

HB

278

MEMORANDUM

State of Alaska

TO: Honorable Jay S. Hammond
Governor

DATE: February 6, 1975

FILE NO:

TELEPHONE NO:

FROM: James W. Brooks
Commissioner
Department of Fish and Game

SUBJECT: Applicability of AS 16.05.870
(Protection of Anadromous Fish
Streams) on certain Federal
lands.

Recent developments on several fronts have caused us great concern re: the applicability of AS 16.05.870 (Protection of Anadromous Fish Streams) on certain Federal lands. This statute is the backbone of our efforts to protect fish and wildlife habitat from harmful effects of development. In recent weeks our authority to protect designated anadromous fish streams has been denied, specifically or by implication, (1) on National Forest lands (2) within the Alyeska Pipeline Corridor and (3) on Petroleum Reserve Number Four. Non-compliance with AS 16 provisions in these areas could cause very significant degradation of fish and wildlife resources and set a dangerous precedent for the rest of the Federal lands in Alaska, as well as (by extension) in OCS areas.

The specifics of the problem in the three areas are summarized below. It has been difficult to get written statements from responsible Federal officials, but their words and actions make it plain that they are reluctant to recognize our AS 16 authority.

1) National Forest Lands: The US Forest Service has never formally acknowledged our permitting authority on National Forest lands, but has in the past been at least grudgingly cooperative in our efforts to insure that logging complied with AS 16,05,870. The Leo Nelson Case, involving Starrigavan Creek (a catalogued anadromous fish stream) seems to have changed this spirit, however. We have a January 16, 1975 Forest Service memorandum which says in part:

"ADF&G feels that we must obtain permits for any activity that affects salmon streams. However, until they win their appeal in the Starrigavan Case, the Forest Service does not feel their permits are required. The decision in the Starrigavan Case recognizes the supremacy of Federal law and the Forest Service's direction from Congress and the Secretary of Agriculture over State law."

(nb: This case was brought under AS 16.10.010.)

2) Alyeska Pipeline Corridor: General Rollins, Authorized Officer (Secretary Morton's representative) for the Alyeska Pipeline Project has refused to acknowledge that AS 16 permits are required for stream crossings by the pipeline on Federal lands. He refuses to attach our permits to his "Notices to Proceed", and reportedly counsels Alyeska that they do not need such permits. We have informed General Rollins through Chuck Champion that AS 16 applies to all catalogued streams on Federal, State or private lands, but he has not replied directly.

(3) Petroleum Reserve Number Four: Commander Schaeffer (USN), in charge of the massive exploration now beginning in Petroleum Reserve Number Four, has totally refused to cooperate when apprised of our concerns re: fish and wildlife values Pet. 4. In August 1974, we expressed our intention to regulate air cushion vehicle use on Pet. 4 under AS 16. He termed our concerns "ridiculous" and stated his belief that we had no authority whatever within the boundaries of Pet. 4. In fact, he requested that we inform him before any of our employees entered Pet. 4. He has failed to respond to a letter sent to him in September suggesting a meeting and cooperative agreement. The situation in Pet. 4 is especially troublesome because Federal agencies charged with wildlife protection (notably BLM and USF&WS) have been conspicuously absent. In addition to significant fish habitat, Pet. 4 contains not only the calving grounds for our largest caribou herd, but the world's largest concentration of Tundra Peregrine Falcons (classified "endangered" by State and Federal regulations), and the densest concentration of moose north of the Kenai Peninsula. Our concern is thus very great.

We would like to resolve the question of State vs Federal control over streams on Federal lands as quickly as possible.

Resolution could come in two ways:

1. ~~through agreement between the State and the Department of the Interior, Department of Agriculture and Department of Defense.~~
2. ~~Through litigation~~

Several Federal laws require Federal agencies to coordinate activities with State agencies. ~~Among these are the Fish and Wildlife Coordination Act (revised 1965), the Federal Water Pollution Control Act (revised 1972), and (in the special case of the Alyeska Pipeline) the Cooperative Agreement on fish and wildlife resources between Secretary Morton and Governor Egan.~~ We feel that these laws, especially in concert with NEPA, require a degree of compliance with AS 16. In addition, State ownership of navigable waters and the principles of State sovereignty argue for compliance. In light of these facts, it is difficult to imagine that the Secretaries in question could refuse to acknowledge our authority.

If no agreement is possible, we could orchestrate a test case in any of these areas to secure a court determination. In fact, it is likely we will have several cases on our hands quite soon if we enforce AS 16.05.870 vigorously the next few months.

We are taking the following steps in pursuit of this matter:

1. ~~We have written~~ to Charles Yates (Regional Forester, USFS), General Rollins and Commander Schaefer, explaining our concerns and asking for statements describing their ideas regarding AS 16 on lands under their jurisdiction.
2. ~~We have instructed our field personnel to cite any violations of AS 16 they observe on these lands.~~

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

SUPPORT BUILDING
JUNEAU 99801

February 8, 1975

Lieutenant Commander Schaefer
Officer in Charge
Naval Petroleum Reserve No.4
Barrow, Alaska 99723

Dear Commander Schaefer:

I am quite concerned that exploratory activities beginning in Petroleum Reserve No.4 may not be thoroughly considering fish and wildlife values in their planning and implementation. Certainly it will benefit the Navy as well as the resources involved if exploration activities are carried out in a manner resulting in a minimum of disturbance to fish and wildlife habitat, and my staff is prepared to give you every assistance they can in insuring that this is the case.

Involvement of knowledgeable biologists should be especially helpful since no environmental impact statement has been prepared for the exploration of Pet.4, pursuant to the National Environmental Policy Act.

Alaska Statute 16.05.870 requires the following on all lands in Alaska:

"(b) If a person or governmental agency desires to construct a hydraulic project, or use, divert, obstruct, pollute or change the natural flow or bed of a specified river, lake or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake or stream, the person or governmental agency shall notify the commissioner of this intention before the beginning of the construction or use.

(c) The commissioner shall acknowledge receipt of the notice by return air mail. If the commissioner determines to do so, he shall, in the letter of acknowledgement, require the person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use, and the approximate date the construction, work, or use will begin, and shall require the person or governmental agency to obtain written approval from him as to the sufficiency of the plans or specifications before the proposed construction or use is begun."

Lt. Commander Schaefer

-2-

February 8, 1975

I note that several major rivers (including the Colville, Kugrua, Kungok, Ivasaruk, and others) and their tributaries are "specified" rivers listed in our official Anadromous Fish Stream Catalog. I hope that you will urge your men and contractors to contact us as long before a projected stream crossing as possible, so that we might help insure compliance with this statute.

I am sure you are also aware of the relevance of the Fish and Wildlife Coordination Act (PL 89-72) and the Water Pollution Control Act (PL 92-500), as well as the National Environmental Policy Act, to your present operations in Pet.4.

I would appreciate your early reply concerning suggestions of how we might help you and your contractors comply with AS 16 provisions.

Sincerely,

James W. Brooks
Commissioner

cc: Honorable John W. Warner,
Secretary of the Navy



DEPARTMENT OF THE NAVY
OFFICER IN CHARGE
NAVAL PETROLEUM RESERVE NO. 4
BARROW, ALASKA 99723

PET4:S:s
5760
Ser: 073
21 FEB 1975

James W. Brooks, Commissioner
State of Alaska
Department of Fish and Game
Support Building
Juneau, Alaska 99801

Dear Mr. Brooks:

I have received and reviewed your letter of February 10, wherein you expressed concern over the effects our petroleum exploration program might have on the wildlife habitat. We share your concern and appreciate your offer of assistance in evaluating specific plans.

~~We presently have no plans calling for use of the beds of any of the streams mentioned in your letter.~~ It is planned that any freight movements will be made during winter months when the surface of all bodies of water are safely frozen.

It would be appreciated if you will send a complete listing of the "specified" rivers in Naval Petroleum Reserve No. 4 listed in your official Anadromous Fish Stream Catalog, or a copy of the catalog itself.

Sincerely,

R. V. Shafer, P. E.
LCDR, CEC, USN
Officer in Charge

Copy to:
DIRNAVPETRES, Wash DC (w/cy of
Commissioner Brooks' letter)

HABITAT
RECEIVED
MAR 5 1975

HEADQUARTERS
JUNEAU

RECEIVED
MAR 3 1975

DEPARTMENT OF FISH AND GAME

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

SUPPORT BUILDING
JUNEAU 99801

February 8, 1975

General Andrew Rollins
Authorized Officer
Alaska Pipeline Office
808 "E" Street
Anchorage, Alaska 99501.

Dear General Rollins:

I am concerned about your apparent decision not to include permits and stipulations under AS 16.05.870 as parts of your Notices to Proceed, when Alyeska projects involve designated anadromous fish streams. The agreement between Secretary Morton and Governor Egan regarding cooperative consideration of fish and wildlife during pipeline monitoring seems to direct us to administer jointly all State and Federal regulations where fish and wildlife are concerned.

I would appreciate your early reply explaining why AS 16.05.870 provisions might be excluded from your Notices to Proceed.

Sincerely,

James W. Brooks
Commissioner

cc: Chuck Champion

MEMORANDUM

TO: Commissioner James Brooks
Department of Fish and Game

DATE: February 26, 1975

FILE NO:

FROM: C. A. Champion *CA*
State Pipeline Coordinator

SUBJECT: Meeting Notes

Attached, for your information, is a memo by Jay Bergstrand of notes he took during a recent meeting regarding General Rollins' problems with Alaska Statute 16.

CAC/pb

attachment

MEMORANDUM

TO: C. A. Champion

DATE: February 21, 1975

FILE NO:

FROM: J. L. Bergstrand *JLB*

SUBJECT:

*Aleky's Pipeline
Office?*

A meeting was called by Andy Rollins at 3:00 p.m. February 20. In attendance were Jim Hemming, Al Carson and myself.

Gen. Rollins was concerned about the letter written by Commissioner Jim Brooks on February 10, and received today. Rollins apparently had never seen the Hydraulics Specification Addendum, which the JFWAT had been sending to (APO) along with their advices on fish and game concerns.

He did say that he wanted to go along with ADF&G Statutory needs and that the HCA would be included if the wording on the cover letter made it clear that it was ADF&G action. He did point out that ~~he was concerned over the State attempting to extend its jurisdiction over areas which it did not have authority~~ Federal Solicitors would be meeting with State A. G. people within 48 hours to clarify the Federal position on this and other similar matters. He also pointed out the recent decision by the State to drop its appeal of a recent court decision which was favorable to the Forest Service (This action in southeast was ADF&G concern over logging practices on salmon streams.) Rollins asked me how the (SPCO) was handling the HSA and I explained how we included it within the NTP package but not over the Coordinators signature.

Rollins pointed out that his decision to include the (HSA) in the (NTP) would ~~not be setting any precedence for accepting State Authority on the Federal lands involved.~~

State Pipeline Coordinators Office

NOTICE TO PROCEED

Hydraulic Specification Addendum

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

SUBPORT BUILDING
JUNEAU 99801

February 8, 1975

Mr. Charles Yates
Regional Forester
US Forest Service
709 West 9th Street
Juneau, Alaska 99801

Dear Mr. Yates:

We have a memorandum to "Files" from a US Forest Service Resource Management Assistant that says in part:

"ADF&G feels that we must obtain permits for any activity that affects salmon streams. However, until they win their appeal in the Starrigavan case, the Forest Service does not feel that permits are required. The decision in the Starrigavan case recognizes the supremacy of Federal law and the Forest Service's direction from Congress and the Secretary of Agriculture over State law."

If this is Forest Service policy, it is important that we know it so we might act accordingly. I would appreciate your early reply regarding Forest Service policy on the applicability of AS 16 on Forest Service lands.

Sincerely,

James W. Brooks
Commissioner

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, Alaska 99802

1560
2600

Mr. James W. Brooks, Commissioner
Alaska Department of Fish and Game
Support Building
Juneau, Alaska 99801



L

Dear Jim:

This will acknowledge your letter of February 10, signed by Mr. Rosier, which refers to a memorandum to the files from one of our Resource Management Assistants. We have not seen the letter you refer to, do not know who wrote it, nor in what context it was written.

We presume the letter refers to a permit or license which would be obtained from the Department of Health and Welfare under AS 16.10.010 (3) before rendering water inaccessible or uninhabitable for salmon spawning or propagation purposes.

As you know, Jim, the Forest Service has never considered the need for permits for activities involving non-navigable streams on National Forest lands. To my knowledge we have not been asked to obtain such permits in the past. For one thing, we do not believe our activities are rendering waters "inaccessible or uninhabitable" since the precautions, developed in consultation with your staff, which we take are specifically designed to prevent that from happening.

We recognize, partially as a result of the Leo Nelson case, that our agencies do have differences in interpreting applicability of AS 16, and particularly AS 16.10.010. We hope most strongly that those differences will disappear through development of a mutual understanding and respect for each agency's goals and objectives in resource management. We intend that the requirements of our timber sales and other contracts provide the control necessary for the protection of the fishery values and water quality under the concept of multiple use management. We think that our proper enforcement of those requirements will accomplish the same objectives we believe AS 16 is intended to do.

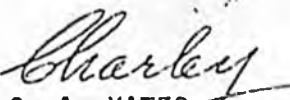
We believe our best chance of establishing strong working relations between us will be through our professional people responsible for

managing the resources. It would be most unfortunate for both our agencies if we had to resolve our differences through legal disputes.

Some of our people will already have met, when you receive this letter, for the purpose of clarifying problem areas and recommending solutions. We will be most disappointed if they do not identify many opportunities for promoting understanding and developing management practices that better recognize the needs of all the resources. If they cannot do that, our troubles are more serious than we presently believe.

~~This letter skirts a direct confrontation over your question regarding AS 16. That was intentional~~ and I hope my expressed thoughts explain why. We have not issued any policy direction to our field people that they will or will not obtain permits. We do not contemplate issuing such direction and certainly hope the approach of working together to provide the needed protection will be found to be the desirable way to go.

Sincerely,


C. A. YATES
Regional Forester

RECEIVED
MAY 3 1975
SIGNER'S OFFICE
DEPARTMENT OF FISH AND GAME

MEMORANDUM

State of Alaska

TO: Bob LeResche
 Chief - Habitat Protection
 Department of Fish and Game
 Juneau

DATE: January 29, 1975

FILE NO:

TELEPHONE NO:

FROM: J. Scott Grundy *Scott*
 Regional Habitat Supervisor
 Habitat Protection Section
 Fairbanks

SUBJECT: Petroleum Reserve No. Four

As discussed, I am extremely disturbed about the lack of cooperation (total) we have received from Commander Shaefer who is the officer in charge of Pet. Four. Attached is a copy of the carbon of the letter sent to Shaefer last September. I did not receive a response. Prior to that occasion, I spoke with him at least once regarding the hovercraft operation and discussed our authority and concerns. ~~He termed the event, "ridiculous."~~

Tom Trent recently informed me that approximately 150 miles of seismic line have been shot within Pet Four this winter and I know of at least two exploratory gas wells also being drilled this winter. GSI will soon shoot three programs in the area: one 70 to 75 miles south of Barrow near the Meade River; another, twenty miles southeast of Barrow down the western side of Admiralty Bay; and the third, about 15 miles southwest of Teshepuk Lake.

~~In my contacts with state and federal agencies all appear frustrated by the situation yet I believe none are really forcing the issue. Since this is occurring in my "kingdom" I believe I must know whether we do or do not have Title 16 authority in Pet Four. Unfortunately, we are limited because there are relatively few anadromous streams in Pet Four. I needn't explain the value of the area to fish and wildlife resources to you but since the area is nearly the size of the state of Indiana I don't see how we can overlook the situation.~~

Please advise Jim and I suggest we obtain an opinion from Attorney General Gross at the earliest possible date.

~~If in fact, we do have authority, I would prefer to see a unified state-federal pressure directed to the Washington level.~~

I see this as a priority item and would very much appreciate your earliest attention to this frustrating situation.

Enclosure

cc: G. Van Wyhe - SF Fairbanks
 R. Regnard - CF Anchorage
 R. Hinman - Game Fairbanks
 P. Cizmich - Habitat Anchorage

HABITAT
RECEIVED
 JAN 31 1975

HEADQUARTERS
 JUNEAU

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

1300 College Road

XXXXXXXXXXXXXX

September 3, 1974

Lt. Commander Schaefer
Officer in Charge
Naval Petroleum Reserve No. 4
Barrow, Alaska

Dear Lt. Commander Schaefer:


As agreed in our conversation of August 28, 1974 attached is a copy of pertinent portions of Alaska Statutes Title 16 which explain the authority of the Commissioner of the Department of Fish and Game over the fish and wildlife resources in Alaska. There are several drainages within Petroleum Reserve No. 4 classified as anadromous such as the Colville, Rugrua, Kungok, Ivisaruk, Kuk, Avak, etc. A new printing of the anadromous stream catalog will be available in the near future and I will be certain you receive a copy.

I am sorry for the confusion that has developed regarding the use of the air cushion vehicle in the Umiat area, but I do not believe the confusion was the fault of this department.

I am by way of a copy of this letter alerting the supervisors within this region of our department of your request that you be notified prior to our conducting any business within the boundaries of the Petroleum Reserve.

I am looking forward to meeting you in the near future and suggest we develop a memorandum of understanding to assure proper coordination and cooperation.

Sincerely,


J. Scott Grundy
Regional Habitat Supervisor

Enclosure

cc: R. Hinman - Game Fairbanks
G. Van Wyhe - Sport Fish Fairbanks
R. Regnart - Commercial Fish Anchorage
M. Smith - Habitat Juneau

JSG:tj

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

REPLY TO 2430 Commercial Timber Sales

January 10, 1975

SUBJECT: Communications with ADF&G

TO: Files



We apparently have a bad communications problem with ADF&G. Maybe the scheduled meeting with ADF&G will help.

In my original memo of 9/26/74, I asked for recommendations on protective requirements necessary to prevent logging damage to Exchange Creek and outlined the manner in which we were planning to log the unit at that time. On October 23, we received a letter from ADF&G opposing this unit for fisheries reasons. The specific comments were made without visiting the stream and unit, and were unrealistic, solvable, or based on misconceptions. In an October 23 memo, Dennis Blankenbeckler recommended that the Exchange Creek unit and unit 17-6 not be logged because they violate the wildlife guidelines.

On November 6, Dennis Blankenbeckler, Fred Harnisch, Dave Loggy, Bradley Brahy from ADF&G and I visited the Exchange Creek unit. Brahy recommended; 1) no YUM yarding, 2) remove trees felled into the creek immediately after cutting, 3) grass seed any stream bank damage, 4) flag natural windfalls to be removed, 5) cut the unit in June. These recommendations are realistic and would have been followed.

When we were at Exchange Creek, Don Koenig suggested that we also look at three proposed bridge crossings, which we did. Brahy recommended that long stringers be used on one stream and that all bridges be built in June if possible. The June construction date for all bridges would be impossible to meet, but the recommendations were realistic.

In two November 8 memos, Don Siedelman and Bob Wood made recommendations concerning the Exchange Creek unit. Siedelman recommended that trees be lined away from the creek, falling and yarding take place between May 1 and May 15, and that if windthrow need to be pulled from the creek, it be done between the above dates. These recommendations were also realistic, although the time period is a little short to complete yarding. Bob Wood recommended that the Exchange Creek unit not be logged on the Cove side of the road, since this area is especially critical

for wildlife. I was prepared to accept this recommendation, however, when I discovered that I was mistaken on the exact location of the road and it was just barely inside the upper end of the appraised unit, I decided to defer this unit, and it will not be logged during this operating period.

The recommendations of individual ADF&G staff specialists are realistic, however, when we get composite recommendations, unrealistic and impractical stipulations are received. In a December 10 ADF&G letter, they stipulated, regarding the Exchange Creek unit, that a leave strip be left to prevent disturbance of the erosive stream banks and that there be no YUM yarding. Dave Loggy did not feel that the stream banks were especially erosive and they are still confusing YUM yarding with stream cleanup. Brahy, the only ADF&G man who has recently visited Exchange Creek, felt that some stream cleanup would be beneficial and suggested that the natural windthrow to be removed be flagged. Regarding the bridge crossings, they recommended that construction occur only in June and that no encroachment occur upon the stream or flood channels. The June timing is impossible unless the bridges were built in two separate construction seasons. The no encroachment stipulation would require 200-foot bridge stringers on one crossing.

In a December 30 memo, Dennis Blankenbeckler attempted to clarify the situation. He also stated that he did not believe that the adverse effects would be any more severe in April or May than in June.

ADF&G's January 8 response to Dennis Blankenbeckler's memo confuses the situation even more. Here they stated that their December 10 letter referred only to the Exchange Creek unit and the Exchange Creek bridge crossing. They said that "since we have been informed through other sources that this crossing has already been built", they considered it a moot point to continue discussing the Exchange Creek crossing. The Exchange Creek bridge was built last spring, and Bradley Brahy visited it on November 6. Fred Harnisch informs me that the Exchange Creek crossing was visited by Roger Lanse, our fisheries biologist at that time, and that he coordinated with ADF&G concerning the crossing. Regarding the three bridge crossings, ADF&G stipulated: 1) construction in July only, 2) No equipment in the stream at any time, 3) no encroachment upon the stream or flood channel, and 4) stringers long enough on crossing #1 to avoid encroaching upon the stream bank. It is impossible to build these bridges under these stipulations. Equipment must cross the stream to build the abutment on the other side. All bridges cannot be built in July or any other month. There are approximately 50 road crossings a year on fish streams in the Ketchikan Area and the construction

dates cannot be realistically contained between specific dates, except under certain circumstances.

As stated earlier, the Exchange Creek unit 17-16 will be deferred. The restrictions on these bridge crossings will be 1) Regulation 71 will be followed, 2) the bridge at crossing #1, Nahanni Creek, Station 102+50, will have a minimum of 70-foot stringers, 3) construction will occur between April 1 and July 31, and 4) the bridge abutments will not constrict the stream channel on any of the fish streams.

ADF&G feels that we must obtain permits for any activity that affects salmon streams. However, until they win their appeal in the Starrigaven case, the Forest Service does not feel that permits are required. The decision in the Starrigaven case recognizes the supremacy of Federal law and the Forest Service's direction from Congress and the Secretary of Agriculture over State law. Recognizing the volume of correspondence, ADF&G's concern over these creeks, and the fact that my release does not follow their permit, we may expect that Owens Drilling will be cited by the State under Title 16 when they build these bridges.

REX BAUMBACK
Resource Management Assistant

Attachments

cc: Harnisch
Chelstad
Wilson
Blankenbeckler
Baumback
Kocmick
✓Ehernberger

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, Alaska 99802

January 20, 1976

1560



Honorable Nels Anderson
Chairman
House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Anderson:

At the January 15 hearings on House Bills 278 and 313, when asked if there were any comments from the floor, Bob Tracy from my office pointed out that we previously had been asked for comment on these two bills and had replied by letter dated April 28, 1975.

Our position as stated at that time remains unchanged. We are certain that other avenues open to us for cooperative effort with State government are far preferable in achieving protection of streams on National Forest lands.

Bob Tracy also indicated our support for a strong Forest Practices Act to provide protection of streams on State and private lands. We think this is extremely important.

In the event our correspondence sent to you last spring is not readily available, I'm taking the liberty of enclosing copies.

We appreciate the interest you and your committee continue to show for the wise use of natural resources in Alaska. We are anxious to provide any assistance possible in your deliberations.

Sincerely,

C. A. YATES
Regional Forester

Enclosures

cc: House Resources Committee Members

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska 99802

RV

file

T:560

H.
APR. 28, 1975



Honorable Nels A. Anderson, Jr.
House Resources Committee
Alaska Legislature
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Anderson:

During Resource Committee hearings on State of Alaska House Bill 313, you requested Bob Tracy to comment for the Forest Service. Although he was prepared to do so, he did not testify due to the tabling of the bill. You also asked that he testify when hearings were held on H. B. 278. Those have not yet been rescheduled.

Because Forest Service management of National Forests was a major topic during the hearing, we are anxious that you and the Resources Committee members understand our view regarding both House Bills 313 and 278. Also we want to respond to some of the points that came up in discussing the bill. We hope this is helpful to you in deliberating these or other bills that may have a bearing on National Forest management. We have enclosed a copy of the letter we had expected to use as testimony at the H. B. 313 hearing.

The following speaks to points of discussion brought up during the hearing of H. B. 313.

Commissioner Brooks indicated that H. B. 313 was aimed at water pollution prevention since it was thought that the Federal Government would be required to comply with pollution prevention laws. Through the Federal Water Pollution Control Act and Presidential Executive Order 11752, we are required to meet State water quality standards developed in conformance with Environmental Protection Agency guidelines. Alaska's water quality standards are embodied in Title 18, Chapter 70 and do conform to EPA guidelines. The State standards are incorporated into our Forest Service Manual as direction to our field people. Executive Order 11752 clearly indicates that we are to comply with the standards but we are not to be bound by State administrative procedures, which H. B. 313 would attempt to do.

Commissioner Brooks was misinformed in stating to you that timber industry people laid out the boundaries of cutting units on National Forest lands subject to Forest Service approval. This was more or less true at one time on our long-term sales, but has never been true on the short-term sale program. This was always done entirely by the Forest Service. We now do the entire job on the Ketchikan Pulp Company long-term sale and are rapidly

acquiring the entire job on the Alaska Lumber and Pulp Company sale. Even on that sale, Company work is merely in accordance with what the Forest Service prescribes. The Committee should also know that Commissioner Brooks on March 20, 1975, before the Forest Practices Committee of the Alaska Loggers Association, stated that logging was not the cause of the depletion in the salmon runs, it was over-fishing.

The Commissioner made reference to having seen a Forest Service letter from someone other than the Regional Forester regarding Forest Service jurisdictional attitude. He stated a copy could be made available to your committee. We do not know what letter he means but believe it may be the same as one the Department inquired about recently. On the chance that it may be, we are enclosing a copy of the ADF&G inquiry and our reply. We have heard nothing further on it. We hope you will find our response positive and in a spirit of cooperation. We are not defiant of State authority but when it seriously conflicts with Federal authorities we simply cannot abrogate our management responsibilities.

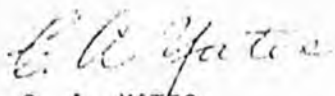
One of the reasons given in support of H. B. 313 was that control over mining activity was needed. We point out that new Mining Regulations applicable to National Forest lands were adopted by the Secretary of Agriculture and have been in effect since last September. Among other things, these regulations require submission of an operating plan and approval by the Forest Service for any mining operation which will cause significant surface disturbance. We believe we have adequate control.

One last point is with regard to considerable criticism of National Forest logging activity. We acknowledge a number of past violations. In fact we can compile quite a list of them. However, we do not believe this should be allowed to obscure the many good practices and good results there have been over the years. We also think it important to recognize recent changes made in cutting policies and administrative capabilities which we have developed to give added protection to other resource values. It will take a few years before these are very noticeable but they are in effect right now. Our staffing has increased greatly in the last year, specifically to enable us to do a better job of managing the resource activities, particularly timber harvest. We have taken strong steps to correct mistakes. Our timber sale contracts have teeth with which we can and intend to enforce good practices

We believe the wise use and protection of our natural resources is the aim of the State of Alaska, just as it is the aim of the Forest Service. We think a spirit of close cooperation and trust must be fostered between the two levels of government if the citizens of Alaska and the nation are to be properly represented. It is our desire to develop such an atmosphere of cooperation and trust.

We thank you for the opportunity to comment on these bills.

Sincerely,



C. A. YATES
Regional Forester

RV

P.O. Box 1628, Juneau, Alaska 99802

1560
2600

February 28, 1975

Mr. James W. Brooks, Commissioner
Alaska Department of Fish and Game
Support Building
Juneau, Alaska 99801

Dear Jim:

This will acknowledge your letter of February 10, signed by Mr. Rosier, which refers to a memorandum to the files from one of our Resource Management Assistants. We have not seen the letter you refer to, do not know who wrote it, nor in what context it was written.

We presume the letter refers to a permit or license which would be obtained from the Department of Health and Welfare under AS 16.10.010 (3) before rendering water inaccessible or uninhabitable for salmon spawning or propagation purposes.

As you know, Jim, the Forest Service has never considered the need for permits for activities involving non-navigable streams on National Forest lands. To my knowledge we have not been asked to obtain such permits in the past. For one thing, we do not believe our activities are rendering waters "inaccessible or uninhabitable" since the precautions, developed in consultation with your staff, which we take are specifically designed to prevent that from happening.

We recognize, partially as a result of the Leo Nelson case, that our agencies do have differences in interpreting applicability of AS 16, and particularly AS 16.10.010. We hope most strongly that those differences will disappear through development of a mutual understanding and respect for each agency's goals and objectives in resource management. We intend that the requirements of our timber sales and other contracts provide the control necessary for the protection of the fishery values and water quality under the concept of multiple use management. We think that our proper enforcement of those requirements will accomplish the same objectives we believe AS 16 is intended to do.

We believe our best chance of establishing strong working relations between us will be through our professional people responsible for

managing the resources. It would be most unfortunate for both our agencies if we had to resolve our differences through legal disputes.

Some of our people will already have met, when you receive this letter, for the purpose of clarifying problem areas and recommending solutions. We will be most disappointed if they do not identify many opportunities for promoting understanding and developing management practices that better recognize the needs of all the resources. If they can not do that, our troubles are more serious than we presently believe.

This letter skirts a direct confrontation over your question regarding AS 16. That was intentional and I hope my expressed thoughts explain why. We have not issued any policy direction to our field people that they will or will not obtain permits. We do not contemplate issuing such direction and certainly hope the approach of working together to provide the needed protection will be found to be the desirable way to go.

Sincerely,

C. A. YATES

C. A. YATES
Regional Forester

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

SUPPORT BUILDING
JUNEAU 99801

February 10, 1975

Mr. Charles Yates
Regional Forester
US Forest Service
709 West 9th Street
Juneau, Alaska 99801

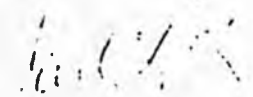
Dear Mr. Yates:

We have a memorandum to "Files" from a US Forest Service Resource Management Assistant that says in part:

"ADF&G feels that we must obtain permits for any activity that affects salmon streams. However, until they win their appeal in the Starrigavan case, the Forest Service does not feel that permits are required. The decision in the Starrigavan case recognizes the supremacy of Federal law and the Forest Service's direction from Congress and the Secretary of Agriculture over State law."

If this is Forest Service policy, it is important that we know it so we might act accordingly. I would appreciate your early reply regarding Forest Service policy on the applicability of AS 16 on Forest Service lands.

Sincerely,


James W. Brooks
Commissioner

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT House

ATTENTION Resources

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

FROM:
MAIL STATION NUMBER 1100

DEPARTMENT Fish and Game

BY J. Morrison DATE 1-15-76

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
 Bill No. House Bill No. 278
 Title: An Act Requiring Fishery Protection Reports
 Requested by: Guy VanDoren Date: 1-14-76
 Return Date Requested: 1-14-76
 Agency: Fish and Game Program: N.R.M. & E.C.

II. FISCAL DETAIL
 Budget Request Unit(s) Affected: Habitat Protection
 A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		65.5	23.2	23.2	23.2	23.2
200 TRAVEL		4.0	1.5	1.5	1.5	1.5
300 CONTRACTUAL		7.0	1.2	1.2	1.2	1.2
400 COMMODITIES		1.5	.5	.5	.5	.5
500 EQUIPMENT		.9				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		78.9	26.4	26.4	26.4	26.4

B. FUNDING: (Thousands of dollars)

GENERAL FUND		78.9	26.4	26.4	26.4	26.4
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	1/3	1/	1/	1/	1/
MAN MONTHS (P./T.)	/	12/27	12/	12/	12/	12/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

FY 77: Reflects one permanent biologist II position plus 24 months of biologist I temporary time and three months of key punch operator time.

Contractual services are mainly publication cost.

Following years reflect one permanent biologist II position to maintain program.

IV. ATTACHMENTS

V. DATE: 1-15-76 PREPARED BY: John Palmes

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

TESTIMONY OF R. W. ALLINGTON FOR SEALASKA CORPORATION
CONCERNING H.B. 278 AND H.B. 313

Mr. Chairman and members of the House Resources Committee:

I am here today to testify at the request of John Borbridge, President of Sealaska Corporation, with respect to H.B. 278 and H.B. 313. These bills were introduced in the first session of the 9th legislature as a means of providing additional protection for our Alaska fisheries resource.

Sealaska Corporation, as you are aware, is the Native Regional Corporation for Southeast Alaska formed under the provisions of the Alaska Native Claims Settlement Act. As such we count many fishermen among our 15,000 plus shareowners. A number of these fishermen-shareowners also sit on the Board of Directors of the Corporation. Consequently, the Corporation is aware of, and sympathetic to, the problems presently facing the fishermen and the efforts of the State of Alaska in trying to protect this valuable natural resource.

The Corporation is quite sympathetic to the issues addressed in the subject legislation (H.B. 278 and H.B. 313). However, we feel that these bills are a "piece-meal" approach to the complex, involved problem insofar as forest lands are concerned, and as such is inconsistent with Governor Hammond's position as set forth in his State

of the State message which addressed the need for an integrated rather than piece-meal approach to resource legislation.

Sealaska Corporation as the prospective owner of 200,000 acres of private timber land, anticipates timber harvest operations on its lands which would be subject to the provisions of H.B. 278 and H.B. 313. Additionally, Sealaska Corporation will be subject to the provisions of the State Forest Practices Act which has been proposed by the Administration. As stated previously, the Corporation endorses the concept of fisheries protection, and also endorses the concept of a Forest Practices Act to ensure best current management practices insofar as forest resources are concerned. However, we are somewhat concerned at the prospect of multiple permit procedures which could result from a piece-meal approach to resource protection. Further, portions of the proposed Forest Practices Act as well as Section 208 of the Federal Water Pollution Control Act, address either directly, or indirectly through authority to promulgate regulations, most if not all of the resource protection issues addressed in H.B. 278 and H.B. 313. We believe that enactment of a "good" Forest Practices Act should among other things, establish insofar as possible, a "one-stop" notification and, if necessary, permit system so that timber operators and/or owners can minimize the governmental paper work required to conduct business. Sealaska

Corporation and other timber related companies should not be required to "bob and weave" through a maze of Departmental notification and permits in order to do business. Such a maze develops unintentionally when a piece-meal approach is taken as appears to be the case with H.B. 278 and H.B. 313. An integrated approach to resource protection can best be achieved through a comprehensive Forest Practices Act which, hopefully, would require only one contact with the State Forester for a timber operator and/or owner to manage his private timber lands in accordance with appropriate statutes and regulations.

Therefore, it appears to this timber related corporation that H.B. 278 and H.B. 313 should be tabled by the House Resources Committee until the proposed Forest Practices Act has been acted upon and we would urge this Committee to so act.

CHAIRMAN:
NELS A. ANDERSON, JR.

STAFF ASSISTANT:
GUY VANDOREN



VICE CHAIRMAN:
TED SMITH

SECRETARY:
BETH O'DONNELL

BUCH V
NEAU, ALASKA 99611

PHONE: 465-3715
465-3781

House Resource Committee

HB 278

FRED BROWN

ALVIN OSTERBACK

DICK ELIASON

LEO RHODE

MIKE HERSHBERGER

LESLIE (RED) SWANSON

JAMES HUNTINGTON

April 4, 1975

Commissioner Jim Brooks
Dept. of Fish and Game
Subport Building
Juneau, Alaska 99801

Dear Commissioner Brooks:

The House Resources Committee respectfully requests that documents and communication alluded to in testimony by Commissioner Brooks of the Dept. of Fish and Game, regarding the lack of authority of the State to require the Federal Government to adhere to Title 16 Alaska State Statutes. The communications specifically mentioned are from the Navel Officer in charge of Pet 4, General Rollins regarding Federal land within the pipeline corridor and communications from members of the U.S. Forest Service.

The committee feels that if these documents and communications are not forthcoming within the next seventy-two hours, the committee will be forced to take subpoena action.

Sincerely,

Nels A. Anderson, Jr.

Nels A. Anderson, Jr.
Chairman-House Resource
Committee

NAA/bd