RUE explained that a budget restructuring took place and he would have to look at the BRUs to refresh his memory. He noted

the division did not add that many more people. He believed the increase resulted from a structural change.

SENATOR BEN STEVENS said the division had a permitting BRU, an EVOS restoration BRU and one other.

MR. RUE repeated it was simply due to reorganization rather than a staff increase. The EVOS Trustee Council decided to have ADF&G manage its program.

SENATOR BEN STEVENS said the EVOS portion stays within ADF&G under EO 107.

MR. RUE commented:

... when we combined the restoration division, which you know, it used to be a whole separate division of fish and game, when the cleanup part changed and we went into restoration, we got rid of that division and combined it with habitat so that was another jump in numbers. And then when Forest Practices happened, we added some biologists to Forest Practices in the early - late '89, '90. That was the only times when we saw significant numbers of positions.

SENATOR BEN STEVENS said when Mr. Rue was director he had about 60 or 70 staff.

MR. RUE said that is correct to his recollection.

MR. KEITH BAYHA told members he is a hunter, fisher, trapper and a retired biologist with the U.S. Fish and Wildlife Service (USFWS). He considers the work done by the Division of Habitat and Restoration biologists to be vital to the protection of the public trust, fish and wildlife, and water and wetlands. The role the Division of Habitat and Restoration plays under the Fish and Wildlife Coordination Act is the key to successful mitigation of projected damages of resource development to fish and wildlife habitat and to the enhancement of these resources when the opportunity is present. That role cannot be successfully executed from DNR, especially with a 20 percent reduction in staff. He asked members to reject EO 107 and send a message to Governor Murkowski that this is not a "rubber stamp" Legislature.

MR. BILL STEVENS, President of Cassandra Energy Corporation, stated support for EO 107. He told members he has a five-page

timeline for the Cassandra Energy Corporation's project. After 29 months, that project is still not permitted to get into the Katalla area. Seven months of that time has been directly due to the system being broken, partly in the Division of Habitat and Restoration. He believes it would best be operated under DNR.

MR. STEVENS said he would like to clear up some statements made earlier about the Katalla project. Never in the plan of operations was it entertained that Cassandra would use 100-foot barges with four or five foot drafts. He said he will do everything he can to make sure no fish or potatoes die from that project.

CHAIR OGAN said that committee members have been told the permit turnaround time is two weeks. He said that could mean two weeks once all of the preliminary work is done but the preliminary work could take months and be costly. He asked if that is an accurate assessment.

MR. STEVENS said most of the delays have been with the USFS, not with the state agencies. The state permit process, since the first pre-application, has taken about one year. He noted there has been a tremendous amount of interest and activity involved in this particular project. It was scrutinized with a fine-toothed comb resulting in turf wars between agencies.

CHAIR OGAN asked where Cassandra Energy Corporation is operating.

MR. STEVENS said Cassandra Energy wants to drill from the old Katalla oil fields under federal land and exploit the oil and gas rights given to the Chugach Native Corporation back in 1981 or 1982.

CHAIR OGAN asked if those fields are in the Yakutat area.

MR. STEVENS said they are in the old town of Katalla, about two miles East of the Katalla River.

REPRESENTATIVE SEATON asked Mr. Stevens to fax a copy of his timeline to members.

MR. JOHN WINTHER, a commercial fisherman for 39 years from Petersburg, stated support for EO 107. He told members that the community of Petersburg is entirely dependent on commercial fishing and its residents are confident that DNR will protect the marine environment. He said he is assuming that the buffer

strip protections will also be transferred to DNR. He told members that 80 percent of Petersburg's population supported Governor Murkowski, which he believes makes a strong statement that they are comfortable with his proposals. He told members he was on Governor Murkowski's fish and game transition team and participated on the habitat committee. The information he heard convinced him the Division of Habitat and Restoration should be transferred and the permitting system put under one roof.

MR. STEVE BORELL, Alaska Miners Association, stated support for EO 107. He said EO 107 is the first significant move to streamline the permit system. The AMA is not opposed to being regulated in a fair system based on a scientific approach. Regulations not only protect the environment, they protect the industry from individual operators who may not want to do what is correct. This change will not modify the requirements of the law as they stand today.

MR. MIKE SALLEE told members he lived in Ketchikan most of his life and has worked as a fish packer, commercial fisherman, harvest diver, and sawmill owner and operator. He believes the reasons given for cutting habitat jobs are nebulous at best. ADF&G has provided rebuttals on each of the cited instances - the Juneau golf course, the Dorothy Lake hydro-project, False Creek, Tok Highway reconstruction and others. Regarding previous comments that DNR will be looking out for the environment, he asked members to recall that floating fish traps were shut down when Alaska became a state because a few wealthy companies had a stranglehold on the salmon resource of Southeast Alaska. He doubts that a single fish trap owner would have admitted to the remotest connection to any problem with the salmon resource. He spoke with some of the representatives of the Alaska Longline Fishermen's Association who oppose EO 107. He said although a SARDFa representative has testified in support of it, he polled a number of SARDFa members who do not favor EO 107. He asked members to reject EO 107.

MR. PAUL SHADURA, President of the Kenai Peninsula Fishermen's Association (KPFA), said KPFA respects the rights of the Governor to streamline government and improve the economic welfare of the state. KPFA believes that EO 107 has merits but also has serious flaws that do not allow for reviews necessary to protect the environment from overzealous industrialization. His three main suggestions for modification are:

- The commissioner of ADF&G should retain a voice in the final permitting process. It is extremely important that aquatic systems are protected to the highest standards

available. ADF&G is the state specialist that supports our state's constitutional mandate to sustain and conserve. The commissioner should have the authority to object, veto, vote or call for further analysis and public involvement if he believes that vital habitat will be compromised.

- The new deputy commissioner position within DNR requires a person with special talents and an ability to not be influenced by individuals. This position should be required to go through the full confirmation and administrative appointment review process.
- The functions of the anadromous fish catalog stay within ADF&G. There is no reason that function should be delegated to non-biologist staff. This catalog is the most important log of fisheries management that tells the public what systems are performing and which are showing stress. It is a performance document that acts as a resource history book.

He encouraged members to reconsider the adoption of EO 107 and to consider the suggested improvements.

MR. TADD OWENS, Resource Development Council (RDC), stated support for EO 107 because the current permitting process is costly and time consuming. He noted that EO 107 retains the statutory requirements. RDC members do not want or expect the habitat standards to change. They do expect the process of permitting a project to become more efficient and predictable. In every major development sector, Alaska companies are fighting for capital dollars in a global arena. What is done in the next few years to improve Alaska's investment climate will have a profound effect on its economy over the long term.

MR. SCOTT METZGER, a Cordova resident, told members that Mr. Stevens' statement that a 100-foot long, four-foot draft barge was never considered is false. That is a matter of record at ADF&G. He said since its inception, the ADF&G Division of Habitat and Restoration has done an exemplary job of issuing permits and protecting Alaska's wild salmon habitat. By streamlining the habitat permitting division, the overall process will not, in fact, be streamlined at all. Fewer biologists will review the same number of permits or more and they will be unable to be as effective. He said although Governor Murkowski has alleged that the Division of Habitat and Restoration has been obstructionist, in reality it has merely been doing the job of critically reviewing development permits. DNR's mission is incompatible with the protection of fisheries habitat while the protection is the number one priority of the

Division of Habitat and Restoration. He supports both house and senate resolutions disapproving EO 107. He is especially concerned about the Copper River watershed as it lacks a comprehensive management plan that would serve as a guiding principle for how to proceed with project permitting in this sensitive area. In 1991, DOTPF began construction of the Copper River highway without even attempting to secure habitat area state and federal permits. He urged the Legislature to exercise its power to check and balance the executive branch. Governor Murkowski's proposal is vindictive, politically motivated and misguided.

MR. ROBERT ZYANICH, representing the Alaska Seine Boat Owners Association (ASBOA), stated support for EO 107. ASBOA believes opposition to EO 107 is designed to generate heat rather than light. A mindset has occurred within ADF&G, which is running contrary to a balanced approach to sound economic development in this state. EO 107 is about streamlining the permitting process, not the destruction of fish habitat.

MS. DEB SPENCER, a resident and fish buyer from Pelican, implored members to look at the check and balance issue in relation to EO 107. She said she strongly hopes the Legislature will take this divisive issue on because all Alaskans value personal use of the resources. She noted questions about the relationship between the commissioner and deputy commissioner within DNR need to be answered before a decision can be made. No matter where members believe the Division of Habitat and Restoration should reside, it is the Legislature's job to give its full attention to this issue. She said sadly, the only healthy aspect of the salmon industry is the resource itself and she fears any tampering with the healthiest piece of the puzzle.

CHAIR OGAN explained to participants that the Legislature can do several things: it can allow the executive order to take effect; it can disallow it to go into effect; or any member can introduce a bill after it goes into effect to make changes. In addition, state law can be amended through the referendum process.

MS. SPENCER said she understands that a review process is available after the fact but she believes EO 107 deserves a full review before the transfer actually occurs.

MR. DICK COOSE, a Ketchikan resident, stated support for EO 107. He told members he has been a professional forest resource manager for 40 years. Placing all of the resource systems together in one place is the most efficient and effective way to

provide the best management solutions for resources and habitat. He believes DNR will act positively and protect Alaska's valuable habitat resources.

DR. DAVID PERSON of Ketchikan said he sees no compelling evidence or information provided by the Governor or his staff to justify this move. All of the allegations and innuendoes put forth fall flat when investigated. They reveal nothing more than a division composed of dedicated professionals who do the jobs expected of them. Last Friday's news conference with Commissioners Duffy and Irwin suggested to him that this is nothing but an effort to punish division staff for doing their jobs. Commissioner Irwin stated in the interview that many states have consolidated their resource development and protection staffs into one agency. He cited Oregon as an example. That should serve not as a model but as a warning to every commercial, sport and subsistence fisherman in the state. There are not enough habitat biologists now to do the job effectively. He questioned how scaling down staff and moving them to another department will create greater efficiency and maintain quality. He said perhaps the motivation behind EO 107 is to ultimately do away with those laws and simply rubber stamp proposals that could impact fish and wildlife resources. On a personal note, he told members that he and colleagues needed to build a cabin on a remote island several years ago to use as a base camp for a research project. They selected state land and applied for a permit to build. DNR informed them it would take three to four years to process the application. He then told members that timber planners with DNR drafted a project proposal for timber land on Prince of Wales Island. In their description of the wildlife in that project area, they described populations of red squirrels, porcupines, and snowshoe hare. None of those species occur on the island. It took a habitat biologist to point that out to them. He urged members to rescind EO 107.

DR. ERIC KNUDSEN, a professional fisheries scientist with over 20 years of experience in management and research on Pacific salmon and trout and the current and past president of the Western Division of the American Fisheries Society, told members he has submitted a copy of a letter that he wrote to Governor Murkowski to the committee for the record. He asked to explain three scientific based claims which, when taken together, argue for a joint resolution to reject EO 107. First, there is no scientific doubt that healthy stream and riparian habitats are fundamental to the amount of salmon and steelhead and other related fish and wildlife produced in Alaskan watersheds. Second, a combination of solid science in Alaska and elsewhere,

together with a long history of experience in the Pacific Northwest, demonstrates that the gradual, incremental, cumulative effects of numerous seemingly minor habitat alterations can lead to the extensive destruction of habitat that supports a productive salmon population. Third, scientific research in the Pacific Northwest has led to the conclusion that it is much more difficult to repair stream and riparian habitat to their fully functional states than to simply protect the natural stream functions in the first place. Damage elsewhere is insidious and irreversible, and often the effects of habitat damage are not known until it is too late. Alaska is not immune to the problems that are being experienced in the Pacific Northwest. He said he is very concerned that any relaxation on habitat protection will result in the insidious degradation of habitat. It is impossible to judge how effectively habitat will be protected if the permitting functions are transferred from ADF&G to DNR. Because the stated purpose is to speed and streamline development, he believes that habitat protection will be less effective. The existing system of checks and balances has served the marine habitat of Alaska well. He urged the Legislature to reject EO 107 and retain habitat permit functions within ADF&G.

MR. JOEL BENNETT, representing Defenders of Wildlife, told members that Defenders of Wildlife is a national non-profit conservation organization that supports consumptive and non-consumptive uses of the state's wildlife with special emphasis on biodiversity. He stated opposition to EO 107 primarily because his organization sees no fundamental or compelling need to make this major change. ADF&G and DNR's roles are fundamentally different. Defenders of Wildlife believes that to best protect and enhance wildlife, matters of habitat permitting should remain where they are.

MR. BENNETT said that Defenders of Wildlife believes there is a frequent need for immediate consultation and communication between area biologists and other experts and habitat review personnel. This is best achieved within ADF&G. Defenders of Wildlife sees that as the most responsible and professional way to operate so that project development assures resource protection. Regarding efficiency, Defenders of Wildlife feels the executive branch can make modifications and changes within the department. Streamlining and reorganization can happen quickly and efficiently. The more serious problems of bias and personnel can be made with personnel changes. He said, in conclusion, a previous commissioner of ADF&G perhaps said it best when he said that habitat is such a cornerstone of fish and

game management that you want management located where the most expertise is. Defenders of Wildlife could not agree more.

MS. PAULA TERRELL, representing the Alaska Marine Conservation Council (AMCC), said that AMCC is a statewide organization with almost 1,000 members, comprised of fishermen, subsistence harvesters, marine scientists, conservationists, small business owners and others, all of whom are linked by a desire to protect and restore our ocean environment through sustainable fishing practices, habitat protection, and local stewardship. AMCC opposes EO 107 because this transfer will create downside risks for fishermen. The fact that the statutes are not being changed gives AMCC little comfort because the fact remains that fishermen have looked to the Division of Habitat and Restoration for the protection of their fisheries. The status quo initiated in Statehood has served Alaska's fishing community well. She requested the committee get answers from the Administration to the following questions.

1. Would the DNR commissioner continue what has been an historical practice of the fish and game commissioner of delegating the authority for making the initial permitting decisions to the habitat biologists? Habitat biologists have been signing the permits. Would these decisions, therefore, become subject to the process for appeals to the DNR commissioner?
2. The commissioner under DNR will have broad discretion to interpret the Anadromous Fish Act. For example, the commissioner would determine the waters of the state that are important for the rearing, spawning and migration of anadromous fish. The DNR commissioner would decide what constitutes important habitat and what constitutes proper protection. A similar discretion is offered under the Fish Way Act. Given the different mandates of DNR and ADF&G, what safeguards would prevent this discretion from being unduly conflicted or compromised because it now resides with the DNR commissioner?

MS. TERRELL said at a minimum, AMCC urges the committee and the Legislature to request the following commitments from the Administration.

1. DNR will give the same level of environmental protection to fish and wildlife and that the habitat biologists being transferred from ADF&G would be housed in this newly formed habitat office.

2. Under the reorganization, the DNR commissioner would delegate the authority for issuing permits to the habitat biologists who have been transferred from ADF&G.
3. DNR will require the state forester to grant due deference under the Forest Practices Act to the new office of habitat management on issues relating to the harvest of trees from within the 66 foot buffer zone on private land. The inclusion in the Forest Practices Act of this due deference to ADF&G was the key to the fishing industry's support of the Forest Practices Act.
4. A commitment from DNR to continue the same level of permitted monitoring compliance and enforcement as previously existed under ADF&G.

She restated AMCC's opposition to the transfer of habitat permitting functions to DNR. AMCC asks the Governor and Legislature to ensure that Alaska's world-renowned renewable fishing industry and the habitat upon which it depends not be compromised.

MS. JAN DAWE, representing the Alaska Forest Council (AFC), told members that the AFC's mission is to help communities make informed decisions about forests and other resources in Interior Alaska. The AFC's role in policy discussions is not to take positions, but to ask questions and raise concerns. She presented the following questions regarding EO 107.

1. Were ways to improve the permitting process and provide greater regulatory transparency within ADF&G considered before recommending the move of habitat functions and biologists to DNR?
2. If the executive order becomes law, will there be a way to ensure the possibility of cabinet level, commissioner-to-commissioner resolution in the exceptional instance of [indisc.] over habitat protection.
3. Given DNR's backlog of permits still pending action, will the government be able to provide sufficient long term financial resources to the agency to handle the additional permitting in the new office of habitat management and permitting?

MS. DAWE said the Board of Forestry has recently developed a stream classification system for Region 3, which is found in SB 88. She asked if it is possible for certain permitting functions within Title 16 to now be treated on a [indisc.] basis, parallel to the way in which the Department of Environmental Conservation has streamlined its permitting process with regard to small log

storage areas at tidewater. The AFC has due process concerns with EO 107. One is a timing issue that the order was issued three weeks into the legislative session making it more difficult for the Legislature to gather constituent input and make an informed decision. AFC's second concern is the difficulty for the public to get substantive information on the executive order, the first information being released on March 7 during the joint press conference of the commissioners.

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MS. DAWE said for those reasons, AFC refrains from taking positions on individual issues. AFC wants the state to make improvements to the regulatory process to provide greater regulatory certainty for permit applicants. AFC has just seen the special concurrent resolutions in the House and Senate. AFC is concerned about the ramifications of EO 107 and the process that has led AFC here today. AFC wonders if it might not be better to adopt the special concurrent resolutions with the caveat that a working group be formed immediately to look at improvements to Title 16 permitting and to make recommendations to the Legislature next session or for a subsequent or substitute executive order to be issued this summer. She offered AFC's services to such a working group.

MR. DAVE HANNA, a Juneau resident, told members his family has been involved in mining, timber development, fishing and construction since the 1870s. He said in the last 25 years he has spent a good deal of time working with ADF&G and the other departments on permitting projects in and around Southeast Alaska. During that time, he has never had a problem permitting a resource development project with ADF&G. That department has acted very professionally. He said some of his projects have had the potential to have large impacts on major fisheries. He believes having the habitat biologists in the same offices with the sport and commercial fish divisions has enabled them to work expeditiously. The habitat biologists finished their review of his projects ahead of the other agencies.

MR. HANNA noted he is not saying he has never had a problem with ADF&G. He said he also chairs the board of a local watershed partnership. The board frequently gets involved in local restoration projects. Last year the Board was involved in a project that was supported by just about everyone but it involved some new technology that some of the habitat biologists were not familiar with. Their policy was to not approve anything they were not familiar with. This raises the issue that many of

the problems, if not all, that have been raised with ADF&G are due to policy and the fact that the habitat statutes are so broad. Policies are set by administrations and personnel and they shift over the years. He believes the fact that decisions are made based on policy rather than statute is what has led to the inconsistency in the permitting climate in Alaska. He suggested instead of transferring the Division of Habitat and Restoration to DNR and leaving it subject to the whims of policy changes, direct the Division of Habitat and Restoration to work with the Legislature to put permitting rules in statute. He said that although Commissioner Irwin may be able to wear both hats, without a check and balance system in place, there is no guarantee that Alaska's resources will be protected down the line.

MR. JOHN STURGEON, representing Koncor Forest Products, told members he was a Board of Forestry member for 18 years and is a member of the Resource Development Council and Alaska Forest Association. He stated support for EO 107. He believes this transfer can be done while successfully protecting the environment and will improve efficiency in government. Regarding concerns addressed about buffer zones, he clarified that DNR already has primary authority for buffer zones. ADF&G has had due deference since about 1991. He believes DNR has done a good job. Regarding the statement that DNR is strictly a resource development entity, the timber industry sees DNR as an enforcement entity under the Forest Practices Act. He believes EO 107 will provide for "one-stop shopping." Under the current system, a developer must comply with several agencies' requirements. With a \$1 billion dollar budget shortfall, state government needs to function more efficiently.

MR. JAN KONIGSBERG, representing Trout Unlimited, told members he has submitted written comments to the committee about how EO 107 is based on the assumption that this transfer will have a significant impact on economic development in the state. Regarding Commissioner Irwin's previous statement that the State of Oregon's system was used as a role model for EO 107, he pointed out that the last time he checked, the State of Oregon is facing a budget shortfall of \$2 billion. He questioned the connection between its permitting system and economy as Oregon no longer has a natural resource based economy. That must have something to do with a lack of productive habitat. Oregon has over 13,000 culverts on state highways and forest roads that block fish. He questioned why Alaska would use Oregon as an example to follow. He believes EO 107 is a misguided approach and he wonders whether anyone has done their homework to produce

a sensible plan for economic development. He noted the Administration seems to believe that consolidating permit oversight in DNR will remedy what is perceived to be the undue influence of environmentalists and professional biologists and that somehow magically economic development will start taking care of itself. If subtracting citizen participation, science and public policy analysis from the equation is the solution, Alaska can look forward to more projects like the Ketchikan veneer plant or the Great Alaska Seafood Plant in Anchorage - no doubt a money maker for a few select individuals but a net loss to the state. He repeated that he cannot figure out how EO 107 has anything to do with economic development.

MR. KONIGSBERG said the Southeast timber industry depended mainly on federal dollars and failed, not because of environmentalists, but because the world demand for dissolving pulp collapsed. The salmon industry, which depended mainly on Japanese demand, has shriveled, not because of habitat biologists but because of the huge supply of farmed salmon. If the salmon industry is ever to gain its market share, it will have to have high-quality salmon habitat. He stated when it comes time to develop a meaningful plan to grow the economy, he does not believe it will start with permitting. Alaska needs to start with its comparative advantages, one being its natural beauty, habitat, and productivity. He urged committee members to reject EO 107. He pointed out the Governor's transition advisory group never recommended moving the Division of Habitat and Restoration to DNR; it recommended appointing the commissioner of ADF&G to investigate ways to make improvements in the Division of Habitat and Restoration.

MR. HAROLD HEINZE told members that numerous experiences have brought him to testify before the committee. He recalls the predictions of the impacts of development of the North Slope, particularly the demise of the caribou herd and waterfowl. He was the DNR commissioner during the Hickel Administration and held hearings on the Forest Practices Act. From that experience, he has a strong sense of interaction with DNR and ADF&G on that one issue. He is very supportive of EO 107 for several reasons. First, he believes the teamwork approach will lead to better decisions. DNR operates under the one constitutional mandate the state has and that is the development of the state's resources to the maximum benefit of all Alaskans. He believes that is the overriding mandate and, working as a team, habitat biologists can contribute to it. He stated the commissioner of ADF&G has had time to fix the problems of the Division of Habitat and Restoration over the last 12 years but he did not do so,

therefore he presumes those problems cannot be fixed. He said one of the biggest disappointments he has seen during the last 12 years is that the Division of Habitat and Restoration had a charge to develop permit standards so that applicants would know whether they would get a permit or not. All of the other agencies of state government have created standards. He said under the Forest Practices Act, the deference to habitat is very clear and, as a commissioner, he experienced a habitat veto.

MR. HEINZE said he had a few more observations. One is that a previous testifier used fish traps as an example of a prior disaster. He said that was a fish management issue rather than a habitat management issue. Second, he has found it very interesting that when it comes to the management of these important fish and game resources, management decisions are not made by the biologists or the scientists but by people with a broader perspective. It has struck him as odd that is considered to be the right approach for fish and game, but that the Division of Habitat and Restoration can veto a resource development issue related to other industries.

SENATOR ELTON asked Mr. Heinze if due deference must be given to ADF&G under the Forest Practices Act now and if the two departments disagree, whether a process is in place to resolve the disagreement. He then asked if there will be no due deference under EO 107 and whether Mr. Heinze sees the elimination of the conflict resolution process as helpful.

MR. HEINZE said he would describe the current process as one without equal footing. He believes the Division of Habitat and Restoration has veto power under the current system. In trying to resolve matters commissioner-to-commissioner, he never won. More importantly, he sees this change as creating equal footing for DNR.

6:20 p.m.

MR. MIKE ROBBINS, representing ASEA Local 52, stated opposition to EO 107 and urged members to rescind the order. He made the following points about the legality of EO 107. First, there is a separation of powers doctrine in art. II, sec. 1 of the Alaska Constitution, which the Legislature should be concerned about. That article gives the legislature the power to enact statutes. On the other hand, art. III, sec. 1 says the Governor implements those laws. EO 107 attempts to amend laws and repeal a law. He pointed out that 43 years ago the Departments of Fish and Game and Natural Resources were established with different roles

designed to balance the public interest. In the 1970s, the legislature passed statutes concerning public employees and their retirement system. In 1983, the legislature passed a statute giving ADF&G employees a 20-year retirement package. The executive branch sought to change the retirement package by transferring ADF&G employees for whom the 20-year retirement was established to DNR. That is a violation of the 1983 statute. He also noted the merit principle is a matter of constitutional law, art. XII, sec. 6. According to a 1992 Alaska Supreme Court decision, that is not supposed to be impacted by political consideration. It also violates the collective bargaining agreement, which provides for progressive discipline, meaning if employees are not performing their job in a timely manner, the employer has a right to discipline. That process requires notice to the employee, a right to representation by the union and opportunities to be heard. The state also recognizes that normally progressive discipline follows a pattern of training, letters of instruction, and verbal and written reprimands, which has not occurred.

REPRESENTATIVE SEATON told Mr. Robbins and other participants that the House State Affairs Committee will hold hearings on Tuesday and Wednesday night, which is an appropriate venue for state employment matters. The Resources Committees are concerned about the resource impacts.

MR. ROBBINS concluded by saying that art. XII, which is the layoff article of the collective bargaining agreement, concerns reorganization. The union feels it is important that the committee understands and addresses these issues. He urged members to disapprove EO 107.

MR. BILL HAUSER told members that he is in support of Alaska's fisheries resources. Unique habitats are required to support their long-term sustainability. He is a retired ADF&G employee and a current temporary employee of the habitat restoration division. His work status is unaffected by EO 107. He is speaking to the committee as a fisheries scientist. He has a Ph.D. in zoology and fisheries management and over 30 years of experience. Mr. Hauser said fish is the most important natural resource in the state for many users. If we care about and want to preserve this resource for future generations, the resource needs good quality habitat for spawning, rearing, overwintering, and open pathways for access to migration amongst these habitats. Any of these are jeopardized by any resource development project. In addition, when anadromous fish populations are reduced or destroyed, other resident populations

are diminished. Regarding the issue of checks and balances, he does not understand how the habitat biologists will work as well in DNR because the mission of DNR is to develop resources. He can only assume that when decisions are made, DNR's main mission will be the driving force. With fewer staff available, the quality of the product will be lower and fish-friendliness will diminish. He said in a short time, the people transferred to DNR will find other jobs and newcomers will have less expertise. He concluded by stating opposition to EO 107.

MR. MACK MEINERS, representing the Kodiak Seiners Association, stated support for EO 107. He said the Kodiak Seiners Association believes the Governor and DNR will do a fine job and that EO 107 will create a streamlined, one-stop shopping permit process.

CHAIR OGAN asked Mr. Meiners to let him know if he believes DNR does not do a good job.

MR. BEN KIRKPATRICK, an ADF&G habitat biologist since 1995, said he is speaking on his own behalf in opposition to EO 107. He said his main reason for speaking out is that he feels as a habitat biologist, the Governor listed many examples of poor jobs done by division employees as the reason for the transfer to DNR. He said if one looks at the facts, the biologists were doing their jobs as directed by the Administration at the time. He said as Mr. Heinze mentioned, he does not believe the Division of Habitat and Restoration has veto power. He said one of the big issues is that in Southeast Alaska, one-third of the Division of Habitat and Restoration's permitting staff will be reduced. That alone will make it much more difficult for biologists to work on the many small projects. He believes the big projects will be looked at in detail but much of his time as a habitat biologist has been spent working with small developers to provide expertise. That will become impossible to do with a smaller staff and will have a very significant impact on Southeast's resources. He said the Administration has the responsibility of making accurate statements when speaking about employees and saying there will be no changes in habitat protection. He said he has found the allegations surrounding EO 107 have been lacking.

MS. MAGGIE WIGEN, a resident of Tenakee Springs, said much of the livelihood of her community is dependent upon subsisting on deer and fish resources. She is not convinced that the transfer of the permitting authority from ADF&G to DNR is in the best interest of habitat protection. While she has not spoken to

everyone in her community, those she has spoken to have expressed deep concern about the transfer. She urged members to oppose EO 107.

MR. JOSH PIERCE, testifying from Anchorage, said the repeated phrase, "streamlining" as justification for EO 107 is a misnomer. ADF&G has been extremely efficient in its permit process while DNR has an extremely large backlog in its permit process. Regarding statements made about improved services resulting from teamwork, he believes that is also misleading because all of the management authority and research will be done at ADF&G, while those issuing the permits will be in the Division of Habitat and Restoration. ADF&G will lose a valuable tool in its ability to manage. He believes that will have a detrimental effect on fisheries resources. He said once habitat problems are discovered, they will be extremely expensive and difficult to fix. He asked members to reject EO 107.

MR. DOUG HILL, an ADF&G employee and commercial fisherman, directed his testimony to the Frazer Report. Commissioner Duffy said Alaska ranked 50th in that report; that was an investment tracking index rather than a ranking. That index includes taxation, government policies, Native issues and environmental regulations, among other things. The index ranges from 1 to 100, 1 being the worst. Alaska rose from 46th in 1997 to 80th [in 2002]. He urged members to look at that report, as well as a report by Mining Watch Canada, which was formed to ensure that mineral development practices are consistent with sustainable communities. He stated opposition to EO 107 as it will clear the way for development at the cost of fish and game habitat. He said this is not a democratic or republican issue: it is an issue about people and fish. He believes it is not a fiscally conservative policy as restoration is much more costly than preservation.

MR. ERIC LEE, a commercial fisherman from Petersburg, stated opposition to EO 107. He said the fishing industry is extremely important to Alaska's economy. It generates more jobs than any other industry in Alaska, including the oil industry. The tourism industry also plays a big role in Alaska's economy. Both the fishing and tourism industries are totally dependent on the condition of fish and wildlife habitat. He believes EO 107 will result in a situation where permitting decisions are made in DNR by overworked employees in an atmosphere of expediency and mistakes will be made. He does not believe important considerations will be adequately addressed by biologists with site-specific knowledge. He noted the conditions in Southeast

Alaska are very different from other areas. Local biologists know what local considerations need to be addressed when making decisions. He added that he heard at the beginning of the meeting that this change is about expediency and streamlining. He said the top priorities should be proper decision making by qualified biologists with local knowledge. He said the existing system works quite well.

TAPE 03-12, SIDE A

MR. NEIL MACKINNON, President of Hyak Mining Company, said he has had numerous opportunities to interact both with DNR, ADF&G and the Division of Governmental Coordination. He supports EO 107 for two reasons. First, the Legislature has to figure out how to deal with the state's budget problems, so if it can't do this, it will have to figure out other ways to get the money to "keep funding that animal." His second reason for supporting EO 107 is that in his dealings with ADF&G, he believes the Division of Habitat and Restoration would benefit from a broader perspective. In the last few years, he has found the division's attitude to be that anything without fins doesn't count. He thinks DNR might also consider the human habitat. His earliest experience with the Division of Habitat and Restoration occurred in 1994 when Hyak was logging its land in Berners Bay. Hyak wanted to cut some trees in the buffer zone of a salmon stream. Both a Division of Habitat and Restoration biologist and a DNR biologist visited the site. The Division of Habitat and Restoration biologist was much more forgiving while the DNR biologist was not going to allow any, maybe because the habitat biologist knew what counted. He said he doesn't see where turning the permitting function over to DNR will open the floodgates to do anything.

MR. CHIP DENNERLEIN gave his numerous credentials working in the area of Alaska's natural resources and said he would be happy to respond to any questions and provide documentation to substantiate his following comments. EO 107 is based on fiction. The commissioner will no longer have any clear authority over salmon and resident fish habitat. Habitat permit issuers will be separated by agency and physically from fish and wildlife biologist colleagues and from ongoing science and research. There will be fewer permitting staff to get in the field and solve problems. The federal agency permit issuers will now consult by law, under the Fish and Wildlife Coordination Act, with ADF&G biologists, not with DNR staff. Every project mentioned in the Governor's state of the state speech was heavily federally funded and subject to federal permits. The

state uses examples of state and single resource agency models elsewhere with numerous apple and orange differences from agency staffing to retaining deference requirements for fish and wildlife. The projects used as examples are blatantly misleading. Falls Creek is one example. That is a proposed hydro project inside the boundaries of a national park in a congressionally designated wilderness. He doubts habitat concerns about fish passages are holding the project up since it is subject to an environmental impact statement. It was subject to a bill in then Senator Murkowski's Senate Energy and Natural Resources Committee.

MR. DENNERLEIN said the Governor's transition team never once met with ADF&G division directors. Neither the Division of Habitat and Restoration director nor deputy director was ever contacted by any member of the transition team, including habitat committee members. However, they still did not recommend the transfer. He believes EO 107 is a radical move that is reckless and based on falsehoods.

MR. STEVE ALBERT, a 21-year ADF&G employee, said he is speaking on his own behalf. He believes EO 107 is poor public policy. He respects the Alaska Constitution and the ability of the Governor to reorganize the executive branch. However, the implications of this reorganization will have far reaching effects well beyond the Habitat and Restoration Division. He asked members to focus their attention on Section 45 of EO 107. It includes language that states that ADF&G employees with peace officer status delegated before June 23, 1983 will continue to accrue service credit as peace officers under AS 39.35 after the transfer as long as the employees remain in a position described in this subsection in DNR. Therefore, if he or other colleagues choose to apply for a position in DNR that could benefit the State of Alaska if selected as the most qualified candidate, he would be forced to endure financial repercussions in terms of his retirement status. The Governor has no right to impose financial consequences and force him to stay in one position for the rest of his working life. He said he cannot apply for another position in DNR, nor can he return to ADF&G in his professional capacity without suffering financial consequences. The executive order provision of the Constitution was included to allow the governor to reorganize, but not to punish employees. He was simply doing the job he was asked and expected to do by the public. He noted that Commissioner Irwin has received praise about how the permitting process for his previous company was handled in the Fairbanks office where the Division of Habitat and Restoration was a separate entity. He stated that he got his

permit in a timely manner and the environment was protected and/or enhanced. Mr. Albert emphasized that the Division of Habitat and Restoration was a separate entity during that process and the system worked. He said the current system works for the public by protecting habitat and for the more than 99.5 percent of all development projects proposed in Alaska each year. He said he is not against development but he appealed to members to recognize that development at any cost over other societal values without recognizing the concept of sustainability and multiple use is wrong and against the vision of the writers of the Alaska Constitution.

7:00 p.m.

SENATOR ELTON said he wanted to take this opportunity to thank committee members and participants for staying to hear the testimony.

MS. KATHERINE PAUL, an ADF&G habitat biologist, told members she was testifying on her own behalf. She said the information the committee is working from is not good. She noted that the ADF&G logo contains animals; DNR's logo does not, showing the very different focus of the two agencies. She said that habitat protection is part of the overall mission of ADF&G. The word "protection" remains in the statutory responsibilities for this agency despite EO 107. She questioned how the habitat protection mandate can be met through having habitat permitting and project review in DNR. Ms. Paul said she is one of the project reviewers who has been targeted by repeated accusations in the press, by the Governor, and others for doing her job under the direction of her supervisors and as part of a larger team of sport and commercial fish and wildlife division staff. It has been quite shocking to her to hear attacks made against her by the state's leader in the media for doing her job correctly. She and others wrote a memo to the director and presumably to the commissioner and Governor to correct the Governor's information but she has received no acknowledgement that that information was incorrect. Instead, she has heard more accusations, inaccurate and some defamatory. She said there is a continuing resting of the case for making this transfer based on erroneous information. She said it is unbelievable to see an agency be "scapegoated," especially in an era when our country is working against repressive regimes, which begin by abusing and controlling the flow of information. She said it is important for members to view this as an environmental injustice and an issue of respect for information. She said there are several ways to show how these changes will lead to a reduction in the substance of

habitat protection, not just a change in process. She noted that not only has the committee received incorrect information, it has provided incorrect information about this process. That needs to be looked at in concert with the people who work on the permitting process. This transition was proposed without any contact with the people who do the work and it will not serve the public to base this decision on incorrect information.

7:10 p.m.

CHAIR OGAN announced a brief at-ease and, upon reconvening, asked participants to limit their testimony to 1 minute. He reminded them that two more hearings have been scheduled on this issue in the House.

MS. ELLEN SIMPSON, representing herself, told members she currently works for ADF&G. She came to Alaska 20 years ago from Washington State, where she worked as a fish biologist. She wanted to work with wild salmon rather than salmon that had to be raised in a hatchery because the habitat they depended on was gone. She believes the same thing will happen if EO 107 goes into effect. Fish habitat is lost one project at a time. Without productive salmon habitat, salmon returns can never be sustainable, no matter how good the state's management policies are. She said she is especially concerned that the Administration has not adequately justified a major change to the way business is done in the state. The Governor says his goal is to streamline permitting and make it more efficient along the lines of the large mine projects. He believes moving the Division of Habitat and Restoration to DNR will accomplish that. Commissioner Irwin explained the large mine project concept in his overview to the House Resources Committee on February 20 and in a press conference last week. He indicated that the Fort Knox staff and habitat biologists worked to modify that project to benefit both the company and fish habitat. He praised the process, which sounds like an endorsement for the existing process, not a justification to change it. She indicated of the 2,000 permits ADF&G issues each year, only a few are for large projects. Over 80 percent require consultations within ADF&G. These permits are very important to landowners and small developers who depend on ADF&G's expertise to help construct projects that are fish-friendly. Most of these projects are unique. She pointed out that ADF&G and DNR had to draft a memorandum of understanding so that the habitat biologists located in DNR will know how to communicate and work with ADF&G biologists. She does not see that as streamlining. She urged members to disapprove EO 107.

MS. CELIA ROSEN, an ADF&G librarian for 15 years, said she has worked with the same crew of habitat biologists that will be transferred and noted those biologists are very professional and take sound science very seriously. Those employees work an incredible number of hours and risk their lives flying around the state to do field work. She believes they probably work more unpaid hours than anyone else in state government. The most significant loss she sees resulting from EO 107 is the loss of legal continuity. She expressed concern that the collective wisdom of generations of lawmakers will be thrown away on a political whim under the guise of reorganization. She said Alaska differs from other states in that it has been proactive in preventing habitat loss. She asked members to oppose EO 107.

MR. JERRY MCCUNE, representing United Fishermen of Alaska (UFA), stated support for EO 107. He said that fishery habitat protection is of the utmost importance to UFA and clearly the fishing industry's sustainability depends on it. UFA has spent the last 1 1/2 years trying to revitalize and a key element of that work has been the examination of ways to reduce costs. Permit streamlining is certainly an element of that. UFA is working to streamline direct marketing permits so that fishermen do not have to deal with four different agencies to do business. UFA sees EO 107 as a similar move; one intended to better serve natural resource users to reduce costs and move toward efficiency. As long as state and regulatory protections are made under DNR permitting as they currently exist under ADF&G, UFA does not believe EO 107 will cause any harm to fisheries. UFA will monitor the new process and voice its concerns if and when they occur.

MR. RODGER PAINTER asked to share a comment made to him by the director of the commercial fisheries division, that being that if commercial fishermen had to go through the same process of review with the Division of Habitat and Restoration, the director would be out of a job because there would be no commercial fisheries. He said he is representing the Alaska Shellfish Growers' Association (ASGA). ASGA has had long standing disputes with the Division of Habitat and Restoration. He said the statutes are broadly written, which leaves a lot of room for personal interpretation. ASGA found there to be no review standards. He requested the committee hold an oversight hearing next year to look at how this process has been carried out. He said he hopes that DNR and the Governor live up to their promises, but little solid information is available.

CHAIR OGAN committed to doing that and said he would also be out in the field this year looking at the process.

MR. CEVIN GILLELAND, an area habitat biologist for the Mat-Su Borough, Prince William Sound, and the Copper River Basin, said he was testifying on his own behalf. He told members he has been involved in three of the projects that have been used to demonstrate why ADF&G's responsibility to protect fish and wildlife should be moved to DNR. Moving this responsibility to DNR will eliminate ADF&G's ability to protect fish and game. The information about the three projects he is working on that was given to the press has been inaccurate. Those projects are the Tok Highway Cutoff Upgrade, the Glenn Park Interchange, and the Power Creek Hydro-electric project. He said it has been alleged that the habitat division first provided comments saying it had no objection to the Tok Highway Cutoff Upgrade. That is true, however DOTPF changed the project to include 24 acres of wetlands fill adjacent to the Copper River and the diversion of a clear channel Copper River tributary. The Division of Habitat and Restoration received the information that those two changes were part of the project. The Division did change its comments because it was the right thing to do. The Division requested plans for the stream diversion and to evaluate the impact of the wetlands fill. The second project was the Glenn Parks Highway. The Governor said the consistency finding was issued in March, 2001 and it took 16 months to get a fish habitat permit. That is incorrect. The first meetings took place in June of 2001. The consistency finding required the contractor provide plans and specifications to ADF&G 30 days before construction began. ADF&G could not issue permits when the consistency finding was done because the plans were not complete. ADF&G worked with the contractor to eliminate one of the bridges over a creek and to get a concrete wall reduced. ADF&G helped the contractor save over \$1 million on that project. He urged members to overturn EO 107.

MR. LARRY HOULE stated support for EO 107 and said that nothing exists to prove that streamlining a government process will degrade or compromise the Alaskan environment.

MS. JEANNE WALTER told members she has worked at the Department of Interior, the State of Alaska, the University and for industry. She said the original intent of EO 107 has been stated to streamline the permitting process. This will not be possible for several reasons. The ADF&G Division of Habitat and Restoration staff processed 2,000 permits per year averaging a 14-day turnaround time. She noted that information can be

verified at the ADF&G tracking system. Of those 2,000 permits, only .5 percent was denied. A second reason is that 22 habitat staff will be laid off and 12 currently vacant positions will be eliminated. Of the 36 positions that will be transferred to DNR, those positions will be spread out among three different divisions and the EVOS office. Dismantling the Division of Habitat and Restoration will decrease the ability of biologists to receive consultative information from adjacent fish and game divisions and field biologists. Decreasing staff by 30 percent will decrease monitoring, restoration, and mitigation and will slow the permitting process down or create a process which will provide rubber-stamping of permits. These reviews and habitat biologists' expertise save permittees money in costly legal fines, both federal and state. She asked members to disapprove EO 107.

MS. CINDY ANDERSON told members she is an ADF&G employee eligible for retirement after 20 years and is slated to be moved to DNR. She will be economically penalized because after 20 years of managing fisheries for the Division of Commercial Fisheries, she moved over to the Habitat and Restoration Division to try to end her career in a more positive manner, helping manage resource development in the state. She supports development in a responsible manner. She noted dedicated staff in the Division of Habitat and Restoration have worked many uncompensated hours to protect fish habitat. If a considerable number of habitat biologists are laid off and others move to DNR, she questioned how the resources and resource users are being protected.

MR. DANIEL SHARP, an ADF&G biologist since 1982, said since September of 2002 he has been employed as a habitat biologist. Under the Governor's planned reorganization, his current position and duties are slated to remain with ADF&G. The organizational structure employed by ADF&G has long depended upon the concept of relying upon area biologists. These are individuals with experience that allow them to speak knowledgeably about the fish or wildlife resources for which they hold responsibility. As a 12-year resident of Cordova, he has had the unique pleasure of serving as the Commercial Fisheries area management biologist from 1995 to 1998 and as the Copper River area management biologist from 1999 to 2001. He said he has heard a number of representatives from commercial fishing organizations voice their support for EO 107. He asked committee members to consider that if EO 107 is such a fine idea, would they have supported it had former Governor Knowles proposed it during the last six months of his administration.

He said the Power Creek hydro-electric project in Cordova has been repeatedly cited as an example of the Division of Habitat and Restoration's interference with legitimate development projects. A less expensive, cleaner and stable source of hydro-electric power was widely supported by industry, local residents and himself. Habitat biologists connected with this project were recently described as refusing to be reasonable on a project that was set way up in the hills where there are no fish. He asked to clarify that description and said in actuality, just a few hundred yards downstream thousands of sockeye, silver, and pink salmon spawn each year. Brown and black bear, trumpeter swans and other waterfowl live in the area year round. Power Creek drains into Eyak Lake, a source of the city's drinking water. Eyak Lake supports a return of tens of thousands of sockeye salmon. These are the same fish that Copper River commercial fishermen receive their highest price per pound for each season. Sockeye salmon returns have paid a substantial dividend to the residents of Cordova for hundreds of years and likely sustained generations of Native Eyak people. If any area deserves due diligence from a habitat protection standpoint, Power Creek certainly qualifies. He cannot attest directly as to whether unreasonable due diligence was exercised by the habitat biologists at the time of this project. However he can attest that as a local area biologist he received numerous phone calls and in-person complaints about unreported small and large fuel spills, unchecked erosion of spawning streams and repeated illegal stream crossings with heavy equipment to the work site. It quickly became evident by the contractor's behavior that any restrictions designed to protect the spawning habitat and wildlife would only be followed if the habitat biologist enforced them. He finds it most unfortunate that this particular project has been heralded by the Administration as a prime example of showing unreasonable interference by habitat biologists working for ADF&G. His experience, however ancillary, was that this project needed almost constant department oversight if any cooperation was to be received from the contractor.

He feels badly the Governor's Office has been so ill-served by those seeming to pass on disinformation about the importance of Power Creek to the residents of Cordova, the conduct of the contractor, and about the work the Division of Habitat and Restoration has performed in attempting to provide the protection this area deserves. He urged the committee's thorough exploration of the proposed transfer and to co-sponsor the joint resolution to rescind EO 107.

CHAIR OGAN thanked all participants and invited them to provide written comments for inclusion in the record. He noted the committee has heard from 62 people tonight, plus the commissioners. He then announced the committee would take no action on EO 107 tonight and adjourned the meeting at 7:37 p.m.