

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 14, 2007
8:32 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Kyle Johansen
Representative Craig Johnson
Representative Gabrielle LeDoux
Representative Bryce Edgmon
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 74

"An Act prohibiting mixing zones in freshwater spawning waters."

- MOVED CSHB 74 (FSH) OUT OF COMMITTEE

HOUSE BILL NO. 41

"An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 74

SHORT TITLE: BAN MIXING ZONES IN SPAWNING AREAS

SPONSOR(S): REPRESENTATIVE(S) SEATON, GARA, LEDOUX

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	FSH, RES
02/05/07	(H)	FSH AT 8:30 AM CAPITOL 124
02/05/07	(H)	Scheduled But Not Heard
02/07/07	(H)	FSH AT 8:30 AM CAPITOL 124
02/07/07	(H)	Heard & Held
02/07/07	(H)	MINUTE(FSH)
02/12/07	(H)	FSH AT 8:30 AM CAPITOL 124

02/12/07 (H) Heard & Held
02/12/07 (H) MINUTE(FSH)
02/14/07 (H) FSH AT 8:30 AM CAPITOL 124

BILL: HB 41

SHORT TITLE: TRANSFER HABITAT DIV FROM DNR TO F&G
SPONSOR(S): REPRESENTATIVE(S) GARA

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) FSH, RES, FIN
02/09/07 (H) FSH AT 8:30 AM CAPITOL 124
02/09/07 (H) Heard & Held
02/09/07 (H) MINUTE(FSH)
02/12/07 (H) FSH AT 8:30 AM CAPITOL 124
02/12/07 (H) Heard & Held
02/12/07 (H) MINUTE(FSH)
02/14/07 (H) FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

ROD ARNO, Executive Director
Alaska Outdoor Council
Governor's Transition Team Member
POSITION STATEMENT: Testified in opposition to HB 41.

THOMAS PEBLER
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 41.

DON BREMNER, Natural Resource Coordinator
Southeast Alaska Inter-Tribal Fish and Wildlife Commission
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 41, and made
comments regarding HB 74.

MARK KAELEKE, Director
Southeast Alaska Projects
Trout Unlimited
POSITION STATEMENT: Testified in support of HB 41.

HERB SIMON
Nelchina, Alaska
POSITION STATEMENT: Testified in support of HB 41.

RALPH GUTHRIE
Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 41.

DR. HAL GEIGER
Past President
Alaska Chapter
American Fisheries Society (AFS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 41.

MATHEW LACROIX, Fisheries Biologist
Alaska Department of Fish & Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 41.

MIKE MILLIGAN
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 41.

KRISTIN SMITH
Copper River Watershed Project (CRWP)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 41.

CARL ROSIER
Retired Commissioner
Alaska Department of Fish & Game (ADF&G)

POSITION STATEMENT: Testified in support of HB 41.

DR. VI JERREL
Anchor Point, Alaska

POSITION STATEMENT: Testified in support of HB 41.

KERRY HOWARD, Director
Office of Habitat Management & Permitting (OHM&P)
Department of Natural Resources (DNR)

POSITION STATEMENT: Answered question on HB 41.

TOM BROOKOVER, R-V Regional Supervisor
Restoration
Habitat Office
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)

POSITION STATEMENT: Answered questions on HB 41.

REPRESENTATIVE GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor of HB 41, joined the committee discussion and provided comments.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:32:42 AM](#). Representatives Edgmon, Johansen, and Johnson were present at the call to order. Representatives LeDoux and Holmes arrived as the meeting was in progress.

HB 74-BAN MIXING ZONES IN SPAWNING AREAS

[8:33:23 AM](#)

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 74, "An Act prohibiting mixing zones in freshwater spawning waters."

CHAIR SEATON explained to the committee that he would like to move HB 74 today, on to the House Resources Standing Committee, and continue hearing testimony on HB 41, without movement.

[8:34:57 AM](#)

REPRESENTATIVE JOHANSEN moved to report CSHB 74, Version 25-LS0337\M, Bullock, 2/6/07, out of committee with individual recommendations, and the accompanying fiscal notes.

CHAIR SEATON objected for discussion.

[8:35:19 AM](#)

REPRESENTATIVE JOHANSEN opined that questions remain unresolved on this bill. The departments involved appear to regulate in an effectual manner, and the Alaskan resources management style is admired the world over. Although he declared that he is uneasy supporting this bill, due to its scope, he will support moving it out of this committee.

[8:36:20 AM](#)

CHAIR SEATON clarified that the bill does not universally ban mixing zones; only in spawning areas.

[8:36:34 AM](#)

REPRESENTATIVE EDGMON stated agreement with Representative Johansen's comments and concerns, but said that he would not object to moving the bill from committee. He stressed the need to delve further into what this bill will accomplish.

[8:37:23 AM](#)

CHAIR SEATON removed his objection.

[8:37:29 AM](#)

There being no further objection, CSHB 74(FSH) was reported from the House Special Committee on Fisheries.

HB 41-TRANSFER HABITAT DIV FROM DNR TO F&G

[8:37:45 AM](#)

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 41, "An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

[8:38:08 AM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), Governor's Transition Team Member, stated opposition to HB 41. He said that the AOC's membership "depends totally" on well managed habitat, and that the council has been active to protect the habitat in Alaska since before statehood. He voiced concern that this legislation is "getting ahead of what the administration is trying to do." As a member of the governor's DNR transition team, he opined:

HB 41 addresses the fish side but there are a number of concerns on the game side that still need to be addressed. ... Through the process ... the commissioners ... [will] come up with a better end plan.

ROD ARNO asserted that if, following completion of the process, the governor's plan calls for moving OHM&P to ADF&G, he trusts that it will occur.

[8:40:02 AM](#)

THOMAS PEBLER stated support for HB41, paraphrasing from a statement, which read as follows [original punctuation provided]:

It is necessary and appropriate that the "Habitat Division" be returned to its proper place within the Alaska Department of Fish and Game. As we all know, the Board of Fisheries has given its unanimous support to this intention.

The Department of Natural Resources and Fish and Game have previously performed separate roles for the sake of balancing the resource needs of Alaska. It is critically important that these separate roles maintain an equal status of integrity.

The consequences of Governor Murkowski's Executive Order 107 would only be realized after many years of cumulative effect. Evaluating a 3 ¼ year track record for permitting projects that are so typically long-term is an inadequate measure of confidence.

Governor Palin has stated that it is important to conduct stakeholder outreach in order to assure the public that departments are working cooperatively and effectively to manage Alaska's habitat resources and consistent with public interest. Having understood Governor Palin and knowing that the public's desire is to restore the Habitat Division to its proper place, we must do so by means of legislative action as necessary. The public should then be assured that the departments are correct without the effort of stakeholder outreach.

It is understandable that there is apprehension at the expense and effort of, again, moving the office. It is not convenient that we should have to fix the mistake of a previous administration however, long-term benefits would appreciate as resources could be accurately be managed.

May the Governor and Officers and Employees of the State of Alaska be respectfully reminded that the foundations of our state and of our country have not been achieved by convenient means and this is our revered patriotic tradition.

8:42:26 AM

DON BREMNER, Natural Resource Coordinator, Southeast Alaska Inter-Tribal Fish and Wildlife Commission, stated support for HB 41, paraphrasing from a statement, which read as follows [original punctuation provided]:

The Southeast Alaska Inter-Tribal Fish and Wildlife Commission have been working on subsistence and commercial fishing issues in Alaska for many years because they provide a good way of life for our people in Alaska. As Tlingits, our people have always made a living from the land and sea. We have traditional knowledge about the land, oceans, and resources from which we make a living here in Southeast Alaska. This traditional knowledge has helped protect, promote, preserve, and enhance the fish and game in Alaska. Our TEK knowledge is now being used by western scientists to supplement their knowledge base in generating sustainable resource management plans in Alaska.

Our Native TEK knowledge has become common knowledge in the eyes of the western world as vital in the cycle of life of our natural resources. Alaska Natives are part of the natural life cycle here in Alaska.

The Alaska Department of Fish and Game also has been part of the natural life cycle of our fish and game resources in Alaska. The wisdom of past leaders thought so and we agree. Fish, game, and habitat are part of the same life cycle. It's the right thing to do, "Transfer habitat authority and management back to the Fish and Game Department." The ADF&G cannot abdicate their rights, roles, and responsibility to manage fish and game in Alaska.

The Department understands better than any other State agency what it takes to develop and manage a sustainable salmon fisheries policy in Alaska;

[1] The Department knows that Alaska's salmon fishery is healthy and sustainable, largely because of abundant pristine habitat properly managed with sound, precautionary, conservation practices.

[2] The ADF&G has recognized the need for a comprehensive policy of regulation and management.

[3] The ADF&G has worked to develop plans which achieve maximum salmon abundance. The Department considers factors which include environmental change, habitat loss or degradation, data uncertainty, inconsistent funding for research and management, harvest patterns, new or expanding fisheries.

[4] The ADF&G understands that to effectively assure sustained yield and habitat protection for wild salmon stocks; fishery management plans and programs require consistent and controlled guiding principles and criteria.

[5] The Department has set goals of ensuring conservation of salmon, and salmon's marine and aquatic habitats, protection of customary and traditional subsistence uses, and other uses, and the sustained economic health of Alaska fishing communities.

Fish, game, and habitat are natural life cycles which are the responsibility of the Alaska Department of Fish and Game. The Department cannot abandon their responsibility in achieving sustainable fisheries policy in Alaska, even when parts of their role and authority are legislated away. The Department has State and Federal legal contracts which say they will manage fish, game, and habitat to achieve sustainable fisheries.

Passing HB 41 is the right thing to do and we look forward to working with State agencies which are organized to make decisions based on experience and efficiency.

[8:44:50 AM](#)

CHAIR SEATON inquired whether there has been a difference of empathy or utilization of experiential knowledge afforded the commission, since OHM&P has been under DNR.

MR. BREMNER explained the confusion to the public and their ability to participate in department decisions, with the current configuration. He opined, that the system is not efficient and is "too divided."

CHAIR SEATON further inquired whether this comment pertains to the permitting process or the general government regulation of fish and game [resources].

MR. BREMNER provided that testimony he prepared on HB 74 might have made this clearer. He answered:

We don't see a comprehensive plan where we could all work off the same page. It's just not like that. We don't see a comprehensive plan for HB 74, it has to be amended. It's having a comprehensive plan, or guide, that everyone can follow. ... We're not looking at the Alaska waters and resources as a whole eco system. ...

CHAIR SEATON encouraged Mr. Bremner to pursue testifying on HB 74, before the House Resources Standing Committee.

[8:47:21 AM](#)

REPRESENTATIVE JOHNSON asked how management might be different with OHM&P moved back to ADF&G. Further, he questioned whether, if Mr. Bremner is advocating having agencies "under one umbrella," should other aspects of DNR be moved to ADF&G.

MR. BREMNER responded that, under ADF&G, OHM&P historically had more control over permitting, monitoring, measuring, and control, of whatever development was being proposed.

REPRESENTATIVE JOHNSON followed-up inquiring: "And do you believe that under DNR that that same control and oversight will not be there."

MR. BREMNER related a brief history of the "DNR Wars," that were fought in Yakutat, over "run-a-way logging" in the Icy Bay area. He continued:

They weren't paying attention to a lot of the in-stream and on-site land and water protections. That is why we moved to form the Yakutat of Fish and Game Management Conservation [Counsel], because it just wasn't working with DNR. That's the only experience we have where we can honestly point to something where

it didn't work. With that history of DNR not enforcing and supporting habitat protection, it's a matter of trust. How can we trust them when they blatantly denied evidence on the ground of what was taking place. The fish and game at that ... time was supportive of trying to protect and preserve the habitat. That's the experience we have.

8:49:41 AM

MARK KAELKE, Director, Southeast Alaska Projects, Trout Unlimited, stated support for HB 41, paraphrasing from a statement, which read as follows [original punctuation provided]:

I would first like recognize the comments on this matter from former Fish and Game commissioners and other department employees. Trout Unlimited supports their viewpoints and experience on this issue and urge you to do the same.

It is our understanding that 37 Fish & Game Habitat employees were part of the transfer of that division to DNR. These individuals brought extensive experience in fish and game habitat advocacy with them at that time. But we are concerned about what will happen when these employees are replaced. Will their successors have the same knowledge, experience, and commitment to our fish and game resources as that of their predecessors? It's obviously a difficult question to answer now, but we believe passage of HB 41 offers the best chance for this as it will insure future Habitat employees work for the agency specifically charged with protecting fish and game habitat.

I spent 12 years in the sport fishing industry prior to my work with Trout Unlimited. Doing so gave me an opportunity to see firsthand not only the great wealth of fish and game resources we have been blessed with, but also the great wealth of knowledge our fish and game employees possess. Were it not for these professionals and the management systems they have undertaken, Alaska would not likely lay claim to our position as a pre-eminent sport fish destination, nor would we have, what are generally recognized as the best-managed commercial fisheries in the world. Other

economically tangible matters like the Marine Stewardship Council certification of our salmon stocks depends on our continued ability to manage fish to the highest degree possible. We question whether that is truly being done now given the current status of permitting authority.

We believe Governor Murkowski's executive order tipped the balance of permitting power in favor of development concerns and we see HB 41 as an opportunity to set things back to the way they should be. We believe it's very hard to argue with the 50-some years of successful fish and game management that took place before that executive order. Furthermore, as major projects like the Pebble Mine enter the permitting process, the people of Alaska should be assured that ADF&G, the agency specifically charged with maintenance of fish and game habitat, is doing exactly that.

[8:52:38 AM](#)

HERB SIMON, Nelchina, stated support for HB 41. He recounted recent experiences, with the new departmental configuration, which have been detrimental to the Sheep Mountain area. He underscored that the stewardship of the area is at risk in the hands of DNR. Further, he stated that DNR bypassed input from ADF&G on a planned land disposal/sell-off in the Sheep Mountain area. As an area that borders the Nelchina caribou herd calving area, as well as being an important habitat area for two species of sheep, this is a designated special use area. He posed the question of why DNR would allow opening this habitat up for mining and land disposal. This was in direct violation of the stipulated use for this resource area. With public input, and the resultant involvement of ADF&G, DNR was not able to go ahead as planned. However, a current proposal for the gas pipeline would cut a swath through this critical Sheep Mountain area, which has caused the Foundation for North American Wild Sheep (FNAWS) to lodge a formal complaint against the state.

[8:59:12 AM](#)

CHAIR SEATON requested that written details, on the Sheep Mountain issue, be provided for the committee's investigation.

MR. SIMON concluded: "That's just a brief summary, there's a lot more. ... I ... believe that we should never sacrifice a

renewable resource position for something that is non-renewable."

[9:00:55 AM](#)

RALPH GUTHRIE stated support for HB 41 and said:

The move to DNR, ... takes away the advocacy that would normally happen in the Department of Fish and Game. This move created quite a lot of attrition and people that are hired out of DNR are hired ... when they agree with what DNR is doing. ... The part that ... bothers me is that without a strong advocacy things are going to happen down the line, as more attrition happens, it will weaken the Habitat Division, and I'm really worried about that part.

[9:02:44 AM](#)

DR. HAL GEIGER, Past President, Alaska Chapter, American Fisheries Society (AFS), described AFS as a professional organization comprised of over 400 scientists, fishery managers, and other research specialists in Alaska. The society receives requests to make official comments on various developmental projects being undertaken in the state. These requests are not routinely responded to, as the societies mission is for the review of professional standards. The societies focus is brought to bear on issues that would question the quality of scientific advice provided, and utilized by the state, for granting project permits. This occurred with a permit issued by DNR for the use of commercial jet boats on the Chilkat Bald Eagle Preserve. Dr. Geiger paraphrased from the published article, Juneau Empire, My Turn guest editorial, August 23, 2005, which addressed this permit process [original punctuation provided]:

In the Pacific Northwest, the word salmon is typically followed by the word crisis. The Columbia River, once the largest producer of Pacific salmon in the world, now has less than 5 percent of the salmon it once had. In the last 50 years, over \$3 billion has been spent to restore runs in the Columbia, and largely failed. In Alaska, the opposite happened. In the 10 years before Alaska took over salmon management from the federal government, the total commercial catch never exceeded 51 million fish; since 1990, the statewide

commercial catch has never dropped below 123 million, and it has been above 200 million twice.

What's the difference between Alaska and the Pacific Northwest? Well, there are several things, including ocean conditions. Even so, the most important difference is Alaskans valued salmon. Alaskans demanded aggressive protection of the fish stocks and the habitat that salmon need to survive and reproduce. The Alaska Board of Fisheries summed it up pretty clearly in its Sustainable Salmon Fisheries Policy: "Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices."

What's changed? Recently habitat protection and permitting was transferred from the Alaska Department of Fish and Game to the Department of Natural Resources. When this change took place, many organizations expressed their concern that this management would be taken from a vigilant and effective institution and turned over to a group too quick with a rubber stamp and a slogan. Since then we have heard a lot about "responsible resource development," but what does that really mean?

The executive board of the Alaska Chapter of the American Fisheries Society is very concerned about the way the Department of Natural Resources reached its recent decision to open parts of the Chilkat Bald Eagle Preserve to very large commercial jet boats. We reviewed the same scientific studies DNR did, and we don't see how they came to the conclusion that these commercial activities pose no risk to salmon. It is worth mentioning these jet boat operators have been working in the Chilkat River since before 1990, and we do not want to see them shut down or put out of business. The only issue is whether to keep some reasonable time and area restrictions to protect salmon during spawning and migration.

To be fair, DNR does have some new information that some of the early fears about the jet boats are unjustified. But DNR has not taken a comprehensive look at all the issues. They glossed over way too much, misunderstood or exaggerated the optimistic side

of the science, and just ignored the negative and the uncertainty. In other words, before DNR, the fish got the benefit of the doubt. Now, it looks like DNR wants to see conclusive proof of damage before they will act in favor of the fish.

That is our issue here: Real habitat managers should place the burden of proof of "no harm" on the person or company wanting to do the activity that puts fish at risk. DNR needs to do what it takes to understand what the real risks are, not just assume that if there is no information that everything will work out fine. DNR seems to be saying as long as they do not have conclusive scientific evidence that some activity is causing some harm, then don't worry, be happy. That is not how most people treat valuable assets in their own personal lives, and that is not how we should be treating this valuable shared resource.

Since well before statehood, Alaskans wanted our salmon fisheries protected and carefully managed. Republicans, Democrats, rural residents, city dwellers, all of us, valued the jobs our salmon brought, valued the fish we used for food, and valued these fish for many other reasons. We recognize that DNR is new to this permitting business. We hope they are still just learning the ropes. However, if the opposite of precautionary management is our new way of doing business in Alaska, the Pacific Northwest has already clearly shown us where this leads.

DR. GEIGER referred to the testimony received from DNR, before this committee on February 12, 2007, which made assurances that the current habitat biologists at OHM&P have the same qualifications that the habitat biologists had at ADF&G. He stated:

If you think about it, baseball teams that didn't even make the playoffs had players with the same qualifications as the players who won the World Series. There's far more to it than just studying the basic qualifications. I think if we're interested in an organization that is truly effective, you have to look at the culture. Our organization is very concerned about the culture, and the lack of professional standards, as we see it, that are going

into the decisions [being made at], and the advice coming out of, DNR.

9:08:55 AM

MATTHEW LACROIX, Fisheries Biologist, Alaska Department of Fish & Game (ADF&G), stated support for HB 41, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

For the past five years I have worked as a permitter and project reviewer for both the Departments of Fish and Game (ADF&G) and Department of Natural Resources (DNR). I am here on my own time providing this testimony as a private citizen. It is based on my personal experiences and opinions. In no way does what I say reflect the official position of any office or division within either the Department of Fish and Game or Natural Resources.

I strongly support returning Fish Habitat permitting authority to the ADF&G.

I was working for the ADF&G within the former Habitat and Restoration Division as a permitter when Governor Murkowski issued Executive Order 107. As a result of the Executive Order the Habitat Division was eliminated along with thirty percent of its positions. The remaining positions were split between ADF&G's Sport Fish Division and the new Office of Habitat Management and Permitting (OHM&P) at DNR. I was one of those that received a layoff notice.

But I was not laid off. Instead, I was offered a position within the new OHM&P area office in Palmer. I accepted the position, and began work to open the new office. I was the only biologist in the office for the first several months, and I received a director's commendation from Kerry Howard for the work that I did during that time. In total, I spent two and one-half years with the OHM&P. I have been back with ADF&G as a permitter in the Sport Fish Division for the past eighteen months.

I relate my personal history so that you know that I am not presenting innuendo or hearsay. I have been issuing permits and coordinating per the ADF&G/DNR

Memorandum of Understanding (MOU) ever since it was originally written. This has been almost four years, and I can say that the arguments put forward by those who support keeping Fish Habitat permitting within DNR are disingenuous to the extreme.

The mantra from these supporters seems to be: "...it is the same statutes, same biologists, same protections," but this is far from the truth. If there truly is no difference in protection, why did our former governor feel so strongly that creating OHM&P was necessary? I will tell you why. Because there is such a thing as corporate culture, because concentrating permitting and project review authorities within DNR was essential to sending the message and creating the reality that was central to the Murkowski administration's goals.

That message and reality was that the State of Alaska was "open for business." That the state was pro-development, and that facilitating development was a priority within all state agencies. The governor publicly stated time and again that he was moving permitting to DNR because ADF&G had stalled or blocked development projects. The governor's sole purpose for creating OHM&P was to grease the skids for development.

I saw first-hand the differences in perspective between ADF&G and DNR. At ADF&G, the focus was on doing a complete, in-depth review of proposed projects. In-depth reviews do occur at OHM&P, but there is a greater focus on short review times. At ADF&G, we take a broad view when reviewing projects, considering potential impacts to all fish and wildlife, as well as users of the resource. The OHM&P focuses much more closely on anadromous fish.

At ADF&G, we address likely impacts and recommend conservative management measures to maintain the existing high quality and productivity of our resources. At OHM&P, applicants are given all reasonable doubt. The burden is on the biologists to demonstrate "significant" and direct impacts to "important" or "high value" fish or wildlife populations before activities can be conditioned. In some cases, such as impacts to spawning habitats the

full scope of the problem may not be apparent for years; and no one is out looking for or documenting them. But even documented impacts may be ignored if avoiding them would add costs to a project.

At ADF&G, detailed permits are written with a focus on their clarity and enforceability. This is much less of a concern at OHM&P. And there were sideboards placed on my work at OHM&P. If at all possible, permits were to be three pages or less, with five or fewer stipulations. Detailed project descriptions were discouraged. If they didn't like the focus of your review, they simply took the project away and gave it to someone less inclined to "rock the boat."

Or just changed your work. Proposed projects that were inconsistent with coastal standards became consistent, eight alternative measures became one, and ten stipulations became three.

This is significant because violations of the Fish Habitat permitting statutes are criminal rather than civil offenses. While other state agencies may also issue permits for a given project, generally the OHM&P permit is the only one that can be effectively enforced. Violators can be cited by commissioned OHM&P staff or by the state troopers. Vague permits are difficult to enforce. The Division of Mining, Land and Water within DNR might issue a twenty-page permit with twenty conditions, while the OHM&P permit (the one that actually could be enforced) might be two pages with two stipulations.

Kerry Howard testified on Monday about the close working relationship that exists between OHM&P and ADF&G. About how OHM&P routinely consults with ADF&G biologists on every project "bigger than a bread box," and how seventy-nine percent of OHM&P biologists once worked for ADF&G. If this is the case, then why not send the OHM&P biologists back to ADF&G were they came from?

If so many of the OHM&P staff really are co-located with ADF&G, why would it be so "disruptive" to return permitting to ADF&G? By the way, ADF&G does not have permanent staff based in the Kenai River Center. We

did have permitting staff there - those individuals now work for DNR.

If ADF&G really has the expertise that OHM&P personnel need to do their jobs; and if OHM&P permittees really do rely on and incorporate the input they receive from ADF&G staff, how does it possibly make sense for DNR to have that permitting authority instead of ADF&G?

It makes sense if you want DNR to have editing and veto power over ADF&G's comments and concerns. And that is how things are now. ADF&G provides "input" that can be disregarded by DNR. If DNR does not agree with ADF&G's comments, those comments simply do not get passed on to the coastal program or to project proponents and do not become part of the public record. The silencing of dissent was a major factor in concentrating review and permitting authorities within DNR.

In her testimony, Ms. Howard pointed out that ADF&G was granted a "full seat at the table" regarding review of the prospective Pebble mine. This seat at the table was only granted after the ADF&G protested that the OHM&P was editing its comments to the Large Mine Team. In fact, OHM&P refused to pass on a memorandum regarding wildlife baseline study needs.

ADF&G may have a seat at the table, but no authority, and we still had to submit comments through OHM&P for the recent coastal review of exploration activities. And this seat at the Large Mine Team table is only for Pebble, not for any other mines.

Although Executive Director Howard pointed out the common responsibilities of all state agencies under our constitution, the departments of Fish and Game and Natural Resources are not interchangeable, and neither are their respective biologists. If they were, there would be no need for an MOU between the two departments. There would be no need for OHM&P to consult with ADF&G, or for ADF&G to review projects at all.

We know that the idea of "...same statutes, same, biologists, same protections" is false. That is why

there is an MOU, and why even the current governor acknowledges that it is necessary.

About that MOU. If there is such a close relationship between the two departments, why is this MOU eleven pages long, and why has it been amended four times in less than four years? Even if I didn't already know how convoluted and unworkable this document is, Governor Palin's letter to the boards and Ms. Howard's testimony would give me pause.

If the MOU is the key to coordination between the two departments, why should we accept that a "new and improved" version would be any more effective than the previous five versions? If the MOU is about coordination, and if OHM&P really does contact the ADF&G on all projects "bigger than a breadbox," why didn't they contact ADF&G about the Rock Creek mine? Or about coal exploration activities within the Matanuska Valley Moose Range? The MOU identifies ADF&G as the lead for review of activities within the Moose Range. Perhaps these projects are smaller than a breadbox.

And if the working relationship between DNR and ADF&G is so congenial, why is it that virtually the only permit denial issued by the Palmer OHM&P office in the last eighteen months was issued to ADF&G? This is in referral to the beaver dam removal project brought up by Ms. Howard during her testimony. Why is it that OHM&P couldn't work with the ADF&G to modify the project instead of issuing a denial? And why exactly did the OHM&P deny this application when they have issued permits to the Forest Service and other applicants for the same activity?

In conclusion, I need to say that I have nothing against OHM&P biologists. They did not create the situation and for the most part are conscientiously doing the best they can under difficult circumstances. These are good biologists who do good work, but the reality is that neither department currently has the necessary staff to adequately protect the state's valuable fish and wildlife resources.

I do object to the message that is being given to this committee, to the legislature as a whole, to the

governor, and to the public. That message is that there are no issues here, that the protection provided to our resources is the same as it was prior to EO 107. It is not. The state lost many of its most experienced permitters and project reviewers as a result of that Order. Review responsibilities are fragmented and uncoordinated. There is more duplication, not less, and the work is being done by fewer, less experienced biologists. It will take years for either ADF&G or DNR to rebuild the capacity lost as a result of EO 107.

The big loser here are the resources, and of course the public that utilizes and depends on them. If we truly focused on protecting and maintaining the resources for the public in accordance with the constitution it wouldn't matter who issued the permits. Unfortunately, however, we are not there yet, and so it does matter. The OHM&P has demonstrated a willingness to defend developers and industry, but have they shown they are willing to defend our fish and wildlife? If Executive Director Kerry Howard had given one example of when OHM&P had stood up in opposition to a position taken by DNR, we could give them the benefit of some doubt that they were first and foremost looking out for the resource. But she did not. The OHM&P is 37 people in a very large and powerful department, and frankly, I don't think that they are willing to fight their own commissioner.

The ADF&G, on the other hand, has a proven track record of being willing to fight to protect the state's fish and wildlife resources. If the legislature recognizes the true value of these resources, it will realize that they are worth fighting for, and it will give the ability to do so back to ADF&G.

I urge you to return Fish Habitat permitting to ADF&G.

[9:16:15 AM](#)

REPRESENTATIVE JOHNSON referred to previously discussed corporate culture differences of the two departments, and asked:

Since you've worked in that department, ... [did] you ever feel pressured or felt like anything you brought forward would have jeopardized your position, or your standing; did you feel threatened in any way when you were at OHM&P.

MR. LACROIX responded:

I never felt threatened, no. Did I feel pressured to change my analysis of projects, yes. Was analysis that I conducted changed, yes. Everything goes up through a review process that's typical in all agencies, ... but there is a definite difference in corporate perspective, corporate culture, within fish and game and DNR. ... The benefit of the doubt is given to project proponents and developers, as opposed to the resource, in the case of OHM&P. ... It's typical for results of analysis to be modified, changed, or for projects to be taken away from review biologist, if certain individuals don't agree with the conclusions that are reached, and given to another biologist to finish the review; [one] who is less likely to rock the boat.

REPRESENTATIVE LEDOUX inquired about Mr. LaCroix's comfort level in bringing this testimony forward.

MR. LACROIX responded that he is not comfortable providing this testimony, as a state employee, but more so being at ADF&G than DNR.

9:19:00 AM

REPRESENTATIVE EDGMON acknowledged the compelling testimony received, and stated that his district's future existence depends on the protection of the habitat. He referred to A CITIZENS GUIDE TO THE ALASKA CONSTITUTION (Alaska legislative Research Agency, Gordon S. Harrison, 3rd ed. 1992), which describes how the Alaska Constitution is deeply rooted in the principles of conservation for sustained yield and multiple use. He advised:

[These are] doctrines that have guided not only our resource management policies, over the many years [of statehood], but also have guided the Department of Fish and Game, and the Division of Habitat up until 2003. ... I haven't had anyone tell me that the

Habitat Division was broken before it was moved over to DNR. We [have] many years on the record to show that the Division of Habitat was doing its job effectively.

REPRESENTATIVE EDGMON said that, having heard from the many involved and distinguished witnesses, and with respect to the governor's decision process and fellow committee members, he would urge support to move OHM&P back to ADF&G.

[9:21:13 AM](#)

MIKE MILLIGAN, Kodiak, stated support for HB 41, and opined that the "single most important issue" is the Dingell-Johnson Act funding. These federal D-J receipts are directed to state fish and game departments, specifically for the use of habitat divisions. He stated that the question of the continued receipt of these funds was not answered publicly by the Murkowski administration, nor has it been asked and answered in this debate, but he stressed that this is a critical, pivotal, question to be answered prior to the movement of this bill to the finance committee. For clarity he asked:

Has the state lost its access to the Dingell-Johnson monies for the funding of the Habitat Division. If it did lose those monies has it been able to access those monies for other purposes. And finally, will the state be able to get those monies back if this House Bill 41 passes.

REPRESENTATIVE LEDOUX asked if the D-J funds were received prior to the transfer of OHM&P to DNR.

MR. MILLIGAN responded that the D-J funds were being received, and at that time constituted the sole funding source for OHM&P.

[9:26:06 AM](#)

KRISTIN SMITH, Copper River Watershed Project (CRWP), stated support for HB 41. She said that this issue "speaks to the heart" of the CRWP mission, which emphasizes integrating the effects of development on all types of capital including: social and cultural, economic, and natural resources. The definition of sustainable economic development, as recognized by CRWP is: "A project, or an effort, that can enhance at least one of those type of capital without detracting from the others." Because salmon are a public renewable resource, they

should be managed specifically for annual productivity. Further, she emphasized:

We hear miners, and land developers, and loggers complain about the expense of erosion control and stream protection. But if you look at the expense that Oregon and Washington [state] are facing of trying to ... [restore] salmon in their streams, the expense ... is outrageous, and it's just too great an expense for us to lose the resources we have and then try to restore them later. ... The function of the Department of Fish and Game is critical and for these reasons we believe strongly that salmon need an independent voice to insure that balance in decision making.

9:28:59 AM

CARL ROSIER, Retired Commissioner, Alaska Department of Fish & Game (ADF&G) stated support of HB 41, and opined that this is one of the most important issues this session. He pointed out that the decision to move OHM&P to DNR was never discussed in the halls of legislature. Continuing, he paraphrased from a prepared statement which read as follows [original punctuation provided]:

I began fisheries work in Alaska in 1955, went to work for Alaska Department of Fish and game (ADF&G) Commercial Fisheries Division in 1959 and held positions of increasing responsibility with commercial fisheries as an Area Manager Biologist, Region Supervisor, Division Director, and Deputy Commissioner. I left State employment in 1980 to take over as Chief of Fisheries Development with the National Marine Fisheries Service. In this position I am proud to have been of help in the Americanization of our Exclusive Economic Zone. I capped my fisheries career by serving Governor Hickel as Commissioner of ADF&G from 1990-1995.

First I would like to say that I fully support and agree with the testimony presented on Monday [February 12, 2007] by Mr. Lance Trasky. Needless to say I am extremely proud of the job the professionals of ADF&G have done in protecting and extending the fish, wildlife, and aquatic plant resources of our state.

ADF&G has a 50 year history of fishery management and habitat protection that is the model and envy of every state fortunate enough to have anadromous fish populations. Alaska's success has come about as the result of a strong fishery management program and habitat protection for long term sustainability and abundance. California, Oregon, Washington [state], and the southern half of British Columbia have all seen their salmon stocks decline precipitously due largely to damage by other extractive industries such as irrigation, electric generation, logging, mining, urban pollution, and in some cases over-fishing. The costs of rebuilding, if possible, will be in the 100's of millions of dollars; not to mention the peripheral costs associated with an ever increasing federal involvement as the list of endangered species continues to grow. With the transfer of the habitat function to DNR, Alaska has now placed our resources on the same slippery slope that has caused the declines in the majority of coastal areas supporting anadromous stocks.

We all know that the resource extractive industries are the future of Alaska, but we have to be smart stewards in terms of protecting the renewable versus non-renewable resources. Yes, there have been some problems between industry and the habitat staff, but the transfer of the Division of Habitat to DNR did nothing to resolve anything except exacerbate the controversy. The logging leadership as well as some segments of the mining industry were the political friends of Murkowski that forced the transfer and have placed the fishery resources in a dangerous compromised position. These resources are renewable, they support the economy of many Alaska communities; commercial salmon alone are valued at between \$500 to \$800 million annually. Fisheries in Alaska are second only to oil in terms of economic importance. This is a resource that deserves to be represented at the cabinet level under an agency charged with their welfare. That was exactly what our early Legislators decided in placing this responsibility with ADF&G. That decision, in my view, is as good today as it was when title 16 was promulgated in the late 1950's.

I am pleased that Governor Palin has elected to take a second look at this issue. She has not been hesitant

to reverse bad decisions by the Murkowski administration and I believe that upon closer scrutiny the Governor will see through the political nonsense espoused by the previous administration and the greed of the industries that have been willing to compromise a great resource so important to so many Alaskans. Control of the habitat by a deputy commissioner under a Commissioner charged with management of land resources simply makes no sense.

In conclusion, the memorandums of understanding may sound good. However, they will only work if the signature parties are somewhat equal in authorities. DNR currently holds all of the policy aces in this regard and with all due respect to the current Commissioner of DNR, the interagency agreement will not stand the test of time.

[9:35:57 AM](#)

REPRESENTATIVE EDGMON asked that, given the terms of the Alaska Constitution and the principles of conservation, sustained yield, and multiple uses, "what agency is best served to protect our natural resources."

[9:36:31 AM](#)

MR. ROSIER emphasized that ADF&G is the agency to best manage Alaska's fish and wildlife resources. He elaborated:

There was certainly controversy here in terms ... of who should do this, but when you look at the basis for the decision ... it was personal attacks in many cases ... by political types from the industry leadership. ... They had been after doing this thing for at least three years. They made a run on it when I was commissioner. We beat the industry back, at that time, largely the logging industry. ... Politics changed, for a moment in time, and the Murkowski administration moved into that in hopes that they could grease the skids for development. Development that had been on-going. We've got a lot of mines in Alaska, we've still got somewhat of a logging industry, not the way it was, but the logging industry refused to change in terms of their products ... and they were out paced by foreign activities producing

the same products that we were, at a cheaper price. It was not the agencies that put the logging ... out of business, in Southeastern Alaska, or in any other part of the state. Other factors ... effected them much more, but the scapegoat that they like to use [is] always the agencies and the regulations on their industry.

[9:38:59 AM](#)

DR. VI JERREL stated support for, and urged the passage of, HB 41.

[9:40:06 AM](#)

CHAIR SEATON closed public testimony and directed attention to the testimonies being added to the committee packet; received from Bruce Baker, the Carlson family, Doug Hill, Stephen Taufen, and Jeff Parker.

[9:41:14 AM](#)

REPRESENTATIVE JOHNSON asked for the intent on the bill and expressed concern for the corporate culture issues, which remain unresolved.

CHAIR SEATON restated his intention to hear and hold this bill today, pending the receipt of additional information. He noted that some questions may be answered, at this time, by the DNR and ADF&G personnel prepared to testify.

[9:43:03 AM](#)

KERRY HOWARD, Director, Office of Habitat Management & Permitting (OHM&P), Department of Natural Resources (DNR), offered that the D-J funding is not available to DNR. Responding to Chair Seaton's inquiry about how the division is funded, she directed the committee's attention to the DNR handout and the pie chart entitled DNR, OHM&P FY08 Funding Sources. The chart indicates the division funding as being: 71 percent General Funds, 18 percent I/A Receipts, 6 percent SDPR, and 5 percent CIP Receipts.

[9:45:13 AM](#)

REPRESENTATIVE JOHNSON asked what amount is currently received by the state under the D-J funding.

TOM BROOKOVER, R-V Regional Supervisor, Restoration, Habitat Office, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), refrained from guessing at the historic D-J funding figures provided to OHM&P. However, he stated that the FY08 budget request includes D-J funds totaling approximately \$485,000 dollars, to administer five research projects.

CHAIR SEATON requested that the committee be provided with the details of the D-J funding. Additionally, he stated that a "chief question" seems to be the difference in corporate culture between the departments, and how each department views its primary objectives. Also, he asked Ms. Howard to provide examples of OHM&P project data analysis being changed, ignored, or utilized in a selective manner, as public testimony suggests that information has been retarded by DNR in the permitting process. The committee must establish if there is a change in how decisions are made based on the current agency configuration.

REPRESENTATIVE LEDOUX pointed out that the corporate culture argument may not be fully determined by this committee. To sort this out would require speaking to the current and past employees of OHM&P, off the record, without identification; this does not seem plausible, she opined.

CHAIR SEATON advised that the Palin administration has stated intent to research and scrutinize the issues of this move. Questions which this committee generates may give rise to discussions to help the governor in her decision.

[9:53:04 AM](#)

REPRESENTATIVE GARA joined the panel for discussion.

[9:53:19 AM](#)

REPRESENTATIVE HOLMES observed that no one is being demonized by this committee. The best "fit", for everyone, is in the forefront of this discussion.

[9:54:32 AM](#)

REPRESENTATIVE JOHNSON acknowledged that the culture of the organizations may not be able to be answered; however, the divisions and the public need to know that the legislature is

aware and concerned for being able to obtain unbiased, sound, and accurate scientific advice.

CHAIR SEATON stated that interrogatives will be made and published on the record.

[9:56:14 AM](#)

REPRESENTATIVE GARA, Alaska State Legislature, as prime sponsor, confirmed that there is a reason why the corporate culture exists, and why moving a division from one agency to another would have a major impact on the states resources. The first consideration on this decision should be for the testimonies provided: constituents with first hand experience; experts in the field; and particularly every ADF&G commissioners who served prior to the Murkowski administration. These witnesses, he pointed out, have unanimously testified that habitat protection was better served with OHM&P located in ADF&G, and that there is a tangible difference of permitting policy, since the office was moved to DNR. To understand why, he offered, it is important to understand how the decision process was handled prior to the re-organization and how it has been working since the move. Historically, when a difference of opinion occurred, because ADF&G wanted to protect fisheries to a greater degree and DNR wanted to move ahead with a particular development project, the two commissioners, with equal power, would come to the governor for a policy decision. This maintained the balance of equal authority between the commissioners. Given the current configuration, if habitat biologists deem it necessary to protect a fishing stream, the commissioner of DNR may make a unilateral choice to disregard the recommendation; in effect providing DNR "veto" power over an OHM&P decision. Additionally, he pointed out, that each of these departments is charged with viewing the resources of the state differently, accounting for opinions to differ. Each department views the same project through a different lens to maintain compliance with state statutes. The department of DNR has the duty to "develop and conserve, our resources for the maximum benefit of the state." This provides a broad area of discretion, he opined, which allows the appointed commissioner to choose a liberal or conservative approach. The commissioner of ADF&G is not allowed that discretion.

REPRESENTATIVE GARA paraphrased from AS 16.05.010 and AS 16.05.020, which read as follows [original punctuation provided]:

Sec. 16.05.010. Commissioner of fish and game ... shall be a qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state.

Sec. 16.05.020. Functions of commissioner.
The commissioner shall

(2) manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state;

REPRESENTATIVE GARA stated that the ADF&G commissioner is charged with promoting the state's natural resources to benefit the economy. This is different than the mandate for the commissioner of DNR to cultivate the state's economy over those same resources. He pointed out that, although the difference may sound subtle, it is the reason that these two departments exist, and answers the corporate culture question. The difference arises out of the statutory mandate being interpreted for each interest. He offered that the director of OHM&P is, and the biologists at DNR are, doing their work "as well as they can." In summary, he underscored the difficulty for any employee to testify contrary to the opinion of a supervisor, at any time, on any issue; not necessarily out of direct fear of retribution.

[10:01:45 AM](#)

REPRESENTATIVE EDGMON called for additional testimony in support of the current departmental configuration.

[10:02:16 AM](#)

CHAIR SEATON announced that he will re-open public testimony, on HB 41, if necessary.

[HB 41 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:02 a.m.