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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.

ERNEST W. MUELLER  
Dept. of ENV. CONSERVATION

Comments on HB 313

"An Act relating to interference with or pollution of water inhabited by fish or shellfish."

Mr. Chairman, members of the Committee: Thank you for this opportunity to share the view of the Department of Environmental Conservation concerning House Bill 313, introduced by request of the Governor on March 19, 1975. This bill is conceptually a logical extension and amplification of Alaska Statutes, Article 1, Chapter 10, Title 16, "Interference with Streams and Waters." The bill accomplishes this task through the following:

1. First, the bill expands the coverage from purely salmonid propagation waters to include habitat waters for all species of fish and shellfish. This expansion recognizes that Alaska's commercial fishing industry has diversified from its traditional reliance largely on salmonids to its present base on a large number of fish and shellfish species, the protection of their habitat thus becomes at least as important as the protection of salmonid habitat. Also, this action recognizes the inherent value of all fishes and shellfishes, whether they are of commercial, recreational, aesthetic, or purely ecological significance.

2. This bill recognizes, as does the Governor's message transmitting it, that destruction of the habitat of wild creatures as a result of rapid development of other natural resources can, most often, result in diminution of species

populations far in excess of that occurring from increases in species harvest. Alaska's diverse natural resources are being exploited at an increasingly rapid rate. To avoid sacrifice of our renewable resources, particularly our fish and wildlife, to extract our non-renewable resources, we must have an adequate base of resource protection law and policy. HB 313, if enacted, would be an important part of that law and policy.

3. HB 313, like the initial legislation, recognizes the technical difficulty of proving that an act of interference with or pollution of water actually damages fish populations. Our experience with water pollution law, in general, is extensive enough for us to believe that the concept of pollution illegality, regardless of provable damage, is the only reasonable and effective one to face. In fact, to prove that an act is a violation, such as a water quality standard violation, is oftentimes extremely difficult in itself, without having to prove damage. Our orientation should be, therefore, to err on the conservation side, to provide a level of protection that we are certain is effective, and to compromise that orientation by exception.

4. To manage those exceptions, HB 313 continues and broadens the permit program of AS 16.10.020. Whereas the existing statute speaks only of granting permits in the cases of structures designed to obtain water or to provide power, HB 313 expands the permissible actions to any which, upon determination, constitute an activity whose benefits outweigh the risks of

damage to the fish or habitat, and the human interests dependent upon them. In addition, the permit process in HB 313 enables us to include permit conditions which mitigate damage, not simply structural modifications as are presently in AS 16.10.020. Thus, we would be able to specify, within the permit, critical times when certain actions should not take place, methods to minimize damage (such as siltation control systems, etc.).

5. HB 313 also increases penalties for violations so that they are more in line with current environmental law. To be effective, environmental laws must include penalty mechanisms rigorous enough to preclude large, prosperous, industrial operations from wilfully violating, and when convicted, paying a token fine. HB 313 remedies this, by significantly increasing the penalty provisions. Also, by applying AS 46.03.780 to these violations, the violators can become liable for full cost of restoration of the damaged environment.

6. HB 313 also repeals AS 16.10.50:

"Sections 10-50 of this chapter do not affect the vested rights or privileges granted by federal statute to any person."

This section essentially removed State control over federal projects, or many private projects on federal lands. As many such projects, particularly water resources projects, forestry projects, mining, etc., are conducted on federal lands, the State must, in order to protect its resource interest, exercise control over the habitat disruption that results.

This bill, by placing implementation in the Department of Environmental Conservation, and by becoming a water pollution control statute, establishes our jurisdiction over federal projects and actions, as required by 33 U.S.C. 1323 under the Federal Water Pollution Control Act Amendments of 1972. The fish and Wildlife Coordination Act of 1934 does require consultation between State and Fish and Wildlife agencies and federal agencies, however 16 U.S.C. 662(h) of the Act states:

"The provisions of Sections 661-666c (essentially the entire Act) of this title shall not be applicable ...to activities for or in connection with programs primarily for land management and use carried out by federal agencies with respect to federal lands under their jurisdiction."

Thus, in a very real sense, projects thus specified on federal lands are not subject to review by State Fish and Wildlife agencies, but are subject to regulation by the State's water pollution control agency. By placing the permitting authority with our Department, and by requiring close coordination with the Department of Fish and Game, HB 313 accomplishes the dual purpose of allowing regulation of the quality of fisheries habitat on a holistic basis, and of extending jurisdiction to federal activities, not as a "guest," but as a co-equal regulatory authority.

Finally, I would like to remark that we have discussed, at some length, the mechanics of the permit program with appropriate

Fish and Game personnel. In all probability, the program would constitute an amplification of the existing review process under AS 16.05.870-900, which refers to structures in and modifications to designated anadromous fish streams and lakes. As a result of these discussions, we feel there will be no significant difficulties in implementing the permit program within our two agencies.

Thank you for this opportunity to comment, and if there are any questions, I would be happy to attempt to answer them.

\* \* \* \* \*

Producers of DISSOLVING PULP

## KETCHIKAN PULP COMPANY

#310 Prospector Hotel, 340 Whittier St., Juneau, Alaska

EDWARD W. BORGEN, Sr.  
Legislative Representative

April 3, 1975

The Honorable Nels A. Anderson, Jr.  
Chairman, House Resources Committee  
State Capitol Building  
Juneau, Alaska

Dear Representative Anderson:                      Re: HB 313

This bill proposes to make some rather drastic changes in AS 16.10, and are so broad that they constitute a definite peril to the survival of the logging and milling segments of the timber industry.

Where the present statute deals with salmon spawning streams, and being seasonal can be observed, -although with some disruption to the logging program. The new measure would be year-around in scope, and by adding other fish and shellfish, make observance of the law impossible - if the logger wished to try to stay in business and fulfill his contract with the U. S. Forest Service.

Under present laws and regulations, it appears that adequate protection is being given to fish and to wildlife in the National Forests and on State lands. Before the logger can cut the first tree, he must have contracts, licenses, leases and agreements with over 30 State and Federal agencies, all acting to protect the best interests of the departments they represent. Adding further regulations appears to defeat the purpose of utilization of the timber, much of it over-aged, and the added restrictions only tend to stifle industry, one badly needed in the economy of Southeastern Alaska in particular, and the State in general.

The fact that the State does not have to even demonstrate actual damage, or the likelihood of damage, in order to prosecute, and this with the rather large increase in the maximum fine, being raised from \$500 to a proposed \$25,000, coupled with each day of violation being considered a separate offense, in our opinion, constitutes a threat of destruction, and certainly is excessive.

We do not feel that the need to change the present statute has been sufficiently demonstrated. If there has been an infraction of the law, perhaps by only a few, this does not require such drastic action that those who are honest and law abiding must face possible ruin.

Since there also may be an area of conflict between Federal and State laws and jurisdictions in this bill, we feel that the role of the State of Alaska should be carefully checked. We ask, therefore, that you give serious consideration to retaining the present statute.

cc Committee Members  
House Resources  
Senator Robert H. Ziegler, Sr.  
Rep. Oral Freeman  
Rep. Terry Gardiner

Respectfully,  
Ketchikan Pulp Co.  
*Edward W. Borgen, Sr.*  
Edward W. Borgen, Sr.  
Legislative Advisor

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska 99802

1560  
APR 23 1973



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 is what 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.

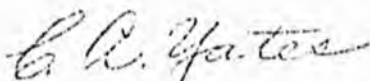
One of the reasons given in support of H. B. 313 was that control over mining activity was needed. We point out that new Mining Regulations applicable to National Forest lands were adopted by the Secretary of Agriculture and have been in effect since last September. Among other things, these regulations 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

Enclosures

cc: Resource Committee members  
Repr. Haugen

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

1550

April 3, 1975

*(not mailed)*



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

Dear Mr. Anderson:

We have reviewed State of Alaska House Bill No. 278, entitled "An Act requiring fishery water protection reports," and House Bill No. 313, entitled "An Act relating to interference with or pollution of water inhabited by fish or shellfish." Of course, we are fully supportive of the need to provide ample protection to the fish waters of our State. Federal laws, regulations, and policies which direct the management of National Forest lands are specific in recognizing Forest Service responsibilities for protection and management of all the National Forest resources. In commenting on these bills, we hope this support of the objective of providing protection is recognized.

In a number of places throughout proposed H. B. 278, the wording ". . . person or governmental agency. . ." is used. While proposed H. B. 313 makes no mention of "governmental agency," neither does it clearly exclude governmental agencies. It is our recommendation that this wording be revised, or some definition inserted, which would clarify that the Federal Government is not included under the terms of the bills.

The authorities under which National Forests are managed assure a high degree of protection including requirements to give full consideration of various alternative actions, to select the most desirable alternatives, and to provide for minimizing adverse effects.

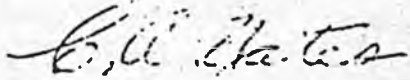
We want to point out the opportunity for close State-Federal coordination through procedures established by Office of Management and Budget Circular A-95. We are pleased to have entered into a cooperative Memorandum of Understanding with the State of Alaska to implement the direction of the Circular. We believe this is an efficient way for the Forest Service to keep the State informed of our activities and to solicit comment from State agencies regarding those activities.

We believe the clarification we have requested is important in understanding the separation of authorities that exist between State and

Federal governments on Federally administered lands. It would not be possible for the Forest Service to relinquish its jurisdictional responsibilities on National Forests to the State.

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

Sincerely,



C. A. YATES  
Regional Forester

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

*W. R. A.*  
*David*

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. House Bill Number 313  
 Title: Pollution of Water Constituting Fish or Shellfish Habitat  
 Requested by: House Finance Committee Date: April 2, 1975  
 Return Date Requested: April 9, 1975  
 Agency: Fish and Game Program: Natural Resources Management and Environmental Conservation

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Habitat Protection

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

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

As per AS 16.05.870 and other permit review processes (Corps of Engineers, discharge permits, highway design review, etc.) the Department of Fish and Game is presently engaged in permitting and review of such activities as are regulated by this act. Therefore, administration of the Act will require no significant expenditure of funds in addition to those already budgeted for these functions.

IV. ATTACHMENTS

V. DATE: April 7, 1975 PREPARED BY: John T. Stewart

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

File  
313

February 6, 1975

Mr. Rodger Peguez  
Attorney General's Office  
Pouch "K"  
Juneau, Alaska 99801

Dear Rod:

Re: Problems Surrounding Present Timber Sales

On behalf of the Alaska Loggers Association I invite you to our offices to commence conversations designed to identify problems surrounding proposed timber sales and to narrow the issues which presently may be contributing to misunderstanding. The further objective of such meetings would be to identify items which might be worthy of inclusion on an agenda for a meeting between State, Federal and Industry policy makers. It is likely that a series of discussions will have to be held to achieve the goals set forth herein. Accordingly, it would seem wise to begin at the earliest possible moment.

Please advise whether or not the State, through your office, would be amenable to such discussions. As I envision it, it would be appropriate at this time that the only participants be the lawyers representing the various interests involved. In addition, it would be most helpful to keep the meeting small so that conversations can move rapidly. Therefore, the Alaska Loggers Association will be represented by Bill Royce, from Ketchikan, and myself. I intend, also, to invite Al Gaskill from the Forest Service. If it would be possible to limit your delegation to two or three persons it would expedite our conversations. Naturally, more persons should be included in these meetings as the discussions develop.

I am looking forward to hearing from you on this matter.

Yours very truly,

c.c. Mr. Al Gaskill  
Mr. Robert Jernberg  
Mr. Clarence Kramer  
Mr. Jim Rynearson

James F. Clark

JFC:k