

HABITAT  
REGULATIONS

3-25-81

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 4, 1982

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

The Honorable Ronald O. Skoog  
Department of Fish and Game  
Support Building  
Juneau, Alaska 99801

Re: Department of Fish and  
Game Jurisdiction over  
Habitat Protection.  
Our File No. J66-839-81

Dear Commissioner Skoog:

By memorandum of June 15, 1981, Habitat Division Director Richard Logan asked for our opinion on several matters relating to your department's proposed habitat protection regulations (5 AAC 95). The opinion request centered on the jurisdiction of the department and the boards of Fisheries and Game over habitat protection, and was prompted by the comments of the Alaska Loggers' Association and Sealaska Regional Corporation on the draft regulations. These comments suggested that the proposed regulations exceeded the department's and boards' authority.

In response to the questions posed by Director Logan, it is our opinion that:

1. The Department of Fish and Game has permit jurisdiction both over activities affecting anadromous streams (AS 16.05.870) and over activities in streams "frequented by fish" if those latter activities will result in the physical obstruction of that stream. AS 16.05.840. The department also has permit jurisdiction over all land use activities within the state refuge system. AS 16.20.050-.060;

2. The Board of Game has permit jurisdiction over land use activities within state game sanctuaries. AS 16.20-.120. The boards of Fisheries and Game, in conjunction with the department, have permit jurisdiction over activities within critical habitat areas. AS 16.20.250-.260;

3. Within the scope of the department's and boards' permit jurisdiction, the department and the boards have the authority to adopt regulations establishing standards and procedures for the processing of those permits; and

4. With respect to anadromous stream permits issued under AS 16.05.870, we believe that the department's jurisdiction is not limited to activities occurring directly and intentionally within the continuously inundated portions of the waterway. Rather, it is our opinion that this jurisdiction extends to those activities occurring upland of classified anadromous streams or their tributaries which, absent sufficient mitigating measures, would create a direct and substantial threat that one of the results specified in AS 16.05-.870(b) would occur. Specification of that jurisdictional line is best accomplished by rulemaking -- which is precisely what the department intends.

The issues involved with respect to part four of our opinion are controversial. Good faith and serious arguments can be made that the department's jurisdiction over anadromous streams is limited to direct in-stream activities. Because of

the arguable ambiguity of the statutory language involved, both arguments may ultimately hinge on legislative intent, which in this case is difficult to discern. We believe that our interpretation is the preferable one because we view it as being more consistent with the purpose of the statute.

I. The department and boards' permit jurisdiction.

Most of the permit statutes at issue in Director Logan's opinion request use some variant of the language employed in the department's anadromous stream legislation. AS 16.05.870. The anadromous stream permit statute was enacted as part of Alaska's comprehensive Fish and Game Code in 1959. SLA 1959, ch. 94, § 31. It is fair to say that the language utilized in the statute is difficult and oblique. The anadromous stream statute applies to persons who desire:

. . . 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.

AS 16.05.870.

This jurisdictional catalogue has created a significant controversy. See sec. III, infra. Equally unsettled are the procedures contemplated. An activity leading to one of the jurisdictional results described in sec. 870 is not simply required to be permitted by the department. Rather, the responsible person is required to "notify the Commissioner of

his intention before the beginning of the construction or use." Id. After receipt of the notice, the commissioner, if he "determines to do so," will "require the person . . . to submit to him full plans and specifications of the proposed construction or work." AS 16.05.870(c). In that case, the commissioner shall also "require the person . . . to obtain written approval from him as to the sufficiency of the plans or specifications before the construction or use has begun." Id. Finally, AS 16.05.880 provides:

If a person . . . begins construction on a work project or use for which notice is required by sec. 870 of this chapter without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game, and without first obtaining written approval of the commissioner as to the adequacy of the plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor.

AS 16.05.870-.880, then, is a licensing statute, which has been the view of this department for at least 18 years. Op. Atty. Gen., January 3, 1963, "Sec. 31, Art. 1, Ch. 94, SLA 1959 As Amended" [hereinafter "1963 Op."]. The Department of Fish and Game has administered the statute accordingly.

The permit requirements of the law, however, are potentially quite cumbersome. A person must initially "notify" the commissioner of his proposed activity. The commissioner is then to determine whether the activity is of a nature which will require the submission of "full plans and specifications." Since the initial "notification" must be sufficiently

specific to enable the commissioner to render an informed determination on the "plans and specifications" question, the statute would seem to allow that the applicant submit, essentially, two permit applications -- the first to determine whether a more detailed inquiry will be made, and the second to obtain the needed authorization.

In the department's habitat protection regulations, the department proposes to short circuit this two-step procedure by specifying in advance, and through regulation, those circumstances under which "full plans and specifications" will be necessary. Those activities are delineated in 5 AAC 95-.030. Activities not listed in that section will not require "notification" under AS 16.05.870(b). While the list in proposed 5 AAC 95.030 has been criticized as a policy matter for being overly broad,<sup>1</sup> it is our opinion that when the department or board has established a general policy of requiring plans and specifications in all instances involving specific types of activities, that policy can and perhaps must be codified by regulation.

The appeal of predetermining, by regulation, circumstances under which "full plans and specifications" would be required becomes manifest with respect to permits within

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<sup>1</sup> Letter, Alaska Loggers' Association to Director Logan, March 25, 1981 at 3. The letter states that the listing requires the submission of full plans and specifications "in every instance."

critical habitat areas. Under AS 16.20.250, a person desiring to use either private or public land within a critical habitat area is required to notify the commissioner. However, under AS 16.20.260, the determination of whether to require "full plans and specifications" is vested in the appropriate board.<sup>2</sup> Since the boards of Fisheries and Game meet on an infrequent basis, under the statute a person may have to wait a long time for the board to determine the appropriate disposition of his "notification" under AS 16.05.250.

The proposed 5 AAC 95.040(a) would specify those construction activities which will require detailed plans and specifications to be submitted to the commissioner under AS 16.20.260. The statute does not preclude the board from "determining" the necessity for submitting plans and specifications by regulation rather than on a case-by-case basis. The choice of which option to pursue would seem committed to the sound discretion of the department and board.

From the permitting statutes discussed supra, it can be seen that Title 16 attempts to divide permitting responsibility between the department and the boards. As noted previ-

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<sup>2</sup> AS 16.20.260 states that full plans will be required "when a board so determines." The statute is unclear as to which board is the appropriate deciding entity. Since the habitat regulations will be jointly adopted by both boards, the problem is avoided.

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ously, AS 16.05.870 vests all permitting authority with respect to classified anadromous streams in the commissioner. The same is true of the "obstruction" permit requirement of AS 16.05-.840.<sup>3</sup> With respect to critical habitat areas (AS 16.20-.250-.260), the permit program is administered by the commissioner in those situations in which the board "determines" that plans and specifications will be necessary. With respect to state game refuges, AS 16.20.050-.060 permit jurisdiction

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<sup>3</sup> AS 16.05.840 states:

if the commissioner considers it necessary, every dam or other obstruction built by any person across a stream frequented by salmon or other fish shall be provided by that person with a durable and efficient fishway and a device for the efficient passage of downstream migrants.

Emphasis supplied.

"Plans and specifications" must be approved by the department. Id. This statute is geographically broader, but topically far narrower than AS 16.05.870. It applies to any stream frequented by fish -- whether anadromous or not. On the other hand, it governs only physical obstructions to the stream, and confers regulatory authority only to the extent necessary to ameliorate the impacts of that obstruction. Proposed 5 AAC 95.020 appropriately confines permit jurisdiction over "streams frequented by fish" to those situations.

solely in the commissioner.<sup>4</sup> Finally, the state game sanctuary statutes provide that "the boards may adopt regulations governing entry, development, construction . . ." in both Walrus Island State Game Sanctuary (AS 16.20.120), and the McNeil River State Game Sanctuary. AS 16.20.170.

Because statutory jurisdiction is split among the areas involved in the habitat protection regulations, the question has arisen as to the authority for the adoption of habitat protection regulations governing all of the areas

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<sup>4</sup> While the state game refuge statutes use the same "notification" and "plans and specifications" language as AS 16.05.870 (and AS 16.20.250-.260), AS 16.20.050 contains one important variation. Unlike the critical habitat statute (AS 16.20.250), permit jurisdiction is confined to land within state game refuges which is "under the control or jurisdiction of the state, whether through federal permit or state ownership." Moreover, the initial applicant under sec. 050 is "the responsible state department or agency." Under the statute, then, when a private individual seeks a permit or lease from the Department of Natural Resources, DNR is obligated to "notify" the Department of Fish and Game. In cases when full plans and specifications are required, however, those plans must be submitted and permission obtained by the private individual. AS 16.20.060. The Department of Fish and Game has sought to streamline this potentially cumbersome procedure by providing for the "adoption" of DNR permits in these areas.

In the case of one state refuge (the Mendenhall Wetlands State Game Refuge), AS 16.20.034(g) provides the "management of the surface and subsurface estate is the responsibility of the Department of Natural Resources." However, that subsection adds that "any actions by the Department of Natural Resources which affect the habitat shall be in conformity with the plan proposed and adopted by the Department of Fish and Game." AS 16.20.034(g) should not be read as an implied repealer of AS 16.20.050-.060. See *Morton v. Mancari*, 417 U.S. 535, 549 (1974). Rather sec. 034(g) would seem consistent with the "veto" device provided in AS 16.05.050-.060.

involved. That issue is treated in the following section of this opinion.

II. Regulatory authority for adoption of habitat protection regulations.

No one entity has explicit permit jurisdiction over all of the areas covered by the Habitat Protection Regulations. In certain cases, permit jurisdiction is vested in the boards; in other cases it is lodged in the commissioner; and in one case (critical habitat areas), the jurisdiction is shared. It is our opinion that each entity has the authority to adopt regulations implementing those permit programs explicitly granted to it by the legislature. This does not mean, however, that joint adoption of habitat protection regulations covering all of the areas involved is not appropriate. To the contrary, since the standards and procedures for permit approval are common to all of the areas covered, joint adoption would seem to promote both clarity and efficiency.

A particular argument has been raised with respect to rule-making authority to implement the anadromous stream permit program. As noted previously, the anadromous stream statutes (AS 16.05.870-.880) confer permit jurisdiction solely on the commissioner. However, AS 16.05 does not explicitly confer upon the commissioner the authority to adopt regulations to implement the particular powers granted by that chapter. As a result, it has been argued that "the legislature may have

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intentionally chosen not to give the commissioner clear authority to write regulations" implementing AS 16.05.870. Letter, Sealaska Corporation to Commissioner Skoog, March 27, 1980 at 7.

The authority to adopt regulations need not be explicitly granted. Indeed, administrative agencies generally are held to have the implied power to adopt regulations necessary to implement explicitly conferred authority. Calif. Drive-In Restaurant Assoc. v. Clark, 140 P.2d 657, 665 (Calif. 1943); Fertich v. Mitchner, 11 NE 605, 609 (Indiana 1887). One of the most common examples of implied authority is the power to adopt rules of procedure to execute quasi-judicial powers. See Sutherland, Statutory Construction, 4th Ed., sec. 55.04. The question of the scope and extent of implied powers involves a mixture of common sense and legislative intent. Although the authority to adopt regulations is not explicitly conferred, the existence of the authority is recognized in Title 16. See AS 16.05.070. All "administrative, budgeting and fiscal powers" are explicitly conferred on the commissioner (AS 16.05-.050), and his specifically enumerated powers are given "not by way of limitation." Id. In particular, the commissioner is to "manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state" (AS 16.05.020(2)) and is given "all necessary power to accomplish the foregoing." AS 16.05.020(c).

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Given the general law with respect to implied rule-making authority, it is hard to argue that the commissioner does not at least have the power to adopt procedural rules to implement AS 16.05.870. Similarly, we believe that he possesses the authority to establish by regulation the standards under which sec. 870 permits will be issued. We cannot impute to the legislature an intent that the commissioner issue permits under sec. 870 solely on an ad hoc basis. Such an intent would be contrary to the most rudimentary concepts of civilized administrative practice. Equally clearly, once the ability to develop standards of general applicability has been assumed, the only lawful means for adoption of those standards by the commissioner is through regulation. Kenai Peninsula Fishermen's Cooperative Assoc., Inc. v. State, 628 P.2d 897 (1981); AS 44-.62.640(2). Because of that constraint, to suggest that the commissioner lacks the authority to adopt regulations governing the issuance of permits under AS 16.05.870 is to argue that the commissioner is constrained in the administration of that permit program to "seat-of-the-pants" adjudication.

The commissioner's implied regulatory authority, however, does not extend beyond the permit authority explicitly conferred. The same is true of the rule-making authority of the boards with respect to the permit programs under their jurisdiction. In the past, it has been suggested that the absence of explicit rule-making authority in the commissioner

is immaterial because of the broad rule-making authority of the boards to adopt habitat protection regulations. Thus, the entirety of proposed 5 AAC 95 -- even as it affects anadromous streams -- has been justified in part by the general rule-making authority conferred on the boards by AS 16.05.251 and AS 16.05.255. Because both the boards, and the commissioner, have the authority to adopt regulations implementing each of their respective permit programs, whether the entirety of the regulations might be justified under the boards' broad rule-making power is a question which we need not resolve.

In sum, the habitat protection regulations should be viewed as an amalgam of allocated authority. For example, the authority citation for proposed 5 AAC 95.030 should reference the commissioner's permit program under AS 16.05.870. Where the boards' permit authority is involved, those permitting statutes should be cited. Where a section of the regulations applies to both the boards' and the commissioner's permit programs, both authority citations should be utilized.

III. Geographical scope of the department's jurisdiction under AS 16.05.870.

The most difficult question raised by the comments of the Alaska Loggers' Association and Sealaska involves the geographical scope of the department's permit jurisdiction under AS 16.05.870. The argument is advanced by Sealaska as follows:

The intent with respect to this language [AS 16.-05.870(b)] provides that only when the party specifically desires or intends to discharge or deposit into the waterbody are they required to secure commissioner concurrence, while those activities adjacent to specified waters that do not purposefully intend to pollute are not required to secure commissioner concurrence. Extension of the commissioner's authority to the area outside the boundaries of the streambed would exceed legislative intent.

Sealaska Letter, supra at 13.<sup>5</sup> Under this view, a permit is not necessary under AS 16.05.870 unless a person intentionally desires to place injurious materials directly into a stream.

The issue of the geographic scope of the department's jurisdiction is difficult because the statute is not necessarily clear. A permit is required under AS 16.05.870(b) if a person "desires to . . . pollute . . . the natural flow or bed of a specified [anadromous] river, lake or stream." That phrase may not have a plain meaning (see Horowitz v. Alaska Bar Assn., 609 P.2d 39 (Alaska 1980), since the statute speaks only

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<sup>5</sup> Earlier in their comments, Sealaska suggested that AS 16.05.870 does not confer upon the commissioner, in any instance, "the authority to require a permit." Id. at 11. This issue is treated in Section I of this opinion. Since the statute clearly does require written approval when the commissioner so requires, and since it is a crime to commence construction without that written approval, the use (or absence) of particular words in the statute -- such as "permit" -- hardly seems important.

of the result, and not how it occurred.<sup>6</sup>

The lynchpin of sound statutory interpretation is legislative intent; AS 16.05.870 must be construed in a manner which effectuates its purpose. Anchorage Municipal Employer Assn. v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980); Kenai Peninsula Borough v. Andrus, 436 F. Supp. 288 (D. Alaska 1977). The purpose of the "plans and specifications" requirement of AS 16.05.870 is for the "protection of fish and game." AS 16.05.870(c). The introduction of pollutants into the stream will have the same effect upon fish and game regardless of whether the pollutants were directly dumped into the stream, or were the result of streamside or tributary activity.

In this regard, it should be noted that the distinction between direct discharges ("point sources") and consequential discharge ("non-point sources") is primarily one of federal law. The terms were first used in Alaska law in 1978, and even then they were not intended as a jurisdictional demarcation. See infra.

Environmental and fish and game protection statutes "should be liberally construed to achieve their intended purpose." Kenai Peninsula Fishermen's Cooperative Association, Inc. v. State, 628 P.2d at 903. This is particularly true with

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<sup>6</sup> It can well be argued that the statute is clear on this issue, since any act of pollution requires a permit, regardless of causation. Even if that were true, more in the way of interpretation would be required. See infra.

respect to the jurisdictional scope of such statutes, Leslie Salt Co. v. Froehlke, 578 F.2d 742 (9th Cir. 1978), and with respect to proferred "intent" requirements. U.S. v. Standard Oil, 384 U.S. 224 (1966). We believe that a "direct discharge" interpretation would disserve the purpose of the statute.

Stock v. State, 526 P.2d 3 (Alaska 1975) provides guidance on this issue. AS 46.03.710 states that "no person may pollute or add to the pollution of the air, land, subsurface land or water of the State." "Pollution" is in turn defined in Title 46 as including both the "actual or potential" harm to protected uses of waters. AS 46.03.900(15). Stock v. State involved the interpretation of the prohibition in AS 46.03.710. In particular, the court stated that the prohibition did not turn upon whether the activity occurred directly in the waterbody:

We hold that by use of the word 'potentially' the statute prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. Pertinent examples would include the disposal of atomic wastes in biodegradable containers or the construction of a septic tank on a hillside known to be subject to landslides and located above a stream.

Id. at 10.

Thus, if a person constructed a septic tank on a hillside under such circumstances, he would be creating a potential for harm. More telling for the purpose of this

opinion, if a landslide were to actually occur, and sewage were to enter the stream, he would be guilty of actual pollution -- even though his activity solely occurred outside the streambank. That view is the only one consistent with the purpose of the statute -- which is to protect the quality of the water in the stream.

Given that the purposes of AS 46.03.710 and AS 16.05-.870 are similar, we fail to see why a landslide induced sewage entry would constitute actual pollution in one case, but not in the other. Indeed, since AS 46.03.710 is a penal statute, while AC 16.05.870 is a public welfare licensing law, the latter would seem, if anything, to be entitled to a broader interpretation. Kenai Peninsula Fishermen's Cooperative Association, Inc. v. State *supra*: United States v. Holland, 373 F. Supp. 665 (D.C. Md. Fla. 1974) As the United States Supreme Court observed in a similar context, "oil is oil." Regardless of how it entered the water, "its presence in our rivers and harbors is both a menace to navigation and a pollutant." United States v. Standard Oil, 384 U.S. at 229.

Our belief that sec. 870 should not be construed to imply a limitation based upon "direct discharge" is supported by a weighty body of case law which has developed with respect to the jurisdictional scope of the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. Under secs. 402, 404, and 502 of that act, permit jurisdiction extends to all "waters of the United States" -- a term which is undefined in the act. In the

mid-1970s, it was repeatedly argued that the jurisdictional scope of the act stopped at the mean high water line -- the traditional demarcation of federal jurisdiction for navigation purposes. Borax Consolidated Limited v. City of Los Angeles, 296 U.S. 10 (1935). In particular, substantial litigation resulted with respect to the U.S. Army Corps of Engineers jurisdiction under sec. 404 over dredge and fill activities in intertidal wetlands. In refusing to impute an artificial jurisdictional limit on the term "waters of the United States," the courts employed a rationale applicable to the issue in question:

Getting at the source of pollution is going beyond the confines of the high water line. It cannot be doubted that most of the damage to marine life results from land based and not sea based activities . . . .

The occasional lapping of the bayou waters has conveyed these pollutants into the waters of the United States. That the pollutants are not so conveyed everyday is of no consequence. Pollutants have been introduced into the waters of the United States without a permit, and the mean high water mark cannot be used to create a barrier behind which such activities can be excused. The environment cannot afford such safety zones.

United States v. Holland, supra at 675-76; See also Leslie Salt v. Froehlke supra; United States v. Ashland Oil, 364 F. Supp. 349 (W.D. Kentucky 1973), affirmed 504 F.2d 1317 (6th Cir. 1974); PFZ Properties v. Train, 393 F. Supp. 1370 (D.D.C. 1975); NRDC v. Calloway, 393 F. Supp. 685 (D.D.C. 1975); See also 1975 Op. Att'y Gen. #19 (November 19, 1975).

Similarly, we believe that the salmon streams of Alaska cannot afford "safety zones" beyond which individuals may engage in activities which create a substantial risk, and in some cases a certainty, of polluting the adjacent stream. The statute by its terms creates no such limitation, and the purpose of the enactment would seem to preclude it.

While we believe that this interpretation offers the better view, the opposing arguments are not without force. Essentially, both Sealaska and the Alaska Loggers Assn. believes that other laws adequately protect anadromous streams from non-point source pollution, and therefore there is no need to interpret sec. 870 broadly to accomplish that purpose. Our primary fault with that argument is that while it holds appeal as a matter of policy, as a matter of law the theory devalues into one of "implied repeal" -- i.e. that the legislature intended, in enacting other resource laws, to limit the otherwise applicable scope of sec. 870. Implied repeal is strongly disfavored by the courts,<sup>7</sup> and will be found only when legislative intent is abundantly clear. Id. We do not believe that any such intent is clearly evident in this case.

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<sup>7</sup> Morton v. Mancari, 417 U.S. at 549; Kenai Peninsula Borough v. State of Alaska, 612 F.2d 1210 (9th Cir. 1980), affd. 101 S.Ct. 1673.

Before proceeding to these theories, it has been argued that sec. 870 itself, read as a whole, limits the jurisdictional phrase "pollution" to direct discharges. Sec. 870(b) lists several jurisdictional incidents. All except the act of "pollution" generally speak to activities usually occurring directly within the stream itself. Therefore, it is argued, such a limitation should likewise be implied with respect to the term "pollution." The argument appears to be one of ejusdem generis -- that specific enumerations may be construed to modify and limit general phrases, absent more reliable indicators of legislative intent. Sutherland, Statutory Construction, 4th Ed. at § 47.17; see Crump v. State, 625 P.2d 857, 859 (Alaska 1981).

However, in this case the phrase "pollution" is not demonstrably broader than many of the other jurisdictional phrases. Simply put, it is hard to determine which phrase is the modifier and which is the modified. The phrase "pollution" should be viewed as a jurisdictional incident distinct from the other listed results or activities in sec. 870 -- otherwise it becomes a redundant restatement of the remainder of the subsection. Christie v. State, 580 P.2d 310 (Alaska 1978). In sum, we do not believe that the limited statutory construction tool of ejusdem generis is particularly useful here.

With respect to Sealaska and the Alaska Loggers Assn.'s. implied repealer arguments, both focus on the Alaska Forest Practices Act (AS 41.17.010), and the Department of

Environmental Conservation's non-point source pollution control program under AS 46.03. DEC's program is undertaken in conjunction with sec. 208 of the federal Clean Water Act. See infra.

AS 16.05.870 was enacted in 1959 (SLA 1959, ch. 94, sec. 31), and its jurisdictional scope was redefined in 1962. SLA 1962, ch. 132. The Department of Environmental Conservation was not created until 1971 (SLA 1971 ch. 120), and the Forest Practices Act was not adopted until 1978. SLA 1978, ch. 108. Thus, if any implied limitation on the authority under AS 16.05.870 exists, it must come from the latter enactments, and not from legislative intent in 1959, or 1962.

The Forest Practices Act creates the greatest difficulty. In regulating forest practices, the statute, while not purporting to lodge exclusive regulatory authority in one agency, does establish a preference for a notification rather than a permit system in controlling these activities (AS 41.17.090), and does attempt to "coordinate" some other regulatory authorities under the Act. In this regard, AS 41.17.030(j) provides:

Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or pre-empt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Management Act; and (2) if authorized by the commissioner of Environmental Conservation, regulations relating to control of non-point source pollution.

AS 16.05.870 is not mentioned in the statute -- an omission from which two conclusions are drawn by Sealaska and the Association. First, it is argued that if the legislature in 1978 believed that the Department of Fish and Game possessed non-point source jurisdiction over logging activities, that authority as well as DEC's would have been "coordinated" under the Act. However, "the views of a subsequent [legislature] form a hazardous basis for inferring the intent of an earlier one." Benevento v. United States, 461 F.2d 1316, 1322 (Ct. Cl. 1972). Here the "subsequent views" are woven from the tenuous cloth of mere silence, and we therefore believe that the argument is not persuasive.

The next question is whether the Department of Natural Resources, under the authority of AS 41.17.030(j), can pre-empt the regulatory authority of the commissioner of Fish and Game under AS 16.05.870 over non-point source pollution of anadromous streams caused by logging activities. In our view, the answer is no. The subsection quoted supra is, with certain specified exceptions, a pre-emption disclaimer, and the Department of Fish and Game does not expressly fall within the exceptions. Non-point source pollution control is the topic of clause (2) of that subsection. However, we believe that this clause should be read in conjunction with sec. 030(g), which provides:

The commissioner may develop proposed regulations under this chapter as part of the state program for control of non-point

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source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner or Environmental Conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of non-point source pollution under that act, and the regulations and cooperative agreement are therefore subject to the advance approval of the commissioner of Environmental Conservation.

Emphasis supplied.

Thus, the Forest Practices Act gives the Department of Natural Resources a significant role in the implementation of non-point source pollution control under sec. 208 of the Clean Water Act. This cross-over of authority, however, is explicitly confined to control programs undertaken in conjunction with the federal act -- i.e., DEC's program. See infra. The commissioner is not infused with any authority for the control of pollution under AS 16.05.870. If the legislature had intended to confine or modify the Department of Fish and Game's authority under that statute as well as the Department of Environmental Conservation's under Title 46, we believe that the statute would have provided for the same type of concurrent approval that is specified with respect to DNR and DEC.

Because of the language in the Forest Practices Act with respect to the control of non-point source pollution under sec. 208, Sealaska and the Alaska Loggers' Association have argued that the legislature intended that section 208 of the federal Act -- as administered by DEC under Title 46 and DNR

under AS 41.17 -- form a comprehensive scheme of regulation of non-point source pollution from logging activities, to the implied exclusion of other existing authorities.

Under sec. 208 of the Clean Water Act, states are asked to prepare comprehensive planning and regulatory programs for the control of non-point source pollution.<sup>8</sup> The Department of Environmental Conservation has accepted grants under that section, and is preparing a state program in conjunction with other interested agencies. DEC has adequate regulatory authority irrespective of the Forest Practices Act to implement the eventual state program. Under AS 46.03.100, DEC has the statutory jurisdiction to require permits of non-point pollutant sources. See 1975 Op. Atty. Gen. #19 (November 13, 1975).

Sec. 208 is, of course, a federal law, and does not purport to allocate responsibilities between DEC, DNR and Fish and Game. The question can only be answered with reference to the state laws involved.

As noted previously, AS 16.05.870 was enacted in 1959. The sec. 208 concept was developed in the 1972 Federal Water Pollution Control Act (PL 92-500), and thus postdates the

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<sup>8</sup> A "point source" means "any discernible, confined and discreet conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discreet fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. Sec. 1326(14). An example of "non-point source" pollution is siltation from streamside devegetation.

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Department of Environmental Conservation's organic legislation. Therefore, it should come as little surprise that nothing in Title 46 expressly or impliedly purports to limit the authority of other state agencies over "non-point source pollution." Since, as discussed previously, AS 41.17 speaks of the Department of Fish and Game's authority, if at all, only in the pre-emption disclaimer, we can find no statutory basis in either AS 46.03 or AS 41.17 for implying that the Department of Fish and Game's authority under AS 16.05.870 is limited by the sec. 208 program.

The remaining implied repealer argument relates to a statute which was enacted prior to sec. 870 -- AS 16.10.010. As early as 1919, the Territorial Fish Commissioners were vested with permit authority roughly coterminous with that conferred by sec. 870. See ACLA 1949, § 39-2-31 (history note). That authority, now lodged in DEC, has been passed over the years to the erstwhile Water Pollution Control Board (SLA 1949, ch. 117, § 2), the Department of Health and Social Services (SLA 1971, ch. 104, § 6) and DEC. SLA 1975, ch. 208, § 12. AS 16.05.870 was enacted as part of the Department of Fish and Game's organic legislation in 1959 (SLA 1959, ch. 94), and it is argued that the legislature intended therein to grant only that licensing authority not previously granted by AS 16.10.010.

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At the outset, we believe that this argument falls of its own weight. AS 16.10.010 requires a permit for well-nigh any activity covered by sec. 870, including any activity which "renders the water inaccessible or uninhabitable for salmon." AS 16.10.010(3). Indeed, the statute is broader than § 870, applying as it does to all waters of the state. We believe it unlikely that the legislature in enacting sec. 870 intended to create an exception broader than the rule itself.

We do not believe there is a conflict between AS 16.05.870 and AS 16.10.010. While the co-existence of these statutes may be undesirable as a matter of policy, we are aware of no rule of law which discourages concurrent jurisdiction. Yet even if such a rule existed, and one statute were required to yield to the other, it is AS 16.10.010 which would suffer the narrowing construction. Aside from the fact that AS 16.05.870 is the more recent enactment, Art. IV, § 1 of SIA 1959, ch. 94 -- the genesis of sec. 870 -- broadly provides that the entire chapter is intended to repeal "all acts and parts of acts in conflict with the provisions of this Act."

It may well be that the legislature should place under one exclusive regulatory umbrella either the control of non-point source pollution in general, or pollution of any kind from particular industries such as forestry or mining. Those, however, are policy issues beyond the scope of this opinion. While such an approach may be desirable, it is not to be found

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expressly or by fair implication in either Title 46, AS 41.17 or AS 16.10.010.

With the Department of Fish and Game, in our opinion, lawfully entitled to regulate activities beyond those occurring directly within the stream itself, definition of the precise jurisdictional line remains to be provided. The proposed habitat protection regulations would define that jurisdictional line as follows:

A habitat protection permit is required for any landclearing or filling with earth and materials within a specified distance of the mean high water line for the anadromous streams listed in (b) of this section, and within 50 feet of the mean high water line for anadromous streams not listed in (b) of this section.

Proposed 5 AAC 95.260(a).

Defining the jurisdictional scope of a licensing statute is an appropriate use of the rulemaking power. In a similar context, it has been encouraged by our Supreme Court. In Stock v. State, supra, the court noted with approval that the Department of Environmental Conservation was then in the process of developing water quality standards which would define with specificity the prohibited act of "pollution:"

We note, however, that if future offenders are charged with violation of regulations of sufficient specificity, the substantial problems involved in defining the parameters of conduct falling within the statutory definition of the term 'pollution' may be avoided.

526 P.2d at 7, note 4.

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Similarly, the regulations will avoid the situation of a person engaging in a streamside activity which in fact results in pollution of the stream from being subjected to after the fact prosecution once the harm has been done.

Indeed, the Department of Fish and Game proposes to follow precisely that course of action taken by the U.S. Army Corps of Engineers under sec. 404 of the Clean Water Act. As noted previously, the courts have refused to imply an artificial jurisdictional limitation on that act. The agency was thus left to define by regulation the outer boundaries of its licensing jurisdiction. For intertidal wetlands, the Corps chose the aquatic vegetation line (33 CFR Sec. 323.2(c)), and the courts have found that delineation "reasonable, consistent with the intent of Congress, and not contrary to the Constitution." Leslie Salt Co. v. Froelke, 578 F.2d at 756.

Whether Alaska courts would find the distances specified in the proposed regulations to be "reasonable" (see Union Oil Co. v. State, 574 P.2d 1266 (Alaska 1978)) is at this point difficult to determine. We do believe, however, that if the distances generally reach only those streamside activities which, if unregulated, would pose a direct and substantial threat of "polluting" an anadromous stream, the court would find the regulations both reasonable and necessary to accomplish the purposes of the statute. Id. Moreover, while the issue is admittedly one of "jurisdiction," that jurisdictional line is to be drawn based upon a blend of hydrology, biology,

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chemistry, limnology and soil science. These are precisely the types of considerations which our court has held, even on matters of statutory interpretation, to call for application of the "reasonable basis" test. Weaver Brothers, Inc. v. Alaska Transportation Commission, 588 P.2d 819, 821 (Alaska 1978). Based upon information available to this department to date, we would be inclined to believe that the court would accept the limitations chosen -- particularly because of the obvious care taken by the department to shorten the distances where technical considerations do not justify a 50 foot line.<sup>9</sup>

Irrespective of the "direct discharge" limitation offered by commentators on the regulations, it has equally been argued that the statute applies only when an individual intends to pollute the stream. Since the Department of Fish and Game proposes, as we think proper, to define "pollution" as a violation of the state's water quality standards (proposed 5 AAC 95.990(18)), the argument means that if a person does not specifically intend to violate state water quality standards, a permit is not necessary.

---

<sup>9</sup> It should be noted that the 50 foot jurisdictional limitation can by no means be considered a "buffer zone." The line merely sets that limit at which the Department of Fish and Game wishes to examine the project to determine whether harm to the stream might result. In this regard, it is our understanding that the vast bulk of anadromous stream permits are in fact issued.

The argument is premised on AS 16.05.870(b), which requires a permit if a person "desires to pollute." Admittedly, there is superficial appeal in equating "desire to pollute" with a subjective intent to befoul the stream. If that indeed is the "plain meaning" of that phrase, the argument would suggest that no further inquiry is necessary. While we believe that the phrase is not self-defining, the "plain meaning" rule is not a rigid formulary -- an inquiry into intent and purpose is still required to assure an interpretation which does not disserve the goal of the statute. Kenai Peninsula Borough, State of Alaska, supra; North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978). In light of the purpose of sec. 870, it is our opinion that the fundamental question should be whether the nature of the construction or work is such as to constitute a "desire to pollute," and not what the individual hopes will or will not happen.

We reach this conclusion for two reasons. First, the conclusion suggested by the commentators would be hostile to the purpose of the statute -- which, again, is to protect fish and game. Charged as we are with interpreting sec. 870 "broadly" in order to achieve those purposes (Kenai Peninsula Fishermen's Cooperative Association, Inc. v. State, 628 P.2d at 903), we are hesitant to accept an interpretation which would confine jurisdiction to only a fraction of those occasions in which it is warranted and which would make enforcement of the law all but impossible. Pollutants discharged in a stream are equally

damaging, whether placed there out of malice, intent, recklessness, negligence or mere lack of foresight. And if the permit requirement hinged upon a showing of "intent" to pollute the stream, few violations would be prosecuted under AS 16.05.880. The defense of "I didn't know that would happen" would be too obviously available. In this regard, one might fairly ask whose purposes would be served by a statute which would raise the permit issue only after the facility had been constructed, and the damage to the stream had been done?

Secondly, applicable case law likewise argues against the interpretation offered. The landmark case in this regard is Standard Oil Co. v. United States, supra, in which the U.S. Supreme Court was called upon to interpret sec. 13 of the Rivers and Harbors Act of 1899 (The Refuse Act). Standard Oil Co. had accidentally discharged oil into the navigable waters of the United States, and was charged with a violation of that Act, which prohibited, inter alia, "the deposit . . . [of] any refuse matter of any kind or description . . . into any navigable water."

Obviously, the prohibition upon the "deposit of any refuse matter" could easily be read to prohibit only the intentional discarding of useless material. The argument that the Refuse Act requires the court to look at the subjective intent of the discharger is virtually indistinguishable from the argument being advanced with respect to the habitat protection regulations. We share the Supreme Court's rationale in

rejecting that argument when it held that the Refuse Act prohibited the entry of oil into waterways regardless of the intent of the discharger:

Oil is oil whether usable or not by industrial standards. It has the same deleterious effect on waterways. In either case, its presence to our rivers and harbors is both a menace to navigation and a pollutant

. . . .

There is nothing more deserving of the label refuse than oil spilled into a river. . . that seems to be the common sense of the matter. The word, 'refuse' includes all foreign substances and pollutants. . . .

384 U.S. at 229-230.

We believe the requirement of broad construction is better served by interpreting "desire to pollute" in the same manner as the Supreme Court interpreted "desposit of refuse."

#### IV. Conclusion.

As stated at the outset of this opinion, while the allocation of jurisdiction between the department and boards present little difficulty, legal and policy controversy will continue to surround the scope of the department's jurisdiction under AS 16.05.870. The arguments advanced by the Alaska logging industry are made in good faith, and they are not insubstantial. At the same time, we believe that much of the force of those arguments lies in the realm of policy. Whether through administrative or legislative action regulatory authority over non-point source pollution should be consolidated is

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not a question addressed by this opinion. We are only concluding that the better reading of AS 16.05.870 would seem to encompass permit jurisdiction over non-point pollutant sources adjacent to classified anadromous streams or their tributaries which, absent sufficient mitigating measures, would create a direct and substantial threat to pollution of the anadromous stream itself.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: 

Jonathan Tillinghast  
Assistant Attorney General

JKT:dlm

TO:

DATE: September 6, 1979

Doug Jones  
Pink Salmon Project Leader  
Juneau

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

Karl Hofmeister  
Pink Salmon Research  
Ketchikan  
Dept. of Fish and Game

Staney Creek salmon die-off

On August 21, 1979 I was approached by Bruce Hoffman of the State Environmental Conservation office concerning a joint investigation of the Staney Creek (103-90-30) salmon die-off. This is a preliminary report dealing with the data collected between August 22, 1979 and August 28, 1979.

The fact that a problem existed at Staney Creek became known on August 17 when John Valentine observed an estimated 15,000 dead unspawned pink salmon throughout the intertidal area. Although very few dead fish were observed up river, the extent of the die-off suggested that stranding in intertidal pools was not the sole cause. A temperature of 17°C and dissolved oxygen of 4.0 p.p.m was recorded at Station A (Fig. 1) at 11:00 a.m. on August 17. At that time Southern Southeast Alaska was experiencing drought conditions. Precipitation at the Ketchikan Airport was 23 inches below the 20 year average for January through August. Total precipitation during the month of August at the Ketchikan Airport was only 1.56 inches compared to the 20 year average of 11.27 inches. Low water conditions were reported at most streams in the area, but Staney Creek had the first reported and most severe die-off to date.

Bruce Hoffman and I arrived at Klawock on Wednesday afternoon. Since it was uncertain how much longer the drought would last, a cursory examination of the entire area, rather than an intensive study on selected streams, was chosen as the study method. The road system was driven and sample sites marked at the numerous stream crossings. Figure 1 is a map of the study area with sample site locations. Figure 1 can be used as an overlay on Quadrangle maps, Craig D4 and Craig C3 for slope and elevation information.

Table 1 presents the temperature recordings taken at the various sites. Sample site locations south of Site #90 are depicted on Fig. 2. Except for that required to build roads, no recent cutting has taken place from Klawock to Sample Site #8

Site numbers 73 and 74 are excellent examples of what may be an important contributing factor to Staney Creek's problem. The stream which had a flow of approximately .1 c.f.s. crossed the road from a timbered area at #73 and recrossed the road at #74 after flowing approximately 50 yards through a cut area. A temperature difference of approximately 3°C was noted over that 50 yard section during each of the first 3 days of the study. Cloud cover during the first 3 days of study was between 0% and 10%. During the last 2 days of the study, under mostly cloudy skies, the temperature rose 1°C.

The data from August 25 provides the most complete picture of the temperature profile of Staney Creek under drought conditions on sunny days. The temperature at the upper portion of Staney Creek (Site #83) was 12.0°C at 6:00 p.m. Fifteen minutes later and 2.5 miles downstream (Site #81), the temperature was 16.5°C. Ten minutes later and 1.4 miles downstream (Site #78), the temperature was 17.0°C. Thirty minutes later and 1 mile downstream (Site #75), the temperature was 21.0°C. Forty-five minutes later and 2.4 miles downstream (Site #1), the temperature had fallen to 19.0°C. This drop in temperature is somewhat surprising since two major tributaries at Sites #76 and #72 were discharging water into Staney Creek at 21.0 and 19.0°C respectively. Whether the drop in temperature between Sites #75 and #1 was due to increased ground water discharge into Staney Creek or some other factor is at present unknown.

Table 2 presents the information from locations where dead unspawned fish were observed. The counts represent only what was observed from the bridge as time requirements precluded any stream walking.

Picture 1 on page 7 was taken at Sample Site #12 where the highest temperature during the study period of 23°C was recorded. Two small lakes are located at the head of this tributary which undoubtedly contributed to the problem. However, temperatures taken at Site #13 located below the lakes were 4.0 and 3.0°C cooler on Thursday and Friday afternoons. The second picture on page 7 was taken at Site #77. It is an example of the type of creek which may be too small to warrant a leave strip under the present guidelines. However, it is my belief that as a watershed becomes logged as extensively as Staney Creek, the cumulative effects of cutting to the banks of numerous small tributaries play an increasingly important role in the temperature profile of the main channels. Streams which were under 3 feet wide (e.g. #70, #71, #6, #7, and #10) generally had an adequate herbaceous plant cover to maintain relatively low temperatures.

The data obtained from this study only documents the water temperatures occurring in the Staney Creek area at this time. The question of whether temperatures would have been significantly lower prior to logging can not be answered with the available data. However, the high temperatures which were recorded and aerial survey estimates of 30-40 thousand dead unspawned pink salmon in Staney Creek attest to the fact that it is, at the present time, temperature sensitive. Because of the above, I believe it would be appropriate to reconsider the cuts presently scheduled for the Staney Creek watershed.

DATE TRANSECT	8/23		8/24		8/25		8/27		8/28	
	TIME	TEMP °C	TIME	TEMP °C	TIME	TEMP °C	TIME	TEMP °C	TIME	TEMP °C
1	1940	19	1020	16	0920	15	2100	17.5	0700	14.0
2					1020	14.5	1730	15.5	0810	12
71			1935	13	1030	12	1625	13	0815	11
3	1725	17	1120	14						
3			1940	15						
70	1735	14	1125	12.5	1045	13	1630	14	0820	12
70			1950	14						
5	1740	22	1130	19	1050	17	1635	18	0825	14.5
5			1955	19						
6					1055	12	1640	12	0835	10.5
7					1100	12			0845	11.5
8					1105	14.5	1645	16.5	0900	12.5
9					1110	14	1650	14	0910	12.5
10					1115	12	1655	14.5	0920	11
11					1120	14.5	1700	14.5	0925	13
12	1755	23	1150	19	1125	18	1705	19	0930	14.5
12			2015	21						
13	1830	19	1200	16	1140	16.5	1710	17	0945	13.5
13			2030	17						
72			1920	19.5	1915	19	1620	15.5	1050	14
73	1710	14	1910	15.5	1910	15	1610	13	1055	12
74	1710	19	1955	19	1900	19	1605	14	1100	12.5
75	1700	22	1900	21	1855	21	1550	17.5	1110	14
76	1635	21	1850	21.5	1850	21	1540	18		
77	1625	20	1840	19	1845	20	1530	17		
78	1620	18	1825	17	1825	17	1525	15.5	1120	13.5
79			1830	16.5	1830	16.0	1520	13	1125	12.5
80			1815	13	1820	14				
81			1805	17	1815	16.5	1515	14	1130	13
82			1800	17.5	1810	17	1510	15	1135	13.5
83			1745	13.5	1800	12	1500	12		
84			1725	14	1745	14	1455	14	1145	14
85			1720	15	1730	16	1450	15		
86			1715	14	1720	14	1445	14	1155	12
87			1705	16	1710	15	1435	14	1210	12.5
88			1655	16	1700	16	1425	13.5	1220	12.5
89			1645	15.5	1640	16.0	1415	15	1305	13.5
90			1255	14	1620	17	1410	15	1310	14
90			1610	16						

DATE TRANSECT	8/23		8/24		8/25		8/27		8/28	
	TIME	TEMP°C	TIME	TEMP°C	TIME	TEMP°C	TIME	TEMP°C	TIME	TEMP°C
91			1315	18	1555	19	1400	17	1315	16
91			1550	18						
92			1545	12	1550	12	1345	12	1320	11.5
93			1540	14.	1545	14			1330	11
94			1535	13	1540	12	1340	11		
95			1530	12.5	1535	12.5				
96			1525	12.5	1530	12				
97			1520	13.5	1525	13.5				
98			1510	12	1520	12				
99			1505	13.5	1515	13	1320	13	1350	13

8/23	0 - 10%	Cloud cover	
8/24	0 - 10%	" "	
8/25	0 - 10%	" "	
8/27	100%	" "	(0700 to 1300)
	50%	" "	(1300 to sundown)
8/28	100%	" "	

Table 2.

## UNSPAWNED DEAD FISH OBSERVED DURING STUDY PERIOD

<u>Transect</u>	<u>Date</u>	<u>Time</u>	<u>O<sub>2</sub> P.P.M.</u>	<u>Temp°C</u>	<u>Remarks</u>
78	8/23	1620	6.8	18	4 DP, 200 LP
78	8/24	1825	.	17	No change
78	8/25	1825	.	17	20 DP, 200 LP
76	8/23	1635	4.9	21	33 DP, 3,000 LP
76	8/24	1850	..	21.5	150 DP, 3,000 LP
76	8/25	1850		21	500 DP, 3,000 LP
75	8/23	1700	7.4	22	5 DP
12	8/23	1755	3.7	23	40 DP, 1 DCO, 2 DC, 50 LP
12	8/24	1150	5.4	19	70 DP, 9 LP
1	8/23	1940	7.5-5.0*	19	9 DP, 4,000 LP, 30 LC
1	8/24	1020	9.5-6.0*	16	No change
1	8/25	0920	9.6-6.4*	15	300 DP, 6 DC, 4,000 LP, 30 LC

\* First O<sub>2</sub> measurement from above hole; second O<sub>2</sub> measurement below hole. Hole approximately 75 yards by 15 yards by 4 feet deep.

DCO - Dead coho adults

DC - Dead chum

DP - Dead pink

LCO - Live coho adults

LC - Live chum

LP - Live pink

DV - Dead Dolly Varden

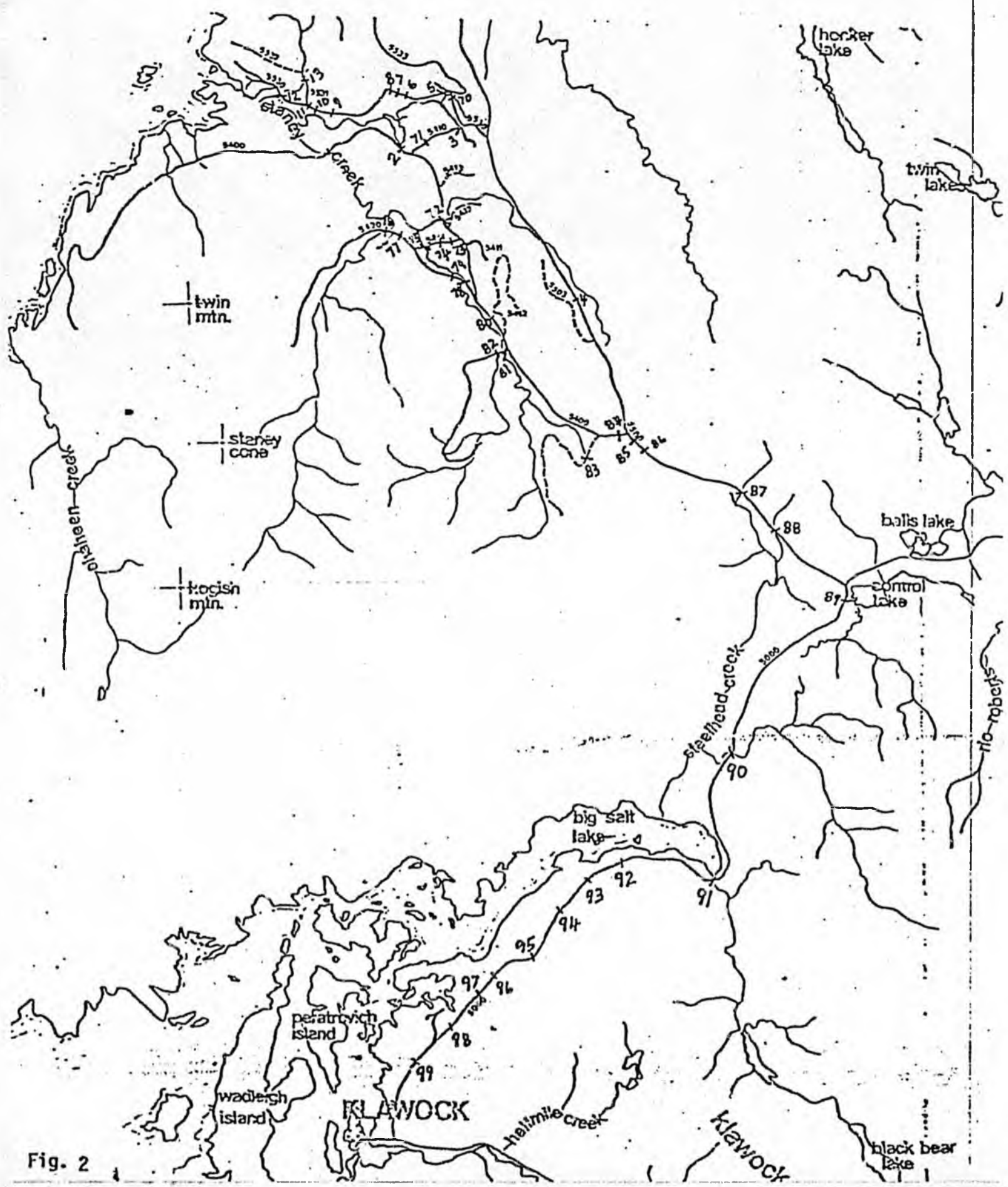


Fig. 2

TO: [Don Kelly  
Habitat  
Ketchikan  
Dept. of Fish and Game

DATE: September 10, 1979

FILE NO:

TELEPHONE NO:

FROM: Donald L. Siedelman  
Sport Fish *USA*  
Ketchikan  
Dept. of Fish and Game

SUBJECT: Staney Creek Fish Kill

We should to on record through the Commissioner requesting to the USFS that logging in the Staney Creek drainage should be stopped in view of the fish kills that have taken place in this stream during the past two out of three years.

The next USFS's 5-Year Plan proposes further logging for this drainage.

Seems that the USFS should get their heads out of the sand and realize that continued logging in this drainage is not aiding the salmon that are utilizing this system. Logging has to be perpetuating the incidence of fish kills due to the excessive large track of logged areas in the upper stream areas with no revegetative cover.

To use an excuse that someone has to prove that this is not the case is asinine. If a problem exists lets face a fact and solve it through positive action instead of waiting 10 years to prove that it was or was not the problem based on field work. In the meantime, the problem continues at the expense of our resources.

If the USFS's guide states the USFS is logging within its guidelines then the guide needs change or updated - or does the USFS staff need to be changed.

It is about time the USFS spoke to temp. sensitive streams in a more positive fashion than saying "prove it".

CC: R. Reed  
...K. Hofmeister  
J. Valentine  
A. Schmidt

# MEMORANDUM

TO: [

DATE: 12 October 79

Randy Bayliss  
SERO/Supervisor

FILE NO:

Thru:

Ron Flinn  
District Coordinator

TELEPHONE NO:

FROM:

Bruce H. Hoffman  
EFO/Ketchikan

SUBJECT: Staney Creek Meeting

On October 12, 1979, a joint meeting with the USFS, ADF&G and ADEC was held at the Ketchikan Federal Office Bldg.

Those in attendance were the following:

NAME	TITLE
Ed Johnson	Forester (USFS)
Mike Pease	Fisheries Biologist (USFS)
Pete Mondich	Timber Program Manager (USFS)
Louie Bartos	Hydrologist (USFS)
Don Kelly	Area Habitat Biologist (ADF&G/Ktn)
Don Siedelman	Sport Fisheries Area Management Biologist (ADF&G/Ktn)
Bruce Hoffman	Environmental Field Officer (ADEC/Ktn)

The purpose of the meeting was to address problems associated with Staney Creek located on the west side of Prince of Wales Island.

Ed Johnson discussed the IDT review of Staney Creek, objections to additional cutting of timber in this watershed were made by Steve Haavig, ADF&G Habitat Biologist and by USFS fisheries biologists. Due to timber harvest quota's and new guidelines to be used for harvesting of timber, units in the Staney Creek watershed were included in the 1979-1984 harvest.

Louie Bartos, USFS Hydrologist, discussed his input on the Staney Creek IDT review. The Staney Creek watershed was divided up into 7 or 8 sub watersheds. Each watershed was analyzed separately, the amount of vegetation removed (acres) and the evapotranspiration ration were included in the computer model. The computer program used addressed the volume of water affected in the watershed, and was described as a "black-box" model due to lack of a complete understanding of the ground water or subsurface flow. Temperature was not addressed in this report on Staney Creek's hydrology. The warming effect of groundwater due to the removal of vegetative cover is of major concern in this watershed.

Present status of timber harvest units are as follows:

1. Total number of acres scheduled to be cut in 1979-1984 five year contract in the Staney Creek watershed are 1283 acres, consisting of 24 units.
2. 431 acres are released to date. Activity in released areas range from access roads built to units, felled units & felled and yarded units.

3. An additional 99 acres of blowdown timber ~~will~~ also be harvested.
4. 743 acres of timber have not yet been released for harvest.

Discussion of possible alternatives on what corrective actions if any that could reduce impacts on the Staney Creek watershed followed. Options that were aired were the following.

1. Drop some or all of the units in the Staney Creek watershed scheduled for harvesting in the 1979-84 5 year contract. Contractual lawsuit possible
2. Reschedule cutting of units in the Staney Creek watershed to the end of the 5 year contract. This would buy 2-3 years of additional growth in the watershed before another impact. It would also 2-3 years to do additional research in this area. \*
3. Plant alders along the stream bank to provide shading during summer months. This would not have much affect for the next couple of years but could reduce the effects of another draught in five or ten years from now. A closer look to this alternative is warrented.
4. Possible intensive fisheries management of the Staney creek system, including special openings to reduce numbers of fish from entering the stream to spawn.
5. Removal of dead fish from stream by hand to reduce dissolved oxygen demand.
6. Involve various State and Federal agencies to study problem and make recommendations. If this is done the task force should be formed immediately so a plan of attack is ready by next spring. This also presents a good chance to form an intensive research study. Industry should also be included as they are the ones who demand the resource; they should help share the responsibilities and be kept informed of problems and their impacts.

\* Appears to be the only avenue actively pursued by the Forest Service at this time minus the research.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH D - JUNEAU 99877

October 12, 1979

Mr. Max Peterson, Chief  
United States Forest Service  
South Building  
12th Street & Independence Avenue S. W.  
Washington, D. C. 20013

Dear Mr. Peterson:

On August 24, 1979, representatives of the Alaska Attorney General's Office and the Alaska Department of Environmental Conservation met with representatives of the U. S. Forest Service in Sitka, Alaska, regarding a serious pollution incident which occurred on Kizhuchia Creek, in the Tongass National Forest, in April 1978. Representing the views of the Forest Service was a member of the Portland regional attorney's office--Mr. James Kauble. Also in attendance were personnel from the Tongass National Forest's Sitka Office.

One of the purposes of the August 24 meeting was to determine why Forest Service personnel did not consult State officials when it became apparent that a gravel pit placed directly adjacent to Kizhuchia Creek created an imminent potential for serious damage to the productivity of that stream. After stating that "I might as well tell you what my clients told me," Mr. Kauble indicated that Tongass National Forest personnel were unanimous in their belief that, in situations such as that presented by the Kizhuchia Creek incident, there was no need to contact State officials since, in the opinion of Forest Service personnel, State officials possessed neither the insight nor experience to aid the Forest Service in preventing or mitigating adverse impacts from logging activities. The purpose of this letter is to determine whether the views expressed by your agents accurately represent Forest Service policy.

To place Mr. Kauble's comments in their proper perspective, a brief history of the Kizhuchia Creek incident may be helpful. In 1976, the Forest Service approved the placement of a gravel

borrow pit in an active alluvial area directly adjacent to Kizhuchia Creek--a rich anadromous fish stream. The pit location lay in the path of a periodic high flow wash which descended from a steep hill area, then around the pit wall, and downhill to Kizhuchia Creek. The pit was so placed that water would eventually break through the pit wall, directly through the pit and thence unimpeded into Kizhuchia Creek. The susceptibility of anadromous streams to damage from siltation is well documented, and the ill-advised placement of this particular pit was conceded by U. S. Forest Service hydrologists at the August 24 meeting. Nonetheless, the pit site was approved. Officials at the August 24 meeting conceded that the Forest Service and the logging company involved--Alaska Lumber & Pulp Company--felt that placement of the pit at that site was warranted because it would minimize the cost of hauling extracted gravel to a nearby road. The location of the pit, it should be noted, was approved by a Forest Service employee who had no hydrological experience, and did not consult anyone schooled in the potential hazards which the pit might create.

Shortly after commencement of pit development, potential siltation problems arose. These problems worsened until a "crisis" was reached in early April 1978. By April 4, Forest Service officials recognized that the next heavy rain would cause the adjacent waterfall to break into the pit, washing substantial amounts of silt from the pit to Kizhuchia Creek. Despite this potential disaster, and a belatedly recognized need for remedial measures, State officials were not notified.

On April 24, 1978, the incident which Forest Service personnel knew was inevitable in fact occurred. A high flow from the waterfall rushed into the pit, through silt-laden settling ponds, and into Kizhuchia Creek--turning a heretofore crystal-line anadromous fish stream a murky brown, resulting in a gross violation of Alaska Water Quality Standards, as approved by the U. S. Environmental Protection Agency. Even then, Alaska Department of Fish & Game and Alaska Department of Environmental Conservation officials were not notified. Rather, quite by happenstance, a Department of Fish & Game employee flying over the area on a herring count observed the violation. This employee then notified the Forest Service of the State's concern.

The failure of the Forest Service to notify State officials regarding the imminent potential for damage to Kizhuchia Creek was broached at the August 24 meeting. In sum, Mr. Kauble stated that it was his client's view that State officials could add nothing to Forest Service efforts to control the situation, either from a hydrological or biological perspective, and that

there was simply no need to alert the State of Alaska that one of its salmon streams was on the verge of being substantially impaired. In my view, those employees' perception that they have environmental management within the Tongass "well in hand" rings hollow with regard to Kizhuchia Creek. Even Forest Service hydrologists conceded that the decision by the Forest Service to allow the gravel pit at this location was, at best, unsound. It seems likely that the Forest Service was simply not eager to let State officials know that a substantial error by the U. S. Government had exposed State resources to severe damage. Further, the nature of the resultant water quality violation is clearly contrary to Section 313 of the Clean Water Act of 1977, which imposes a mandatory duty upon Federal agencies to obey State water quality protection laws.

There are several matters which concern us regarding the Forest Service's conduct throughout this incident. Approval of the pit was apparently given for purely economic reasons, without regard to sound hydrological practice. No attempt was made to monitor construction of the pit meaningfully, your agent admitted that the Forest Service made no inquiry as to whether the pit was being placed near or below the waterfall. Apparent from these questions of fault, however, I am particularly dismayed by the apparent view of a few of your key agents that they feel no real need to cooperate effectively with the State of Alaska in preventing damage to anadromous fish streams from logging and related activities.

In recent years, the Forest Service has gone to substantial ends to seek to improve the quality of its land use decision-making. It is regrettable that, at least with respect to State coordination, this philosophy has not filtered down to some Tongass and regional personnel. I would hope that something beneficial would come from the Kizhuchia Creek incident. If nothing more, a meaningful attempt to change the rather distressing attitudes of these representatives would appear in order.

Another matter has been called to the attention of the Regional Forester in Juneau concerning rather alarming reports of unspawned adult coho, chum, and pink salmon mortality in logged portions of the Staney Creek watershed. These warrant investigation and remedial modifications to cutting plans for further operations in that area. Meetings between our Department, Alaska Department of Fish and Game, and the Forest Service have been set up to discuss the matter in Ketchikan this morning.

Staney Creek, on the west side of Prince of Wales Island, has been designated "temperature sensitive" in that destruction of stream side vegetation could allow sunlight to warm the water

and nearby earth to the extent that the marginal waterflow is heated to lethal limits. Extensive early timber harvesting in the lower portions of the Staney Creek watershed was conducted prior to the implementation of cutting guidelines for temperature sensitive watersheds.

Recent investigations by Fish & Game biologists have confirmed large fish kills, up to one-third of the returning spawning run:

Unspawned Dead Salmon

August 1977	2,000
August 1979	15,000

Concurrent investigation by Environmental Conservation field officers found simultaneous violations of the Alaska Water Quality Standards (18 AAC 70) for temperature and dissolved oxygen, both of which were unfit for salmon or trout survival.

Because of the cumulative nature of temperature effects in a stream system, proposed logging on the upper portions of the Staney Creek watershed, even if current guidelines are adhered to, will be antagonistic. The current guidelines are based upon the assumption that the same practices will be uniform throughout the watershed; this is clearly not the case in Staney Creek.

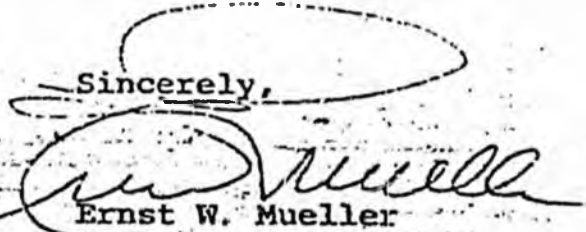
In view of these developments, two considerations deserve attention:

- (1) What measures should be undertaken to restore the lower portions of the Staney Creek watershed so that effects can be rectified; and
- (2) What modifications should be made to the existing cutting plans in the upper portions of the Staney Creek watershed so that the temperature effects do not worsen.

Meanwhile, we suggest that resource agencies coordinate to monitor this system.

Thank you for your consideration in this matter. I look forward to hearing from you.

Sincerely,



Ernst W. Mueller

bc: Congressional Delegation Commissioner  
 Commissioner Skoog  
 Tillinghast, Koester, Prezyna  
 Cowles, Bayliss, Hoffman, Flinn

TO: Rick Reed  
Regional Habitat Protection Supervisor  
Juneau

DATE: October 15, 1979

FILE NO.

TELEPHONE NO.

FROM: Don Kelly *DK*  
Area Habitat Biologist  
Ketchikan

SUBJECT: Meeting with USFS  
regarding Staney Creek

On Friday, October 12, Don Siedelman, Area Sport Fish Biologist and I attended a meeting with representatives of the Forest Service to discuss alternatives open to us in the Staney Creek drainage on Prince of Wales Island. Also present at the meeting were: Pete Mondich, Timber Program Manager, Ed Johnson, Forester and Team Leader for the LPK 5 year plan IDT, Mike Pease, Fishery Biologist, Lou Bartos, hydrologist and Bruce Hoffman, Ketchikan Area Environmental Field Officer, ADEC.

Ed Johnson discussed the IDT process as it operated in the Staney Creek drainage. Lou Barbs then discussed the report he prepared for the IDT on Staney Creek's hydrology. The central point of this report was that he predicted logging in the drainage, within prescribed limits, would have little effect on the volume of the creek. Temperature was not discussed in this report. Ed Johnson then gave a rundown on the status of the 79-84 units in the Staney Creek drainage. A total of 24 units (1283 Acres) in the watershed were included in the five year plan. Of these, 431 Acres have been cut or are released and partially cut. Another 99 Acres are blowdown and will be cut. There are 743 Acres that have not been cut. These are in various stages of road and unit layout, but have not been released, nor have roads been built. Mike Pease stressed that units in the 79-84 plan had been laid out with current temperature sensitivity guidelines strictly followed.

There was some discussion (again) of what we could "prove" to be the cause of fish mortality on the creek. I stated that we weren't concerned with proving anything, but that we felt that logging in the drainage would simply further worsen an already bad situation, since we felt that existing temperature sensitivity guidelines were not strict enough to make up for past excesses.

We then discussed possible options:

1. Drop some or all of the units that remain uncut. This is unlikely to be actively pursued by the Forest Service. It may, in fact, present them with legal or contractual problems, and may just mean exporting our problems to another drainage.

Rick Reed  
October 15, 1979  
Page 2

2. Defer cutting of units until the end of the 79-84 period. This is the most likely alternative at this point. Logging in all or most of these units can be put off until 83 or 84, giving us the benefit of 3-4 more years regrowth.

3. Investigate the possibility of replanting alder to provide stream-side cover. There are some questions as to the effectiveness of this technique, and I doubt Timber really wants to help get alders established. However, I think the idea still has merit and deserves a closer look, especially in areas where there are a number of tributaries.

4. There was some discussion of things that could be done at the time another low water period occurs. These may include removal of dead fish or actions by ADF&G's Comm. Fish Division to reduce the number of fish entering Staney Creek.

Also discussed were plans to assemble a group of people concerned with land resources and fisheries (ADFG, ADEC, NMFS, USFWS, USFS) to discuss modifications to the temperature sensitive guidelines and the development of a research program on these systems. This is particularly important since we have a number of systems on Prince of Wales Island (Logjam Creek, Sweetwater Lakes, Shaheen Creek) where we may have problems as severe as on Staney Creek. Both ADF&G and ADEC expressed a willingness to participate.

The meeting ended at this point, with general agreement to defer cutting on uncut units and to investigate replanting. I'll keep you informed of future developments. As we have discussed, it will be important to follow this meeting up to assure that some action is taken.

cc: D. Siedelman-ADFG-Ketchikan  
K. Francisco-ADFG-Ketchikan  
K. Hofmeister-ADFG-Ketchikan  
B. Hoffman-ADEC-Ketchikan

COWLE

DON YOUNG  
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:  
INTERIOR AND INSULAR  
AFFAIRS  
MERCHANT MARINE AND  
FISHERIES

WASHINGTON OFFICE  
1216 LONGWORTH BUILDING  
TELEPHONE 202, 223-5785

Congress of the United States  
House of Representatives

Washington, D.C. 20515

October 19, 1979

DISTRICT OFFICES  
FEDERAL BUILDING AND  
U.S. COURT HOUSE  
701 C STREET, BOX 3  
ANCHORAGE, ALASKA 99513  
TELEPHONE 907, 271-5378  
FEDERAL BUILDING, ROOM 212  
101 12TH AVENUE, BOX 10  
FAIRBANKS, ALASKA 99701  
TELEPHONE 907, 456-6949

RECEIVED  
OCT 26 1979

Dr. M. Rupert Cutler  
Assistant Secy. for Conservation,  
Research & Education  
U.S. Department of Agriculture  
Washington, D.C. 20250

Dept. of  
Environmental Conservation

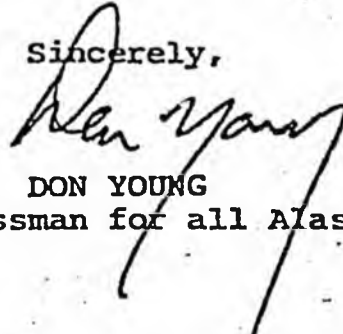
Dear Secretary Cutler:

The enclosed letter from the Alaska Department of Environmental Conservation to the Chief Forester, USDA, raises some serious concerns regarding resource management in Alaska.

Although I am not personally familiar with the situation described, it appears that Forest Service officials have refused to consult with the State of Alaska regarding potential land and water management problems. Given the complex inter-mixture of State and federal lands in Alaska and thus the continuing federal presence in the State, I am sure that you will agree with me that cooperation between State and federal resource agencies is imperative. I request that you investigate the alleged actions of Forest Service employees and inform me of what actions are being taken to preclude future occurrences of this sort.

Your assistance in this matter is appreciated.

Sincerely,



DON YOUNG  
Congressman for all Alaska

cc: Comm. Mueller  
Comm. Skoog

RECEIVED

NOV 7 1979

Dept. of Environmental Conservation  
S. E. Regional Office

United States Senate

WASHINGTON, D.C. 20510

*BB*  
*De*  
*B. L. (12/20)*  
*Hoffman*

*Sweeney*  
*Creek*  
*file*

October 29, 1979

Alaska Department of Environmental  
Conservation  
Attn: Ernst W. Mueller, Commissioner  
Pouch O  
Juneau, Alaska 99811

Dear Ernst:

Thanks for providing me with a copy of your  
October 12th letter to Max Peterson regarding the  
incident at Kizhuchia Creek.

In an effort to assist you in this matter,  
I have also contacted Mr. Peterson. As soon as a  
reply is received, we will be back in touch.

With best wishes, \_\_\_\_\_

Cordially,

*Ted Stevens*

TED STEVENS  
United States Senator

RECEIVED

RECEIVED

NOV 5 1979

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
P.O. Box 2417  
Washington, D.C. 20013

*Killing host  
Bayless  
Henkins  
Cowles 11-26  
Comm. Skog*

NOV 5 1979



Mr. Ernst W. Mueller  
Commissioner  
State of Alaska  
Department of Environmental Conservation  
Pouch 0  
Juneau, Alaska 99811

Dear Commissioner Mueller:

This acknowledges receipt of your letter of October 12 concerning the problems related to sedimentation into Kizhuchia Creek caused by construction of a gravel pit.

As you would expect, we are disturbed that an impression has been created that the Forest Service would suppress knowledge of resource damage from the State or fail to consult with the State on matters of concern to them. We are well aware of Regional Forester Sandor's desire to develop strong working relations with the State, and we certainly support his efforts to do that.

For us to respond more fully and to be sure we accurately understand the situation you have described, we have asked Regional Forester Sandor to look into the matter and provide additional information to us. We will respond further to you as soon as it is received.

With regard to the fish mortality in Stoney Creek, we are of course concerned that this has apparently taken place. We are pleased to see that you are working with Regional Forester Sandor on this matter and trust you will continue to do so in determining the necessary action to take.

You may expect to hear further from us on the Kizhuchia Creek matter by November 20. Thank you for bringing it to our attention.

Sincerely,

*J. B. Hilmon*

J. B. HILMON  
Associate Deputy Chief

RECEIVED

REC  
NOV 13 1979

Environmental Conservation

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



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

RECEIVED

NOV 20 1979  
NOV 14 1979

Honorable Don Young  
House of Representatives  
Washington, D.C. 20515

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

Dear Congressman Young:

This is in reply to your letter of October 19 enclosing a copy of a letter from Ernst W. Mueller, Commissioner of the Alaska Department of Environmental Conservation to Chief Forester Peterson.

The Chief has written the Regional Forester for additional information on this situation. The Chief and I agree with you that close cooperation between the Forest Service and the State is essential.

Regional Forester John Sandor has given the highest priority to protection of anadromous fish streams. Additionally, he has taken positive steps through development of the Tongass Land Management Plan and in other actions to coordinate closely with State officials. In our view, it would foster closer cooperation if the State Commissioners would work directly with the Regional Forester when problems arise as they apparently now are doing regarding Stoney Creek.

We do appreciate knowing of potential conflicts and can assure you that we are investigating the matter. We are confident that the problems can be resolved. We will let you know what actions are being taken after the Regional Forester has checked into the matter.

Sincerely,

HUBERT CUTLER  
Assistant Secretary for  
Natural Resources and Environment

RECEIVED

Dept. of Environmental Conservation  
S. E. Regional Office

November 21, 1979

Rick Reed  
Regional Habitat Protection Supervisor  
Department of Fish and Game  
Juneau

Don Kelly  
Area Habitat Biologist  
Department of Fish and Game  
Ketchikan

Staney Creek

The purpose of this memo is to bring you up to date on what's been happening in regard to Staney Creek.

As you are aware, alternatives were discussed at a meeting with the Forest Service on October 12. At that time, there were three likely courses of action:

1. Investigate silvicultural techniques that could be employed to provide shade for the creek and its tributaries.
2. Investigate deferral of harvests in this drainage until the end of the present five year period.
3. Form an interagency review team to review guidelines for timber harvest in temperature sensitive streams.

Since the October meeting, I've spoken briefly with Mike Novy, Acting Wildlife and Fisheries Program Manager, about one particular problem on Staney Creek, the re-drawing of two small units and the relocation of a section of road. At that time, Novy stated that the Forest Service would like to wait until LPK submits their 1980 logging plan before meeting to discuss deferral of units. I think we should begin consideration of alternatives 1 and 2 as soon as possible, however, and suggest that we meet again with the Forest Service some time in the first part of December, whether or not a logging plan has been submitted. I will contact them on or about 1 December and suggest a meeting.

As we have discussed, it would be useful to have a letter sent from you to Forest Supervisor Watson inquiring about the progress of our discussions. This would serve to put more pressure on the Forest Service and prevent them from putting this on a back burner, and would also put us on the record as officially expressing concern over this and other creeks. Specifically, I think this letter should (a) refer to the October meeting and urge that further consideration of alternative (2) above take place, and (b) ask what if any action has been taken on the silvicultural alternative. The letter should also express our willingness to participate in an interagency review of temperature sensitivity guidelines. I've drafted a letter as an example. Feel free to use it or toss it as you feel necessary.

I also think it may be necessary for headquarters to write a letter to Sandor expressing concern over Staney Creek in particular and the temperature sensitive guidelines in general. This would serve to underscore our concern

Rick Reed

-2-

November 21, 1979

over these matters and add an extra voice to our request for an interagency review of existing guidelines. It would also serve to "make us official" in registering our concerns. I'd suggest something similar to the draft of the letter I wrote in September (copy attached), to be sent some time after your letter to Watson.

Call if you have any questions. Thanks.

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

# STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF FISH & GAME  
Habitat Protection Section

210 Ferry Way  
Juneau, Alaska 99801

November 27, 1979

Mr. James Watson  
Forest Supervisor  
Tongass National Forest-Ketchikan Area  
Federal Building  
Ketchikan, Alaska 99901

Dear Mr. Watson:

RE: Modifications to logging plans for the Staney Creek drainage

Low water conditions, combined with high water temperatures resulted in high mortalities of salmon in Staney Creek (stream number 103-80-31) during late August of this year. Members of the Ketchikan staff of the Department of Fish and Game have expressed concern that continued timber harvest in the Staney Creek drainage may further aggravate an already critical situation.

With these concerns in mind, members of our Ketchikan staff met with members of your staff to discuss alternatives for the protection of fish in this drainage. The following options were discussed:

1. Modify unit boundaries and/or defer the harvest of remaining units until the end of the 1979-1984 operating period.
2. Have silviculturists investigate the possibility of planting alders or other species to provide shade and stream side cover.
3. Form an interagency team, consisting of representatives of the Alaska Departments of Environmental Conservation and Fish and Game, the Forest Service, the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to review existing guidelines for the protection of temperature sensitive streams. This is particularly important since there are several other systems on Prince of Wales Island (Logjam Creek, Sweetwater Lake), that may in the future experience problems similar to those encountered on Staney Creek in 1977 and 1979.

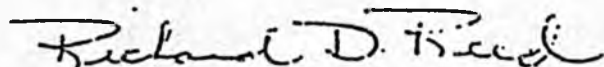
We would strongly urge that another meeting be held to discuss modifications to timber harvest plans in the Staney Creek drainage, and suggest that this meeting be conducted in a manner similar to the Interdisciplinary Team system used to develop the current five year plan. This review should take place

Mr. James Watson  
November 27, 1979  
Page 2

and be concluded well before the 1980 timber harvest begins. We also recommend that the replanting program be given full consideration.

This Department stands ready to participate in any interagency review of existing guidelines for the protection of temperature sensitive streams. We would urge that this review begin as soon as possible.

Sincerely,



Richard D. Reed  
Regional Habitat Protection Supervisor

cc: D. Logan  
D. Kelly  
W. Sheridan

STATE OF ALASKA  
DEPARTMENT OF FISH & GAME

JAY S. HAMMOND, Governor

Habitat Section  
415 Main Street  
Room 208  
Ketchikan, Alaska  
99901

November 28, 1979

Mike Novy  
Acting Wildlife and Fisheries Program Manager  
U.S. Forest Service  
Federal Building  
Ketchikan, Alaska 99901

Dear Mike:

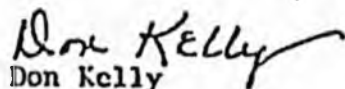
Re: Additions to units in the Staney Creek drainage

As you are aware, the Department of Fish and Game is concerned about the effects of canopy removal on stream temperatures in Staney Creek, and we have requested a review of logging plans in the drainage. At a meeting held in October and attended by representatives of the Forest Service and Fish and Game, several alternatives were discussed for lessening future impacts on the creek. The primary alternatives discussed were: 1) the modification of unit boundaries and the adoption of specific prescriptions which would permit the retention of shade-producing streamside cover, and 2) the deferral of the harvest of units in this watershed until the end of the five-year operating period.

Review of several recent stream survey reports (copies attached) indicates at least two proposed additions to units on or immediately adjacent to Staney Creek. From your comments, it appears that these have not been considered in any IDT process. We are extremely concerned that any additional harvests will contribute unfavorably to an already critical situation, and request that no unit additions be permitted without prior critical review by an Interdisciplinary Team. We also request that representatives of this Department be included in this IDT review.

I would appreciate hearing from you on these items, and urge that we meet to discuss this situation as soon as possible.

Sincerely,

  
Don Kelly  
Area Habitat Biologist

cc: R. Reed-ADFG-Juneau

Kim Turley  
 Mark Van Tassel

FRED ZEIGLER

ADIFAG

Date: 10/2/79

Fish Stream Survey Report  
 See previous report Dovy & Gruber

103-90-030

Camp 1/2 Way House

Stream Name (ID) Trib. of North St

Road# \_\_\_\_\_ Station# \_\_\_\_\_

Unit# 44-71 RFD \_\_\_\_\_

Quad Map Craig D-4 Section \_\_\_\_\_

Click Map \_\_\_\_\_ Section \_\_\_\_\_

Fish Present	Yes	No
Above Road Crossing	X	_____
Below Road Crossing	X	_____
Within Unit Boundary	X	_____
Below Unit Boundary	X	_____

Species Present/Stage of Development Dolly Varden, Adults & juvenile

Type of Fish Habitat

Salmon Spawning Area _____	sq yds Describe _____
Salmon Rearing Area _____	sq yds Describe _____
Other <u>Trout</u> Area <u>X</u> _____	sq yds Describe _____

Stream Sketch or Map: Attach supplement if necessary:

See maps

Method(s) used to determine presence of fish: shocker

Date	#Fish	APPROX LENGTH	Gear	Length of Time Fished
10/1/79 Stream #1	1 Dolly Varden	5"	Shocker ↓	10 min ↓
	1 Dolly Varden	6"		
	2 Dolly Varden	1 1/2"		
Stream #2	1 Dolly Varden	6"	Shocker ↓	10 min ↓
	1 Dolly Varden	3"		

No future fish habitat enhancement possible? Yes \_\_\_\_\_ No X  
 If yes Describe:

II. Road and Unit boundary/fish stream intersection(s)  
 Marked with aluminum metal tags Yes X No     
 Fish stream(s) flagged with <sup>orange</sup> stripe tape Yes X No     
 Stream(s) traversed-If so attach traverse notes Yes    No X  
 Additional parameter information necessary, Yes    No X  
 If so attached completed fish stream parameter Data form

Pertinent Wildlife Information:

Fresh Beaver activity on stream #1

Comments:

This is a salvage sale to collect blowdown.

Survey Crew Members:	Signature	Date
Jim McCullough	<i>Jim McCullough</i>	10/2/79
Tom Staples	<i>Tom Staples</i>	10/2/79
Report Reviewed By	<i>Jim Ambler</i>	<u>FISH TECH.</u> 10/15
	Signature	Title Date

Recommendations: CUTTING UNIT: 1.) DIRECTIONAL FELLING & YARDING OF STANDING TREES AWAY FROM STRS #1 & #2 WHENEVER POSSIBLE; 2.) SPLIT ON STREAMS WHENEVER POSSIBLE; 3.) CLEAN-UP OF DEBRIS (LOGGING & WADTHROW) IN STRS #1 & #2. CONCURRENT WITH LOGGING ACTIVITY; 4.) NO LIMBING & BUCKING IN FIBBER (O/W) LOCATION OF STRS. SPUR ROAD: 1.) 1 POUCH IN CROSSING ON E STR CROSSING AND FISH PASSAGES REQUIRED. CONCURRENT WITH ROAD BUILDING ON STRS #1 & #2. ROAD RELOCATION REQUIRED AT 2<sup>ND</sup> ROAD CROSSING OF STR. #1 AS TO PREVENT RAIN

MARK WARD THRELL

A.D.F.C.G.

Date: 10/1/79

Save this for or next Stanley

MEMO! NF

Fish Stream Survey Report

See previous report 9/24/79 Hopper

103-98-030

Camp 1/2 Way House

Stream Name (ID) Trib. at Stanley Cr.

Road# \_\_\_\_\_ Station# \_\_\_\_\_

Unit# 44-13 RFD \_\_\_\_\_

Quad Map Craig D-4 Section \_\_\_\_\_

ADD-00  
Chick Map \_\_\_\_\_ Section \_\_\_\_\_

Fish Present Yes X No \_\_\_\_\_

Above Road Crossing \_\_\_\_\_ X

Below Road Crossing X \_\_\_\_\_

Within Unit Boundary X \_\_\_\_\_

Below Unit Boundary X \_\_\_\_\_

Species Present/Stage of Development Coho - Adults & Smolt & Fry

Dolly Varden juvenile & adults

Type of Fish Habitat

Salmon Spawning Area X sq yds Describe \_\_\_\_\_

Salmon Rearing Area X sq yds Describe \_\_\_\_\_

Other Tract Area X sq yds Describe \_\_\_\_\_

Stream Sketch or Map: Attach supplement if necessary:

See maps

Method(s) used to determine presence of fish: shocker

Date	Fish	Approx Length	Gear	Length of Time Fished
10/3/79 Stream A	2 Dolly Varden	2"	Shocker ↓ ↓ ↓	0 min
	1 Dolly Varden	3"		↓
	1 Dolly Varden	4"		↓
Stream B	1 Dolly Varden	4"	↓ ↓ ↓ ↓	10 min
	1 Dolly Varden	2"		↓
	2 Dolly Varden	1 1/2"		↓
	2 Coho	2"		↓
Stream C	1 Dolly Varden	4"	↓ ↓ ↓	10 min
	1 Dolly Varden	3"		↓
	2 Dolly Varden	2"		↓

Is future fish habitat enhancement possible? Yes \_\_\_\_\_ No X

If yes Describe:

II. Road and Unit boundary/fish stream intersection(s)

Marked with aluminum metal tags	Yes <u>X</u>	No _____
Fish stream(s) flagged with blue stripe tape	Yes <u>X</u>	No _____
Stream(s) traversed-If so attach traverse notes	Yes <u>X</u>	No _____
Additional parameter information necessary, If so attached completed fish stream parameter Data form	Yes <u>X</u>	No _____

The south portion of the unit below the road should be checked for fish streams. They are yarding this portion of the unit as of 10/4/79  
Pertinent Wildlife Information:

Bear Sign - near salmon streams

NOTE \*

Comments:

The timber has been felled, bucked and limbed with no consideration given to fish streams. Extensive cleanup will be necessary in orange/white flagged portions of the streams and above the flagged portions of the streams to prevent debris from washing down the streams. The SW portion of the unit will have to be checked for fish streams it is being yarded now.

Survey Crew Member

Jim McCullough  
Tom Staples

Signature

*Jim McCullough*  
*Tom Staples*

Date

10/4/79  
10/4/79

Report Reviewed By \_\_\_\_\_

Signature

Title

Date

NOTE \*

Recommendations: UNIT ADDITIONS OF THIS MAGNITUDE AFFECTING THE COMMERCIAL FISHERIES SHOULD BE COORDINATED WITH THE FISHERIES BIOLOGIST AND OTHER MEMBERS OF THE I. D. T. PRIOR TO ANY COMMITMENT TO LOG THIS AREA AS THE 1979-1984 LONG TERM APPRAISAL T.E.A.P. DOES NOT SPEAK OF THIS RO BONE ADDITION. SEE ATTACHED PAGES FOR DETAILED WRITE-UPS CONCERNING THESE STREAMS #1, #1-A, #2, #3, #4, #5. THESE ARE SALMON SPAWNING & REARING STREAMS. FULL SUSPENDED SOLIDS RECOMMENDED FOR ALL SALMON STREAMS IN THIS PROPOSED ADDITION. STREAMS #A, #B, & #C WERE NOT SURVEYED DUE TO THE CUTTING OF A PORTION OF UNIT 41-13. THIS IS NOT THE PRESCRIBED METHOD OF I.D.T. STREAM HABITAT EVALUATIONS & SURVEYS OF CUTTING UNITS. RECOMMENDATIONS FOR THESE STREAMS ARE AS FOLLOWS:

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

Tongass National Forest  
Federal Building  
Ketchikan, Alaska 99901

Ph. No. (907) 225-3101

2620

DEC 07 1979



Alaska Department of Fish and Game  
Habitat Section  
415 Main Street  
Room 208  
Ketchikan, Alaska 99901

Dear Don:

Re: Units in the Staney Creek Drainage

The LPK proposal for a 20-acre addition to the 44-13 unit mentioned in your November 28, 1979, letter is pretty much a dead issue at this time. The temperature sensitivity problems concerning Staney, the quality and quantity of spawning and rearing habitat, the poor profiles which preclude full suspension, all suggest the area be left intact at this time.

No formal IDT was formed to evaluate this proposal, as the initial survey work conducted by our fisheries crew, at the request of the RMA, indicated that inclusion was unlikely. If a serious proposal to log the area ever arises, I assure you that we will have ADF&G input.

In regards to currently approved units effecting Staney Creek, I suggest that you and I, representatives from your department, and our timber people get together prior to finalization of the 1980 logging and road building plan for Thorne Bay. I suspect LPK's proposed plan for Thorne Bay will be available after the first of the year.

That document, along with the 72-84 unit selections, will allow us to formulate some site specific measures and alternatives to mitigate the adverse effects of additional canopy removal during this period.

I will keep you informed of any developments concerning Staney and suggest you and I get together to set a firm date for the meeting.

Sincerely,

MICHAEL E. NOVY  
Acting Fish & Wildlife Program Manager

Stoney Creek file

Buce

3 copies plus  
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

P.O. Box 2417  
Washington, D.C. 20013

Dept. of Environmental Conservation  
S. E. Regional Office  
1920 (WS)

15 15 15 15 15 15

DEC 13 1979

DEC 11 1979

Mr. Ernst W. Mueller  
Commissioner  
State of Alaska  
Department of Environmental Conservation  
Pouch 0  
Juneau, Alaska 99811

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION



Dear Commissioner Mueller:

Regional Forester John Sandor has provided additional information to help us respond further to your letter of October 12.

The Regional Forester confirms that the views you believe were expressed at the August 24 meeting relative to contacts with State officials certainly do not represent Forest Service policy in the Alaska Region. He has discussed the matter further with the Forest Supervisor of the Chatham Area and learned there was no intent to convey such an impression at that meeting.

Information from the Regional Forester indicates his staff agrees with you that the rock quarry was poorly located. I'm advised that this was not evident at the time of location, and that the location was primarily dictated by the lack of available rock elsewhere. This lack of suitable rock is a fairly common problem in the northern part of Southeast Alaska.


The Regional Forester has discovered weaknesses that did result in lack of proper notification to the State in this case. We don't believe there has been a common or recurring failure in this regard. I'm assured that steps have been taken to strengthen the management process to avoid happenings of this kind. We do note that inter-agency review of this incident took place on April 28, 1978 and State of Alaska advice was incorporated into the rehabilitation plan that was developed.

Regional Forester Sandor has given the highest priority to the protection of anadromous fish streams, and thru the development of the Tongass Land Management Plan has taken positive steps to assure close coordination with State officials. He and his Forest Supervisors and their respective staffs are anxious to continue to work directly with you and other commissioners. I'm certain this is the most effective way to address and resolve land management

problems. It is most important that communication lines be kept open between his office and yours. I'm pleased with the progress that has been made and have confidence that with your good help we'll continue to move in the right direction.

Thank you again for calling this matter to our attention.

Sincerely,



R. MAX PETERSON  
Chief

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

December 13, 1979

Mr. John Sandor, Regional Forester  
Tongass National Forest  
U.S. Forest Service  
P.O. Box 1628  
Juneau, Alaska 99802

Dear John:

The purpose of this letter is to brief you on problems we have encountered during the course of timber harvest activities in the Staney Creek drainage on the west coast of Prince of Wales Island. After noting the letter from the Department of Environmental Conservation to the chief of the Forest Service concerning Staney Creek, I felt it appropriate to bring you up to date on our thoughts.

Staney Creek (ADF&G stream number 103-90-30) is a relatively wide, slow-moving stream lying in a broad southeast-northwest trending valley, and is classified as temperature-sensitive. Extensive clearcutting has taken place in this watershed over the last ten to fifteen years. Early segments of this timber harvest took place before the development of guidelines for the protection of temperature-sensitive streams. Large amounts of streamside cover were removed from the main stream and its tributaries, further increasing the system's vulnerability to high temperature/low water conditions. Following the development of temperature-sensitive guidelines and their inclusion in the Southeast Alaska Area Guide, some additional harvest units were taken in this drainage. Restrictions on this later timber harvest included limitations on removal of streamside canopy and designation of leave strips along portions of the streambanks. Wind damage to leave strips and the consequent leanup of blowdown and blowdown-susceptible timber have, to some extent, limited the effectiveness of these stream-protective measures.

Heavy pre-spawning pink salmon mortalities were noted in Staney Creek in August, 1977, and again in August of 1979. The 1977 mortality involved an estimated 2,000 fish, and was attributed to high water temperatures coupled with low levels of dissolved oxygen. Aerial surveys on August 17, 1979, indicated that 10,000 to 15,000 dead unspawned pink salmon were present in the lower and intertidal portions of the creek. On-the-ground inspection of the creek on the same date revealed temperature and dissolved oxygen concentrations to be at critical levels (temperature 17°C, D.O. 3.8-4.0 ppm).

December 13, 1979

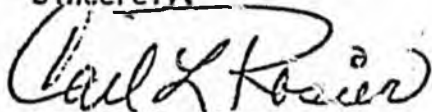
Investigations conducted on Staney Creek by Department of Environmental Conservation and Department of Fish and Game personnel between August 22 and 29 further documented these conditions, and confirmed that water conditions in Staney Creek did not comply with existing State of Alaska water quality standards for temperature and dissolved oxygen.

These conditions led us to be concerned about the long-term effects of repeated heavy mortalities on the production of pink salmon in the Staney Creek system. Consequently, we feel that a reconsideration of proposed activities in the Staney Creek watershed may be warranted. The proposed harvest units have been laid out using guidelines for the protection of temperature-sensitive streams, however, these may not provide protection from further degradation, as a considerable portion of the watershed was logged without application of the guidelines. We feel that a formal IDT review of existing plans for timber harvest in the Staney Creek watershed is warranted. This review should include a thorough evaluation of the effects of proposed logging, alternatives to the proposed units that would more adequately protect the stream, and plans for restoration and rehabilitation of damaged portions of the stream.

The review of stream protection measures should be continued during the winter of 1979-1980 to determine if new guidelines are adequate to safeguard anadromous fish-producing streams on the west coast of Prince of Wales Island. Patterns of salmon mortality in this area indicate that a number of systems may have temperature sensitivity problems similar to those we have encountered with Staney Creek. We believe that it is imperative that this be considered before timber harvest in these other drainages have proceeded to the extent that they have in Staney Creek.

John, we sincerely appreciate your concern and action on this matter, and look forward to continuing work with you on the development of measures to protect Alaska's fishery resources.

Sincerely,



Ronald O. Skoog  
Commissioner

cc: Commissioner Mueller, ADEC  
Richard Logan  
Rick Reed  
Don Kelly ✓

Atlantic Richfield Company Public Affairs  
Alaska State & Local Government Relations  
Mailing Address: Box 360  
Anchorage, Alaska 99510  
Telephone 907 277 5637



Dave Harbour  
Regional Director

March 25, 1981

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Resource Chairperson  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Dr. Tom Fink, of the Atlantic Richfield Company is unable to attend the committee meeting today and testify on Proposed Habitat Protection Regulations. In lieu of his presentation, we wish to submit his prepared comments and hope that they will be useful to you and the committee.

Sincerely,



TESTIMONY ON PROPOSED  
HABITAT PROTECTION REGULATIONS

March 25, 1981

Thomas R. Fink  
Environmental Conservation Manager  
ARCO Alaska, Inc.

Ladies and gentlemen, ARCO Alaska, Inc., a wholly owned subsidiary of the Atlantic Richfield Company, wishes to thank this Committee for an opportunity to comment on proposed regulations governing fish and game habitat protection.

As an oil and gas producer in the State of Alaska, ARCO recognizes the importance of protection for fish and game habitat that is critical to the state. Any proposed industrial activities need to be carefully examined, with due consideration to all the natural resources that may be affected by such plans.

We believe the existing system employed by the State of Alaska for oil and gas related exploration and development activities includes careful scrutiny by the Alaska Department of Fish and Game. The Alaska Department of Fish and Game reviews and comments on permit applications before the Alaska Department of Natural Resources. This allows for a decision making process which accounts for fish and game considerations along with other concerns. A careful balancing of all natural resource elements can hereby take place. This permit review process by the state includes review by other regulatory agencies, resulting in permissible activities which are consistent with state policy. The permit applicant receives a permit which is assured to be acceptable to all agencies.

We recognize that the Commissioner of Fish and Game and the Boards of Fisheries and Game have not yet reviewed nor approved these regulations. However, we feel that we must use every forum available to comment on these proposals. We feel that this Committee and the Legislature should be aware of what is being proposed.

Contrary to assurances from the Department of Fish and Game, these proposed regulations add another permitting procedure to already complex regulatory mechanisms which presently include fish and game habitat protection concerns. A "habitat protection permit" will have to be obtained where no such "permit" was required before. When procedures already exist which address a given concern, it is redundant, wasteful, and unnecessary to invent another mechanism.

The Alaska Department of Natural Resources is currently the principal agency that regulates oil and gas activities in Alaska. If the State of Alaska leases land for the purpose of exploring for oil and gas resource potential, there is an obligation that this resource be developed for the benefit of all Alaskans in an environmentally sound manner. The Department of Natural Resources has a history of carefully balancing apparent conflicts in resource development and habitat protection. We are unaware of any substantive objections to their stewardship of state lands.

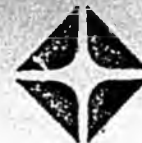
If the Department of Fish and Game is allowed to review and "endorse" Department of Natural Resources permits, this authority would create conflict over competing resource use that was supposedly resolved when the land was leased originally. This means an effective veto power over Department of Natural Resources permits.

A conflict of resource development could result in an operator being given clearance for a project on the one hand by the Department of Natural Resources, and denied a permit to the same project by the Department of Fish and Game on the other hand. Under this proposed process, there would be no mechanism for resolution of this dilemma, where presently this dilemma does not exist.

ARCO objects to the regulations as proposed, and believes that the habitat protection provisions should be restructured into guidelines. The guidelines would have the force of regulation, yet would be more flexible in applying to different and varying circumstances prevalent from one region in Alaska to another.

Attached are specific written comments made to the Department of Fish and Game on the proposed habitat regulations. Although we are commenting on the proposed regulatory language, our so doing should not be misinterpreted to mean that we agree with the concept of these proposed regulations. At the very least, such regulations should not be considered until the umbrella regulatory reform regulations are adopted and in place. To do otherwise, might conflict with the policies of the administration.

ARCO Alaska, Inc.  
Post Office Box 360  
Anchorage, Alaska 99510  
Telephone 907 277 5637



March 20, 1981

The Boards of Fisheries and Game  
Subport Building  
Juneau, Alaska 99801

Commissioner Ronald Skoog  
Alaska Department of Fish and Game  
Subport Building  
Juneau, Alaska 99801

Gentlemen:

SUBJECT: ARCO ALASKA INC. COMMENTS ON PROPOSED FISH  
AND GAME REGULATIONS

ARCO Alaska, Inc, a wholly owned subsidiary of Atlantic Richfield Company, wishes to thank the Alaska Boards of Fisheries and Game and the Alaska Department of Fish and Game for an opportunity to comment on proposed regulations governing fish and game habitat protection.

As an oil and gas producer in the state of Alaska, ARCO recognizes the importance of protection for fish and game habitat that is critical to the state. Any proposed industrial activities need to be carefully examined, with due consideration to all the natural resources that may be affected by such plans.

We believe the existing system employed by the State of Alaska for oil and gas related exploration and development activities includes careful scrutiny by the Alaska Department of Fish and Game. Inclusion of the Alaska Department of Fish and Game in review and comment on permit applications before the Alaska Department of Natural Resources, allows for a decision making process which accounts for fish and game considerations along with other concerns. A careful balancing of all natural resource elements can thereby take place. This permit review process by the state includes review by other regulatory agencies, resulting in permissible activities which are consistent with state policy. The permit applicant receives a permit which is assured to be acceptable to all agencies.

Contrary to assurances from the Department of Fish and Game, these proposed regulations add another permitting procedure to already complex regulatory mechanisms which presently include fish and game habitat protection concerns. A "habitat protection permit" will have to be obtained where no such "permit" was required before. When

The Boards of Fisheries and Game  
Commissioner Ronald Skoog  
Page Two  
March 20, 1981

procedures already exist which address a given concern, it is redundant, wasteful, and unnecessary to invent another mechanism.

The Alaska Department of Natural Resources is currently the principal agency that regulates oil and gas activities in Alaska. If the State of Alaska leases land for the purpose of exploring oil and gas resource potential, there is an obligation that this resource be developed for the benefit of all Alaskans in an environmentally sound manner.

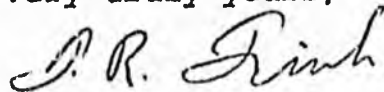
If the Department of Fish and Game is allowed to review and "endorse" Department of Natural Resources permits, this authority would create conflict over competing resource use that was supposedly resolved when the land was leased originally.

A conflict of resource development could result in an operator being given clearance for a project on the one hand by the Department of Natural Resources, and denied a permit to the same project by the Department of Fish and Game on the other hand. Under this proposed process, there would be no mechanism for resolution of this dilemma, where presently this dilemma does not exist.

ARCO objects to the regulations as proposed, and believes that the habitat protection provisions should be re-structured into guidelines. The guidelines would have the force of regulation, yet would be more flexible in applying to different and varying circumstances prevalent from one region in Alaska to another.

Enclosed are specific written comments on the proposed habitat regulations. Although we are commenting on the proposed regulatory language, our so doing should not be misinterpreted to mean that we agree with the concept of these proposed regulations.

Very truly yours,



T. R. Fink, Manager  
Environmental Conservation Department

tmw

Enclosure

COMMENTS ON PROPOSED  
FISH AND GAME REGULATIONS

5 AAC 95.020: Activities in Streams and Rivers Frequented by Fish.

This section of the proposed regulations requires the submission of plans and specifications for review and approval by the Department. Currently, the Department of Fish and Game reviews plans for activities in nonanadromous fish streams, as part of the overall review and comment process for permits already required by other agencies. This proposed approval constitutes a permit which presently does not exist. Contrary to declarations made by the Department, this proposed procedure would introduce numerous new permits for activities that are already reviewed by the Department through existing mechanisms. Protection of streams frequented by fish is already provided by the existing mechanisms of permit procurement. The phrase "frequented by fish" is very broadly defined, such that an applicant would not know beforehand if a stream that may be affected by activities is "frequented by fish" or not. The regulation does not "increase the predictability of departmental decisions", nor does it "establish statewide consistency", nor does it "increase efficiency of operations", nor "eliminate permit requirements for certain activities." In fact, this proposed section expands the number of permits required.

5 AAC 95.020(1): The proposed regulation in this subsection calls for a permit to be needed when snow and ice bridges are to be used. Construction of snow and ice bridges have no impact on fish in the winter. For the past several years, ice roads and bridges have been built for exploration, crossings on numerous creeks. No impact to the fisheries has been observed in any of these instances. The Department proposes to require permits for activities that have no basis on fish impact mitigation. This unnecessary requirement should be eliminated.

5 AAC 95.030: Activities in or Affecting Anadromous Fish Streams.

Subsection (6) of this proposed regulation would require a permit for construction of snow ramps. Construction of a snow ramp does not impact fish in a stream in winter. See comments on 5 AAC 95.020(1) above. This unnecessary requirement should be eliminated.

5 AAC 95.060: Habitat Protection Permit Required.

This proposed regulation sets a limit for a "habitat protection permit" at a maximum term of five years. A permit through the Department of Natural Resources for lease operations approved, as referenced in 5 AAC 95.065, may not be subject to this short a time limit, as a lease operations approved activity may extend beyond five years. Where lease operations approval extends beyond five years, a "habitat protection permit" should also be extended for this period.

5 AAC 95.065: Adoption of Department of Natural Resource Authorizations.

This section of the proposed regulations states that a "habitat protection permit" need not be separately applied for if the activity for which a permit is required under 5 AAC 95.040(b) or (c) is approved under a plan of operations approval through the Division of Minerals and Energy Management. 5 AAC 95.040 concerns only activities in State of Alaska critical habitat areas, sanctuaries, and refuges. Stopping short of including adoption of all Department of Natural Resource authorizations for activities in the state, including activities which occur in anadromous fish streams and activities in streams and rivers frequented by fish in Sections 5 AAC 95.020 and 95.030, essentially creates a separate permitting process for those activities. The Department is creating more permits where it has a genuine opportunity to exercise regulatory reform. By adopting authorizations for all activities requiring Department of Natural Resource approval, the Department would still "allow public critique of procedures and standards used in issuing permits, increase predictability of departmental decisions involving issuance of permits, establish statewide consistency in the Department's habitat protection permitting program, avoid litigation over matters of interpretation, increase efficiency of operations and eliminate permit requirements for certain activities."

If "endorsed", as used in 5 AAC 95.065(2), means separate departmental approval, a conflict may exist between the agencies. Endorsement will more likely occur prior to the Department of Natural Resources authorizing the activity pursuant to 11 AAC 65. This procedure should be continued.

5 AAC 95.120: Amendments to the Permit.

Section (b) of the proposed regulations should include a clause, where if the applicant for an amendment does not receive approval or denial of the amendment within 30 days

after submittal of all required information, the project may proceed as set forth in the amendment application. It is inherent that an applicant for an amendment receive a timely response. Also, amendments should be allowed to be approved verbally by the Department, with later confirmation in writing.

5 AAC 95.200: Culvert Installation Standards.

The standards included for culvert velocities would be almost impossible to attain, and are very restrictive compared to current Department guidelines. The standards are unrealistic and are generally not achievable on the North Slope. Groups II and V in the table on page 15 are species most prevalent on the North Slope. These groups would require for a 60 foot long culvert, a 2.3 cfs velocity at a Q2.33 flood and a 1.6 cfs velocity at normal summer flows. Comparing these proposed values to current Department of Fish and Game guidelines, shows that culverts would require 4 cfs at Q5 discharge.

Literal implementation of these proposed regulations in streams which may naturally exceed these velocities, makes these standards unrealistic. The velocities presented on the table should be used as guidelines only, and each project in a stream should be examined on a case by case basis to establish criteria tailored to that instance, as is currently done by the Department.

5 AAC 95.990: Definitions (8).

As stated in specific comments on the proposed regulations, the definition of "frequented by fish" does not allow for any predictability by departmental decisions involving issuance of permits. The definition does not help clarify consistency in permitting programs, nor does it necessarily eliminate permit requirements for certain activities. The definition is overly broad, and shows no guidance for Department involvement.

# Alaska State Legislature

DETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

March 25, 1981  
1:30 p.m.

Butro Room  
207 - Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

---

Meeting regarding proposed Alaska Boards of Fisheries and Game and Alaska Department of Fish and Game regulations governing fish and game habitat protection.

Dick Logan, Chief Habitat Protection, Department of Fish and Game, stated the proposed regulations have been in the drafting stage for about a year. The proposed regulations are scheduled for public hearing in Anchorage April 2nd before the Boards of Fisheries and Game.

In response to the question, have you asked for or received an Attorney General's opinion on the Department's authority to draft these regulations? Mr. Logan, stated, yes, they have received a draft opinion which states in part the Department has such authority and he will provide the Committee with a copy of it.

Mr. Logan, stated these draft regulations are a part of the regulatory reform effort. One benefit of issuing regulations through the Boards of Fisheries and Game is because these regulations can be revised annually. The Department is also trying to provide for multiple use via the permitting process.

In response to the question, what is the percentage of streams that will not require a permit? Mr. Logan, stated that in the coastal areas 100% of the streams would require a permit because they have or had fish in them. In the interior, a permit would be required on only 30-40% of the streams. 90% of the placer miners will not need a permit.

In response to the question, has the absence of regulations pose any problems? Mr. Logan, stated that while there have been a few complaints due to a lack of uniform policy, there have been no serious problems.

Jim Clark, Alaska Loggers Association and Bob Loescher, Resource Director, Sealaska Corporation were the next to testify. Mr. Clark, stated that the proposed regulations are not needed because they are a classic example of the theory "if it ain't broke don't fix it." The draft regulations go well beyond the authority granted to to the Department by the legislature and would require countless new state employees to administer. He suggested that the proposed regulations should be held in abeyance pending the completion of the Governor's Regulatory Reform Study currently underway. The proposed regulations are an attempt to standardize fish and game habitat policies for which no regulations presently exist. Presently habitat problems or policies are resolved with department biologists on site specific basis. It is impractical to write prescriptive regulations to cover all habitat conflicts.

Mr. Loescher, stated that he would like to see the regulations held up until the question of whether the Department or the Boards have the statutory authority to draft these regulations.

Fahrenheit Camp

# Southeast Alaska Conservation Council

BOX 1692, JUNEAU, ALASKA 99802

907-586-6942

Rec 5/27/81



## SEACC

Before the Senate Resources Committee  
Thursday, March 26, 1981, 10:00 am.

RE: Alaska Dept. of Fish and Game Habitat Regulations  
=====

LYNN CANAL  
CONSERVATION  
Haines, Alaska

JUNEAU GROUP  
SIERRA CLUB  
Juneau, Alaska

SITKA GROUP  
SIERRA CLUB  
Sitka, Alaska

PETERSBURG  
CONSERVATION  
SOCIETY  
Petersburg, Alaska

SITKA  
CONSERVATION  
SOCIETY  
Sitka, Alaska

STIKINE  
CONSERVATION  
SOCIETY  
Wrangell, Alaska

JAKU CHAPTER ACS  
Juneau, Alaska

LONGASS  
CONSERVATION  
SOCIETY  
Ketchikan, Alaska

My name is Jim Stratton. I am the Executive Director of the Southeast Alaska Conservation Council, Inc. We'd like to thank you for the opportunity to appear before you today and speak to these habitat regulations. We appreciate you running late yesterday, you quadrupled our time to get prepared. We found out about this hearing yesterday at 9:00. Also, Madam Chairman, you pointed out to Fish and Game yesterday that they have scheduled their public hearing in Anchorage at the same time as the Miners' Conference in Fairbanks. This hearing was scheduled at the same time as the Board of Fish and Game meeting in Anchorage. That is why there are not more fishermen here today.

We support Fish and Game in their regulation promulgating role. These regulations, while they may be a burden for one industry, are vital to the survival of several others. It is something we have needed for a long time. They aren't burdensome - they are merely asking that activities that affect anadromous fish streams be cleared with Fish and Game through the permit process so they can give their input on mitigating measures to protect anadromous fish and to weed out the projects that are totally destructive. We agree with the other speakers that these regulations aren't perfect. But they can be changed at the public hearing next week and through yearly reviews by the Board of Fish. As for the authority - that's not up to us or Jim Clark, it's the Attorney General's determination.

Times have changed. In years gone by, there was enough land base to go around. But, like what has happened to the rest of the country, Alaska is shrinking. The competition for the land use is expanding. Not only between

commercial fisheries, loggers and miners, but sportfishing, subsistence fishing, primitive recreation and not so primitive tours. They all have a stake in the land, but, until now, several of these uses have been slighted for the short term benefit of others.

These fisheries protection regulations are aimed at protecting the fisheries that are left. Every logging operation and every mining operation has an impact. While some of these impacts are small, they all add up to a serious depletion of the stocks. These regulations are essential for the protection of the fishing industries. They are not meant to shut down any loggers or miners. We aren't against logging, however we want logging done in such a manner that it doesn't have on the other resources. These regulations are insurance against any activity destroying valuable habitat. Without them, the loggers and miners will continue to destroy habitat and the fishing industry will continue to get the shaft.

We are concerned about the loggers' arguments that given the standards and guidelines, let them figure out a way to meet them. This is unrealistic. It's like asking the fox to design the security system for the chicken house. Not only do they lack the expertise, they don't care. Fish and Game experts know what is needed for anadromous fish protection and passage. By developing a list of prescriptive methods, the guy on the D-9 making the road will know exactly what to do to protect the fisheries instead of making an uneducated guess. He knows how to make roads, but he doesn't necessarily know how to protect fish. With these regulations, Fish and Game is insuring that habitat will be protected. And just exactly what regulations do the loggers follow now? They really aren't that regulated. The Forest Practices Act type of a cookbook and Best Management Practices are nothing more than a suggestion list of how to do it. As Jim Clark said yesterday, "You can't manage resources with a cookbook." There are no mandatory BMPs, no monitoring, no enforcement. "there is nothing to enforce in the Forest Practices Act. I would be scared to place these regulations and, as such, the future of Alaska's sport and commercial fisheries into this document.

Let's look at the fishing industry — just how important is it?

-It is the largest private employer in Alaska.

-It is a renewable resource. Old growth forests are not renewable because the Forest Managers are not letting them grow back long enough, mining definitely is not renewable.

-There are 171,281 sport fishing licenses issued in this state

according to the Alaska Department of Revenue. They generate \$1,400,747.75 per year in (fishing only) license revenues, not counting poles, reels, beer, transportation, lodging, guide fees.

These regulations are aimed at protecting the stock that come with having the best fishing in the world for sport fishers and subsistence users also. When the oil is depleted, the hard rock all mined, the forest turned into monoculture ... fishing will be the bread and butter of Alaska and we'd better start protecting it now.

I'm not sure what the end product of this hearing is supposed to be. I'm unaware of any resolution or bill currently in the hopper relating to these regulations. But if anything is developed, it should be in total support of Dick Logan, Fish and Game and these regulations. I can't imagine this committee giving away the renewable fisheries industry of this state for the short term profit of a few miners and the convenience in the permitting and mitigating process for the loggers.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3034  
(907) 405-3035

## Senate

### Committee on Resources

March 26, 1981  
10:00 a.m.

Beltz Room  
211 - Capitol

---

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer

---

Meeting regarding proposed Alaska Boards of Fisheries and Game and Alaska Department of Fish and Game regulations governing fish and game habitat protection.

J. P. Tangen, Alaska Miners Association, stated his main objections to the proposed regulations are: (1) they are lengthy and difficult to understand; (2) they were drafted without taking into consideration for the user groups' ability to comply; (3) they were apparently drafted without consideration for the engineering problems they will create; (4) they exceed the authority of either the Department or the Boards; (5) they were apparently written in a vacuum and do not take into consideration regulations of other agencies; (6) there is no need to extend, expand or enhance the authority of the Department; and, (7) the Department is not prepared to police or enforce the regulations as written.

Geron Bruce, Secretary-Treasurer, United Fishermen of Alaska, stated that the salmon habitat has been suffering incremental losses for a long time. He said that the question has arisen as to the Department's authority to write these regulations and he believes that what the Department is trying to do through these regulations, is obtain that needed authority. There have been sacrifices by the fishermen to rebuild the salmon runs through taxing themselves 2-3%. These funds are used to build hatcheries.

Earl Krygler, Alaska Trollers Association, stated that he supports the draft regulations because without adequate regulations that can be read and understood there will be damage to the habitats. The draft regulations take into consideration the difference of the various stream sites in the state.

Roland Shanks, Alaska Environmental Lobby, stated that the

SENATE RESOURCES COMMITTEE

March 26, 1981

Page: 2

Department is mandated to write these regulations because their authority is in the state constitution and law. It is in everyone's best interest to resolve the habitat problems as fast as possible.

Jim Stratton, Southeast Alaska Conservation Council, stated that the permitting system in the draft regulations is important to eliminate the potentially damaging projects. The proposed regulations insure that the habitats will be protected.

OF COUNSEL  
M. E. MONAGLE

# ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

R. E. ROBERTSON (1885-1981)  
F. O. EASTAUGH  
J. B. BRADLEY  
WILLIAM G. RUDDY  
L. B. JACOBSON  
MICHAEL T. THOMAS  
JAMES F. CLARR  
PAUL M. HOFFMAN  
J. R. TANGEN  
D. ELIZABETH CUADRA  
HAROLD E. SNOW, JR.  
PAMELA L. FINLEY

A PROFESSIONAL CORPORATION

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March 25, 1981

The Honorable Bettye Fahrenkamp  
Chairman Senate Natural Resources Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

This is written in behalf of the Alaska Loggers' Association (ALA) and Sealaska Corporation. We recommend that you consider making certain changes to the Alaska Forest Practices Act and the authority of the Alaska Department of Fish and Game (ADF&G) under AS 16.05.970. The proposed changes would effect the regulation of timber harvest, activities upland of the natural flow and beds of streams, lakes and rivers.

The issue arises as a result of ADF&G's on-going attempt to promulgate habitat regulations, which are presently in draft. These regulations would require a habitat permit for activities along the shoreline of, and within the flood plain of, rivers, lakes and streams frequented by fish as well as the tributaries of such streams. In attempting to regulate tributaries and riparian land upland of "the natural flow or bed" of "specified" streams, lakes and rivers, ADF&G is exceeding its authority under the law.

ADF&G's authority to regulate timber harvest or other activities is limited to that set forth AS 16.05.370(b) which provides as follows:

"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 wheels, 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."

As can be seen, ADF&G's authority is limited to streams specified under AS 16.05.870(a). There is no authority to regulate tributaries of a specified river, lake or stream; nor, except in limited circumstances is there authority to regulate streams "frequented by fish" as ADF&G is seeking to do. ADF&G's authority is further limited to situations where a person or governmental agency "desires" to "use, divert, obstruct, pollute or change" the "natural flow or bed" of a "specified river, lake, or stream." As can be seen, no authority whatsoever has been given to ADF&G to regulate upland of the "natural flow or bed" of a specified river, lake or stream.

Not only do these regulations exceed the authority of the Statute upon which they are based, they are in direct conflict with the direction set for State management of forest practices designed by the Legislature in the Forest Practices Act. The Alaska Legislature specifically rejected the prior approval system originally proposed for Forest Practices Act in favor of a notification system. In other words, under the Legislature's approach, an operator simply has to notify DNR 30 days in advance of his or her operations in order to undertake them. Under the habitat regulations, a habitat permit will be required of an operator when he or she seeks to harvest timber in Southeast Alaska, since so much of this area is within the flood plain. This habitat permit requires prior approval by ADF&G before operations can begin. Accordingly, contrary to the intent of the Legislature to create a notification system in the Alaska Forest Practices Act, ADF&G, through its regulatory authority alone, is creating a prior approval system.

We accept the proposition that ADF&G should have authority to protect fish and game from problems which may be caused by timber harvest activities. Using a professional management approach, which maximizes use of the expertise of our operators, ADF&G's biologists and other experts, we have done a good job of resource protection.

What we object to is the change in management direction which the habitat regulations reflects. For reasons which we do not understand, ADF&G is seeking to move to a highly prescriptive approach designed to spell out in cookbook-fashion, how each aspect of industrial activities should take place on lands extending to the flood plain. We object to this change and to the unnecessary bureaucratic

requirement that we obtain a habitat permit from ADF&G for each aspect of our operations. Such an approach by ADF&G runs directly counter to the Governor's regulatory reform effort. ADF&G lacks the funds and personnel to carry out this program in an expeditious manner and therefore the formal permit process will cause delays to ours and other industries, with no benefit to the environment.

It has been a cardinal principle of the ALA to create one comprehensive set of regulations such that an operator will have to look at only one set of regulations to know what is required of him or her. DNR and DEC have cooperated with us in this regard by jointly promulgating regulations with respect to timber harvest. The Coastal Management Act regulations regarding forestry have been preempted by DNR's forest practice regulations as is required by the Forest Practices Act. Thus, ADF&G by its regulations will be the only non-cooperating agency. A situation which requires the timber operator to look at several sets of regulations to determine what the requirements are will only create confusion as to what is required and will in fact prevent us all from obtaining the protection we want for the various other resources.

We recommend that there be changes made to AS 41.17.010 et. seq. (the Forest Practices Act) and to AS 16.05.870 (ADF&G's authority) which would, on the one hand, give ADF&G the authority to protect fish and game habitat. On the other hand, to the extent its regulations impact timber harvest activities, ADF&G should be required to coordinate its regulations into one comprehensive set of regulations (as the other State regulatory agencies have done in response to the legislative mandate set forth in the Forest Practices Act).

To effect this compromise we propose the following changes to the law:

1. AS 16.05.870(b) would be amended to read as follows: "With the exception of a person or governmental agency subject to AS 41.17.010 et. seq. ..." (everything else in subsection (b) would remain the same).

This change would except those involved in the forest industry from whatever rulemaking authority ADF&G might have under AS 16.05.870. The following changes in AS 41.17.010 would be designed to allow regulation of the

forest industry by ADF&G through the provisions of the Forest Practices Act. This will cause all regulations concerning timber harvest to be put into one comprehensive set of regulations.

2. A new subsection to AS 41.17.010 "Declaration of Intent" would be put in as subsection 5 and present subsections 5 and 6 would be renumbered as subsections 6 and 7 respectively. The new subsection would read as follows:

"Government administration of timber harvest activities should combine the regulatory measures of all agencies concerned with timber harvest activities into one comprehensive regulatory scheme which includes regulations under this chapter, Title 16, Title 46 and other agency authorizing statutes as provided herein;"

This states as purpose the desirability of having only one comprehensive set of regulations for the forest industry.

3. AS 41.17.020. "Division of Forest Land and Water Management Established" would be amended to include a new subsection (h) and present subsection (h), (j), (k), and (l) would be relettered as subsections (i), (j), (k) and (l) respectively. The new subsection (h) would read as follows:

"The commissioner, the Commissioner of the Alaska Department of Fish and Game, and the Commissioner of Alaska Department of Environmental Conservation, in accordance with his authority under AS 16.10.010, and AS 46.03.070, shall work cooperatively to protect the fish resources of the state and the game resources of the state on public lands in accordance with the economic and general well being of the state from any adverse consequences which may occur as a result of activities under this chapter. Protection of game on private lands shall be undertaken pursuant to a cooperative agreement or understanding by and between the private landowner and the appropriate agency or agencies of the state. All regulations concerning the protection of fish and game shall be based upon the concept of professional management, as opposed to management by prescription, and shall be promulgated under and in accordance with the provisions of this chapter.

This provides authority for joint promulgation of fish and game standards in accordance with the authority of all the agencies involved.

4. The present subsection (j) (which shall be relettered as subsection (k) in accordance with the change requested in number 3) shall be amended to read as follows:

"Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Zone Management Act, (2) regulations protecting fish and game prepared in cooperation with the Commissioner of the Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation, and (3) if authorized by the commissioner of Environmental Conservation, regulations relating to control of non-point source pollution."

The underlined section is a technical conforming amendment consistent with the change made in Paragraphs 2 and 3.

5. AS 41.17.080 would be amended by adding a new paragraph (a)(7) which would read as follows:

"Protection of fish and game as determined in cooperation with the commissioners of the Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation."

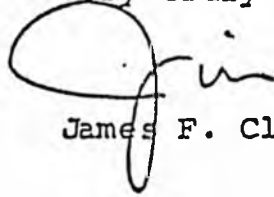
This authorizes regulations to be promulgated to protect fish and game resources. The authority is broader than that which ADF&G presently enjoys. However, the Commissioner of DNR and DEC would have to agree to it before it could be promulgated.

#### Conclusion.

Thank you very much for the ALA and Sealaska Corporation having the opportunity to offer these amendments. We intend to use all lawful measures to prevent implementation of the habitat regulations promulgated by ADF&G under AS 16.05.970 for the reasons set forth in the attached letter to Mr. Dick Logan. However, we join with

the habitat section of ADF&G in seeking to assure that there is adequate protection for fish and game resources of the State. We think the proposals for compromise made herein will allow reasonable coordination of the two activities within a single comprehensive set of regulations for forestry. We would like to meet with you on this as soon as possible.

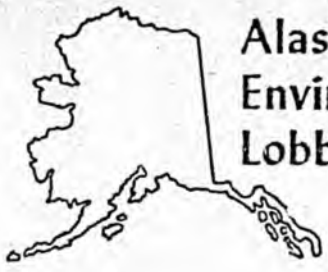
Very truly yours,

A handwritten signature in cursive script, appearing to read "J. F. Clark", written in dark ink.

James F. Clark

JFC:sd

3/26



Alaska  
Environmental  
Lobby

419 6th St., Suite 321  
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586-2345

TESTIMONY BEFORE THE SENATE RESOURCES  
COMMITTEE REGARDING THE HABITAT PROTECTION  
REGULATIONS BY ROLAND SHANKS

I am really at a lack as to how to start this testimony. Since the Public hearing was going to be in Anchorage next week I'm not really prepared to testify on the substance of the Regs. A couple of the groups I represent did submit written comments and I'm sure someone will testify next week in Anchorage. But there are a few points I'd like to make quickly.

There was a lot of discussion yesterday about Alaska Department of Fish and Game's mandate to control these issues. Well it seems to me there is a clause in the constitution that "The State will hold all resources for the common good." And I've seen the Department of Fish & Game mandate described as to protect and enhance the Fish & Game resources of the State. Those doctrine plus the authorities cited in the regs. seem to make it clear that the department does have the authority to regulate activities in fish streams. And under existing laws Alaska Department of Fish & Game can arrest a person for wasting fish; I can't believe they don't have the power to arrest someone for wasting a whole creek.

Now that brings us to an interesting issue what is the stream? Now when the State asserts ownership to a stream under the submerged lands act, they claim the entire riverbed

from vegetated bank to vegetated bank and that's the way it's conveyed. And if that's not enough reason there is a biological reason too. Leaving berms and potholes can cause fishtraps where fish are trapped after the annual flood. A good example of this is Nome Creek north of Fairbanks where mining in the past has left lots of potholes that trap fish. I think that under the mandate to protect fish and game, ADF&G has a responsibility to protect the thermal regime of fish stream by maintaining streamside cover. This also protects the stream banks, it cuts down on erosion, and it cuts down on stream sedimentation.

There was also a lot of discussion yesterday about vehicles operating on ice. 2500 pounds might be too a low a limit, but it is important to control equipment operation. Another example from Fairbanks. A couple of years ago we had a guy try and take a Cat up the Salcha River. The Salcha has a nice run of King Salmon, that are heavily utilized by the sport fishermen in Fairbanks. Well to make a long story short, the Cat broke through. It took a couple of weeks to get that Cat out. This time we were lucky, but what if he had been dragging a trailer of diesel. This accident would have had serious impacts on that river.

This brings us to another problem. Why are we worried about fish anyway. This brings us to another interesting statistic. The fishing industry in Alaska directly employs more people than any other industry. We also have more

fishing licenses per capita than any other state. It seems like fish are very important to both our economy and our recreation. It seems imperative that we protect our fish and to do that we must protect our streams.

The House Resources committee just spent two days reviewing the fisheries rehabilitation and enhancement programs of ADF&G. They were discussing millions of dollars to recreate fish habitats that were destroyed because regulations like this were not in place. To put off implementing these regs now only shifts the burden to future generations to recreate the habitat we destroy in the future.

There was also a lot of talk about timing of comments and hearings and about when these regs will take effect. It seems like its in everybodys best interest to get these regs in place. If there aren't any regs, no permits can be issued and if no permits can be issued we would have massive noncompliance. This could lead to legal problems. I think it's in everybody's best interest to resolve this problem.

Some of the discussion during these hearings would lead one to believe the industries have a right to destroy these streams. Well I'd like to know how the rights of the 30,000 people involved in the fishing industry, the 172,000 Alaskans who own sport fishing licences, and the recreationalists who use th streams are being protected. The constitution guarantees equal protection, well I'd like to see some equal protection for other stream users.

So in conclusion I call on this committee to allow Fish & Game to complete the procedures necessary to issue these regs. The hearing of the Fish Board go forward and comments submitted and the regulations issued.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
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## Senate

### Committee on Resources

#### MEMORANDUM

TO: SENATE RESOURCES COMMITTEE MEMBERS

FROM: SENATE RESOURCES COMMITTEE STAFF

RE: PROPOSED FISH AND GAME REGULATIONS GOVERNING FISH AND GAME HABITAT PROTECTION

DATE: MARCH 25, 1981  
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During the Senate Resources Committee meeting today, testimony will be received from Mr. Richard Logan from the Dept. of Fish and Game, Mr. James Clark representing the Alaska Loggers Association and Mr. J.P. Tangen who will represent the Alaska Miners Association.

You have received a copy of the proposed regulations. Attached for your information is a letter written to Mr. Logan from Jim Clark on the proposed regulations.

The Committee staff has been in contact with numerous groups to ascertain their views on these regulations. With some exceptions notably the United Fishermen of Alaska, there seems to be general agreement with Mr. Clark's main points.

Mr. Clark makes six main points in his memorandum:

- (1) Regulations such as these should be part of a comprehensive set of regulations coordinated through one state agency. As a policy matter, these regulations should be integrated with the Forest Practices Act regulations promulgated by DNR.
- (2) These regulations violate the Forest Practices Act.
- (3) These regulations go far beyond the authority which the Legislature gave the Alaska Dept. of Fish and Game and the Boards of Fish and Game in Title 16.
- (4) These regulations are too long and complex.
- (5) The Dept. of Fish and Game does not have the personnel to administer these intricate regulations.
- (6) It is inappropriate for these regulations to be promulgated prior to the time that the regulatory reform regulations are completed.

Mr. Clark has also compiled a sectional critique which starts on page 6.

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March 24, 1981

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Chief Richard Logan  
Habitat Protection Section  
Alaska Department of Fish & Game  
Support Building  
Juneau, Alaska 99801

Dear Dick:

This is in behalf of the Alaska Loggers Association (ALA) in response to the proposed regulations governing fish and game habitat protection. We are extremely disappointed with the draft regulations. For years we have had a good working relationship with you, have maintained high environmental standards in our industry, and have protected other resources by relying upon the application of professional management (yours, ours and others) of on the ground decisions. You are now assaulting this working system with a complete turn-about in management philosophy: you are seeking to replace professional management with a new system of complex and burdensome prescriptions. Why? We feel that these regulations as applied to timber harvesting violate the Forest Practices Act and in any event go far beyond the authority which the Legislature gave the Alaska Department of Fish and Game (ADF&G) and the Boards of Fish and Game in Title 16.

As we mentioned to you in our letter of January 6, 1981, in response to the preliminary draft, it is ALA policy that forest practice regulations, such as these, be one comprehensive set of regulations coordinated through one state agency. This principle was recognized in the State Forest Practices Act wherein Coastal Zone Management Act regulations impacting forestry and the non-point pollution authority of the Department of Environmental Conservation (DEC) as found in Section 208 of the Federal Water Pollution Control Act, were integrated into the rulemaking process which resulted in State Forest Practice Act regu-

lations. We believe that as a policy matter these regulations should also be integrated with the Forest Practices Act regulations promulgated by the Department of Natural Resources (DNR). This will provide timber operators, regulating agencies and the public with only one set of regulations regarding forest practices. In this way, the timber operator, the regulating agency and the public will know what is required of the operator. Such integration can be accomplished either through cooperation with the Department of Environmental Conservation (DEC), in utilizing the provisions of Section 208(b) of the Water Pollution Control Act discussed below, or through amendments to the State Forest Practices Act attached hereto as Exhibit A.

Secondly, these regulations, as written, violate the Forest Practices Act. The Forest Practices Act as originally proposed by the Governor was a prior approval system, i.e., DNR had to approve the timber harvest plan before operations could commence. The Legislature specifically changed this to a notification system, i.e., the operator merely had to notify DNR that it would begin operations in thirty days. The law provides standards and guidelines which anyone desiring to harvest timber has to obey, but as stated, the Legislature specifically rejected the permit approach.

There is no way under these draft regulations that timber harvesting activities could be undertaken without obtaining a habitat protection permit. Such a permit requires ADF&G approval. Accordingly, by converting the notification system into a prior approval system, the proposed regulations are contrary to the letter and spirit of the Forest Practices Act.

The primary authority upon which ADF&G is relying (notwithstanding the overly extensive citation of sections of Title 16 as authority for the various regulations) is AS 16.05.870(b) and (c). These sections call for a modified notification, rather than a prior approval, system. Subsection (b) states that if a person or governmental agency desires to undertake certain activities with respect to a "specified river, lake or stream", the person or government agency "shall notify the Commissioner of this intention before the beginning of the construction or use." (emphasis added). Subsection (c) provides that the Commissioner should acknowledge receipt of the notice and

can require submittal of full plans and specifications and written approval "if the Commissioner determines to do so." In other words, the statutory scheme requires notice in the first instance, with the Commissioner having authority to require prior approval for certain projects. The statute certainly did not contemplate the requirement of obtaining a habitat protection permit in every instance as the regulations have done. It seems to us that further clarification of AS 16.05.870(c), specifying in what specific cases prior approval needs to be obtained, would help clarify the original and obvious statutory scheme which the Legislature sought to implement.

Since the legislative intent of the Forest Practices Act clearly favors a notification, not a prior approval system; and since the Forest Practices Act came after ADF&G's Title 16 authority; and since the Legislature is presumed to have been aware of Title 16 when it passed the Forest Practices Act (and thus is presumed to have believed that the Forest Practices Act and Title 16 are consistent); and since Title 16 as described above is itself a modified notification system; it follows that the proposed regulations violate the Forest Practices Act. We therefore ask that these regulations be withdrawn and redone in cooperation with DEC through DEC's Section 203 authority or pursuant to the attached legislation which we are proposing.

Assuming for purposes of argument that the proposed regulations do not violate the Forest Practices Act, they clearly exceed ADF&G's authority under AS 16.05.870 - the only arguable authority ADF&G has with respect to non-point pollution under Title 16. AS 16.05.870(b) only requires notice with respect to actions in "a specified river, lake or stream." (emphasis added). Thus, the authority extends only to rivers, lakes, or streams specified under AS 16.05.870(a). the habitat regulations purport to also extend this authority to unspecified tributaries of a specified stream (5 AAC 95.970).

Furthermore, the regulations purport to control activities upon the banks of rivers, lakes and streams as well as land based activities beyond them. AS 16.05.870(b) only requires notice to ADF&G where one "desires to construct a hydraulic project, or use, divert, obstruct, pollute or change the natural flow or bed of a specified river, lake, and stream. There is no authority in ADF&G

under this section to regulate the "desire" to use, divert, obstruct, pollute or change" beyond the "natural flow or bed" of a specified river, lake or stream. The Legislature simply did not provide for ADF&G to regulate the banks or land based activities beyond them. These regulations are therefore ultra vires to the extent they seek to regulate such activity.

Authority does exist for the State to regulate non-point pollution of streams. It is found in Section 208(b)(2)(F) of the Federal Water Pollution Control Act which is administered by DEC. We have no philosophic problem with ADF&G seeking to protect streams by protect banks and land based activities beyond the banks. ( objective is to cause the state agencies concerned about forest practices to coordinate forest management through one comprehensive set of regulations. If ADF&G will cooperate with DEC and exercise its regulatory actions through Section 208, there will be only one set of comprehensive regulations because DEC has coordinated its Section 208 authority with DNR through a Memorandum of Understanding.

It is also clear to us that the Boards of Fish & Game should not have authority to promulgate habitat regulations. The boards lack the expertise to write regulations concerning forest habitat. Accordingly, we will be seeking to delete whatever authority they may have under AS 16.05.251(a)(7) to write regulations regarding habitat.

Furthermore, the Boards' statutory authority simply does not extend to making regulations of the type promulgated here. Whereas the Commissioner of ADF&G is given authority to require written approval of plans and specifications, the authority of the Board of Fisheries in AS 16.05.251(a)(7) and the Board of Game in AS 16.05.255(a)(7) is limited to regulations "for engaging in ... watershed and habitat improvement". Notice that this is not watershed and habitat protection, but rather watershed and habitat improvement. Thus, what this section contemplates are regulations leading to watershed and habitat enhancement programs. Given the vast difference in the authority afforded the Commissioner in AS 16.05.870(b) and the very limited type of authority given to the Boards of Fish and Game in AS 16.05.251(a)(7) and 255(a)(7), it is clear that they lack authority to participate in the promulgation of these habitat regulations.

We have raised a series of legal objections to the regulations. We hope that you will submit these issues to the Department of Law for its consideration.

Third, these regulations are too long and complex. When it is considered that the timber operator must also comply with DNR's forest practice regulations (which incorporate DEC's best management practices), it will be most difficult to meet the detailed, cookbook-type prescriptions set forth in these regulations. Thus, the complexity of the regulations in conjunction with other regulations will be confusing to both operator and regulator alike.

What is needed is a written description of the system under which we have been operating. Field biologists have been using their professional discretion to insure stream protection. We submit that the detailed prescriptions which comprise these regulations, particularly Sections 190 through 260, will hinder ADF&G's professional biologists as they seek to deal with site specific problems. It would be simpler and wiser to set forth goals in the forest practice regulations and allow timber operators and biologists to find ways to meet those goals on the ground. This is the permit by regulation technique which we have discussed with you orally.

Fourth, ADF&G does not now have the personnel to administer these intricate regulations. How many additional positions will be needed to administer and interpret them on the ground? How many people will be needed to deal with the administrative appeals and litigation which are likely to follow in the wake of this most complicated set of regulations?

Fifth. Please be advised of our most strenuous objection to Section 250, which in effect calls for buffer strips on all streams. This is environmentally indefensible and will place an incredible burden on timber harvest operations. Its impact on the potential yield of the Tongass National Forest and state and private forest is incalculable given the intermesh of streams on the best timber growing lands. We believe it is safe to say that ADF&G has no notion whatsoever of the adverse job impact of this particular section.

Sixth. We believe it inappropriate for these regulations to be promulgated prior to the time that the regulatory reform regulations are completed. The regulatory reform regulations (which are presently in draft and upon which public comment is still being received) are the umbrella regulations under which the habitat regulations will be included. To attempt to draft these subordinate regulations before the umbrella regulations are completed will simply mean that ADF&G will have to go back later and amend these regulations to conform to the regulatory reform regulations. To make the process work in an orderly manner, we recommend that you suspend this rulemaking process until such time as the regulatory reform regulations are completed.

We have the following specific comments regarding the various sections of the proposed regulations:

1. 5 AAC 95.001. Findings.

A. Subsection (b) states that the Legislature has set aside "various land and water areas of the State" where fish and game is entitled to a higher degree of protection than afforded other areas. The next sentence states that among legislatively designated areas are "specified fish streams." AS 16.05.870(a) provides for specification by the Commissioner of ADF&G of "the various rivers, lakes and streams or parts of them that are important for the spawning or migration of anadromous fish." Thus, it is incorrect to say that specified streams are legislatively designated: the Legislature has set up a mechanism by which the Commissioner may designate streams.

More important, the authority with respect to specified streams is limited in AS 16.05.870(b) to activities within the "natural flow or bed" of a specified river, lake or stream. Accordingly, the findings are incorrect in stating that the Legislature has set aside land areas by providing for the specification of fish streams. Therefore, we challenge every attempt in the habitat regulations to prescribe ADF&G management of banks and land based activities beyond the banks whether or not we have made specific reference to the Sections in which the prescriptions appear.

B. We challenge the statement of subsection (f) of .001 that "the susceptibility of fish and game to damage requires the promulgation of uniform standards." The very next sentence states that "because of the wide variation in habitats, there must be a means for accommodating unique individual circumstances." We agree with the latter sentence and disagree with the former. What should be maintained is maximum flexibility for ADF&G professionals to determine what is needed on the ground.

Even though ADF&G does not have the authority to require anything on the banks or surrounding riparian land, we in the timber industry have always reached agreement with ADF&G with respect to activities in these areas. This clearly shows that there is no need for uniform procedures - we have been working with the fish and game managers on banks and riparian lands without any requirement that we do so for a long time. What is needed is professionally determined site specific determinations of how operations could best take place with minimum impact on the surrounding environment. Accordingly, we recommend striking the first sentence of subsection (f).

C. We disagree entirely with the last sentence of subsection (g) of .001 which makes the Orwellian statement that a permit system is best for providing flexibility. As stated, without ADF&G having any authority whatsoever, we have worked with the department to protect site specific environments as requested by ADF&G biologists. It is my understanding that your department thinks that we have done a good job in protecting the environment. Accordingly, this belies the statement that a permit system is needed at all. It boggles the mind to read that a permit system would provide flexibility. The long and complicated regulations set forth in this chapter make it clear that that is not the case. These regulations will make it impossible for operators and biologists to know what to do. We submit that these regulations will therefore harm, not help, the environment.

D. Subsection (h) is a hive of inconsistencies. On the one hand, the first sentence talks about minor impacts and the second sentence talks about general permits to accommodate and minor impacts. On the other hand, the third sentence seems to take the opportunity to obtain general permits by calling for individual permits on a case-by-case basis. We recommend the deletion of subsection (h) entirely.

2. 5 AAC 95.002. Purposes.

A. We object to the use of the phrase "land and water use" as found in subsections 1 and 2. As previously stated, ADF&G does not have such extensive authority.

B. Subsection 2(A) says that the regulations must provide for "unobstructed passage of fish". Use of absolute words like "unobstructed" are unwise, since theoretically anything could be considered an obstruction. The word should be deleted.

C. Subsections 2(B) and (D) state that there should be uniform standards dealing with certain land-based activities. Again, ADF&G does not have authority to make regulations in this regard.

3. 5AAC 95.020. Activities in Streams and Rivers Frequented by Fish.

A. This subsection and .030 require plans to be approved by the department if certain listed activities are undertaken. It is a mechanical system: the sole issue being whether or not the proposed activity is covered in the lists of activities set forth in the subsections.

In fact, AS 16.05.870(c) states that "[I]f 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 ... ." Accordingly, it is appropriate to use a mechanical system. The regulations should contain a section describing under what circumstances the commissioner will "determine" that the plans and specifications for the activities listed in this subsection and subsection .030 are needed. It is all right to have a mechanical system to describe what activities will trigger the notice requirement. However, these regulations are insufficient and illegal to the extent they seek to make mechanical a situation in which the law requires the commissioner to exercise his discretion.

B. This section provides that certain activities in streams or rivers "frequented by fish" cannot take place without plan approval. In 5 AAC 95.990(8), "frequented by fish" is defined to mean "at any time in the determination

of the department, containing resident or migratory fish." A stream must be specified under AS 16.05.870(a), in order for it to be subject to AS 16.05.870(b) and thus subject, to these regulations. It is our recommendation, therefore, that the term "frequented by fish" be stricken and that the words "specified" be placed in front of the word "stream or river" in the third line of this section.

C. This section also states that activities cannot take place in "portion of the flood plain which is covered by the mean annual flood." Again, the Department does not have authority under the cited statutes to control land based activity.

Even if there were such authority, how is a timber operator on the ground to determine what portion of the flood plain is covered by the mean annual flood? Viewed from this perspective, the regulation simply is impractical.

D. Subparagraph 2 of 95.020 states that plans need to be submitted in order to build certain cross channel structures. We submit that a Corps of Engineers permit would be needed for any of these structures in navigable waters. ADF&G would have a right to comment upon the proposed plans within the Corps of Engineers permitting process and could certainly disapprove them if they were unsatisfactory. What thought has been given to coordinating the need for Corps permits with these requirements in order to eliminate duplication? This issue would be easier to address if consideration of the draft of these regulations were held off until such time as the regulatory reform regulations were promulgated.

4. 5 AAC 95.030. Activities in or Affecting Anadromous Fish Streams.

A. This section precludes certain activities from taking place without a permit "in water specified as important to anadromous fish." Does this mean waters specified in accordance with AS 16.05.870(a)? We would submit that the only legal way to bring waters within the regulations is to specify them as required by AS 16.05.870(a).

Furthermore, to do otherwise would leave it to the timber operator to determine what streams are important to

anadromous fish and which are not. There is no way that this burden should or can legally be shifted to the timber operator inasmuch as he or she does not have the expertise to make this determination as AS 16.05.870(b) only authorizes regulation of specified streams.

B. This section includes tributaries of anadromous fish streams within the definition of waters important to anadromous fish. There is no authority whatsoever in Title 16 to require a timber operator to guess which streams are tributary to an anadromous fish stream. Under AS 16.05.870(a), ADF&G has the right to specify tributaries as waters important for the spawning or migration of anadromous fish. Such designation causes tributaries to become specified streams and thus, subject to your regulatory authority. Anything short of specification as provided in AS 16.05.870(a) would fail to make that stream subject to these regulations.

C. Section 95.030 provides that certain activities in waters important to anadromous fish cannot take place without a permit if those activities "may result in pollution or a change in the natural flow or bed of the anadromous fish stream." The addition of the word "may" goes far beyond the authorization of the regulatory power found in AS 16.05.870(b). That section states that notification must be given if a person "desires to pollute." In other words, it requires a much closer nexus between the activity and pollution than the word "may" provides. Use of the word "may" requires the timber operator to speculate as to what may or may not result from a particular activity.

Usually such determinations are made by biologists on the ground who work with the operators to make certain that their activities do not have adverse consequences. This is the existing situation which we are trying to maintain. We do not intend to allow the ADF&G to switch the burden of making such determinations to the timber operators who lack the necessary expertise. Determining under what circumstances pollution may or may not occur, is simply not within their ability to do. It is ADF&G's job and can only be carried out by professional managers making on the ground decisions.

D. Under subsection 2, a permit is needed if activities are going to take place within the annual flood plane. As previously stated, ADF&G lack the authority under the law to regulate land based activities.

Furthermore, the state has certification authority under section 404 of the Federal Water Pollution Control Act to control such dredging and filling. Accordingly, it appears that this provision will result in duplication of regulatory control.

E. Subsection 5 requires submission of plans and specifications for "use of any log dragging equipment." As written, this would seem to mean that any time an operator intended to use log dragging equipment anywhere on the operation, submission of plans would have to be submitted. Again, this is a land based activity outside ADF&G's legal authority to regulate.

F. Subsection 7 requires submission of plans and specifications for construction "at the bank of the stream, river or lake." Again, you do not have authority to regulate activity on the bank of the stream, river or lake. Furthermore, even if you did have such authority, the word "bank" is an extremely vague term. It could, theoretically, extend to all riparian uplands. Would it not be better to specify a zone alongside the stream in which activity would be regulated?

G. Subsections 9, 10, 11, 12, 13 and 14 are objected to as attempts to regulate land based activity which ADF&G is not authorized to do under AS 15.05.970 or any of the other listed statutes.

5. 5 AAC 95.070. General Permits.

This section provides for general permits with respect to certain named areas. However, the criteria for obtaining a general permit is not spelled out. It would seem that general permits could be issued on a "logging show" basis. This would save biologists the necessity of stream by stream analysis for habitat protection. Instead, a series of rules for an area could be decided upon and set forth in a general permit. Where special streams need special protection, they could be looked at by ADF&G biologists apart from the general permit. We believe that this section should be written to so provide.

6. 5 AAC 95.90. Uniform Application Procedures.

A. This section provides that if the notice provided to DNR by a timber operator under AS 41.17.090 contains certain information which is specified in subsection (b) of this section, then a timber operator does

not also need to provide notice. As written, this would require the operator to compare the DNR form to subsection (b) of this section in order to make sure that all of the subsection (b) information were included. This results in no time saving for a timber operator at all, and in fact, subjects him or her to sufficient risk that all the important information is not included such that a prudent operator would simply use both forms to apply. The responsibility for making sure that the information provided on each form is sufficient lies with the agencies themselves and not with the timber operator.

B. Subsection 90 is in conflict with sections 20 through 40. The latter subsections state that the proposed activity cannot be undertaken unless there has been prior approval by ADF&G of plans for the proposed activity. Section 90 says that in addition to obtaining plan approval, one must have a permit. Can one assume that by obtaining plan approval, one can receive a permit? Or, are there other things that must be done in addition to submitting the plans and obtaining approval which are necessary to obtain a permit?

7. 5 AAC 95.100. Permit Conditions and Assignments.

This section allows the deciding officer to put terms and conditions which he believes are necessary into the permit. At a minimum, the deciding officer should provide written reasons for adding any such conditions. Otherwise, one could not effectively appeal such a decision.

8. 5 AAC 95.110. Reconsideration of Denials.

This section provides that reconsideration would be allowed if the applicant provides new factual information. We suggest that reconsideration also be allowed where legal reasons are advanced by the applicant.

9. 5 AAC 95.120. Amendments to the Permit.

A. Subsection (a) does not explain when a change is sufficient to require an amendment. There should be language explaining this.

B. The second sentence of subsection (b) is poorly worded. It states that the "Department will require a

maximum of 30 days to review a request for amendment after receipt of all necessary information in the appropriate regional office." This sentence should be changed to read "The Department will review a request for amendment within 30 days of receipt of all necessary information in the appropriate regional office."

What is all necessary information? It would seem that all necessary information would be provided in a completed application described in 5 AAC 95.90(b).

10. 5 AAC 95.170. Application of Standards.

Subsection (a) makes the standards of Sections 180 through 260 applicable to "rivers, lakes and streams frequented by fish." As stated in our response to 5 AAC 95.020, as found in paragraph 3(a) of our response, "frequented by fish" as defined would have to mean streams specified under AS 16.05.870(a). Since AS 16.05.870(b) limits the authority of the Department to specified streams, if the term "frequented by fish" does not mean what we say, then the Department simply has no authority to extend the regulations as provided in 95.170. In other words, unless "frequented by fish" is defined to mean "specified under AS 16.05.870(a)", then there is no authority in the Department to regulate. For this reason, we would again suggest that the term "frequented by fish" be stricken and that the word "specified" be placed in front of the words "rivers, lakes and streams" in the third line of this section.

11. 5 AAC 95.180. Adherence to Standards.

Subsection (b) as a practical matter, requires the permittee to remove installations not in accordance with the provisions of the permit or this chapter which pre-existed the permit and the chapter. The impact of these regulations should only apply prospectively. We should not be required to remove installations, which although once legal, do not now comply with the regulations. A grandfather clause should be written in.

12. 5 AAC 95.190. Standards for Free Passage and Protection of Fish.

A. Subsection (a) calls for "free passage" and movement of fish. What is the difference between free passage and free movement? "Movement" seems to be simply an added word conveying no discreet meaning. Accordingly, we recommend that it be stricken.

B. Subsection (b) provides for scheduling of certain "instream" activities. Our experience has been that the building of bridges -- even during spawning periods -- can be accomplished without undue disturbance to the fish. Once a structure such as a bridge, or a wide culvert is in place, we have observed that fish seem to pay very little attention to it.

C. Subsection (c) says that blasting is prohibited within one-eighth of a mile of the water line of any river, lake or stream, unless otherwise permitted in the permit. Section 95.030(8) says that blasting cannot be undertaken unless plans and specifications have been submitted to and approved by the Department. Why is this matter covered twice?

Furthermore, industry experience shows that techniques such as sequential blasting substantially reduce concussion. The Du Pont Company has demonstrated that good practice can reduce the distance between the blasting area and the water. Accordingly, we urge you to reconsider the one-eighth mile distance in favor of result oriented goal statement.

13. 5 AAC 95.200. Culvert Installation Standards.

A. The requirement for the burying of culverts as set forth in Subsection (a) is unnecessary. It is not the present practice to bury culverts to a six inch depth. Such a practice could result in adversely affecting fish habitat. At present, an operator considers the size of the stream bed and specifies a culvert of length and size sufficient for fish passage to occur at a water velocity acceptable except for periods of peak flow. In addition, culverts are presently placed to match natural river or stream flow.

B. Subsection (b) specifies a table to be followed by the field operator. The maximum allowable culvert velocities are much too low, especially when one considers that there are peak flow periods when such velocities are naturally exceeded.

C. Subsection (c) provides that no realignment may occur, even if a stream is not a fish stream. All tributaries and feeder streams should be available for realignment to accommodate installation. In these cases, the water quality is of the highest concern and such realignment, usually, enhances water quality.

D. Subsection (e) simply states that installation of a culvert may not occur if there is a spawning or rearing site through which a road has been designed. Certainly there are situations where such culvert installations would result only in a diminimous reduction of fish habitat. Accordingly, we believe that this section should be qualified.

14. 5 AAC 95.220. Stream, River and Lake Banks Stabilization Standards.

A. Subsection (a) precludes any activities which "may affect" the banks of streams, rivers and lakes. Again, ADF&G does not have authority under AS 16.05.870(b) to regulate activity on banks of streams, rivers, or lakes; particularly on banks of unspecified streams, rivers or lakes.

Furthermore, anything may affect the banks of streams, rivers and lakes. Accordingly, this phrase is overly broad and simply should be deleted.

B. Subsection (d) states that only rocks, cribbing, or material provided by the Department could be used for stream bank stabilization. What about grass seed or vegetation? Why should they not be specified in this section?

15. 5 AAC 95.230. Stream, River and Lake Bed Stabilization Standards.

A. Subsection (a)(2) states that a person has to be in compliance with terms specified in the permit "which the department considers necessary for free passage and protection of fish ..." The underlined phrase should be changed to "which are reasonably necessary." While we have no doubt that the department will act within reason, there is no reason to broaden its discretion beyond that.

B. Subsection (b) flatly states that no person may channelize a stream frequented by fish. Again, to solve a particularly difficult engineering problem, this may be the wisest thing to do. This, of course assumes that environmental standards can be met.

C. Subsection (d) states that no person may conduct activities which can act to create potential fish entrapment basins within portions of the flood plain. As previously stated, ADF&G lacks the land based authority under AS 16.05.870(b) to regulate actions within the flood plain. Furthermore, even if such authority did exist, this section is too vague and requires too much speculation to be practical.

E. Subsection (e) states "each berm created in an anadromous fish stream must be contoured to the natural slope as it existed prior to the creation of the berm." It is difficult to understand precisely what this means. 5 AAC 95.990(3) defines berm to mean "an artificially raised margin, bar or other deposit composed of earthen materials, which interrupts the natural configuration of the adjacent terrain." Accordingly, it would appear that to the extent there is any raised deposit of material of any kind, whether detrimental or non-detrimental, it must be changed to the pre-existing contours. This, in turn, means that those contours must be charted by a baseline study before operations begin. This is an absurd make-work type result which is simply unconnected to any environmental protection whatsoever. This section should be rewritten to require berms to be eliminated where necessary to protect the environment. Returning to natural contours has been rejected in every rulemaking and legislative process of which we are aware. The reason is that the expense is not related at all to the environmental benefits to be derived.

F. Subsection (g) requires that bridge pilings be cut off level with stream bottoms upon removal. When culverts are removed, channels are to be restored to original configurations. Both of these costly requirements may be necessary in individual instances. However, the goal should be that when an area is left, there will be no environmental damage to the fish. We can foresee any number of instances where meeting the requirements of Subsection (g) would cause more environmental damage than doing nothing. Furthermore, it is impossible to restore a channel to its "original configuration." How is the original configuration to be determined? It may well be that returning to its original configuration provides no environmental advantage whatsoever, yet the operator would still be required to undertake the cost of meeting this requirement.

16. 5 AAC 95.240. Water Quality Standards.

There is no reason for ADF&G to address itself to water quality standards since this is a function of DEC. Accordingly, we believe this entire section should be deleted.

17. 5 AAC 95.250. Shoreline Standards.

Notwithstanding its confusing language, this section seems to provide for buffer strips along all streams. As a policy matter, the ALA opposes such a standard. We certainly recognize in particular cases buffer strips may be required. However, to require them in all cases is regulatory overkill and cannot be supported on environmental grounds. We think it far better to follow the forest service approach of setting up streamside management zones within which there would be special protection. Therefore, we believe that this section should be rewritten to accord with the Southeast Area Guides.

18. 5 AAC 95.910. Waiver or Alteration of Procedure Standards and Permit Conditions.

Subsection 3 of this section provides that waivers may be granted where the standards set forth in a regulation are not applicable due to unique individual stream or land features. This leaves it up to the operator to prove that the stream or land features are unique. It will be far better to employ the type of system we have talked about throughout this response to the regulations. The biologists and the operators should work out standards which will provide environmental safeguards to specific, on-the-ground situations.

19. 5 AAC 95.930. Retention of Permit for Inspection and Inspection of Permit Sites.

Subsection (b) requires that a permittee must give law enforcement officers free and unobstructed access "at all times" to the permit site. We believe it inappropriate for there to be such access except where the timber operator or its designated representative is available to accompany law enforcement officers around the site.

20. 5 AAC 95.970. Waters Important to Anadromous Fish.

The last sentence of this section attempts to extend the provisions of the chapter to tributaries of anadromous fish streams. As previously stated, there is insufficient authority in law for such an extension to be made. ADF&G is only allowed to regulate streams specified under AS 16.05.870(a). Accordingly, we recommend that the last sentence of this section be deleted.

21. 5 AAC 95.990.

A. Subsection 2 defines an anadromous fish stream as a stream which is or "may at any time be important to the spawning, rearing or migration of anadromous fish, and includes all sloughs and backwaters adjoining the listed waters, and that portion of the flood plain which is covered by the mean annual flood." Section 870(a) makes no provision whatsoever for streams which may become important to spawning, rearing or migration of anadromous fish. The 870(a) list only applies to streams "that are important to the spawning or migration of anadromous fish." (See AS 16.05.870(a)). Thus, the phrase "may at any time" should be deleted as exceeding ADF&G's authority under the law.

Again, the inclusion of sloughs, backwaters, listed waters and the flood plain go way past the legal authority set forth in 870(b) and should therefore be eliminated.

B. Subsection 3 defines "berm" to mean an artificially raised margin, bar, or other deposit composed of earthen materials which interrupts the natural configuration of the adjacent terrain." This definition is going to be truly difficult to apply. What does artificially raised mean? What does interrupts a natural configuration mean? We recommend that this definition be eliminated. (See our other objections to this issue in Paragraph 15 E. of this response.)

C. Completed application is defined to mean "all of the information necessary for the department to issue, condition, or deny permit". How much information this will be or how many exchanges of correspondence or meetings it will take to provide it are anyone's guess. Accordingly, the use of this phrase which puts the burden on the operator

to determine the information needed, is totally unfair. In the first place, it gives the department the opportunity to hold up processing of any permit for as long as it can conjure up a need for additional information. Furthermore, in 5 AAC 95.090, it stated that "each applicant for habitat protection permit must submit a completed application on a form or in a manner approved by the department. The notion that one can submit all of the information that must be ultimately required is nonsensical. We recommend that the term completed application be defined as "the form provided by the department which is fully answered to the best of the applicant's knowledge." This definition puts the burden on the department to ask the right questions in the first place and provides that the form will be considered to be completed if the applicant has answered all the questions asked.

D. Subsection 8 defines "frequented by fish" to mean "that any time in the determination of the department, containing resident or migratory fish." As we see it, this phrase should only be used in connection with regulations designed to implement AS 16.05.840 which requires construction of fishways where a dam or other structure is built across a stream frequented by salmon or other fish.

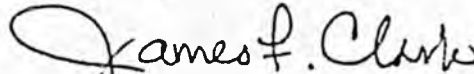
#### CONCLUSION.

Thank you for the opportunity to respond to the habitat permit regulations. As stated, our major concern is that for no apparent reason, ADF&G is, by these regulations, attempting to exchange a working management system based upon use of professional management for a prescriptive system that is universally opposed by industry and probably by a number of your own biologists. The regulations in their present form violate the Forest Practices Act and go beyond the authority which the legislature gave ADF&G and the Boards of Fish and Game in Title 16. Finally, we believe it inappropriate to promulgate these regulations prior to completion of the umbrella regulations which are

Chief Richard Logan  
March 24, 1981  
Page Twenty

now in draft in connection with regulatory reform. For all these reasons, we urge you to withdraw these regulations. We will work with you to help obtain the authority and budget you need to protect fish and game resources, but this is not the way to do it.

Very truly yours,

A handwritten signature in cursive script that reads "James F. Clark". The signature is written in dark ink and is positioned above the typed name.

James F. Clark

JFC:sd

TO: Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

DATE: March 10, 1981

FILE NO:

TELEPHONE NO:

FROM: Captain Wayne A. Fleck *WAF*  
Captain Frank W. Sharp *FWS*  
Div. of Fish & Wildlife Protection  
Department of Public Safety  
P.O. Box 6188 Annex  
Anchorage, Alaska 99502

SUBJECT:

Habitat Proposals

BOARDS OF FISHERIES & GAME

RECEIVED

MAR 13 1981

DEPARTMENT OF FISH & GAME

The following are our comments on the proposed habitat protection regulations which you are scheduled to consider in April 1981.

Page 3, Article 2, Section 5AAC 95.020:

We suggest the first paragraph of this proposal be amended by adding the word "lakes" after rivers in line 1 and the word "lake" after river in line 3.

In our habitat enforcement efforts we frequently encounter construction or other activities along lake shores which we believe are equally valuable to fish as spawning or general use habitat. In order to pursue any legal action against activities in these areas we request these amendments be included. They do appear in related proposed regulations which appear later in the pamphlet.

Page 4, Article 2, Section 5AAC 95.040(a)(1):

We suggest this section be amended to include "floating houses" and "permanent tent frames" specifically if it is your intent to include all types of construction generally encountered in critical habitat areas. Other agencies have encountered confusion and enforcement difficulties in covering these type of structures in restricted areas as courts have held that these type of structures are not included in the meaning of "buildings and cabins".

Since we currently have a considerable amount of use of these types of structures in Alaska already, we wish to anticipate possible future enforcement problems.

Page 7, Article 2, Section 5AAC 95.065(b):

We suggest the end of the last line of this paragraph be amended to include the words "and to the Department of Public Safety".

While we're not sure what all the DNR benefits are at this point we believe that since the word "department" is defined as the Department

*PC/1*

Board of Fisheries and Game  
March 10, 1981  
Page 2

of Fish and Game and that since we are charged with the enforcement of the "departments" regulations that we should also have the same "right of inspection, reporting or entry" as the "department".

By specifically adding this amendment we will avoid any legal argument of the necessity of our having to acquire a search warrant prior to accompanying habitat personnel or solely "inspecting" or "entering" premises covered by this section.

Page 8, Article 2, Section 5AAC 95.080:

We suggest amending the end of this section by adding "or State law enforcement".

Our department occasionally must cross some waters covered by this section in emergency or routine enforcement activities and we wish to be exempted from the permit requirements to avoid possible legal entanglements that could arise thus compromising our position/operation. These crossings are generally rare and are done with a great deal of care and common sense.

This completes our comments on these proposals. Thank you for your consideration.

WAF:FWS:kdr

cc: Colonel Stickles  
Captain Sharp  
Greg Cook, Executive Director —

PC/2

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

JAY S. HAMMOND, GOVERNOR

BOARDS OF FISHERIES & GAME  
**RECEIVED**

SOUTHCENTRAL REGION

P.O. BOX 507  
VALDEZ, ALASKA 99686  
PHONE: 835-4322  
242S-2211

MAR 11 1981

March 9, 1981

DEPARTMENT OF FISH & GAME

Alaska Department of Fish and Game  
Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Re: Draft Habitat Protection  
Regulations

Gentlemen:

In response to your solicitation of comments on the referenced draft regulations, I would like to submit the following points for consideration:

1) Page 3, 5AAC 95.020 - The title to this section is misleading for two reasons. First, it implies that this section only applies to streams, when the intent, according to the preceding Section 002 (Purposes), is to apply the section to streams, rivers, and lakes. Second, the title to the section implies that it covers all waters frequented by fish, when in fact the section only applies to waters other than those important to anadromous fish.

To clarify the situation, the title could be changed to read "Activities In Waters Frequented By Fish Other Than Waters Listed Pursuant To Section 970 Of This Chapter."

Also, to be consistent with Section 190(c), blasting within 1/8 mile of the water should be listed in Section 020 under the activities requiring approval.

2) Page 4, 5AAC 95.030 - The title to this section also erroneously refers only to streams, and fails to refer to the definition of anadromous waters found in Section 970. To resolve these shortcomings, the title could read "Activities In Or Affecting Anadromous Waters As Defined By Section 970 Of This Chapter."

3) Page 6, 5AAC 95.060(a) - This section should specify that the term "plans and specifications" is defined in Section 90(b). Otherwise, some people will read only as far as Section 60(a) before assuming that a set of plans will suffice for a permit application.

4) Page 6, 5AAC 95.060(d)(1) - Some provision should be made to allow mitigative measures, which are designed to alleviate unforeseen adverse impacts, to proceed without requiring another permit to implement them. This could be a field level decision by an ADF&G biologist.

5) Page 10, 5AAC 95.120 - This section should contain a clause allowing an ADF&G field biologist to orally amend a permit on site provided a written amendment is procured later within a specified time.

6) Page 14, 5AAC 95.200(a) - The way this now reads, a culvert would have to have a 0 or reverse slope. It should be reworded to read "Each culvert placed in a river or stream frequented by fish must be installed so that at least one-fifth of the diameter of each round culvert and at least 6 inches of the vertical span of each elliptical or arch type culvert is placed below the stream bed at both inlet and outlet."

200(b) - Some provision should be made for allowing culvert velocities in excess of those found in the tables when such velocities do not exceed natural velocities by more than 10% or so. It is a paradox to request an agency to install a culvert so that velocities are below natural velocities.

7) Page 15, Culvert Velocity Tables - Rainbow and Cutthroat trout are not represented in these tables.

8) Page 16, 5AAC 95.200(b)(4) - This requirement should be altered to allow the use of baffled culverts in lieu of standard culverts if the recommended velocities cannot be achieved.

200(c) - This requirement is counterproductive in that it dictates longer culverts despite the fact that longer culverts hinder fish passage. In many cases this will result in unrealistic demands to actually slow down the natural stream velocities within the culvert.

9) Page 19, 5AAC 95.230(g) - A drainage structure is a culvert or similar structure, and removal of such has nothing to do with extracting or cutting bridge pilings. The passage could be reworded to read "During removal of temporary structures, bridge pilings...".

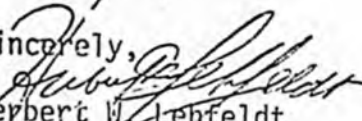
10) Page 22, 5AAC 95.910 - Delegation of authority should be distinguished here so that the ADF&G field biologist or area offices can perform this function.

pc/4

March 9, 1981

I hope these suggestions will help in the preparation of final regulations which will not only benefit the various fisheries resources but will also prove compatible with the requirements of other state agencies and the needs of the public.

Sincerely,

  
Herbert W. Lenfeldt  
Chief Engineer  
DOT/FF-Southcentral Region

HWL/MH/b

PC/S

# G.N. McDonald and Associates

P.O. BOX 10-2022  
ANCHORAGE, ALASKA 99511  
(907) 344-9978

BOARDS OF FISHERIES & GAME

RECEIVED

MAR 16 1981



March 13, 1981

DEPARTMENT OF FISH & GAME

State of Alaska  
Board of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Re: Comments on Proposed Regulations Governing Fish & Game Habitat  
Protection

Gentlemen:

In these comments I'll be critical of some aspects of your regulations. However, these are certainly an improvement over the historical situation. I sincerely believe that eventually we will have sufficiently accurate guidance so that the engineering designer knows what is expected of him.

5 AAC 95.001 In paragraph (e) you talk of "consistency in regulatory activities". This is good because a planner needs to know at an early stage what the costs of meeting environmental regulations are. He needs a stationary target. However, I am disturbed with the language of paragraph (h) which sounds like we may have different strokes for different folks.

5 AAC 95.002 Purposes. I am left feeling that your aim is to stop the on going natural geologic processes of erosion and to remove natural obstructions to fish passage. I think paragraph (3) sounds much more realistic in that it specifically addresses the effects of man made alteration.

5 AAC 95.002 The word 'stream' needs defining. How much of the tidal mouth do you consider? Do you consider intermittent streams (grayling pasture)? What about the streams which, although not utilized by fish can provide a source of unwanted sediment. What about groundwater flow to overwintering areas?

5 AAC 95.020 The definition of 'mean annual flood' provided is very loose. The vegetation limits do, in humid temperate areas, provide a general guidance as to the mean annual flood level. However, in Alaska the vegetation line, if one can be found, can range widely. I believe reliance on vegetation opens up a wide area for argument. A better definition might be the mathematical one, "A flood stage which on the average is exceeded during one half of the years. Note that I have said 'stage', meaning height, not discharge. That is because in many of our streams the maximum stage is controlled by ice and ice jams, not open water floods. If you are concerned with open water discharge conditions and not ice you should substitute 'discharge' for 'stage'.

PC/6

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In any event, you will find that estimating mean annual flood stage or discharge is no easy job. You should be prepared to assist the applicants. Since the Federal agencies are required to use the methods promulgated in Technical Bulletin 17A, I suggest the State adopt the same procedures. Perhaps ADF&G could develop their own 'cook book' using these procedures for small, ungedged streams.

If you are still intent on shortcutting the statistical approach and tying the mean annual flood to a morphological feature you will find the tops of the point bars a better estimator of mean annual flood than the vegetation line.

5 AAC 95.020 This paragraph seems to allow structures that do not cross streams but may increase velocity such as levees, dikes and groins.

5 AAC 95.030(2) Annual floodplain is not defined.

5 AAC 95.080 This section waives regulations for firefighting activities. Perhaps a similar waiver, or coordination procedure, is necessary for flood fighting activities when life and property are at stake. Note that many of the flood fighting activities conducted in Fairbanks during the 1967 flood would have been in technical violation of these regulations. Perhaps what is needed is an emergency coordinator to the State Disaster Office with the authority to advise and waive regulations.

5 AAC 95.90 The application procedures should provide for a method of a binding conceptual approval of preliminary plans. This would, for the applicant, allow firm conceptual approval without the cost of preparing detailed plans. For the State it would provide a way of guiding the applicants work at an early and flexible stage.

5 AAC 95.100 The permit conditions should specifically address provision for maintenance and eventual abandonment of instream works. For instance, consider Alyeska's spur dikes. At some future date, when the oil is gone, they will want to abandon their works and go out of business. At that time the stream will have adjusted to the river training. How will you propose either to remove or maintain the works? A commitment should have been part of the original permit consideration.

5 AAC 95.200 The term, "Maximum Allowable Culvert Velocity" needs defining. In most culvert cases you will encounter the point water velocity varies substantially, both along the length of the culvert and through any cross section. The extreme point velocity may be several times the mathematical average of all points within the culvert. I think you need to go back into the experimental data and see what the investigator was calling 'average velocity'. I expect you will find most experiments were done with full pipes which is not a realistic case.

PC/7

State of Alaska  
March 13, 1981  
Page Three

Computing the average velocity in a culvert, regardless of the definitions, is no easy chore. The existing engineering methods are designed for the case of larger floods with higher flows and are not usually applicable to your low flows. Another problem is the lost area and change in average roughness caused by the required burial depth. What is needed is a task force to develop a workable engineering procedure to develop the numbers you need. Since you created the regulations you should create the procedures. They should be simple enough so that any reasonably intelligent dirt stiff can apply them. As an alternative, you might provide your technical service to evaluate designs for the applicants.

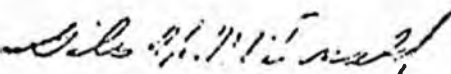
The table of swimming velocitys provides seasonal need data. Procedures for estimating the seasonal flood frequency should be developed. Note that a mean annual flood has a return period of 2.33 years only with certain population distributions. For the federally mandated distribution, the distribution would be extremely skewed to have a 2.33 year return period. I suggest the term ( $Q = 2.33$ ) be struck.

The manuals referenced in paragraph 5 do not by themselves provide sufficient data to design a fish culvert meeting your regulations. Further guidance and procedures are required.

5 AAC 95.210 The design dimensions of diversion channels should reflect the period of use intended, and the consequent risk considering the erodeability of the materials through which it is excavated. Such terms as 'bed and banks that will not significantly erode' are meaningless. All material in alluvial stream beds will, by definition erode. Any hydraulic criteria for diversions should consider the slope of the channel. For instance a diversion across a meander neck may have a slope about twice that of the natural channel it replaces.

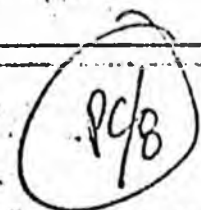
Stream power is often considered to be one of the best indicators of the likelihood and rate of erosion. Perhaps an allowable change in stream power at the design flood for the diversion period may provide a meaningful criteria. Stream power is defined as the sheer stress acting on the bed times the average velocity. This value is quite easily calculated. It has the dimensions of foot pounds per second per square foot and is an indicator of the rate at which work is being done on the stream bed.

Sincerely,

  
Giles N. McDonald P.E.

cc: Carl Yanagawa  
ADF&C  
333 Raspberry Rd.  
Anchorage AK 99502

GNM/jan



3-13-81

DEAR SIR:

THE KENAI SOLDOTNA FISH AND GAME  
ADVISORY COMMITTEE HAS LOOKED AT THE  
PROPOSED REGULATIONS GOVERNING  
FISH AND GAME HABITAT PROTECTION.

WE AGREE WITH THE CONCEPT BUT  
THINK THEY ARE TOO RESTRICTIVE &  
CERTAIN PARTS ARE UNNECESSARY.

IF PASSED EACH CASE SHOULD BE LOOKED  
AT CASE BY CASE.

THANK YOU  
J.D. Hinkle  
CHAIRMAN  
KENAI SOLDOTNA  
FISH & GAME COM. M.

PC/9

Juneau Ready-Mix

P.O. BOX 270  
JUNEAU, ALASKA 99802

Hildre Sand & Gravel Co.

907-586-3412  
907-586-1313

March 18, 1981

Board of Fisheries  
Support Building  
Juneau, Ak

Re: Proposals for Title 5,  
Part 6 - Chapter 95

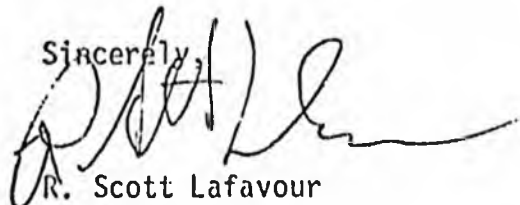
Gentlemen,

It is very exasperating to try to keep up with ever increasing regulatory policies. With reference to the proposals above, many concerns are already covered by Dept. of Environmental Concern - Coastal Zone Regulations, local government regulations and Corps of Engineers as well as Federal E.P.A.,

Our suggestion is to have "Habitat" submit proposals not covered by other agencies, and then coordinate a permit with the above agencies.

Right now we are operating with a Corps of Engineers Permit - Federal E.P.A. Permit - Fish & Game approval and pending D.E.C. approval. It would seem that enough is enough!

Sincerely,



R. Scott Lafavour  
Assistant Manager

pc/10

P.O. Box 71  
Petersburg, Alaska 99833  
March 18, 1981

Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Dear Sirs:

I appreciate the opportunity to make comments on the draft of proposed habitat protection regulations. I would have liked a longer period to review these but will at this point offer a few suggestions.

Article 2. Habitat protection permit system, 5AAC 95.020, 030 and 040.

I consider it dangerous to exclude activities not listed in this section from the need for written approval or notification. Unanticipated activities may arise in the future and without procedures for approval or notification, there will be no way to control them. There is no way to predict what may come up in the future. Some provision needs to be written into the regulation to provide for new developments.

5AAC 95.065 (a) (2)

It is most important that this section requiring ADF&G authorization of DNR permits be retained.

I am particularly concerned that Fish and Game have more influence over Department of Natural Resources permits involving tidelands and estuaries important to fish and wildlife. Log dumping, log rafting and log storage areas come immediately to mind. There are numerous non-conforming log handling areas scattered throughout southeast Alaska yet these permits continue to be authorized.

I would like to see this section expanded to require ADF&G authorization for projects in salt water bodies such as bays that are important to fish and wildlife that are also being adversely affected by log handling and soon to be affected by mining.

Article 3. Standards of General Application to Fish Habitat. 5 AAC 95.170 should be expanded to include estuaries and bays necessary as fish habitat.

Sincerely yours,

*Dixie M. Brade*  
Mrs. Dixie M. Brade

PC/11

MINUTES

FAIRBANKS  
Advisory Committee

Place of Meeting: CHAMBER COMMERCE BLDG.

Date of Meeting: 7:30 PM 3-11-81

Members Present: HALEY, KESNER, DIXON, McCARTY, BURGGRAF, WOOD AND WAUGAMAN  
MEMBERS ABSENT: SCARBOROUGH, BUIST AND MATSCHKE

Others Present: LARRY JENNINS ADF&G GAME DIVISON, SCOTT GRUNDY ADF&G HABITAT FBKS.  
OFFICER L. BEHAN F&WP  
RICK SUBSISTION SECTION FAIRBANKS.  
RON STANEK ADF&G SUBSISTENCE SECTION ANCHORAGE  
BOB TOBEY ADF&G GLENMADEN

Changes in Membership (additions ore deletions):  
(Please include addresses for new members)

Subjects Discussed and/or Action Taken:

MEETING CALLED TO ORDER BY BYRON HALEY SEC. AT 7:40 PM MARCH 11, 1981.  
MINUTES OF LAST MEETING WERE READ AND APPROVED (MEETING OF MARCH 4, 1981 )  
OLD BUSINESS: HALEY REPORTED ON SUBSISTENCE COMMITTEE AND THEY ARE STILL WORKING ON A  
SUBSISTENCE PAPER FOR THE FISH BOARD. HAD A DISCUSSION ON PISON AND BROUGHT MR. WAUGAMAN  
UP TO DATE ON THE PISON AND OF THE VIEWS OF ARE COMMITTEE.  
NEW BUSINESS:  
MR. RON STANEK OF ADF&G SUBSISTENCE SECTION ANCH. GAVE A PRESENTATION ON SUBSISTENCE USE  
OF THE MELCHINA CARIBOU HERD AND THE WORK THEY HAVE BEEN DOING ON THIS ISSUE.  
MR. BOB TOBEY ADF&G BIOLOGIST GLENMADEN GAVE BIOLOGICAL DATA ON THE MELCHINA CARIBOU HERD.  
THE MEETING WAS THEN OPENED TO THE COMMITTEE TO ASK QUESTIONS OF MR. STANEK AND MR. TOBEY  
AND ALSO TO STATE ARE VIEWS ON THE MELCHINA CARIBOU HERD OF WHICH THE COMMITTEE AGREED TO  
INCREASE THE DRAWING PERMIT TO 1600 FROM 1300 AS PER ARE VOTE ON PROPOSAL # 102 ON 2-25-81.  
ONE QUESTION WAS HOW WOULD THE SUBSISTENCE EFFECT THE TOTAL ALLOWABLE HARVEST? ANSWER IF  
300 CARIBOU WERE NEEDED FOR SUBSISTENCE THAT WOULD LEAVE 500 FOR OTHERS AND THE PERMITS  
MAY HAVE TO BE REDUCED ACCORDANTLY. (THE PROJECTED 1981 HARVEST IS APPROXIMATELY 800)  
THE QUESTION WAS ASKED FOR A LEGAL DESCRIPTION OF SUBSISTENCE THIS CAN NOT BE DONE IT WILL  
BE LEFT UP TO THE BOARDS OF FISH AND GAME. THERE WAS ~~XXXXXX~~ A LOT OF DISCUSSION ON THIS  
SUBJECT. HALEY READ A PAPER ON WHO IS A SUBSISTENCE USER AND IT STATED THAT A RESIDENT OF  
THE STATE OF ALASKA WHO HUNTS OR FISHES AND USES THE FISH OR GAME FOR HIS TABLE AS FOOD IS  
A SUBSISTENCE USER. THE PAPER WENT ON TO SAY THAT IF THE FISH OR GAME BECAME SCARCEST IT  
COULD BE RESTRICTED TO LOCAL RESIDENTS OF A AREA AND SOME OF THEM MAY NOT QUALIFY.  
THE MEETING WAS OPEN TO PUBLIC QUESTIONS AND COMMENTS. THERE WER A RANGE OF QUESTIONS ON  
CARIBOU, MOOSE AND PREDAION OF WHICH THE ADV. COMMITTEE AND MEMBERS FROM ADF&G AND F&WP  
TRIED TO ANSWER.

Con't Next Page.

Submitted by: Byron Haley  
Secretary of Glenmaden

Please fill out separate page for each day the meetings lasts.

PC/12

NEXT WE HAD A PRESENTATION FROM MR. SCOTT GRUNDY HABITAT SECTION FERRIBANKS ON THERE PROPOSAL PACKET. THE ADVISORY COMMITTEE HAD A LONG AND VERY EDUCATIONAL DISCUSSION WITH SCOTT ON THIS PROPOSAL PACKET. WE AGREED TO SUPPORT THIS HABITAT PACKET WITH THE EXCEPTION OF 5 AAC 95.030 WHICH WOULD HAVE TO BE AMENDED IN ORDER FOR US TO SUPPORT 5 AAC 95.030.

- (1) USE OF ANY WHEELED OR TRACKED EQUIPMENT IN THE WATERS, THIS SHOULD BE REMOVED SO AS RECREATION NEEDS ARE PROVIDED FOR.
- (13) DELETE THE WORDS "OR WHEN WATER IS REMOVED FROM UNDER THE ICE." IF THIS IS LEFT IN YOU COULD NOT LEGALLY CUT A HOLE IN THE ICE AT YOUR CABIN TO GET COOKING OR DRINKING WATER IF YOUR CABIN IS ON AN ANADROMOUS FISH RIVER, STREAM OR LAKE SYSTEM.

IN REGION 3 WE NEED A GENERAL PERMIT SYSTEM EXCEPT FOR CRITICAL SPAWNING AREAS. THIS PERMIT WOULD BE FOR ALL RECREATION ACTIVITY WITH SOME WEIGHT RESTRICTION ON RECREATION VEHICLES SOME WHERE AROUND 4000 LBS. SO IF THE ABOVE CHANGES OR ANY OTHER AMENDMENT THAT WOULD BENEFIT RECREATION ACTIVITY, ARE MADE WE COULD SUPPORT 5 AAC 95.030.

THIS MEETING WAS TAPED BY THE ADVISORY COMMITTEE. MR. STANEK ALSO TAPED THE SUBSTANCE PART OF THE MEETING FOR HIS RECORDS.

MEETING ADJOURNED 11:10 PM

Byron W. Haley Sec.

*Byron W. Haley*

1002 Pioneer Rd

FbY. 99701

pc/13

ARCO Alaska, Inc.  
Post Office Box 360  
Anchorage, Alaska 99510  
Telephone 907 277 5637



March 20, 1981

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

The Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

DEPARTMENT OF FISH AND GAME

Commissioner Ronald Skoog  
Alaska Department of Fish and Game  
Support Building  
Juneau, Alaska 99801

Gentlemen:

SUBJECT: ARCO ALASKA INC. COMMENTS ON PROPOSED FISH  
AND GAME REGULATIONS

ARCO Alaska, Inc, a wholly owned subsidiary of Atlantic Richfield Company, wishes to thank the Alaska Boards of Fisheries and Game and the Alaska Department of Fish and Game for an opportunity to comment on proposed regulations governing fish and game habitat protection.

As an oil and gas producer in the state of Alaska, ARCO recognizes the importance of protection of fish and game habitat that is critical to the state. Any proposed industrial activities need to be carefully examined, with due consideration to all the natural resources that may be affected by such plans.

We believe the existing system employed by the State of Alaska for oil and gas related exploration and development activities includes careful scrutiny by the Alaska Department of Fish and Game. Inclusion of the Alaska Department of Fish and Game in review and comment on permit applications before the Alaska Department of Natural Resources, allows for a decision making process which accounts for fish and game considerations along with other concerns. A careful balancing of all natural resource elements can thereby take place. This permit review process by the state includes review by other regulatory agencies, resulting in permissible activities which are consistent with state policy. The permit applicant receives a permit which is assured to be acceptable to all agencies.

Contrary to assurances from the Department of Fish and Game, these proposed regulations add another permitting procedure to already complex regulatory mechanisms which presently include fish and game habitat protection concerns. A "habitat protection permit" will have to be obtained where no such "permit" was required before. When

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The Boards of Fisheries and Game  
Commissioner Ronald Skoog  
Page Two  
March 20, 1981

procedures already exist which address a given concern, it is redundant, wasteful, and unnecessary to invent another mechanism.

The Alaska Department of Natural Resources is currently the principal agency that regulates oil and gas activities in Alaska. If the State of Alaska leases land for the purpose of exploring oil and gas resource potential, there is an obligation that this resource be developed for the benefit of all Alaskans in an environmentally sound manner.

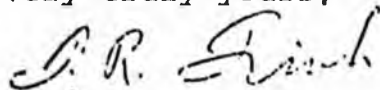
If the Department of Fish and Game is allowed to review and "endorse" Department of Natural Resources permits, this authority would create conflict over competing resource use that was supposedly resolved when the land was leased originally.

A conflict of resource development could result in an operator being given clearance for a project on the one hand by the Department of Natural Resources, and denied a permit to the same project by the Department of Fish and Game on the other hand. Under this proposed process, there would be no mechanism for resolution of this dilemma, where presently this dilemma does not exist.

ARCO objects to the regulations as proposed, and believes that the habitat protection provisions should be re-structured into guidelines. The guidelines would have the force of regulation, yet would be more flexible in applying to different and varying circumstances prevalent from one region in Alaska to another.

Enclosed are specific written comments on the proposed habitat regulations. Although we are commenting on the proposed regulatory language, our so doing should not be misinterpreted to mean that we agree with the concept of these proposed regulations.

Very truly yours,



T. R. Fink, Manager  
Environmental Conservation Department

tmw

Enclosure

(2/15)

COMMENTS ON PROPOSED  
FISH AND GAME REGULATIONS

5 AAC 95.020: Activities in Streams and Rivers Frequented by Fish.

This section of the proposed regulations requires the submission of plans and specifications for review and approval by the Department. Currently, the Department of Fish and Game reviews plans for activities in nonanadromous fish streams, as part of the overall review and comment process for permits already required by other agencies. This proposed approval constitutes a permit which presently does not exist. Contrary to declarations made by the Department, this proposed procedure would introduce numerous new permits for activities that are already reviewed by the Department through existing mechanisms. Protection of streams frequented by fish is already provided by the existing mechanisms of permit procurement. The phrase "frequented by fish" is very broadly defined, such that an applicant would not know beforehand if a stream that may be affected by activities is "frequented by fish" or not. The regulation does not "increase the predictability of departmental decisions", nor does it "establish statewide consistency", nor does it "increase efficiency of operations", nor "eliminate permit requirements for certain activities." In fact, this proposed section expands the number of permits required.

5 AAC 95.020(1): The proposed regulation in this subsection calls for a permit to be needed when snow and ice bridges are to be used. Construction of snow and ice bridges have no impact on fish in the winter. For the past several years, ice roads and bridges have been built for exploration, crossings on numerous creeks. No impact to the fisheries has been observed in any of these instances. The Department proposes to require permits for activities that have no basis on fish impact mitigation. This unnecessary requirement should be eliminated.

5 AAC 95.030: Activities in or Affecting Anadromous Fish Streams.

Subsection (6) of this proposed regulation would require a permit for construction of snow ramps. Construction of a snow ramp does not impact fish in a stream in winter. See comments on 5 AAC 95.020(1) above. This unnecessary requirement should be eliminated.

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5 AAC 95.060: Habitat Protection Permit Required.

This proposed regulation sets a limit for a "habitat protection permit" at a maximum term of five years. A permit through the Department of Natural Resources for lease operations approved, as referenced in 5 AAC 95.065, may not be subject to this short a time limit, as a lease operations approved activity may extend beyond five years. Where lease operations approval extends beyond five years, a "habitat protection permit" should also be extended for this period.

5 AAC 95.065: Adoption of Department of Natural Resource Authorizations.

This section of the proposed regulations states that a "habitat protection permit" need not be separately applied for if the activity for which a permit is required under 5 AAC 95.040(b) or (c) is approved under a plan of operations approval through the Division of Minerals and Energy Management. 5 AAC 95.040 concerns only activities in State of Alaska critical habitat areas, sanctuaries, and refuges. Stopping short of including adoption of all Department of Natural Resource authorizations for activities in the state, including activities which occur in anadromous fish streams and activities in streams and rivers frequented by fish in Sections 5 AAC 95.020 and 95.030, essentially creates a separate permitting process for those activities. The Department is creating more permits where it has a genuine opportunity to exercise regulatory reform. By adopting authorizations for all activities requiring Department of Natural Resource approval, the Department would still "allow public critique of procedures and standards used in issuing permits, increase predictability of departmental decisions involving issuance of permits, establish statewide consistency in the Department's habitat protection permitting program, avoid litigation over matters of interpretation, increase efficiency of operations and eliminate permit requirements for certain activities."

If "endorsed", as used in 5 AAC 95.065(2), means separate departmental approval, a conflict may exist between the agencies. Endorsement will more likely occur prior to the Department of Natural Resources authorizing the activity pursuant to 11 AAC 65. This procedure should be continued.

5 AAC 95.120: Amendments to the Permit.

Section (b) of the proposed regulations should include a clause, where if the applicant for an amendment does not receive approval or denial of the amendment within 30 days

after submittal of all required information, the project may proceed as set forth in the amendment application. It is inherent that an applicant for an amendment receive a timely response. Also, amendments should be allowed to be approved verbally by the Department, with later confirmation in writing.

5 AAC 95.200: Culvert Installation Standards.

The standards included for culvert velocities would be almost impossible to attain, and are very restrictive compared to current Department guidelines. The standards are unrealistic and are generally not achievable on the North Slope. Groups II and V in the table on page 15 are species most prevalent on the North Slope. These groups would require for a 60 foot long culvert, a 2.3 cfs velocity at a Q2.33 flood and a 1.6 cfs velocity at normal summer flows. Comparing these proposed values to current Department of Fish and Game guidelines, shows that culverts would require 4 cfs at Q5 discharge.

Literal implementation of these proposed regulations in streams which may naturally exceed these velocities, makes these standards unrealistic. The velocities presented on the table should be used as guidelines only, and each project in a stream should be examined on a case by case basis to establish criteria tailored to that instance, as is currently done by the Department.

5 AAC 95.990: Definitions (8).

As stated in specific comments on the proposed regulations, the definition of "frequented by fish" does not allow for any predictability by departmental decisions involving issuance of permits. The definition does not help clarify consistency in permitting programs, nor does it necessarily eliminate permit requirements for certain activities. The definition is overly broad, and shows no guidance for Department involvement.



## Alaska Conservation Society

Incorporated in 1960

P.O. Box 80192

College Branch, Fairbanks, Alaska 99708

3/19/81

Alaska Boards of Fisheries and Game  
Support, Juneau, 99801

Dear Mr. Chairman:

Our Society supports the intent and in most cases the content of the regulations proposed to govern habitat protection. It seems to us that although Alaska's legal basis for habitat protection leaves much to be desired - especially for protecting terrestrial areas and wetlands - it is getting harder to secure broad public support for those we have. No doubt most Alaskans value wildlife and want habitats to be protected. However, efforts to get money and people for adequate field education and enforcement perennially fall short. Even our oil wealth has not improved the situation.

Therefore, we support the simplification of regulation and elimination of the rough edges that can cause losses of public support that outweigh gains in habitat maintenance, as long as the basic effectiveness of the habitat protection effort is not eroded. The proposed regulations seem to be acceptable in this regard. For example, the proposed general permits for minor activities (effectively, no permit) are desirable as long as the Boards maintain the cautions expressed in the proposals. The same is true of the

PL/19

proposed uniform application procedures.

We are concerned about the exemption proposed (5 AAC 95.050, page 5) for emergency firefighting. The title targets emergencies, yet firefighting is given a blanket exemption. We do not believe that all "normal" (whatever that is) firefighting activities merit freedom from regulation. It is bad enough to put out fires that could improve habitats of certain wildlife; to exempt firefighters from control over aquatic habitat disturbance is additional folly. Firefighting can cause more ecological damage than the fire itself. Earthmoving equipment, at least, should come under permit restraints when used in ways that would impact fish habitats.

We appreciate the chance to comment on these proposals.

Sincerely yours,

Robert B. Weedon

Robert B. Weedon

President

06/20

Mc Kay Bldg Box 1235  
Anchorage, Ak. 99501  
March 20, 1981

Boards of Fisheries & Game  
Support Building  
Juneau, Alaska 99811

Dear Sirs:

My husband, Fred, and I have been residents of Alaska since January 1969 and live & work in the Municipality of Anchorage. We also own water front property in the Mat-Su Borough where we spend much of our time, summer & winter.

We appreciate the opportunity to comment on the Proposed Regulations Concerning Fish & Game Habitat Protection. The following comments are offered:

5 AAC 95.030(1) This regulation would require the day-to-day activities of a great number of people to have a permit, particularly during the winter months. The use of wheeled or tracked vehicles greater than 2500 lbs is arbitrary and would include the activities of a large portion of the state's population. We recommend this paragraph be deleted.

PL/21

5AAC 95.030 (13) Appropriation of Water is obtained through application to the Dept. of Natural Resources. There is no need for a duplicate permit from Fish & Game. The volume indicated is arbitrary, restricting to the ridiculous amount of 'any' water removed from under the ice. This paragraph should also be deleted.

5AAC 95.070 The activities listed for general permits are too specific and/or limited. A broader spectrum of activities should come under general permits. Perhaps this section should more appropriately contain standards for determining what types of activities would qualify for a general permit.

5AAC 95.990 (10) The definition for "lake" is too broad and could be interpreted to mean any pond, pothole or marsh.

We thank you for the opportunity to comment.

Sincerely  
Justin ?? Local  
(PC/22)



UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

P. O. Box 1628, Juneau, AK 99802

1560

MAR 23 1981



Alaska Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Sirs:

Thank you for the opportunity to review and comment on the proposed regulations governing fish and game habitat protection. Though the proposed regulations will not apply to projects on National Forest land, the Forest Service is supportive and is complying with their intent in the management of National Forest lands in Alaska. We offer the following suggestions:

1. Throughout the proposed regulations the intent does appear to switch emphasis back and forth between project planning and project operation. This is confusing. We recommend the proposed regulations be divided into two major divisions. One division which deals with regulations and standards for project development and another division which deals with project implementation.

2. Section 5 AAC 95.180 Adherence to Standards. Recommend clause (a) be amended to read as follows: Permit requirements must meet the intent of the standards stated in Sections 190 - 260 of this chapter. This would change the focus of the Standard from the permittee to the Department habitat protection administrators. We believe this would allow more flexibility in administering the habitat protection regulations. We realize there will be a potential for inconsistent interpretations of the Standards by the Department personnel but we believe that this will be offset by the reduced need to invoke Section 5 AAC 95.910 waiver of standard clause which requires the Department to detail rationale why there is a need to waive a standard.

3. Define what constitutes significant, for:

a. 5AAC 95.200 Culvert Installation Standards. If a culvert is proposed for installation at a site which, in the determination of the department, is used for fish spawning or has significant use from rearing, the department will not approve the

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culvert installation plan. Instead, the department will require that an alternative site be proposed and approved, or that a bridge be installed at the proposed crossing.

b. 5AAC 95.210 Diversion Channel Standards. The bed and banks of the diversion channel must be constructed of material that will not significantly erode at expected flows.

c. 5AAC 95.230 Stream, River and Lake Bed Stabilization. No person may excavate gravel from any portion an anadromous fish stream which is used for spawning, or has significant use for rearing.

4. Need to define what constitutes "substantially free of dirt and debris" in Section 5AAC 95.220 Stream, River and Lake Bank Stabilization.

(b) snow ramps and snow bridges must be composed only of snow or ice and must be substantially free of dirt and debris;

5. Need to strengthen Section 5AAC 95.220 Stream River and Lake Bank Stabilization clause b-2 by adding language to cover spring breakup.

6. Please clarify in either Section 5AAC 95.050 Habitat Protection Permit Required or Section 5AAC 95.160 Renewal of Permit as to the intent regarding permit renewal. The way we read 95.050 and 95.160 it appears a permit would need to be renewed for projects already approved if the project has not been completed within 5 years after being issued. If this is a correct interpretation, it could create significant additional work for the Department as a major portion of the permit activity on some projects could take longer than 5 years.

7. We recommend Section 5AAC 95.190 Standards for Free Pass and Protection and Section AAC 95.200 Culvert Installation Standards be incorporated together.

8. We recommend Section 5AAC 95.220 Stream River and Lake Bank Stabilization Standards be incorporated with Section 5AAC 95.260 Shoreline Standards.

9. Section 5AAC 95.200 is too specific. We recommend the specific standards on culvert placement and dimensions and alignment be changed to guidelines for assuring fish passage.

10. Recommend the deletion or rationale in Section 5AAC 95.260 Shoreline Standards.

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11. We wonder whether the following standard clauses are necessary:

a. Section 5AAC 95.190 Standard for Free Passage and Protection of Fish (c) Blasting is prohibited within one-eighth mile of the edge of the water in any river, lake, or stream unless a lesser distance is specified by the department on the permit. We think the Department will have to issue a variance to this clause for the majority of proposals in which blasting is part of the project.

b. Section AAC 95.200 Culvert Installation Standards. Subsection (a) All of subsection (b) except for clause 3: We agree the subsections (a) and (b) provide the permittee with excellent information to use when designing a stream crossing structure to pass fish but this information should not be presented as standards. It should be used as suggested criteria or guidelines for the permittee as the standards proposed are not the only specifications available for use to achieve fish passage.

c. Section 5AAC 95.220 Stream River and Lake Bank Stabilization Standards clause (g). Delete the statement concerning bridge pilings removal. By deleting bridge pilings must be extracted or cut off level with or below the stream bottom and change the wording slightly the intent of the proposed clause will remain. We think your intent is when channel structure is removed the channel is to be restored to its former configuration.

d. Section 5AAC 95.240 Water Quality Standards clause (2). The Forest Service is unaware of any acute or chronic toxicity problems caused from using treated timber stream crossings as worded in clause two.

Clause (3) Informal discussion with the Department surfaced the intent of this clause was aimed primarily at drainage in urban and metropolitan areas. If this is the case then it should be specified in the clause. On climbing roads which are not outsloped, the inside ditch may often discharge into a stream directly. Thus, there is a need to expand the clause to reflect drainage ditch discharge for non-urban and metropolitan areas.

e. Section 5AAC 95.260 Shoreline Standards Clause (c). Informal discussion with the Department indicated the intent of this clause was to eliminate the potential of the non-biodegradable net getting into a body of water containing fish and creating a gill net type of problem. Their concern was with the plastic and monofilament stabilization net. Though the plastic and monofilament nets are not biodegradable, they do degrade rather quickly when

PC/26

exposed to ultraviolet rays. Further, once vegetation is intertwined in the netting it is essentially impossible to remove it without damaging the erosion control vegetation.

f. Section 5AAC 95.130 Retention of Permit for Inspection and INSPECTION OF PERMIT SITES clause (a) We think in most instances this would be impractical. At which work site for example should the permit be located on a project involving construction of 20 miles of road with 25 stream crossings requiring fish passage and the project has 10 subcontractors?

Again, thank you for the opportunity to comment.

*for Michael A. Barton*  
JOHN A. SANDOR  
Regional Forester

(PC/27)

20th March 81

LAMB # 22  
2321 MERCIER  
FAIRBANKS

99701

FISH - AND FEATHERS;

GET OFF OUR BACKS!

MORE RESEARCH - BEFORE

DREAMING UP REGS. AND RULES.

R. E. Lamm

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

Boyd

Com. Harold J. Hooy  
Board of Fisheries & Game  
Support Bldg  
Juneau ab 99801

Dear Sir

I like a mess of fish  
once in awhile but don't  
want the damn things  
three times a day 365 days  
a year  
need a little gold for rig  
and coffee

Bill Kaalson

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

PC 29

Commissioner Ronald Skoog  
Board of Fisheries & Game  
Sub Post Bldg.  
Juneau, Alaska, 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

March 20, 1981

DEPARTMENT OF FISH AND GAME

Dear Mr Skoog

I'm writing you regard to your  
proposed regulations for the fish & game.

In all due respect I can't conceive  
out of his right frame of mind  
trying to implement such an outrageous  
form of interference to private industry  
no what do you people mention,  
How much damage is done by the  
Sportsman, camper, and R.V. users  
Mess.

I'm involved in a private  
Business, plus mining, now I feel  
I don't need a marine biologist with  
no experience to tell me how I should  
run my business

I'm opposed to these regulations and  
the short sightedness of the agency  
I'm involved and will fight with all  
my knowledge to beat this.

Garland W. Ackman

NATIONAL  
4231 100 FEET 1 SQUARE  
4231 100 FEET 1 SQUARE  
4231 100 FEET 1 SQUARE

Mar. 20, '81

Fish & Game ~~Fanhook~~ Ah  
PO Box 92933

Placer, ZIP 99909

Why should we miners ever con-

up something Fish & Game Regs,  
when our people don't consider high  
water in Spring time for lost 22 1/2

Million yrs. - Summer Rain etc etc.

When our people have proof of  
considerable silt damage from small  
or/and large Placer mining?

J. B. Lyde Metcalf

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME (Pn 2)

POB 73734  
FBKS, AR 99707

COMM SKOOG,

I would like to take this opportunity to convey to you my bitter discontent with the Dept of Fish & Game in reference to the latest proposed regulations governing fish & game habitat protection. These proposals were drawn up to effectively put the placer miner out of business.

There is more damage being done to the river bottoms by jet boats, outboard motors, fishermen, hunters, hawks, bears, moose... than the placer miner.

I feel these regulation proposals are premature, they need more research but most of all are open ended regulations to control the placer miner.

I feel it was very unprofessional, inconsiderate, unfair and not in the interest of the miners for fish & game to schedule a public hearing in Anadarko the same night of our miners conference in Fairbanks.

It certainly is not in the interest of democracy to run business the way fish & game has performed in this case.

Let's clean it up and fight fair. PLEASE!

Respectfully  
Chuck Delgado  
Gold Miner

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

D, 27

FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

MAR 3 2 1981

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

To Whom it may Concern

I object to the proposed regulations by Fish and Game Governing Fish and Game Habitat because there is no no evidence that has been compiled to show damage to fish and game habitat.

Also the Rivers & Creeks change from seasons to seasons; from morning to afternoon; from day to day; from hour to hour from week to week. Where is the evidence of damage from mining in case of damage from nature.

Mr Paul Barba  
1213 9th Ave  
Anchorage AK (PC)

4.7.81

42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE

NATIONAL

RECEIVED

MAR 25 1981

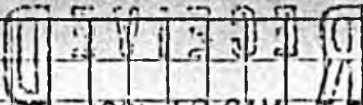
march 20, 1981

## DEPARTMENT OF FISH AND GAME

Dear Commissioner Skoog:

I just wanted to briefly address the subject of Alaska boards of fisheries & game and Alaska dept. of fish and game's proposed regulations governing fish and game habitat protection. <sup>to be reviewed and decided on in their meetings April 1-4, 1981 in Anchorage.</sup>

It's interesting how it states "the dept is proposing these regulations to (1) make explicit ... (2) allow public critique of procedures and standards used in issuing permits, ..." I don't believe a couple of weeks time is fair enough time to get the public's view point on these rules and regs. but even more so they seem very biased and were very hastily thrown together. I would like to see something to back up the reasoning for some of these (or most of these) rules and regs. I can't address each and everyone and won't right



APR 23 1988

now, but I'm concerned that these  
are being moved through as quickly  
as possible to avoid the public's  
viewpoints

I do agree ~~there~~ there is a need  
for some rules and regs in all fields,  
but please lets keep them in the  
perspective and not set for just  
certain parties and groups of  
(MIDERS) people or activities. Some <sup>(of the proposed rules & regs)</sup> may have  
merit, but a good portion just don't have  
any backing and I think it only  
fair ~~that~~ that these be reviewed further  
before initiation.

Thank you.

Debra M. Bates  
David E. Tipton  
(Mines)

Mr. Skoog,

Let's hold it a minute. If you're going to draw up a set of new rules we, the placer miners of Alaska, demand to be made a part of their creation. This new list of proposed regulations for fish and game habitat protection has been designed and directed solely against the way we make our living and were not going to stand still for it. The wording for these regulations could be more accurately titled regulations to control mineral ore recovery. We will not be controlled without being heard. We still live in a democracy so let's slow down and give us a chance to respond. More research and time needs to be employed.

Concerned Miner,



COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC 35

RE-PROPOSED NEW MINING REGULATIONS 3-20-81

TO WHOM IT MAY CONCERN:

I wish to protest the Biased efforts to PUT US MINORS OUT OF BUSINESS... A THREAT TO the very existence of our American free People.

By these proposed mining regulations, please read & try to follow the Constitution of the United States of America... our good old U.S.A. not dictatorship Russia & stop try to put us in chains because when if they we you continue on this wild course we will all including you WILL BE IN CHAINS and have lost our free country.

So lets get some common sense & fairness in the necessary laws only & keep them to a minimum before we lose our free country & become slaves of the worlds sneaky dictators. Do I need to mention names or are these law makers taking orders from these would be freedom

Stealing Dictators.

Sincerely & Patriotically YOUR

Let's keep our Country FREE of the People By the People & FOR the People

James Altius

PC 36

Dear Sir

I believe that more public input should be included into these proposed regulations governing Fish & Game habitat protection.

I also believe that more in-state research should be done on the proposed regulations.

I also believe that these proposed regulations and others that have come up lately are just another attack on small miners.

Sign  
Donald W. Little  
March 20-81

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC 37

Mar. 20, 81  
Board of fish & Game

Shilling  
Box 81424  
College Park  
99708

Dear Sirs,

I strongly oppose the proposed regulations governing fish & game. Habitat protection as being unworkable. They are aimed at the mining industry but could be detrimental to much of the sport hunting in the state also. Paragraph 5 APC 95.100 leaves entirely too much power in the hands of the (deciding officer) it could also place him in great danger at times.

If the mining industry was as detrimental to Fish & Game as the Preservationists contend then we would already be out of game due to the enormous amount of mining activity at the turn of the century until world war II. Sincerely,  
Arthur L. Shilling PC 38

Fairbanks, Alaska  
99707

3/20/81

Commissioner Ronald Skoog  
Board of Fisheries & Game  
Support Bldg.  
Juneau Alaska 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Dear Commissioner,

I have just been made aware of the proposed regulation on fish habitat protection. Rather than comment on specific proposals in the regulations I wish to comment on the intent behind the regulations.

About  $1\frac{1}{2}$  years ago I (a placer miner) was served by one of your officers and a state trooper a summons to appear for criminal arraignment. The gist of the arraignment was that I and several others, were conducting a mining operation on an anachromans stream without a fish & game permit. I am mining on a tributary of a tributary of an anachromans stream (Bink Creek) Three days later the summons was squashed because your officer ~~didn't~~ suddenly found out Bink C was not a stream. The point is in case

PC 37

a sick culture that originates in the  
educational system that educates that  
people are subservient to other species  
of life except for an elite that collect  
under you. I repeat that that culture  
y **DEVELOPED** **DEVELOPED** **DEVELOPED** **DEVELOPED** **DEVELOPED**  
1891 S. PAUL  
regulations only reinforce that opinion.

DEPARTMENT OF FISH AND GAME

Sincerely  
Fred Wilkerson

THE HONORABLE RONALD SKOOG  
COMMISSIONER  
BOARD OF FISHERIES & GAME  
SUBPOUT BUILDING  
JUNEAU, ALASKA 99811

RE: PROPOSED REGULATIONS

DEAR COMMISSIONER SKOOG:

MANY SUGGESTIONS WILL NO DOUBT BE MADE  
FOR CHANGES IN THE PROPOSED REGULATIONS.  
ONLY ONE CHANGE IS NECESSARY -- JUST  
CHANGE THE TITLE TO READ:

"A SCHEME FOR CLOSING  
DOWN ALASKA"

THIS WOULD SILENCE ALL CRITICISM  
OF THE SUBSTANCE OF THE REGULATIONS.

SINCERELY YOURS

*Barry Donnellan*

BARRY DONNELLAN

PO BOX 73795

FAIRBANKS AK 99707

456-2329

COMMISSIONER'S OFFICE

RECEIVED  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC 40

The Honorable Ronald Skoog  
Boards of Fisheries and Game  
Sub Post Building  
Juneau, Alaska 99801

March 20, 1981  
Fairbanks, Alaska

Subject: Proposed Regulations  
Governing Fish and Game  
Habitat Protection.

Dear Sir,

I am very opposed to the new  
regulations. We are over regulated now.  
we do not feel the State should interfere  
with our business. I see where they will  
hurt the construction business also.  
Consider repeal of these regulations.

Sincerely

Alice C Eberal

President

A-C-E General Contractors Inc

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC41

Com. Robert Spooz

3/20/81

Boards of Fisheries & Game

Support Bldg 99301 Geneva

I feel that the state is imposing regulations on mining that have not had sufficient study open ended and seemingly with out end fish & game reg hearing 10 days with from notice ample time? hearings that take place some time to mining conference?

please give us a break!

John Stately

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC 42

To Whom It May Concern,  
I feel the proposed regulations  
governing fish and game habitat protection  
is just another step to trying  
to suppress the people into a socialist  
type of government. We are over  
our heads in regulations, stick  
to your jobs and off our backs.  
We provide jobs and industry  
to Alaska. The Governor should  
be aware of all these regulatio.

Thankyou.  
Brooks Bailey

I appreciate your concern in this matter

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

(PC 43)

3-20-81

Comm Ronald Hoag  
Boards of Fisheries & Game  
Subport Bldg.  
Juneau, Ak. 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Dear Sir:

The fish and game has recently produced some proposed regulations for placer mining operations.

It appears to me these regulations have been made without sufficient input from the miners as to feasibility and sufficient time is not allowed for response. It is also pointed toward miners.

We would all agree some protection of the environment is necessary, however placer mining must be allowed to continue.

Implementation of these proposed regulations will have the effect of eliminating placer mining.

Please give consideration to re-consideration.

Sincerely,  
Jim Deannette James  
R.D. Box 74528  
" " " "

PC 214

43 SHEETS 1 SQUARE  
43 SHEETS 3 SQUARE  
43 SHEETS 2 SQUARE  
43 SHEETS 3 SQUARE  
NATIONAL

P.O. Box 60408  
Fairbanks, Ak 99706  
March 18, 1981

Comm. Ronald Skoog  
Board of Fisheries & Game  
Support Building  
Juneau, Alaska 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Dear Sir:

We as placer miners would like to go on record as being very displeased with the proposed regulations governing fish & game habitat.

We feel that the over-regulations have been proposed without thorough investigation, that they are unnecessary, which you would probably decide upon sufficient research, and that we as miners have a hard enough time surviving without these unnecessary regulations. Maybe it would have been a good idea to get some input from some knowledgeable miners to assist in producing some equitable solutions.

Sincerely,  
Bernie Karl & Connie Parks  
The Last Rush Mine

PC  
45

March 20, 1981

Commissioner Ronald Skoag  
Board of Fisheries & Game  
Subpost Building  
Juneau, Alaska 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Regarding the Proposed Regulations governing Fish  
& Game Habitat Protection

After reviewing the proposed regulations I am  
totally and <sup>of Dept of Natural Resources</sup> firmly convinced that the  
Dept of Fish & Game desires to have total  
control over all activities within the state  
of Alaska. The drastic affect that these  
regulations would impose on the people of  
Alaska goes beyond and far beyond Federal  
regulations ever imposed on Alaskans.

Where is the scientific data backing  
up damage done to fish, streams  
or lakes. Where is the expert information  
officer who determines section dredges  
damage streams or fish.

Our business firm with stores in  
both Anchorage & Fairbanks initially brought  
section dredges into Alaska several years  
ago. I suspect that I and Jim Madann  
have more knowledge about using these  
units than any other person in the state

PC  
4

of Alaska. We also have more technical  
information than anyone else in the state.  
about ~~sections~~ dredges.  
Where ~~were~~ your fish & game people  
getting their information on dredges. What  
tests have they run? What damage  
have they found to require permits?

How did fish survive over the  
years since miners first developed  
this great state in the late 1800's  
till today. How much study has proven  
the mine has caused damage to  
fish.

These regulations in their entirety  
are absolutely insulting to all people  
residing in Alaska.

I cannot believe that the Fish  
& Game or Dept of Natural Resources  
has such an unbalanced ego and  
desire to destroy the future of  
Alaska, two legged people. It seems  
all for fish but what about the  
people, homes, cabins, recreation,  
mining, timber and other industry?

Respectfully,

Leah Madonna  
Alaskan Prospector & Geologist  
504 Collier Road

(46 1/2)

Dear Sirs

I am most upset by  
your new proposed Regulations  
under Title 5 for the  
protection of fish & game  
habitat. They are simply  
stating that if you are a  
miner you will be on  
the welfare rolls by  
the end of the year.

I feel they are unjust,  
unfair and totally unnecessary.



COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
47

Dear Sis:

MAY 30-1961

We are absolutely against any leasing program in the state of Alaska.

Neither can we live with the regulations of the Dept. of Fish & Game,

W By these regulations all miners will be outlaws just by their very presence on any mining land, patd, or otherwise.

NBA-Gillycat Enterprises

Robert Nelson

Marshall Nelson

Hanna Nelson

See Nelson Thank You  
(948)

MARCH 20, 1981

COM. REARAD Skoob  
BOARD OF FISHERIES AND GAME  
SUPPORT BUILDING  
TUPACAL, ALASKA

MR. SKOOB

THIS SHORT COMMENT IS ABOUT THE PROPOSED REGULATIONS GOVERNING FISH AND GAME HABITAT PROTECTION. WHY WAS THE PUBLIC NOT MADE AWARE OF THESE REGULATIONS DURING THE PAST MONTHS THEY WERE BEING PROPOSED? MAYBE THE PUBLIC WAS, BUT I DIDN'T HEAR OR SEE THE PROPOSED CHANGES UNTIL TODAY, AND TO SAY THE LEAST I'M VERY UNPLEASED.

TO ME THIS SEEMS LIKE ANOTHER WAY THE GOVT IS TRYING TO WALK-ON AND HURT THE SMALL BUSINESS MAN. I THINK THERE SHOULD BE MUCH MORE RESEARCH TO PROVE WITHOUT A QUESTION THE DAMAGE THAT IS BEING DONE, BEFORE THESE PROPOSED REGULATIONS ARE ADOPTED.

Respectfully  
Robert Bengard  
5R. Box 80398  
FBKS.

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

7C 49

43 SHEETS SQUARE  
43 SHEETS 100 SHEETS SQUARE  
43 SHEETS 200 SHEETS SQUARE  
NATIONAL

RECEIVED

MAR 23 1981

Dear Sirs

DEPARTMENT OF FISH AND GAME

All your fish and game Regs

are unnecessary <sup>to</sup> ~~and~~ have  
no basis in fact

I am opposed to all of it

and will follow none of it

Neil Thurman

Box 107 Eagle

99 738

PCT  
50

5/20/81

Mr. Commissioner,

I am writing in regards to the new fish & game regulations pertaining to placer gold mining. I feel that due to the way these regulations are trying to be slipped through without the miners having a chance to respond proves to me, we are dealing with irrational & illogical men and that we can no longer even listen to them at all.

Steve R. Weber  
Fairbanks Miner Assoc

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
51

RECEIVED

MAR 25 1981

DEPARTMENT OF FISH AND GAME

Mr. Hansen  
Box 246  
Nome, AK 99762  
3-20-81

To all those interested Authorities

I have lived all my life in Alaska lived & worked - mined - farm over - 5 years at U of A - received & imparted through much of the state

I consider myself an independent & experienced Alaskan

These new fish & game regulations requested are subject to my integrity as an Alaskan

I understand many of them were written & developed either by knowledgeable people or were introduced by to those Alaskaans they are ridiculous

At  
1001-1001-1001

PC 5

Board of Fisheries & Game  
Support Budget, 99801  
Alaska, Alaska 99701

March 20-81  
4. Alaska Alaska  
99701

Sir - Here we are at a minor meeting  
and again we are facing the E.P.A.  
on New Fish and Game  
and what next.  
What to do.

We better get off of the Permit  
System and added regulations or  
hell will be out with in our  
own people.

Should we buy fuel-oil or  
equipment, or

Should we buy boats & buoys.

Please, work with us.

Not against us.

Thank you



COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
53

COMMUNICATIONS  
RECEIVED  
MAR 22 5 49 81

DEPARTMENT OF FISH AND GAME 3-20-81

Comm, Shoag,

The latest proposed fish and Game regulations, conveniently scheduled for public hearing April 2, 1981, are ridiculous, why does the Fish & Game Dept. it should control the mining industry, why does the govt want to stop mining (progress employment etc) Concerning stream pollution, Every time a natural or straight produced <sup>heavy</sup> rain occurs it muddies the streams, river boats, muddy the stream. The River Boat Discovery shuns up the change. I was born in Alaska, born in Wash, lived here after that, I was Born an American and do not or will not be a Slave or Ward of the state like half the unhealed from population. Your lease proposals are just ridiculous also which would stop the economy of Alaska also

Any way - I protest -

God Bless America!

Dell Johnson  
2110 Broadway PC  
D.H.

3-20-81

Commissioner Ronald Skoog  
Boards of Fisheries & Game  
Support Building  
Juneau, AK 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

Your ~~method~~ <sup>method</sup> of implementing your proposed regulations governing fish and game habitat protection is so grossly unfair, undemocratic and unintelligent that it borders on being criminal.

You seem to ignore the fact that miners are also American citizens. The miners are demanding to be treated fairly as American citizens. They demand to be treated as fairly as you are treating the fish and game.

Please have the decency to give the miners sufficient time to comment on your proposed regulations governing fish and game habitat protection.

George Radloff  
Mining Engineer

Energy Mgmt

PC  
55

RECEIVED

MAR 25 1981

DEPARTMENT OF FISH AND GAME

To Ronald Skoog

I a placer miner in the state of Alaska feel the Regulations proposed by the Fish and Game are one sided and very unreasonable. The whole Idea is very unprofessional and low down dirty. These regulations had no input by anyone having to do with any miners or anyone having to do with mining. I feel the Regulations are written from a negative point of view and are very one sided. I do believe there can be regulations to control the guarantee of the existence of the sport fish and beauty of streams. I agree that there should be some protection but no body has evidence to show any damage to fish habitat.

Deeply Concerned

D || ||

PC

56

COMMISSIONER'S OFFICE  
RECEIVED  
MAR 25 1981

March 22 1981

DEPARTMENT OF FISH AND GAME

Dear Sir,

In regards to your proposed regulations on our mining operations I will advise you on our mining operations I will advise you

Make both Fishermen and Company owners aware of the problems that are now being caused by the

They are apprehensive as such, we

Also what are the findings of all

these so-called Environmentalists, we have

NOT BEEN SHOWN NONE OF THE RESULT OF

DAMAGE DONE TO THE FISH AND GAME AS A RESULT OF

into this subjects

While doing the Alaska fish and game

get the thing put in progress without

these actions give us a chance to

of our ourselves

Sincerely yours

LARRY KENT

(PC 57)

CD. MM RONALD SKOOG  
BOARD OF FISHERIES & GAME  
Support Bldg.  
JUNEAU ALASKA 99801

Your proposed regulations are not  
at all fair to the working people of  
Alaska. Especially miners in and around  
Fairbanks. I am a member of the Alaska  
Miners Assoc as well as a business man  
in Fairbanks

Gene Routh  
Box 74480  
Fairbanks AK  
99707

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

42389 50 SHEETS 3 SQUARE  
42389 100 SHEETS 3 SQUARE  
42389 500 SHEETS 3 SQUARE  
NATIONAL

PC  
56

March 20, 81

8:00 P.M.

Mr Ronald Skoog  
Dear Sir

We attended an emergency meeting to discuss the Fish and Game anti-placer mining regulations.

We find the regulations unacceptable and we reject them in their entirety.

Sincerely

Jim Luksa

Alaska Miners Association

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

(PC 59)

30 SHEETS 3 SQUARE  
100 SHEETS 3 SQUARE  
NATIONAL

RECEIVED

MAR 25 1981

DEPARTMENT OF FISH AND GAME

413 Glacier Ave  
Fairbanks, Alaska 99701  
Mar. 20, 1981.

Commissioner Ronald Shoog

We are tired of controls and regulations.

It is now time for action from us, the miners of Fairbanks region.

Before we accept your so called rules, we demand much more research on your part.

We will not accept nor live under Communist control and it appears that you and all the other boards or whatever, are trying to force us into that way of life.

Under no circumstances will we miners bend to your ideas - Before we do, there will be blood shed - Go to hell or come up with a democratic system that will help us - Not control us.

Vernon T. Nelson

Allen L. Nelson

PC  
60

Re. Regulations Proposed  
Governing Fish & Game Habitat Protection

Commissioner Ronald S. Koos  
Board of Fish & Game  
Support Building  
Juneau, Alaska 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

Commissioner S. Koos,

After looking through the proposed regulations, the only things I think you have overlooked are jetboats, outboards, fishermen, moose, bears & other threats to your fish.

It seems that the Dept. of Fish & Game will be in control of placer mining in Alaska. We are already regulated by all of the permits we are required to have.

Just what damage has mining done to fish in Alaska? The EPA standards for discharge water are already stricter than the naturally occurring water in most of our glacial streams. If fish can't stand silt, Alaska would have no fish.

Rosalyn Stowell  
Charles Stowell

Manley Hot Springs, Alaska  
9975

(PC  
h1)

Commissioner Ronald Skoog  
Boards of Fisheries & Game  
Subport Building  
Juneau, Alaska 99801

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

We have just reviewed a copy of the new fish and game regulations. We feel these regulations are premature. There has not been enough evidence compiled to mandate these decisions.

The regulations are indirectly trying to control placer mining business, - assuming that mining is damaging to the environment without having more research. - It's also very discriminating, - saying nothing to the impact of Jet Boats, outboard motors, fishermen and horses etc. to the environment.

We need more research, and an unbiased opinion.

Sincerely,

Fred R + Patricia Hall  
Castle Creek Mines  
Flat Cr. Via Bettles  
Alaska 99726

(DC  
162)

Com. Ronald Spooey  
Boards of Fisheries & Game

Sub port Bldg. Juneau, Alaska 998

RE: Al. Board of Fisheries & Game Dept. of FIS  
& GAME Proposed Regulation  
Gov. FISH & Game HAB. Protection

Dear Sir;

I have been a resident of Alaska  
for thirty one years. I have voted consistently  
for most every important question including  
local, city, borough, state & federal elections.  
I have traveled & talked extensively  
with others across the state as well  
as the lower states. A great many  
people expressed admiration for our  
state due to our growth as a state,  
because of the lack of regulations,  
particularly in the areas of overregulation.  
It is a genuine concern among the  
business people, those of us supply  
the mines with their needs will be  
stating their position to Vice, shortly  
to you, Betty Jarentamp, Gov. Hammond,  
La Pesch.

I believe it is incumbent on both  
the elected officials & appointed officials.

support their proposals. With documentation of valid facts; NOT supposition. Once regulations take effect they can & probably will be opposed.

I make a suggestion that all the affected principals; i.e., Sportmen, fishermen, Congress, Business people, Miners & any other including any and all citizens plus industry be afforded an open opportunity to fully be heard on such an important issue as their proposed regulations.

In closing Gentlemen I ask  
1. For further input from all concerned,  
2. Much more input from the state biologist in charge of determining damage to our fish, this to be supported by documented evidence to leave little room for too hasty (63.1) in passing regulations for the sake of passing something. Lets work together & see if we can't come up with something that will work for all 12/10

The negative stance that seems to prevail through out the proposed regulations leaves me angry and confused. I <sup>Wish</sup> what are you trying to do <sup>to prospecting & mining in this state?</sup>

If we don't look for the minerals now, how will we have them when this country needs them?

Why does this state feel that it has to outdo Carter's Aridness thinking?

I thank you for your consideration & pray that you consider what God has

Say -

Louise D. Miller

1229 Pine County Ave

FRANK, AK. 99701

Ph. 456-5061

(63.2)

to

Ronald Shoop  
Board of Fisheries and Game

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

Gene Sir i am writing this letter in regards  
to the proposed Regulation governing fish and  
game habitat i don't think there is fair  
to push up on or inflict upon the poorer  
mining industries of the state of alaska with out  
a lot more research into fish and game  
habitats and if there is not a lot more  
research into the proposed Regulations then  
the miners have no choice but to tell  
you and the rest of the fish and  
game department to go to Hell

Wes Shoop  
poor miner  
critical ab

PC  
64

42 SHEETS 30 SHEETS 3 SQUARE  
22 SHEETS 100 SHEETS 3 SQUARE  
NATIONAL

March 20

To:

Commissioner Randall Stoop  
Board of Fisheries and Game

Mining in Alaska has been opening  
since the early 1900's and thus far  
the damage done yet to be done  
to the population of wild fish and wildlife  
is not understood. The mining operation by  
the natives who abuse the rights and privacy of  
the commercial fishermen and which  
regulations will do no good and you  
should already realize this. Instead of  
protecting the fish and game area you should  
let them do what they could wish a little to do  
to this area for regulations and control and  
as fast we can hardly begin to complete but  
and before another comes can you imagine  
what the loss of the mission in Alaska on this  
state would and could do to it. This state is  
really full over the rest of the states as a  
dry state in which you had a permit to  
use your own. In this to see some of the  
that will straighten in putting our part  
of us

Richard Green

Jerry Robinson

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

(Handwritten initials)

3-20-81

Fairbanks Alaska 99707  
PO Box 1836

Boards of Fisheries & Game  
Support Building  
Juneau Alaska  
99801

Also we are not in favor of these regulations  
that are on moving tent. We do not feel that  
we have had the proper time to discuss them  
and feel that the date to adopt them should be  
moved forward to give us that time

Thanking you  
Kenneth W. Gault  
PO Box 1831  
Fairbanks Alaska 99709

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

PC  
66

NATIONAL  
42-381 50 SHEETS 1 SQUARE  
42-382 100 SHEETS 1 SQUARE  
42-383 100 SHEETS 1 SQUARE

RECEIVED

MAR 23 1981

March 20, 1981  
George R. Haskins  
P.O. Box 1777  
Fairbanks, Alaska  
99707

DEPARTMENT OF FISH AND GAME

Com. Ronald Skoog  
Boards of Fisheries and Game  
Subport Bldg.  
Junnan, Alaska. 99801

Dear Sir:

I feel that you people have put to gather a hasty set of regulations and left very little room for input from other groups. Because of this it makes the regs. very one sided in favor of fish and game with no concern with people that make a living off the land. It is impossible for miners, loggers, farmers, guides and other people to live by these regs when the enforcing officer has the final interpretation of them for enforcement. In this day and age people with high interest rates and other problems do not need to be beholden to your open ended regs. and enforcing officer's interpretation with little concern for industry.

This set of regs show no evidence in the form of studies to back them. Industry does not exist on dreams and ideas but on working solutions and research. To be favorable with industry fish and game should be able to back up their regs. with proof for the need of each and every reg.

I will name a few problems with your proposed regs. They do not address the damage that boats, outboards motors, fisherman horses and people that cross streams do but they are able to address the damage mining, road const. logging and other groups do to streams with very little visible evidence that fish and game has proposed these regs with a open mind.

Being a person that makes a living from placer mining I do not appreciate their reg. being forced on us with very little notice for input. Above all any government agency should do research and do in fact statements on what these new regs do for and against industry.

30 SHEETS 3 SQUARE  
42 SHEETS 4 SQUARE  
42 SHEETS 5 SQUARE



PC  
6

20 Mar 1981  
Nemana Alaska  
99760

Com. Ronald Story.

I protect these Reg. as  
written. With out much real  
study & input from people  
affected by these Reg.

Al Muthens  
SR mile 328 pt Hwy  
Nemana Alaska  
99760

Clair Osiner

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
68

42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
NATIONAL

COM. Ronald Skoag  
Boards of Fisheries & Game  
Support Bldg  
Juneau AK 99801

The Republic of the United States was founded  
on the right of the people. The right to live,  
and feed our family, and work. Now we have  
reached a point in time that are. Livly hood is  
being took away, with out much chance to  
fight. We feel that <sup>we the</sup> ~~the~~ minnct's are being cut  
short by the state's new proposals. Who is  
the state we the people give us are right  
thank you

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
69

RECEIVED  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

20 March 81  
FELK'S  
SCOTT HASKINS

COMMISSIONER RONALD SKOGES -  
BOARD OF FISHERIES & GAMES  
SUPPORT BUILDING  
UNREAU, ALASKA. 99801

DEAR SIR,

YOUR TO QUICK ANSWERS FOR  
PROPOSED REGULATIONS ARE IMPOSSIBLE  
ALTHOUGH I KNOW THIS IS YOUR DESIRE.

MINING IS A METHOD FEED PEOPLE  
WITHOUT DAMAGING TO NON/MIGRATING  
FISH. IT APPEARS YOU DESIRE TO MAKE  
LAW BY COMMISSION NOT BY VOTE OF PEOPLE.  
BRING THIS BEFORE THE PEOPLE NOT BY  
BOARD OF FISHERIES.

I AM AGAINST YOUR REGULATIONS  
YOU HAVE NO EVIDENCE TO DAMAGE TO NON/  
MIGRATION FISH -

YOU HAVE NO RIGHTS TO CONTROL METHODS  
OF PLACIER MINING. YOU HAVE NOT SUFFICIENT  
RESEARCH TO BACK YOUR THOUGHTS -

SCOTT HASKINS  
147 KELSANUA CT FELK 99741

PC  
76

March 20, 1981

Dear Henry:

It has come to my attention that your paternal point of view towards the people of Alaska is consistently trying to put the people of Alaska (in this case) out of the picture totally! Your prime thing that you are doing, is to control all people in Alaska who do not join unions, class, do go to church & are generally able & willing to fend for themselves. That is what our country is now doing. People's fund control!!

It is a sorry state of affairs that our country is going Socialistic. Adding jobs for the same commissions (such as yours) that go for regulations to incorporate jobs for paternal boards, so they can take over our lives.

We, here in Alaska, love & honor America but do not want our basic life imperiled by the Federal agencies or State against us.

Most Sincerely,

Mrs. L. J. Hawkins

147 Nelson Way #48

Woodside North

Pril Banks, Alaska 99701

COMMISSIONER'S OFFICE  
RECEIVED  
MAR 25 1981

DEPARTMENT OF HEALTH AND CARE

PC  
11

20 March 1981

George W Bell  
921 9th Ave  
Lawrence, KS 66044

Comm Ronald Skoog

Due to the fact that I have just found the new regulation proposal at this late date, I feel that to be fair to all, the mining ~~and~~ industries and fish and game more time should be allowed.

Thank you  
George W Bell

42 SHEETS SQUARE  
42 SHEETS SQUARE  
42 SHEETS SQUARE  
42 SHEETS SQUARE  
NATIONAL

COMMISSIONER'S OFFICE

RECEIVED

MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
72

Com. Ronald Skoog  
Board of Fisheries Game  
Support Building  
Juneau Alaska 99801

Dear Sir.

I am surprised to hear of your new set of regulation, surprised at the the very negative outlook toward the miners. I am very much against your timing of your next meeting, I also would encourage your department to do more research on damage to fish by mining operations. Fish & Game should not have a direct control of placer business. you are putting the small miner out of business. please take in consideration that Jet-boats + outboard motors and fishermen are general do more damage to fish than the miners

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Fordman & Richter

Box 1255

Fairbanks AK 99707

(PC)

Commonwealth of Alaska  
Board of Fish & Game  
Subpoena Order  
Juneau, Ak. 99801

March 22, 1981

Dear Sir:

I am concerned as placer miner about  
your proposed fish & game regulations and  
feel they are premature and without  
proper study and research.

Fred E. Wilson  
820 5th Ave.  
Fairbanks, Ak.  
99701

Sincerely,  
Fred E. Wilson

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

P2  
174

COMM. RONALD SKOOG  
BOARDS OF FISHERIES & GAME  
SUPPORT Bldg  
JUNEAU, AK. 99801

Dear Sir,

What the hell is the Fish & Game  
doing or trying to do. We feel you  
are trying to: 1. Force something on us  
without justification. 2. Sitting up  
the Fish & game to regulate us miners.  
who the hell do you think you  
are. 3. one more thing. What is  
this bullshit giving us 11 days to  
present our views on your so called  
Proposed Regulations

Rev. Wood

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
75

TO: Commissioner Ronald Skoog  
Re: The proposed Fish & Game Regulation  
on Alaskan Miners.

The time frame under which  
these regulations were put upon  
the Alaskan people did not give  
the industry related miners  
sufficient time to give any input  
I don't believe this is in the  
people's best interest & the  
people involved should make regulations  
to regulate themselves and not  
some un-related branch of the  
State government. I would like  
to be counted as an Alaskan  
against these regulations and  
~~not~~ the push on rushing them  
through without the people  
involved getting to be involved.

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

Sincerely,

A. Eaton  
and  
T. Eaton

PC  
176

March, 20 1981

TO: Commissioner Ronald S Roog  
RE: Proposed Habitat Regulations by the State, fish & Game on mining in Alaska

MAR 22 1981

Dear Sir,

RECEIVED

42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
42 SHEETS 3 SQUARE  
NATIONAL

I would like to disagree with the proposed Regulations on Mining in Alaska. The Regulations seemed to be put upon the people in such a fast manner that the industry related people can not give any input. The meeting that is being held in regards to these regulations is being held <sup>in Anchorage</sup> at the same time as our Alaska Miners Assoc. is having a state conference <sup>in Fairbanks</sup>. It makes me wonder about the coincidence of most of the people who should be involved in the making up of these regulations ~~are~~ being at the opposite end of the state while its going on.

In the very least we should have more input from the Miners and more time to accomplish this.  
Thank-you Sincerely,  
M. A. Staton

PC 7



42-381 30 SHEETS 3 SQUARE  
42-382 100 SHEETS 3 SQUARE  
42-389 300 SHEETS 3 SQUARE



Com Ronald E Koog  
I Protest the Proposed  
B Fish + wildlife regulations  
which will stop Alaska mining  
If you love to live with  
total rules + regulations why  
don't you move to Russia  
there where they have total  
control

BR/oyt  
587-10<sup>th</sup> ave  
Folsom AK

COMMISSIONER'S OFFICE

RECEIVED

MAR 25 1981

DEPARTMENT OF FISH AND GAME

PC  
78

20 Mar 81

This whole business of the proposed Regulation on Fish & Game Habitat that will effectively put me out of Business and on to welfare, was handled in a very sneaky manner.

This will destroy Place mining in Alaska and effectively put thousands of Alaskans out of work.

There needs to be a hell of a lot <sup>more</sup> research on the effects of Equip on stream bottom crossings.

The restriction that J. Scott County imposed since the threats of the miners that had to fight for the privilege to cross the Chena River area is a joke, and an outrage. I've heard that I had to pay \$15,000 to bridge the Chena river so that Equip wouldn't leave the rocks on the stream bottom. Stupid - stupid - stupid.

E. J. Gordon

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 23 1981

DEPARTMENT OF FISH AND GAME

PC  
79

42,381 50 SHEETS 5 SQUARE  
42,382 100 SHEETS 5 SQUARE  
42,389 500 SHEETS 5 SQUARE  
NATIONAL

3-21-81  
SR3-Box 30608  
Fairbanks AK 99701

Dear Sir:

As a 30 year Alaskan resident and an Alaskan miner I object to the proposed bill covering Fish and Game Habitat Protection. We feel that more research should be conducted before this proposal is passed. We do not feel mining does, in any way, affect fish and game habitat protection in Alaska.

We, at this time, have more regulations than we have time to take care of.

Thank you for your consideration and prompt attention to this matter.

Glenn D Boutin  
W. Iena AK.  
P.O. Box 30608 Fairbanks AK  
99701

COMMISSIONER'S OFFICE  
**RECEIVED**  
MAR 25 1981

DEPARTMENT OF FISH AND GAME

PC  
80

March 20, 1981

Dear Governor Hammond,

I would like to protest the "Proposed Regulations Governing Fish and Game Habitat Protection". I feel that, in the first place, the time element is too short for allowing persons within the mining industry to respond to the Dept of Fish and Game proposed regulations.

I feel that the proposed regulations place undue and unfair stipulations on the placer industry, which is a majorstay for state economics, which are not necessarily founded on a sound platform.

The premise that destruction of fish and game habitat will be avoided by regulating the placer industry is not necessarily valid. We, as a group, are all interested in future generations and would not want the rest citizens. However, it has not to my knowledge been proven what fish and game suffer under any but the most extreme polluting situations.

I would suggest that more research is necessary to better determine which of these regulations have a sound basis, and which would only be detrimental to the placer industry without necessarily being beneficial to fish and wildlife.

By adopting the proposed regulations, Fish and Game Board would have increased control over the placer industry. This is an attempt to destroy the free enterprise system upon which our country is founded.

I request you strike these regulations until such time as fair representation from the placer industry can provide input to fairly represent both sides.

Thank you

Ed Armstrong

Tri-Cor Mining, Inc

COMMISSIONER'S OFFICE

RECEIVED

MAR 25 1981

DEPARTMENT OF FISH AND GAME

DC  
181



# Southeast Alaska Conservation Council

BOX 1692, JUNEAU, ALASKA 99802

907-586-6942

## SEACC

Boards of Fisheries and Game  
Support Bldg.  
Juneau, AK 99801

LYNN CANAL  
CONSERVATION  
Haines, Alaska

March 22, 1981

JUNEAU GROUP-  
SIERRA CLUB  
Juneau, Alaska

Re: Proposed regulations governing fish and game habitat protection

SITKA GROUP  
SIERRA CLUB  
Sitka, Alaska

Dear Boards of Fish and Game: .

PETERSBURG  
CONSERVATION  
SOCIETY  
Petersburg, Alaska

Thank you for the opportunity to comment on the proposed regulations governing fish and game habitat protection. Overall we find the regulations very satisfactory. They provide the resources with the essential habitat protection in a balanced manner with the activities that are needed for the economic well-being of Southeast Alaska. We do have several suggestions that we feel are important to insure the perpetuity of healthy fish and game populations.

SITKA  
CONSERVATION  
SOCIETY  
Sitka, Alaska

5AAC 95.030

SIKINE  
CONSERVATION  
SOCIETY  
Wrangell, Alaska

(4) additon of "sedimentation" and "change in water temperature". Any activity that will result in sedimentation or a change in water temperature in an anadromous fish stream will cause damage to the resource. As such, these types of activities should be required to submit detailed plans and specifications for approval.

TAKU CHAPTER ACS  
Juneau, Alaska

(5) should be rewritten to read:

"Use of any log yarding equipment that drags all or part of a log through a body of water, over the bank or through the flood plain."

TONGASS  
CONSERVATION  
SOCIETY  
Ketchikan, Alaska

(14) The distance requirement should be 100 feet instead of 50 feet. The US Forest Service uses the 100 foot minimum for stream protection. A study by Erman, Newbold and Roby of the University of California at Berkeley entitled "Evaluation of Streamside Buffer Strips for Protecting Aquatic Organisms" identified 30 meters (100 feet) as the minimum required for protection. They found that streams with buffers of less than 30 meters resulted in the same loss of aquatic organisms as streams having no buffer. As such, any activity within the 30 meter (100 foot) distance will cause damage to anadromous fish and should be required to submit detailed plans and specifications for approval.

PC/82

5AAC 95.040

(2) "Timber harvesting" should be added to the list of activities subject to the requirements of this section. Timber harvesting can have as much, if not more, impact on habitat as the other activities listed.

5AAC 95.220

(2)(c). the phrase "...or spawning habitat" inserted after "overwintering populations of fish." The snow cover is needed on spawning streams as thermal cover to prevent the development of anchor ice.

5AAC 95.230

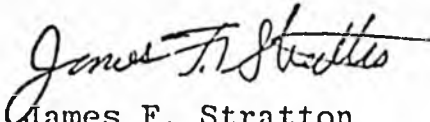
add:

(j) No person may yard logs across a stream in any way that causes all or part of the log to drag through the streambed or along the bank.

This fits in with the other activities that are not allowed.

If you have any questions regarding our suggestions or reasoning behind them, please contact us for clarification.

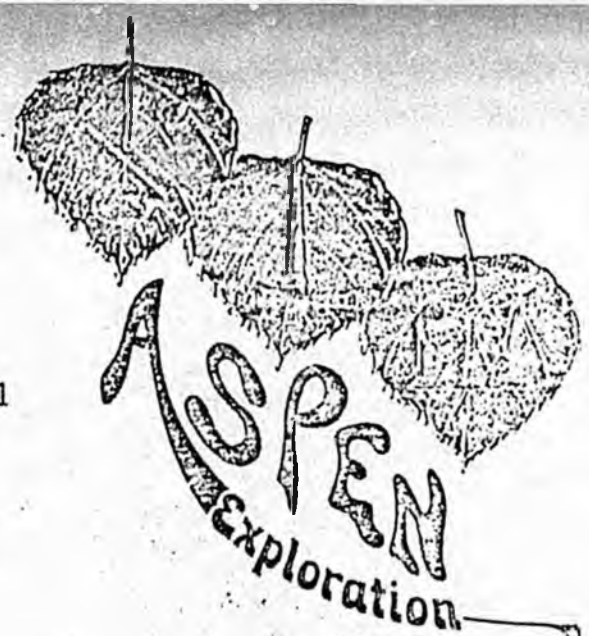
Sincerely,



James F. Stratton  
Executive Director

JS/ats

March 21, 1981



Boards of Fishery and Game  
Support Building  
Juneau, Alaska 99801

Gentlemen:

We have reviewed your proposed regulations governing fish and game habitat protection and offer the following comments:

A. General Comments

1. Throughout the regulations the Department of Fish and Game has total discretion to approve or disapprove a habitat permit. If the regulations are adopted at all, which we question, there should be a section setting forth guidelines which the Department must follow when approving or disapproving a permit. If such procedures are followed it will prevent inconsistent and arbitrary denials which may result from imposition of different standards by different employees in the Department.

2. There are no standards or guidelines set out for a prospective operator to prepare the plans and specifications required for approval of a habitation protection permit nor are the standards of acceptance of such plans or specifications set forth. For example, the purpose of the regulations, among other things, is to provide for an unobstructed path of fish in streams, rivers and lakes. If one proposes to put a culvert across the stream, the engineering standards of that culvert are set out with specificity, but if one proposes to placer mine gravels near a stream, it is not certain what would constitute a plan that would provide unobstructed passage for fish.

3. The list of legislative designated areas where fish, game and their natural habitat are the primary values would be widely published and widely disseminated. In a like manner, the list which identified anadromous fish streams should be widely published, widely disseminated and opportunities to comment should be provided.

4. These regulations could seriously disrupt the potential for multiple land use of many kinds, especially mineral exploration and development. A long, hard look should be given to the redundancy

Aspen Exploration Corporation

PC/84

and interference between this proposal and already-existing regulations and the result of their combined effect. Existing regulations are probably adequate.

5. We question whether adequate notice was given in the issuance of the proposed regulations. The copy we received was undated and we do not know when the proposed regulations were distributed. Ample time for review and comment should be provided.

B. Specific Comments

1. Section 5 AAC 95.020 concerning streams and rivers frequented by fish is a trap for the unwary. Although "frequented by fish" is defined as containing resident or migratory fish, there are certainly many streams where it may be arguable whether or not they contain resident or migratory fish on a continuous basis.

2. In 5 AAC 95.300 (2) we question the inclusion of the excavation of materials from an annual flood plain of an anadromous fish stream.

3. Likewise in 5 AAC 95.030 (9) we question the inclusion of disposal of stockpiling of any materials in the flood plain of an anadromous fish stream.

4. It is also questioned why in 5 AAC 95.030 (14) land clearing and filling earth and materials within 50 feet from an anadromous fish stream should be included as an activity affecting such streams. This may be especially true if such activity doesn't affect the stream itself.

5. A habitat protection permit is only issued for fixed term not to exceed 5 years. It should be pointed out that many placer mining operations will exist for more than five years. Under the regulations, the Department has a continuing right to inspect the operation and impose additional standards, which could adversely affect excavation planning. The relatively short term is not understandable.

6. The way we understand the regulations, operations can be excluded for up to 30 days in any calendar year, if determined necessary by the Department. This could be disastrous to a placer mining operation if that 30-day period comes in during the short placer mining season.

7. The application for a habitat protection permit must be on a form and in the manner approved by the department. This is very general language and to submit "in the manner approved by the Department" could mean several different things.

pc/85

8. We appreciate that an application for a habitat protection permit may be included in the submission to the Department of Natural Resources on a tri-agency placer mining permit application form. Your efforts to consolidate permits and to expedite the permitting process are beneficial.

9. 5 AAC 95.190 states that scheduling of instream activities will be determined by the Department. There must be close coordination with the operator of any mining operation since the mining season is extremely short and disallowing instream activities during a portion of that period could be disastrous.

10. 5 AAC 95.230 (2) (c) taken to its extreme will completely prevent anyone from placer mining an anadromous fish stream. 5 AAC 95.23 (2) (h) and (i) seem to be inconsistent with 5 AAC 95.23 (c) in that (h) and (i) deal with disposing mine tailings in an anadromous fish stream.

11. 5 AAC 95.240 (1) states that no person may fuel in excess of 10 gallons any type of wheeled or tracked equipment in any anadromous fish stream. The term "stream" must be clearly defined in this context. If spillage is the main concern, then it should be so written.

12. 5 AAC 95.260 is concerned with shoreline standards. Paragraph (a) states that the distance from the shore wherein a riparian disruption may affect the quality of aquatic habitat is dependent on several things, but finally "the type of activity causing the disruption." Does mean that these regulations are aimed at specific types of activity rather than types of disruption? Has placer mining been singled out as a target even though that activity founded Alaska, and has been going on for many years without adversely affecting Alaska's fish. Or is it rather that the distance from the shore is dependent on the "type of the disruption"? In addition, it is not clear if a habitat protection permit is required for placer mining operations within 50 feet of the mean high water line of an anadromous fish stream.

13. 5 AAC 95.910 states that the Department may waive or alter any requirements of previous sections. If one plans his operations based on those regulations, then this would mean that the Department may impose additional or different requirements on his operation. Before the Department should be allowed to waive any standards, there should be a very obvious and extreme necessity.

14. 5 AAC 95.930 states that upon issuance of a permit the Department has unobstructed access at any reasonable time on the permit site. As a matter of courtesy, safety and security there should be at least a 10-day notification prior to allowing governmental employees to inspect an operation site.

01/26

15. 5 AAC 95.940 requires the permittee to submit reports to the Department on the form and on the date satisfactory to the Department. We believe this requirement to be unnecessary and a form of harassment. Field personnel are not report writers, and if regulations and procedures are adequately promulgated in the first place, reports should not be necessary.

In conclusion, those of us in the mineral exploration and development business have been severely harassed and restricted by regulations and land withdrawals at the Federal level. It is our sincere hope that the State of Alaska does not now join those who oppose multiple use concepts and who would like to see the mining business go out of existence.

Sincerely,

ASPEN EXPLORATION CORPORATION

*James G. Bush*  
gk

James G. Bush, Alaska Manager

JGB:gk

107



# ALASKA MINERS ASSOCIATION, INC.

FAIRBANKS BRANCH

March 20, 1981

**PRESIDENT**

DONALD STEIN  
105 Dunbar Avenue  
Fairbanks, Alaska 99701  
(907) 456-7642

**VICE PRESIDENT**

DONALD MAY  
4545 Woodriver Drive  
Fairbanks, Alaska 99701  
(907) 479-2493

**SECRETARY**

FRED HEFLINGER  
P.O. Box 74304  
Fairbanks, Alaska 99707  
(907) 452-7143

**TREASURER**

BARRY DONNELLAN  
P.O. Box 73795  
Fairbanks, Alaska 99707  
(907) 456-2309

**DIRECTORS**

ROGER BURGGRAF  
S.R. Box 20086  
3 1/2 Mile Sheeh Creek Road  
Fairbanks, Alaska 99701  
(907) 479-2596

RON ROSANDER  
718 16th Avenue  
Fairbanks, Alaska 99701

CARL HEFLINGER  
665 10th Avenue, Apt. 307  
Fairbanks, Alaska 99701  
(907) 456-4548

DENNY BREID  
P.O. Box 2116  
Fairbanks, Alaska 99707  
(907) 452-3165

BILL WAUGAMAN  
270 Illinois Street  
Fairbanks, Alaska 99701  
(907) 479-2182

WALTER WIGGER  
P.O. Box 78  
Fairbanks, Alaska 99707  
(907) 479-4372

**STATE VICE PRESIDENT**

DICK SWAINBANK  
P.O. Box 81315  
Fairbanks, Alaska 99708  
(907) 479-6093

The Honorable Jay Hammond  
Governor - State of Alaska  
Pouch A  
Juneau, Alaska 99811

*Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801*

RE: Alaska Department of Fish and Game  
Proposed Regulations  
Governing Fish and Game Habitat Protection

Dear Governor Hammond: *v Board Members:*

The Fairbanks Branch of the Alaska Miners Association first became aware of the proposed regulations on March 12, 1981.

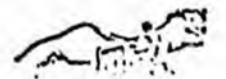
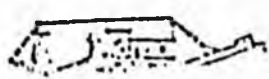
We were informed that written comments are to be received in Juneau by March 23, 1981 to assure proper consideration of our testimony. It was also brought to our attention that the hearings covering the proposed regulations are being held on April 2, 1981 in Anchorage the same day Alaska Placer Miners Conference is held in Fairbanks.

We would like to protest the very unprofessional and unethical way the above has been handled. We had no knowledge of what was "in the mill" and the Department of Fish and Game made no effort to obtain input from the Miners Association and the Placer Miners in preparing the proposed regulations. This is not the way a republic form of government is meant to operate.

The short time allowed for us to reply to the proposed regulations and the holding of the Hearings when the annual Placer Miners Conference is being held will not allow the Alaska Miners Association and its members sufficient time or opportunity to submit input into the process of formulating regulations, which the people involved in Alaska can live with.

We do not have time to respond point by point on

*pc/88*





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the context of the proposed regulations but would like to make it clear that we oppose the attempt by the Department of Fish and Game to promulgate regulations without getting the proper input from industry.

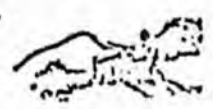
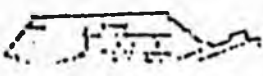
The proposed regulations appear to be one-sided. No attempt is being made to regulate recreational equipment such as out-board boats, jet boats, fishermen and other people, or pack animals and horses who pass thru spawning grounds. We maintain the above activities are more detrimental to fish habitat than most mining ventures. If the Fish & Game propose to regulate the "protection of habitat", then the above endeavors must require permits before they can conduct activities on streams that contain fish.

The Department of Fish and Game has expanded its management powers beyond what was originally conceived at the time of statehood. The term anadromous fish originally meant the different species of salmon, but now has been expanded to include many other species of fish. Now the regulations are being drawn up in such a way that the Department of Fish and Game is assuming to completely control the management of streams where any fish reside or migrate thru. If these regulations are approved it will give the Department of Fish & Game total control over streams where industry is competing for the water resource. The economic benefits that an industry can provide must be considered in relation to what a stream produces in fish for commercial and recreational purposes.

These regulations as proposed will have a monumental impact on the mining industry, farming and other construction and development oriented industries. It is another step by the government to regulate and slow down development and increase overhead and production cost in industry.

It appears as if this is one of the first steps being taken by the administration to regulate the activities of Alaskans by a permit system.

PC/89





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The proposed regulations use nebulous phraseology through-out and do not clearly define conditions requiring permits. The regulations leave too much interpretive discretion up to the enforcement officer who will dictate to industry how they are to conduct their business.

We have no choice but to oppose these proposed regulations and request that more time be given to study the impact of mining and activities in streams where fish live. The Department of Fish and Game are attempting to regulate industry without having the proper scientific data to back up their contentions. Too little study has been done to determine the beneficial vs. the detrimental effects of placer mining on fish habitat.

Regulations of this magnitude will have a dire effect on industry. We suggest that an economic impact statement be prepared and reviewed before any regulations are put into effect.

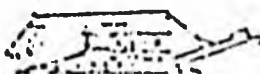
Sincerely yours,

Donald Stein, President

RCB:dlb

c.c. Boards of Fisheries and Game

PC/90



# MEMORANDUM

# State of Alaska

TO: Richard Logan  
Chief  
Habitat Protection  
Department of Fish and Game

FROM: *D.M. for*  
Glenn Akins  
Director  
Environmental Quality Management  
Department of Environmental  
Conservation

DATE: March 23, 1981

FILE NO:

TELEPHONE NO: 465-2640, ext. 63

SUBJECT: Proposed Habitat  
Protection  
Regulations

This Department has reviewed the second draft of the proposed regulations governing fish and wildlife habitat protection and submits the following comments:

1. We endorse the concept of standardizing procedures to increase predictability and consistency in the department's permitting role. Substantive concerns and editorial changes to the preliminary draft were provided to the Department of Fish and Game at our January meeting. Many of those points remain unaddressed in the current draft. In those instances, we have indicated directly on the draft copy our recollection of the content of those comments.
2. The authorities under which these regulations are promulgated are often very broad and general and thus open to interpretation. We understand an Attorney General's opinion has been issued which clarifies the authority of the Commissioner of the Department of Fish and Game to cover any impeding activities for all lakes, streams and rivers frequented by non-anadromous fish. We have attempted to clarify 5 AAC 95.020 to eliminate any confusion that may be caused on whether the section applies to non-impeding activities.
3. We understand that a fiscal note will be submitted with the uniform procedures regulations covering notification and appeal requirements listed in the proposed habitat regulations. Should other incremented costs result from implementing these regulations, a fiscal note should be attached.
4. Coordination of the Department of Environmental Conservation's 401 certification process with the habitat protection permit process is essential to clarify responsibilities for water quality and ensure that both agencies issue their respective authorizations with non-conflicting conditions for activities in waterbodies covered under Title 16. Both agencies need to work on this mechanism.

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5. The general permit provisions (Section 070 (2)) should include a mechanism to allow crossings established at a later date to fall under the general scheme. This would avoid the need to formally amend the regulations if and when such areas are designated.
6. "Hazardous chemicals" should be included in the definition section and should be defined to mean those wastes and substances listed in the Federal Solid Waste Disposal Act (PL 94-580).

We appreciate this opportunity to comment on the proposed regulations and we hope that consideration will be given to our recommendations.

Enclosures

cc: C. Deming Cowles, Dep. Com., DEC  
Deena Henkins, EQM, DEC  
Dick Marcum, M&TA, DEC  
Paul Bateman, NRO, DEC  
Doug Redburn, M&TA, DEC  
Paul O'Brien, M&TA, DEC

pc/92

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March 24, 1981

The Honorable Bettye Fahrenkamp  
Chairman Senate Natural Resources Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The Alaska Loggers Association (ALA) recommends that you consider making certain changes to the Alaska Forest Practices Act and the authority of the Alaska Department of Fish and Game (ADF&G) and the Boards of Fish and Game. The proposed changes effect the regulation of timber harvest activities upland of the natural flow and beds of streams, lakes and rivers

ADF&G's authority to regulate timber harvest or other activities is limited to that set forth AS 16.05.870(b) which provides as follows:

"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 wheels, tracted, 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."

As can be seen, ADF&G's authority is limited to streams specified under AS 16.05.870(a). This authority is further limited to situations where a person or governmental agency "desires" to "use, divert, obstruct, pollute or change" the "natural flow or bed" of a "specified river, lake, or stream." As can be seen, no authority whatsoever has been given to ADF&G upland of the "natural flow or bed" of a

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specified river, lake or stream. The issue arises as a result of ADF&G's on-going attempt to promulgate habitat regulations which are presently in draft. These regulations would require a habitat permit for activities within the flood plain of rivers, lakes and streams frequented by fish as well as the tributaries of such streams. In other words, ADF&G is attempting to use AS 16.05.870(b) as authority to regulate upland of "the natural flow or bed" and is attempting to extend its control beyond specified streams to streams frequented by fish. (Enclosed as Exhibit A is our response to the draft regulations.)

We accept the proposition that ADF&G should have authority to protect fish and game from problems which may be caused by timber harvest activities. Using a professional management approach, which maximizes use of the expertise of our operators, ADF&G's biologists and other experts, we have done a good job of resource protection. What we object to is the change in management direction which the habitat regulations reflects. For reasons which we do not understand, ADF&G is seeking to move to a highly prescriptive approach designed to spell out in cookbook-fashion how each aspect of industrial activities should take place on lands extending to the flood plain. We object to this change and to the unnecessary bureaucratic requirement that we obtain a habitat permit from ADF&G for each aspect of our operations. Such an approach by ADF&G runs directly counter to the Governor's regulatory reform effort.

Furthermore, the Alaska Legislature specifically rejected the prior approval system proposed by the Hammond Administration for Forest Practices in favor of a notification system. In other words, under the Legislature's approach, an operator simply has to notify the agencies 30 days in advance of his operations in order to undertake them. Under the habitat regulations, a habitat permit will be required of an operator when he or she seeks to harvest timber in Southeast Alaska, since so much of this area is within the flood plain. This habitat permit requires prior approval by ADF&G before operations can begin. Accordingly, contrary to the intent of the Legislature as expressed in the Alaska Forest Practices Act, ADF&G, through its regulatory authority alone, is creating a prior approval system.

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It has been a cardinal principle of the ALA and others with whom we have been working on the Forest Practice Act to set up one comprehensive set of regulations such that an operator will have to look at only one set of regulations to know what is required of him or her. DNR and DEC have cooperated with us in this regard by jointly promulgating regulations with respect to timber harvest. The Coastal Management Act regulations regarding forestry have been preempting DNR's forest practice regulations as is required by the Forest Practices Act. Thus, ADF&G by its regulations will be the only non-cooperative agency. A situation which requires the timber operator to look at several sets of regulations to determine what the requirements are will only create confusion in the operators and in fact prevent us all from obtaining the protection we want for the various other resources.

We recommend that there be changes made to AS 41.17.010 et. seq. (the Forest Practices Act) and to AS 16.05.870 (ADF&G's authority) which would, on the one hand, give ADF&G the authority protect fish and game habitat. On the other hand, to the extent its regulations impact timber harvest activities, ADF&G should be required to coordinate its regulations into one comprehensive set of regulations (as the other State regulatory agencies have done in response to the legislative mandate set forth in the Forest Practices Act).

To effect this compromise we propose the following changes to the law:

1. AS 16.05.870(b) would be amended to read as follows: "With the exception of person or governmental agency subject to AS 41.17.010 et. seq. ..." (everything else in subsection (b) would remain the same).

This change would except those involved in the forest industry from whatever rulemaking authority ADF&G might have under AS 16.05.870. The following changes in AS 41.17.010 would be designed to allow regulation of the forest industry by ADF&G through the provisions of the Forest Practices Act. This will cause all regulations concerning timber harvest to be put in one comprehensive set of regulations.

2. A new subsection to AS 41.17.010 "Declaration of Intent" would be put in as subsection 5 and present subsections 5 and 6 would be renumbered as subsections 6 and 7 respectively. The new subsection would read as follows:

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"Government administration of timber harvest activities should combine the regulatory measures of all agencies concerned with timber harvest activities into one comprehensive regulatory scheme which includes regulations under this chapter, Title 15, and other agency authorizing statutes as provided herein;"

3. AS 41.17.020. "Division of Forest Land and Water Management Established" would be amended to include a new subsection (h) and present subsection (h), (j), (k), and (l) would be relettered as subsections (i), (j), (k) and (l) respectively. The new subsection (h) would read as follows:

"The commissioner and the commissioner of Fish and Game shall work cooperatively to protect the fish and wildlife resources of the state from the adverse consequences of activities under this chapter. All regulations concerning the protection of fish and wildlife on forest land shall be in accordance with the concept of professional management as opposed to management by prescriptions and shall be promulgated under and in accordance with the provisions of this chapter."

4. The present subsection (j) (which shall be relettered as subsection (k) in accordance with the change requested in number 3) shall be amended to read as follows:

"Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Zone Management Act, (2) regulations protecting fish and game prepared in cooperation with the commissioner of Fish and Game, and (3) if authorized by the commissioner of Environmental Conservation, regulations relating to control of non-point source pollution."

5. AS 41.17.080 would be amended by adding a new paragraph (a)(7) which would read as follows:

"Protection of fish and game as determined in cooperation with the commissioner of Fish and Game."

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Conclusion.

Thank you very much for the opportunity to offer these amendments. We intend to use all lawful measures to prevent implementation of the habitat regulations promulgated by ADF&G under AS 16.05.870 for the reasons set forth in the attached letter to Mr. Dick Logan. However, we join with the habitat section of ADF&G in seeking to assure that there is adequate protection for fish and game resources of the State. We think the proposals made herein will allow reasonable coordination of the two activities within a single comprehensive set of regulations for forestry. We would like to meet with you on this as soon as possible.

Very truly yours,

James F. Clark

JFC:sd

pc/97

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March 24, 1981

Chief Richard Logan  
Habitat Protection Section  
Alaska Department of Fish & Game  
Subport Building  
Juneau, Alaska 99801

Dear Dick:

This is in behalf of the Alaska Loggers Association (ALA) in response to the proposed regulations governing fish and game habitat protection. We are extremely disappointed with the draft regulations. For years we have had a good working relationship with you, have maintained high environmental standards in our industry, and have protected other resources by relying upon the application of professional management (yours, ours and others) of on the ground decisions. You are now assaulting this working system with a complete turn-about in management philosophy: you are seeking to replace professional management with a new system of complex and burdensome prescriptions. Why? We feel that these regulations as applied to timber harvesting violate the Forest Practices Act and in any event go far beyond the authority which the Legislature gave the Alaska Department of Fish and Game (ADF&G) and the Boards of Fish and Game in Title 16.

As we mentioned to you in our letter of January 6, 1981, in response to the preliminary draft, it is ALA policy that forest practice regulations, such as these, be one comprehensive set of regulations coordinated through one state agency. This principle was recognized in the State Forest Practices Act wherein Coastal Zone Management Act regulations impacting forestry and the non-point pollution authority of the Department of Environmental Conservation (DEC), as found in Section 208 of the Federal Water Pollution Control Act, were integrated into the rulemaking process which resulted in State Forest Practice Act regu-

oc. 1981

lations. We believe that as a policy matter these regulations should also be integrated with the Forest Practices Act regulations promulgated by the Department of Natural Resources (DNR). This will provide timber operators, regulating agencies and the public with only one set of regulations regarding forest practices. In this way, the timber operator, the regulating agency and the public will know what is required of the operator. Such integration can be accomplished either through cooperation with the Department of Environmental Conservation (DEC), in utilizing the provisions of Section 208(b) of the Water Pollution Control Act discussed below, or through amendments to the State Forest Practices Act attached hereto as Exhibit A.

Secondly, these regulations, as written, violate the Forest Practices Act. The Forest Practices Act as originally proposed by the Governor was a prior approval system, i.e., DNR had to approve the timber harvest plan before operations could commence. The Legislature specifically changed this to a notification system, i.e., the operator merely had to notify DNR that it would begin operations in thirty days. The law provides standards and guidelines which anyone desiring to harvest timber has to obey, but as stated, the Legislature specifically rejected the permit approach.

There is no way under these draft regulations that timber harvesting activities could be undertaken without obtaining a habitat protection permit. Such a permit requires ADF&G approval. Accordingly, by converting the notification system into a prior approval system, the proposed regulations are contrary to the letter and spirit of the Forest Practices Act.

The primary authority upon which ADF&G is relying (notwithstanding the overly extensive citation of sections of Title 16 as authority for the various regulations) is AS 16.05.370(b) and (c). These sections call for a modified notification, rather than a prior approval, system. Subsection (b) states that if a person or governmental agency desires to undertake certain activities with respect to a "specified river, lake or stream", the person or government agency "shall notify the Commissioner of this intention before the beginning of the construction or use." (emphasis added). Subsection (c) provides that the Commissioner should acknowledge receipt of the notice and

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can require submittal of full plans and specifications and written approval "if the Commissioner determines to do so." In other words, the statutory scheme requires notice in the first instance, with the Commissioner having authority to require prior approval for certain projects. The statute certainly did not contemplate the requirement of obtaining a habitat protection permit in every instance as the regulations have done. It seems to us that further clarification of AS 16.05.970(c), specifying in what specific cases prior approval needs to be obtained, would help clarify the original and obvious statutory scheme which the Legislature sought to implement.

Since the legislative intent of the Forest Practices Act clearly favors a notification, not a prior approval system; and since the Forest Practices Act came after ADF&G's Title 16 authority; and since the Legislature is presumed to have been aware of Title 16 when it passed the Forest Practices Act (and thus is presumed to have believed that the Forest Practices Act and Title 16 are consistent); and since Title 16 as described above is itself a modified notification system; it follows that the proposed regulations violate the Forest Practices Act. We therefore ask that these regulations be withdrawn and redone in cooperation with DEC through DEC's Section 208 authority or pursuant to the attached legislation which we are proposing.

Assuming for purposes of argument that the proposed regulations do not violate the Forest Practices Act, they clearly exceed ADF&G's authority under AS 16.05.970 - the only arguable authority ADF&G has with respect to non-point pollution under Title 16. AS 16.05.970(b) only requires notice with respect to actions in "a specified river, lake or stream." (emphasis added). Thus, the authority extends only to rivers, lakes, or streams specified under AS 16.05.970(a): the habitat regulations purport to also extend this authority to unspecified tributaries of a specified stream (5 AAC 95.970).

Furthermore, the regulations purport to control activities upon the banks of rivers, lakes and streams as well as land based activities beyond them. AS 16.05.970(b) only requires notice to ADF&G where one "desires to construct a hydraulic project, or use, divert, obstruct, pollute or change the natural flow or bed of a specified river, lake, and stream. There is no authority in ADF&G

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under this section to regulate the "desire" to use, divert, obstruct, pollute or change" beyond the "natural flow or bed" of a specified river, lake or stream. The Legislature simply did not provide for ADF&G to regulate the banks or land based activities beyond them. These regulations are therefore ultra vires to the extent they seek to regulate such activity.

Authority does exist for the State to regulate non-point pollution of streams. It is found in Section 208(b)(2)(F) of the Federal Water Pollution Control Act which is administered by DEC. We have no philosophic problem with ADF&G seeking to protect streams by protecting banks and land based activities beyond the banks. Our objective is to cause the state agencies concerned about forest practices to coordinate forest management through one comprehensive set of regulations. If ADF&G will cooperate with DEC and exercise its regulatory actions through Section 208, there will be only one set of comprehensive regulations because DEC has coordinated its Section 208 authority with DNR through a Memorandum of Understanding.

It is also clear to us that the Boards of Fish & Game should not have authority to promulgate habitat regulations. The boards lack the expertise to write regulations concerning forest habitat. Accordingly, we will be seeking to delete whatever authority they may have under AS 16.05.251(a)(7) to write regulations regarding habitat.

Furthermore, the Boards' statutory authority simply does not extend to making regulations of the type promulgated here. Whereas the Commissioner of ADF&G is given authority to require written approval of plans and specifications, the authority of the Board of Fisheries in AS 16.05.251(a)(7) and the Board of Game in AS 16.05.255(a)(7) is limited to regulations "for engaging in ... watershed and habitat improvement". Notice that this is not watershed and habitat protection, but rather watershed and habitat improvement. Thus, what this section contemplates are regulations leading to watershed and habitat enhancement programs. Given the vast difference in the authority afforded the Commissioner in AS 16.05.870(b) and the very limited type of authority given to the Boards of Fish and Game in AS 16.05.251(a)(7) and 255(a)(7), it is clear that they lack authority to participate in the promulgation of these habitat regulations.

We have raised a series of legal objections to the regulations. We hope that you will submit these issues to the Department of Law for its consideration.

Third, these regulations are too long and complex. When it is considered that the timber operator must also comply with DNR's forest practice regulations (which incorporate DEC's best management practices), it will be most difficult to meet the detailed, cookbook-type prescriptions set forth in these regulations. Thus, the complexity of the regulations in conjunction with other regulations will be confusing to both operator and regulator alike.

What is needed is a written description of the system under which we have been operating. Field biologists have been using their professional discretion to insure stream protection. We submit that the detailed prescriptions which comprise these regulations, particularly Sections 190 through 260, will hinder ADF&G's professional biologists as they seek to deal with site specific problems. It would be simpler and wiser to set forth goals in the forest practice regulations and allow timber operators and biologists to find ways to meet those goals on the ground. This is the permit by regulation technique which we have discussed with you orally.

Fourth, ADF&G does not now have the personnel to administer these intricate regulations. How many additional positions will be needed to administer and interpret them on the ground? How many people will be needed to deal with the administrative appeals and litigation which are likely to follow in the wake of this most complicated set of regulations?

Fifth. Please be advised of our most strenuous objection to Section 260, which in effect calls for buffer strips on all streams. This is environmentally indefensible and will place an incredible burden on timber harvest operations. Its impact on the potential yield of the Tongass National Forest and state and private forest is incalculable given the intermesh of streams on the best timber growing lands. We believe it is safe to say that ADF&G has no notion whatsoever of the adverse job impact of this particular section.

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Sixth. We believe it inappropriate for these regulations to be promulgated prior to the time that the regulatory reform regulations are completed. The regulatory reform regulations (which are presently in draft and upon which public comment is still being received) are the umbrella regulations under which the habitat regulations will be included. To attempt to draft these subordinate regulations before the umbrella regulations are completed will simply mean that ADF&G will have to go back later and amend these regulations to conform to the regulatory reform regulations. To make the process work in an orderly manner, we recommend that you suspend this rulemaking process until such time as the regulatory reform regulations are completed.

We have the following specific comments regarding the various sections of the proposed regulations:

1. 5 AAC 95.001. Findings.

A. Subsection (b) states that the Legislature has set aside "various land and water areas of the State" where fish and game is entitled to a higher degree of protection than afforded other areas. The next sentence states that among legislatively designated areas are "specified fish streams." AS 16.05.870(a) provides for specification by the Commissioner of ADF&G of "the various rivers, lakes and streams or parts of them that are important for the spawning or migration of anadromous fish." Thus, it is incorrect to say that specified streams are legislatively designated: the Legislature has set up a mechanism by which the Commissioner may designate streams.

More important, the authority with respect to specified streams is limited in AS 16.05.870(b) to activities within the "natural flow or bed" of a specified river, lake or stream. Accordingly, the findings are incorrect in stating that the Legislature has set aside land areas by providing for the specification of fish streams. Therefore, we challenge every attempt in the habitat regulations to prescribe ADF&G management of banks and land based activities beyond the banks whether or not we have made specific reference to the Sections in which the prescriptions appear.

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B. We challenge the statement of subsection (f) of .001 that "the susceptibility of fish and game to damage requires the promulgation of uniform standards." The very next sentence states that "because of the wide variation in habitats, there must be a means for accommodating unique individual circumstances." We agree with the latter sentence and disagree with the former. What should be maintained is maximum flexibility for ADF&G professionals to determine what is needed on the ground.

Even though ADF&G does not have the authority to require anything on the banks or surrounding riparian land, we in the timber industry have always reached agreement with ADF&G with respect to activities in these areas. This clearly shows that there is no need for uniform procedures - we have been working with the fish and game managers on banks and riparian lands without any requirement that we do so for a long time. What is needed is professionally determined site specific determinations of how operations could best take place with minimum impact on the surrounding environment. Accordingly, we recommend striking the first sentence of subsection (f).

C. We disagree entirely with the last sentence of subsection (g) of .001 which makes the Orwellian statement that a permit system is best for providing flexibility. As stated, without ADF&G having any authority whatsoever, we have worked with the department to protect site specific environments as requested by ADF&G biologists. It is my understanding that your department thinks that we have done a good job in protecting the environment. Accordingly, this belies the statement that a permit system is needed at all. It boggles the mind to read that a permit system would provide flexibility. The long and complicated regulations set forth in this chapter make it clear that that is not the case. These regulations will make it impossible for operators and biologists to know what to do. We submit that these regulations will therefore harm, not help, the environment.

D. Subsection (h) is a hive of inconsistencies. On the one hand, the first sentence talks about minor impacts and the second sentence talks about general permits to accommodate and minor impacts. On the other hand, the third sentence seems to take the opportunity to obtain general permits by calling for individual permits on a case-by-case basis. We recommend the deletion of subsection (h) entirely.

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2. 5 AAC 95.002. Purposes.

A. We object to the use of the phrase "land and water use" as found in subsections 1 and 2. As previously stated, ADF&G does not have such extensive authority.

B. Subsection 2(A) says that the regulations must provide for "unobstructed passage of fish". Use of absolute words like "unobstructed" are unwise, since theoretically anything could be considered an obstruction. The word should be deleted.

C. Subsections 2(B) and (D) state that there should be uniform standards dealing with certain land-based activities. Again, ADF&G does not have authority to make regulations in this regard.

3. 5AAC 95.020. Activities in Streams and Rivers Frequented by Fish.

A. This subsection and .030 require plans to be approved by the department if certain listed activities are undertaken. It is a mechanical system: the sole issue being whether or not the proposed activity is covered in the lists of activities set forth in the subsections.

In fact, AS 16.05.870(c) states that "[I]f 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 ... ." Accordingly, it is inappropriate to use a mechanical system. The regulations should contain a section describing under what circumstances the commissioner will "determine" that the plans and specifications for the activities listed in this subsection and subsection .030 are needed. It is all right to have a mechanical system to describe what activities will trigger the notice requirement. However, these regulations are insufficient and illegal to the extent they seek to make mechanical a situation in which the law requires the commissioner to exercise his discretion.

B. This section provides that certain activities in streams or rivers "frequented by fish" cannot take place without plan approval. In 5 AAC 95.990(3), "frequented by fish" is defined to mean "at any time in the determination

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of the department, containing resident or migratory fish." A stream must be specified under AS 16.05.870(a), in order for it to be subject to AS 16.05.870(b) and thus subject, to these regulations. It is our recommendation, therefore, that the term "frequented by fish" be stricken and that the words "specified" be placed in front of the word "stream or river" in the third line of this section.

C. This section also states that activities cannot take place in "portion of the flood plain which is covered by the mean annual flood." Again, the Department does not have authority under the cited statutes to control land based activity.

Even if there were such authority, how is a timber operator on the ground to determine what portion of the flood plain is covered by the mean annual flood? Viewed from this perspective, the regulation simply is impractical.

D. Subparagraph 2 of 95.020 states that plans need to be submitted in order to build certain cross channel structures. We submit that a Corps of Engineers permit would be needed for any of these structures in navigable waters. ADF&G would have a right to comment upon the proposed plans within the Corps of Engineers permitting process and could certainly disapprove them if they were unsatisfactory. What thought has been given to coordinating the need for Corps permits with these requirements in order to eliminate duplication? This issue would be easier to address if consideration of the draft of these regulations were held off until such time as the regulatory reform regulations were promulgated.

#### 4. 5 AAC 95.030. Activities in or Affecting Anadromous Fish Streams.

A. This section precludes certain activities from taking place without a permit "in water specified as important to anadromous fish." Does this mean waters specified in accordance with AS 16.05.870(a)? We would submit that the only legal way to bring waters within the regulations is to specify them as required by AS 16.05.870(a).

Furthermore, to do otherwise would leave it to the timber operator to determine what streams are important to

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anadromous fish and which are not. There is no way that this burden should or can legally be shifted to the timber operator inasmuch as he or she does not have the expertise to make this determination as AS 16.05.870(b) only authorizes regulation of specified streams.

B. This section includes tributaries of anadromous fish streams within the definition of waters important to anadromous fish. There is no authority whatsoever in Title 16 to require a timber operator to guess which streams are tributary to an anadromous fish stream. Under AS 16.05.870(a), ADF&G has the right to specify tributaries as waters important for the spawning or migration of anadromous fish. Such designation causes tributaries to become specified streams and thus, subject to your regulatory authority. Anything short of specification as provided in AS 16.05.870(a) would fail to make that stream subject to these regulations.

C. Section 95.030 provides that certain activities in waters important to anadromous fish cannot take place without a permit if those activities "may result in pollution or a change in the natural flow or bed of the anadromous fish stream." The addition of the word "may" goes far beyond the authorization of the regulatory power found in AS 16.05.870(b). That section states that notification must be given if a person "desires to pollute." In other words, it requires a much closer nexus between the activity and pollution than the word "may" provides. Use of the word "may" requires the timber operator to speculate as to what may or may not result from a particular activity.

Usually such determinations are made by biologists on the ground who work with the operators to make certain that their activities do not have adverse consequences. This is the existing situation which we are trying to maintain. We do not intend to allow the ADF&G to switch the burden of making such determinations to the timber operators who lack the necessary expertise. Determining under what circumstances pollution may or may not occur, is simply not within their ability to do. It is ADF&G's job and can only be carried out by professional managers making on the ground decisions.

D. Under subsection 2, a permit is needed if activities are going to take place within the annual flood plane. As previously stated, ADF&G lacks the authority under the law to regulate land based activities.

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Furthermore, the state has certification authority under section 404 of the Federal Water Pollution Control Act to control such dredging and filling. Accordingly, it appears that this provision will result in duplication of regulatory control.

E. Subsection 5 requires submission of plans and specifications for "use of any log dragging equipment." As written, this would seem to mean that any time an operator intended to use log dragging equipment anywhere on the operation, submission of plans would have to be submitted. Again, this is a land based activity outside ADF&G's legal authority to regulate.

F. Subsection 7 requires submission of plans and specifications for construction "at the bank of the stream, river or lake." Again, you do not have authority to regulate activity on the bank of the stream, river or lake. Furthermore, even if you did have such authority, the word "bank" is an extremely vague term. It could, theoretically, extend to all riparian uplands. Would it not be better to specify a zone alongside the stream in which activity would be regulated?

G. Subsections 9, 10, 11, 12, 13 and 14 are objected to as attempts to regulate land based activity which ADF&G is not authorized to do under AS 16.05.870 or any of the other listed statutes.

5. 5 AAC 95.070. General Permits.

This section provides for general permits with respect to certain named areas. However, the criteria for obtaining a general permit is not spelled out. It would seem that general permits could be issued on a "logging show" basis. This would save biologists the necessity of stream by stream analysis for habitat protection. Instead, a series of rules for an area could be decided upon and set forth in a general permit. Where special streams need special protection, they could be looked at by ADF&G biologists apart from the general permit. We believe that this section should be written to so provide.

6. 5 AAC 95.90. Uniform Application Procedures.

A. This section provides that if the notice provided to DNR by a timber operator under AS 41.17.090 contains certain information which is specified in subsection (b) of this section, then a timber operator does

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not also need to provide notice. As written, this would require the operator to compare the DNR form to subsection (b) of this section in order to make sure that all of the subsection (b) information were included. This results in no time saving for a timber operator at all, and in fact, subjects him or her to sufficient risk that all the important information is not included such that a prudent operator would simply use both forms to apply. The responsibility for making sure that the information provided on each form is sufficient lies with the agencies themselves and not with the timber operator.

B. Subsection 90 is in conflict with sections 20 through 40. The latter subsections state that the proposed activity cannot be undertaken unless there has been prior approval by ADF&G of plans for the proposed activity. Section 90 says that in addition to obtaining plan approval, one must have a permit. Can one assume that by obtaining plan approval, one can receive a permit? Or, are there other things that must be done in addition to submitting the plans and obtaining approval which are necessary to obtain a permit?

7. 5 AAC 95.100. Permit Conditions and Assignments.

This section allows the deciding officer to put terms and conditions which he believes are necessary into the permit. At a minimum, the deciding officer should provide written reasons for adding any such conditions. Otherwise, one could not effectively appeal such a decision.

8. 5 AAC 95.110. Reconsideration of Denials.

This section provides that reconsideration would be allowed if the applicant provides new factual information. We suggest that reconsideration also be allowed where legal reasons are advanced by the applicant.

9. 5 AAC 95.120. Amendments to the Permit.

A. Subsection (a) does not explain when a change is sufficient to require an amendment. There should be language explaining this.

B. The second sentence of subsection (b) is poorly worded. It states that the "Department will require a

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maximum of 30 days to review a request for amendment after receipt of all necessary information in the appropriate regional office." This sentence should be changed to read "The Department will review a request for amendment within 30 days of receipt of all necessary information in the appropriate regional office."

What is all necessary information? It would seem that all necessary information would be provided in a completed application described in 5 AAC 95.90(b).

10. 5 AAC 95.170. Application of Standards.

Subsection (a) makes the standards of Sections 180 through 250 applicable to "rivers, lakes and streams frequented by fish." As stated in our response to 5 AAC 95.020, as found in paragraph 3(a) of our response, "frequented by fish" as defined would have to mean streams specified under AS 16.05.870(a). Since AS 16.05.870(b) limits the authority of the Department to specified streams, if the term "frequented by fish" does not mean what we say, then the Department simply has no authority to extend the regulations as provided in 95.170. In other words, unless "frequented by fish" is defined to mean "specified under AS 16.05.870(a)", then there is no authority in the Department to regulate. For this reason, we would again suggest that the term "frequented by fish" be stricken and that the word "specified" be placed in front of the words "rivers, lakes and streams" in the third line of this section.

11. 5 AAC 95.190. Adherence to Standards.

Subsection (b) as a practical matter, requires the permittee to remove installations not in accordance with the provisions of the permit or this chapter which pre-existed the permit and the chapter. The impact of these regulations should only apply prospectively. We should not be required to remove installations, which although once legal, do not now comply with the regulations. A grandfather clause should be written in.

12. 5 AAC 95.190. Standards for Free Passage and Protection of Fish.

A. Subsection (a) calls for "free passage" and movement of fish. What is the difference between free passage and free movement? "Movement" seems to be simply an added word conveying no discreet meaning. Accordingly, we recommend that it be stricken.

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B. Subsection (b) provides for scheduling of certain "instream" activities. Our experience has been that the building of bridges -- even during spawning periods -- can be accomplished without undue disturbance to the fish. Once a structure such as a bridge, or a wide culvert is in place, we have observed that fish seem to pay very little attention to it.

C. Subsection (c) says that blasting is prohibited within one-eighth of a mile of the water line of any river, lake or stream, unless otherwise permitted in the permit. Section 95.030(8) says that blasting cannot be undertaken unless plans and specifications have been submitted to and approved by the Department. Why is this matter covered twice?

Furthermore, industry experience shows that techniques such as sequential blasting substantially reduce concussion. The Du Pont Company has demonstrated that good practice can reduce the distance between the blasting area and the water. Accordingly, we urge you to reconsider the one-eighth mile distance in favor of result oriented goal statement.

### 13. 5 AAC 95.200. Culvert Installation Standards.

A. The requirement for the burying of culverts as set forth in Subsection (a) is unnecessary. It is not the present practice to bury culverts to a six inch depth. Such a practice could result in adversely affecting fish habitat. At present, an operator considers the size of the stream bed and specifies a culvert of length and size sufficient for fish passage to occur at a water velocity acceptable except for periods of peak flow. In addition, culverts are presently placed to match natural river or stream flow.

B. Subsection (b) specifies a table to be followed by the field operator. The maximum allowable culvert velocities are much too low, especially when one considers that there are peak flow periods when such velocities are naturally exceeded.

C. Subsection (c) provides that no realignment may occur, even if a stream is not a fish stream. All tributaries and feeder streams should be available for realignment to accommodate installation. In these cases, the water quality is of the highest concern and such realignment, usually, enhances water quality.

D. Subsection (e) simply states that installation of a culvert may not occur if there is a spawning or rearing site through which a road has been designed. Certainly there are situations where such culvert installations would result only in a diminimous reduction of fish habitat. Accordingly, we believe that this section should be qualified.

14. 5 AAC 95.220. Stream, River and Lake Banks Stabilization Standards.

A. Subsection (a) precludes any activities which "may affect" the banks of streams, rivers and lakes. Again, ADF&G does not have authority under AS 16.05.870(b) to regulate activity on banks of streams, rivers, or lakes; particularly on banks of unspecified streams, rivers or lakes.

Furthermore, anything may affect the banks of streams, rivers and lakes. Accordingly, this phrase is overly broad and simply should be deleted.

B. Subsection (d) states that only rocks, cribbing, or material provided by the Department could be used for stream bank stabilization. What about grass seed or vegetation? Why should they not be specified in this section?

15. 5 AAC 95.230. Stream, River and Lake Bed Stabilization Standards.

A. Subsection (a)(2) states that a person has to be in compliance with terms specified in the permit "which the department considers necessary for free passage and protection of fish ..." The underlined phrase should be changed to "which are reasonably necessary." While we have no doubt that the department will act within reason, there is no reason to broaden its discretion beyond that.

B. Subsection (b) flatly states that no person may channelize a stream frequented by fish. Again, to solve a particularly difficult engineering problem, this may be the wisest thing to do. This, of course assumes that environmental standards can be met.

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C. Subsection (d) states that no person may conduct activities which can act to create potential fish entrapment basins within portions of the flood plain. As previously stated, ADF&G lacks the land based authority under AS 16.05.870(b) to regulate actions within the flood plain. Furthermore, even if such authority did exist, this section is too vague and requires too much speculation to be practical.

E. Subsection (e) states "each berm created in an anadromous fish stream must be contoured to the natural slope as it existed prior to the creation of the berm." It is difficult to understand precisely what this means. 5 AAC 95.990(3) defines berm to mean "an artificially raised margin, bar or other deposit composed of earthen materials, which interrupts the natural configuration of the adjacent terrain." Accordingly, it would appear that to the extent there is any raised deposit of material of any kind, whether detrimental or non-detrimental, it must be changed to the pre-existing contours. This, in turn, means that those contours must be charted by a baseline study before operations begin. This is an absurd make-work type result which is simply unconnected to any environmental protection whatsoever. This section should be rewritten to require berms to be eliminated where necessary to protect the environment. Returning to natural contours has been rejected in every rulemaking and legislative process of which we are aware. The reason is that the expense is not related at all to the environmental benefits to be derived.

F. Subsection (g) requires that bridge pilings be cut off level with stream bottoms upon removal. When culverts are removed, channels are to be restored to original configurations. Both of these costly requirements may be necessary in individual instances. However, the goal should be that when an area is left, there will be no environmental damage to the fish. We can foresee any number of instances where meeting the requirements of Subsection (g) would cause more environmental damage than doing nothing. Furthermore, it is impossible to restore a channel to its "original configuration." How is the original configuration to be determined? It may well be that returning to its original configuration provides no environmental advantage whatsoever, yet the operator would still be required to undertake the cost of meeting this requirement.

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16. 5 AAC 95.240. Water Quality Standards.

There is no reason for ADF&G to address itself to water quality standards since this is a function of DEC. Accordingly, we believe this entire section should be deleted.

17. 5 AAC 95.250. Shoreline Standards.

Notwithstanding its confusing language, this section seems to provide for buffer strips along all streams. As a policy matter, the ALA opposes such a standard. We certainly recognize in particular cases buffer strips may be required. However, to require them in all cases is regulatory overkill and cannot be supported on environmental grounds. We think it far better to follow the forest service approach of setting up streamside management zones within which there would be special protection. Therefore, we believe that this section should be rewritten to accord with the Southeast Area Guides.

18. 5 AAC 95.910. Waiver or Alteration of Procedure Standards and Permit Conditions.

Subsection 3 of this section provides that waivers may be granted where the standards set forth in a regulation are not applicable due to unique individual stream or land features. This leaves it up to the operator to prove that the stream or land features are unique. It will be far better to employ the type of system we have talked about throughout this response to the regulations. The biologists and the operators should work out standards which will provide environmental safeguards to specific, on-the-ground situations.

19. 5 AAC 95.930. Retention of Permit for Inspection and Inspection of Permit Sites.

Subsection (b) requires that a permittee must give law enforcement officers free and unobstructed access "at all times" to the permit site. We believe it inappropriate for there to be such access except where the timber operator or its designated representative is available to accompany law enforcement officers around the site.

20. 5 AAC 95.970. Waters Important to Anadromous Fish.

The last sentence of this section attempts to extend the provisions of the chapter to tributaries of anadromous fish streams. As previously stated, there is insufficient authority in law for such an extension to be made. ADF&G is only allowed to regulate streams specified under AS 16.05.870(a). Accordingly, we recommend that the last sentence of this section be deleted.

21. 5 AAC 95.990.

A. Subsection 2 defines an anadromous fish stream as a stream which is or "may at any time be important to the spawning, rearing or migration of anadromous fish, and includes all sloughs and backwaters adjoining the listed waters, and that portion of the flood plain which is covered by the mean annual flood." Section 870(a) makes no provision whatsoever for streams which may become important to spawning, rearing or migration of anadromous fish. The 870(a) list only applies to streams "that are important to the spawning or migration of anadromous fish." (See AS 16.05.870(a)). Thus, the phrase "may at any time" should be deleted as exceeding ADF&G's authority under the law.

Again, the inclusion of sloughs, backwaters, listed waters and the flood plain go way past the legal authority set forth in 870(b) and should therefore be eliminated.

B. Subsection 3 defines "berm" to mean an artificially raised margin, bar, or other deposit composed of earthen materials which interrupts the natural configuration of the adjacent terrain." This definition is going to be truly difficult to apply. What does artificially raised mean? What does interrupts a natural configuration mean? We recommend that this definition be eliminated. (See our other objections to this issue in Paragraph 15 E. of this response.)

C. Completed application is defined to mean "all of the information necessary for the department to issue, condition, or deny permit". How much information this will be or how many exchanges of correspondence or meetings it will take to provide it are anyone's guess. Accordingly, the use of this phrase which puts the burden on the operator

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to determine the information needed, is totally unfair. In the first place, it gives the department the opportunity to hold up processing of any permit for as long as it can conjure up a need for additional information. Furthermore, in 5 AAC 95.090, it stated that "each applicant for habitat protection permit must submit a completed application on a form or in a manner approved by the department. The notion that one can submit all of the information that must be ultimately required is nonsensical. We recommend that the term completed application be defined as "the form provided by the department which is fully answered to the best of the applicant's knowledge." This definition puts the burden on the department to ask the right questions in the first place and provides that the form will be considered to be completed if the applicant has answered all the questions asked.

D. Subsection 8 defines "frequented by fish" to mean "that any time in the determination of the department, containing resident or migratory fish." As we see it, this phrase should only be used in connection with regulations designed to implement AS 16.05.840 which requires construction of fishways where a dam or other structure is built across a stream frequented by salmon or other fish.

#### CONCLUSION.

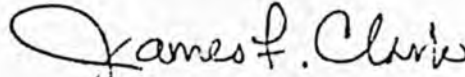
Thank you for the opportunity to respond to the habitat permit regulations. As stated, our major concern is that for no apparent reason, ADF&G is, by these regulations, attempting to exchange a working management system based upon use of professional management for a prescriptive system that is universally opposed by industry and probably by a number of your own biologists. The regulations in their present form violate the Forest Practices Act and go beyond the authority which the legislature gave ADF&G and the Boards of Fish and Game in Title 16. Finally, we believe it inappropriate to promulgate these regulations prior to completion of the umbrella regulations which are

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now in draft in connection with regulatory reform. For all these reasons, we urge you to withdraw these regulations. We will work with you to help obtain the authority and budget you need to protect fish and game resources, but this is not the way to do it.

Very truly yours,



James F. Clark

JFC:sd

ALASKA BOARDS OF FISHERIES AND GAME

AND

ALASKA DEPARTMENT OF FISH AND GAME

PROPOSED REGULATIONS

GOVERNING FISH AND GAME HABITAT PROTECTION

The Alaska Department of Fish and Game and the Alaska Boards of Fisheries and Game are seeking review of and comment on the attached draft of proposed habitat protection regulations.

The Department is proposing these regulations to (1) make explicit the procedures and standards used in issuing habitat protection permits, (2) allow public critique of procedures and standards used in issuing permits, (3) increase predictability of departmental decisions involving issuance of permits, (4) establish statewide consistency in the Department's habitat protection permitting program, (5) avoid litigation over matters of interpretation, (6) increase efficiency of operations, and (7) eliminate permit requirements for certain activities. The proposed regulations are written to implement an existing permitting program. No new permit is being introduced. The time required to obtain permits will not be increased.

The Boards and the Commissioner will meet from April 1 through approximately April 4 at the Captain Cook Hotel in Anchorage, Alaska to consider proposed changes in Departmental regulations. A public hearing on the habitat protection regulations will start at 9:00 a.m. April 2, 1981.

The Boards and the Commissioner may adopt or reject these proposed changes or may develop alternatives on the subject matter contained in the proposed regulations. The Boards and the Commissioner may also consider any additional subject matter set forth in the legal notice published in compliance with the Administrative Procedure Act. Copies of the legal notice may be obtained from regional offices of the Department of Fish and Game.

Pursuant to the Administrative Procedure Act, public comment is invited on the proposed changes. At the public hearing, comments may be offered orally or in writing. Written comments may be submitted in advance of the hearing and should be sent to the Boards of Fisheries and Game, Support Building, Juneau, Alaska 99801 early enough to allow receipt by March 23, 1981. Adherence to the March 23 suggested deadline will assure the Commissioner and Board members of more time for study and, therefore, fuller consideration of comments submitted by the public. The Boards and the Commissioner urge those persons whose interests may be affected by the proposed changes to offer comments.

TITLE 5. FISH AND GAME

PART 6. PROTECTION OF FISH AND GAME HABITAT.

CHAPTER 95. PROTECTION OF FISH AND GAME HABITAT.

ARTICLE 1. PURPOSE OF REGULATIONS.

5 AAC 95.001. FINDINGS. (a) The Boards of Fisheries and Game and the commissioner make the findings set forth in this section.

(b) Lands and waters comprising the natural habitat of fish and game are important to the welfare of fish and game but may also be valuable for other uses which benefit the economy and general welfare of Alaskans. The legislature has set aside various land and water areas of the state where the fish, game and their natural habitat are the primary values, and require a higher degree of protection than afforded to areas not so designated. These legislatively designated areas include specified fish streams, game refuges, game sanctuaries, and fish and game critical habitat areas.

(c) Certain activities on lands and in waters comprising the natural habitat of fish and game resources may create conditions which diminish the values and amenities of that habitat. In areas where fish and game resources are of importance, land and water uses may, if not properly planned, cause unnecessary or undesirable impacts to fish, wildlife and their habitat. For example, land and water modifications can increase erosion or sedimentation, or divert, obstruct or alter water quality, quantity or flow. Water temperature extremes may be aggravated, or populations of animals and vegetation may be altered or destroyed. Land and water development actions may reduce food supplies for fish or game, restrict movement of fish and game, eliminate cover or disturb or destroy spawning, nesting, and breeding areas. Modifications to land or water may change adjacent habitats, or significantly change the capacity of a stream or wetland to store storm and flood waters. Development actions in upstream waters or in tributary streams are potential causes of undesirable changes in downstream habitats of fish and wildlife.

(d) In the legislatively designated areas, regulations governing public uses are necessary to promote planning and secure effective protection of the characteristics and values of the natural habitat of fish and game, and to establish measures and procedures for mitigating adverse effects upon the habitat.

(e) Promulgation of regulations will promote the public interest by providing for the protection of public resources, avoiding conflicts in the use of lands and waters through

public disclosure of development guidelines, and providing for predictability and consistency in regulatory activities.

(f) The susceptibility of fish and game to damage requires the promulgation of uniform standards. However, the wide variation in sensitivity and quality of natural habitat complicates the problem of developing uniform standards, and necessitates a means for accommodating unique individual circumstances.

(g) Flexibility in the implementation of regulations is necessary to ensure that the purposes of uniform regulations are met without undue constraints on the general public, and that the least damaging or least restrictive practical land or water use alternative may be considered in determining whether, and on what terms, approval should be given. This is best accomplished through the use of a permit system which allows for conditioning of permits on the basis of local variations in resources.

(h) It is anticipated that substantial numbers of permit applications will be for minor routine activities that have little potential for significant environmental degradation. For these activities, the public interest is best served by providing a mechanism whereby general permits covering topical uses or area may be issued. However, since cumulative and secondary effects could be significant, and since there exists a multitude of preconceived ideas of what constitutes habitat acceptable to perpetuating fish and game, an individual permit should be issued for conducting any type of land and water development project which poses a threat to the sustained viability of fish and game habitat in special legislatively designated areas and in natural water bodies containing fish.

Authority: AS 16.05.020  
AS 16.05.251  
AS 16.05.255

5 AAC 95.002. PURPOSES. It is the purpose of these regulations to:

(1) provide land and water use applicants with explicit procedural requirements for project approval and permit issuance;

(2) sanction practical land and water use programs in legislatively designated areas important to fish or game while minimizing adverse disruption of natural fish or game habitat and the resources therein through site-specific permit conditions which protect fish, game, and their habitat, and by uniform standards which;

(A) provide for unobstructed passage of fish in streams, rivers and lakes;

(B) control or prevent erosion, sedimentation, subsidences of land, and construction of fish entrapment basins;

(C) assure protection of fish and their habitat during migration, spawning, incubation, rearing and overwintering;

(D) stabilize or preserve stream, river, and lake beds and banks; and

(E) maintain water quality and quantity acceptable to fish;

(3) ensure that fish and game habitat during and after completion of any alteration or development of it, will be stabilized or restored by the permittee to allow maintenance or recovery of fish and game populations by natural physical and biological processes.

Authority: AS 16.05.020  
AS 16.05.251  
AS 16.05.255

## ARTICLE 2. HABITAT PROTECTION PERMIT SYSTEM.

5 AAC 95.010. LIST OF WATERS IMPORTANT TO ANADROMOUS FISH. Repealed / /81.

5 AAC 95.020. ACTIVITIES IN STREAMS AND RIVERS FREQUENTED BY FISH. No person or governmental agency may undertake any of the following activities in a stream or river frequented by fish, or that portion of the floodplain which is covered by a mean annual flood, unless plans and specifications for that activity sufficient to assure the passage of fish have been submitted to and approved by the department. Activities not listed in this section will not be subject to written approval under AS 16.05.840 and therefore notification of the activity will not be required:

(1) installation of culverts and bridges, including snow and ice bridges;

(2) installation of cross channel structures that increase stream velocity or restrict channel flow including, as applicable;

(A) ford site development involving placement of material instream;

(B) placement of flumes or sluice boxes instream;

(C) instream stilling basins and settling ponds;

- (D) dams;
- (E) impoundments.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7)  
AS 16.05.840

5 AAC 95.030. ACTIVITIES IN OR AFFECTING ANADROMOUS FISH STREAMS. The activities listed in this section necessitate the submission of detailed plans and specifications under AS 16.05.870 before beginning the activity in waters specified as important to anadromous fish, including any activity in a tributary to an anadromous fish stream that may result in the pollution or a change in the natural flow or bed of the anadromous fish stream. Except for emergency permits issued orally pursuant to AS 16.05.890, no person or governmental agency may undertake any of the listed activities unless plans and specifications have been submitted to and approved by the department under this chapter. Activities not listed in this section will not be subject to the written approval requirements of AS 16.05.870(c), and therefore notification of the activity under AS 16.05.870(b) will not be required:

- (1) use of any wheeled or tracked equipment in the water, or use of any wheeled or tracked equipment greater than 2500 pounds gross vehicle weight over ice;
- (2) excavation of material from the stream or lake bed, bank or annual floodplain;
- (3) use of a suction dredge;
- (4) any action which results in a diversion, obstruction, impoundment, fluming or pollution of the natural flow of an anadromous fish stream;
- (5) use of any log dragging equipment;
- (6) construction of any stream, lake, or river crossing, permanent or temporary, including snow ramps, bridges and culverts, low water crossings or constructed fords;
- (7) any construction or development project, including access ramps, at the bank of a stream, river, or lake;
- (8) blasting within 1/8 mile from a natural lake, river, or stream;
- (9) disposal of any materials or any stockpiling of such materials in a lake, river, or stream or its annual floodplain;
- (10) any operation to alter or stabilize the bank or bed of a lake, river, or stream;

(11) construction of river training structures, including spur dikes, revetments, or guidebanks, within the annual floodplain;

(12) construction of any storm drain or drainage ditch into a lake, river, or stream;

(13) use of mechanical water removal equipment for a volume of water greater than 500 gallons per day, or when water is removed from under the ice;

(14) any land clearing or filling of earthen materials within 50 feet from an anadromous fish stream, except that a distance other than 50 feet may be specified for specific streams in sec. 260 (b) of this chapter.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7)  
AS 16.05.870  
AS 16.05.890

5 AAC 95.040. ACTIVITIES IN STATE CRITICAL HABITAT AREAS, SANCTUARIES AND REFUGES. (a) The following activities are subject to the requirements of this section:

(1) construction of buildings and cabins in fish and game critical habitat areas;

(2) construction and excavations related to industrial and commercial activities, pipelines and utility systems and corridors, roads, airports and other transportation networks, oil and gas exploration and development, hydroelectric developments, commercial and industrial waste disposal activities, mining and mineral processing, grazing and animal husbandry, dredge or fill activities and water extraction in:

(A) fish and game critical habitat areas, as delineated in AS 16.20.230;

(B) state game refuges, as delineated in AS 16.20.030-16.20.039;

(C) state game sanctuaries, as delineated in AS 16.20.110 and 16.20.160.

(b) In critical habitat areas the activities listed in (a) of this section necessitate approval of detailed plans and specifications under AS 16.20.260. No person or governmental agency may undertake any of the activities listed in (a) of this section within a critical habitat area unless plans and specifications have been submitted to and approved by the department under this chapter. Activities not listed in (a) of this section within critical habitat areas will not be subject to AS 16.20.260, and therefore notification of the activity under AS 16.20.250 will not be required.

(c) In state game refuges the activities listed in (a)(2) of this section necessitate approval of detailed plans and specifications under AS 16.20.060. No person or governmental agency may undertake any of the activities listed in (a)(2) of this section on state-owned land within a state refuge unless plans and specifications have been submitted to and approved by the department under this chapter. Activities not listed in (a) (2) of this section within state refuges will not be subject to AS 16.20.060, and therefore notification of the activity under AS 16.20.050 will not be required.

(d) No person or governmental agency may undertake any activity listed in (a)(2) of this section within a state game sanctuary unless a permit for the activity has been issued by the department under this chapter.

Authority:	AS 16.05.020(2)	AS 16.20.060
	AS 16.05.251(a)(1), (7)	AS 16.20.120
	AS 16.05.255(a)(1), (7)	AS 16.20.170
	AS 16.20.040	AS 16.20.240
	AS 16.20.050	AS 16.20.250
		AS 16.20.260

5 AAC 95.050. PROTECTION OF CRITICAL HABITAT AREAS.  
Repealed / /81.

5 AAC 95.060. HABITAT PROTECTION PERMIT REQUIRED. (a) For convenience, the approval of plans and specifications under sec. 20, 30 and 40 (b) - (c) of this chapter, and the permit issued pursuant to sec. 40(d) of this chapter, will be referred to as : "habitat protection permit" throughout this chapter, and the submission of plans and specification will be referred to as an application for a habitat protection permit. Whenever the submission of plans and specifications is required under sec. 20 - 40 of this chapter, the submission of those plans and specifications satisfies any related notification requirement imposed by AS 16.05 or AS 16.20.

(b) A habitat protection permit will be issued for a fixed term not to exceed five years, subject to the provisions of (d) of this section.

(c) A habitat protection permit is a Class I permit and is subject to the procedures set forth in 22 AAC 10.

(d) The term of a habitat protection permit excludes those periods of time identified by the commissioner or his designee under this subsection. If the commissioner or his designee determines that (1) there exist temporary environmental conditions which were reasonably unforeseeable at the time of permit approval which threaten to cause substantial adverse impacts as a result of the activity, or (2) the permittee has failed to implement required mitigating or preventive measures or (3) the permittee has failed to comply with the provisions of this chapter, or the condition of the permit, the commissioner

or his designee will notify the permittee that the term of the permit is or will be interrupted for a period of time which the commissioner or his designee finds necessary for the abatement of the temporary condition, the completion of the delayed measures, or compliance with the provisions of this chapter. Exclusion periods under this subsection will not exceed 30 days in any calendar year, and successive exclusion periods will not be imposed without the consent of the permittee. Exclusion periods will be terminated by notice to the applicant from the department if the applicant demonstrates compliance or implements the mitigating measures. If the commissioner or his designee finds, prior to or during any exclusion period, that the environmental conditions are unlikely to correct themselves within any available exclusion period, he will, in his discretion, initiate revocation proceedings under sec. 150 of this chapter.

Authority:	AS 16.05.020(2)	AS 16.20.040
	AS 16.05.251(a)(1), (7), (12)	AS 16.20.050
	AS 16.05.255(a)(1), (7), (10)	AS 16.20.060
	AS 16.05.840	AS 16.20.120
	AS 16.05.370	AS 16.20.240
	AS 16.05.830	AS 16.20.250
	AS 16.05.890	AS 16.20.260

5AAC 95.065. ADOPTION OF DEPARTMENT OF NATURAL RESOURCE AUTHORIZATIONS. (a) Application to the department for a permit required under sec. 040 (b) or (c) of this chapter need not be made if:

(1) the activity has been authorized by the Department of Natural Resources through a land use permit issued under 11 AAC 65, a disposal of an interest in state land, or a plan of operations approved pursuant to a subsurface lease; and

(2) the authorization under (1) of this subsection has been endorsed in writing by an employee of the department authorized to issue permits under this chapter.

(b) An authorization endorsed under (a)(2) of this chapter constitutes the permit required under sec. 040 (b) and (c) of this chapter, and is enforceable by the department to the same extent as a permit issued under the provisions of this chapter. A violation of a term or condition of the permit constitutes a violation of a permit issued under this chapter, and the permit is subject to secs. 060(d) and 150 of this chapter. Any right of inspection, reporting or entry inuring to the benefit of the Department of Natural Resources under the permit also inures to the benefit of the department.

Authority:	AS 16.05.251(a)(1)(7), (12)
	AS 16.05.255(a)(1)(7), (10)
	AS 16.20.050
	AS 16.20.060
	AS 16.20.250
	AS 16.20.260

5 AAC 95.070. GENERAL PERMITS. Notwithstanding secs. 20 - 60 and 90 of this chapter, the following activities are, upon the effective date of their inclusion in this section, issued a general permit subject to the provisions of secs. 200 - 260 of this chapter, and the activity may occur without the necessity of obtaining a habitat protection permit:

(1) tracked and wheeled vehicles may be used to cross the Little Susitna River at the Edgerton Park junction (Section 34, T19N, R1E, Seward Meridian);

(2) tracked and wheeled vehicles may be used to cross anadromous fish streams at established crossings on the Petersville Road in Game Management Unit 16A;

(3) tracked and wheeled vehicles may be used to cross Russell Creek (Cold Bay) at vehicle ford sites identified as Number 1, Number 2, and Number 3, described as follows and specified on a topographical map available upon request from the Anchorage regional office (Region II):

(A) Number 1 is located approximately one mile upstream from the mouth of Russell Creek and immediately upstream from what is known locally as the "first fishing hole"; a road to this point and across the stream provides a land mark location;

(B) Number 2 is located approximately two miles upstream from the mouth of Russell Creek and near the Russell Creek hatchery; a road on each side of the crossing marks the access point;

(C) Number 3 is positioned approximately one mile upstream from the Russell Creek hatchery; a road is evident on each side of the crossing.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7)  
AS 16.05.255(a)(7)  
AS 16.05.870

5 AAC 95.080. EMERGENCY ACTIVITIES EXEMPTED FROM THE PERMIT REQUIREMENTS OF THIS CHAPTER. The permit requirements of secs. 020 - 160 of this chapter do not apply to anything done by an individual in the normal course of firefighting.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(1), (7)  
AS 16.05.255(a)(1), (7)

5 AAC 95.90. UNIFORM APPLICATION PROCEDURES. (a) Except for emergency permits issued orally pursuant to AS 16.05.890, each applicant for a habitat protection permit must submit a completed application on a form or in a manner approved by the department. Forms are available from department regional and

area offices in Ketchikan, Sitka, Petersburg, Juneau, Anchorage and Fairbanks, or other locations specified by the department. An application for a permit of another state agency is an acceptable form for applying for a habitat protection permit if the information required by (b) of this section is provided with or on the other agency's form and if the applicant submits a copy of the other agency's application form directly to the appropriate Department of Fish and Game regional or area office. An acceptable means of applying for a habitat protection permit also includes submission to the Department of Natural Resources of a tri-agency placer mining permit application form. The notification to the Department of Natural Resources required by AS 41.17.090 of the Forest Resources and Practices Act is also an acceptable means of applying for a habitat protection permit if the information required by (b) of this section is provided, and if a copy of the notification is given directly to the appropriate Department of Fish and Game regional or area office.

(b) A completed application constitutes plans and specifications for anticipated land or water use or construction work, including plans and specifications which provide for protection of fish and game. The application shall include the anticipated commencement date, duration and area of proposed activity including a scaled map, identification of streams or lakes at the site, description of type of activity, and information necessary for the department to judge whether the applicant will comply with the applicable provisions of secs. 170 - 990 of this chapter. The application may also include other information requested by and necessary for the department to determine the effect of the activity upon fish and game populations and habitat.

(c) Except for the tri-agency placer mining permit application submitted to the Department of Natural Resources pursuant to (a) of this section, a completed application must be submitted to the department regional or area office in the region in which the proposed activity will occur.

Authority:	AS 16.05.020(2)	AS 16.20.040
	AS 16.05.251(a)(7), (12)	AS 16.20.050
	AS 16.05.255(a)(7), (10)	AS 16.20.060
	AS 16.05.840	AS 16.20.120
	AS 16.05.870	AS 16.20.240
	AS 16.05.890	AS 16.20.250
		AS 16.20.260

5AAC 95.100. PERMIT CONDITIONS AND ASSIGNMENT. (a) In addition to the standards in secs. 170 - 260 of this chapter, the deciding officer will attach permit conditions to a habitat protection permit if he determines that terms and conditions are necessary to ensure compliance with the requirements of this chapter, or to otherwise ensure maintenance and protection of fish, game, or their habitat.

(b) Permits may only be assigned upon written consent by the department.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.110. RECONSIDERATION OF DENIAL. (a) The deciding officer may reconsider an application denied pursuant to 22 AAC 10 if the applicant submits, to the appropriate regional office, factual information or data which is new or additional to that supplied with the original application. The supplementary evidence may be submitted as an amendment to the original application, or the applicant may submit a new application.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.120. AMENDMENTS TO THE PERMIT. (a) A permittee may request amendment of a habitat protection permit by submitting, in writing to the department office where the permit was issued, a complete statement explaining why the amendment is necessary, including the amended plans, the location, commencement time, duration and type of activity requiring amendment.

(b) The deciding officer will issue an amendment to the permit if it is the department's determination that the provisions of this chapter will be met. The department will require a maximum of 30 days to review a request for amendment after receipt of all necessary information in the appropriate regional office.

(c) Amendments approved by the department become effective upon receipt by the permittee, or at a later date as may be specified by the amendment. Amendments remain valid for the duration of the permit or for a lesser duration as may be specified by the department.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.130. APPEAL ON A DENIAL OF APPLICATION. (a) Any person aggrieved by a decision on a permit application, amendment, or reconsideration may appeal by taking either a Class A or Class B appeal pursuant to 22 AAC 10.

(b) If an appeal is taken to the Department of Natural Resources of any decision on a permit in a critical habitat area or state game refuge endorsed pursuant to sec. 65(a)(2) of this chapter, the applicant will be notified, within 10 days of service of the notice of appeal, if the portion of the decision being appealed is attributable to the department. If the portion appealed is attributable to the department, the department will hear and decide the appeal under otherwise applicable procedures. If the portion appealed is attributable to both the department and the Department of Natural Resources, the appeal will be heard and decided jointly.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.150. REVOCATION OF A PERMIT. (a) The chief of the habitat protection section will serve upon the permittee an accusation under AS 44.62.360 initiating revocation proceedings if the chief finds that:

(1) the activity is causing fish or wildlife habitat impacts which:

(A) were not reasonably foreseeable at the time of permit issuance;

(B) are significantly more adverse in kind or degree from those projected at the time of permit issuance; and

(C) are unlikely to be alleviated within any available exclusion period under sec. 60(d) of this chapter; or

(2) the applicant has violated a term or condition of the permit, and it is unlikely that the violation can or will be cured within any available exclusion period under sec. 60(d) of this chapter.

(b) Hearings held under this section will be held within 30 days of service of the accusation, or 15 days of service of the notice of defense under AS 44.62.390, whichever first occurs. The hearing officer appointed under AS 44.62.350 will preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law. The

commissioner or the deputy commissioner will hear the case for the department, and will issue findings and conclusions within 10 days of the conclusion of the hearing.

(c) The effective date of the decision is as provided in AS 44.62.520.

(d) The permitted activity will be allowed to continue during the pendency of revocation proceedings unless the chief of the habitat protection section finds that continuation of the activity may result in substantial or irreparable harm to important fish or game resources. Any determination of the chief of the habitat protection section will be served with the accusation under (a) of this section. Upon service of the finding under this subsection, the permittee must immediately cease any activity for which the habitat protection permit was issued or required. At any time during the course of revocation proceedings, the permittee may petition the commissioner to stay the chief's order under this subsection. A copy of the petition must be served on the chief, and the chief may respond in writing to the commissioner and the permittee within two working days of receipt of a copy of the petition. The commissioner or the deputy commissioner will rule on the petition within three days of service of the petition on the commissioner and the chief of the habitat protection section.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.160. RENEWAL OF PERMIT. Upon expiration or termination of a permit issued under this chapter, a new permit may be obtained only if a new completed application is filed pursuant to sec. 90 of this chapter. A permit may be renewed for the same operation if the permittee requests renewal before the expiration of the permit.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

### ARTICLE 3. STANDARDS OF GENERAL APPLICATION TO FISH HABITAT.

5 AAC 95.170. APPLICATION OF STANDARDS. (a) Unless specifically provided otherwise, the standards in secs. 180 - 260 of this chapter apply only to rivers, lakes and streams frequented by fish.

(b) Unless indicated that it applies only to permittees, each standard in secs. 200 - 260 of this chapter applies to all persons regardless of whether a permit is necessary to engage in the activity.

(c) Until the permit expires, the standards in secs. 180 - 260 of this chapter do not apply to any permittee who obtained, prior to the effective date of these regulations, a permit from the department to conduct activities in a river, lake or stream frequented by fish.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7)  
AS 16.05.840  
AS 16.05.870

5 AAC 95.180. ADHERENCE TO STANDARDS. (a) Each applicant or permittee must plan for, maintain and comply with the standards of secs. 190 - 260 of this chapter.

(b) The department reserves the right to require the permittee to correct conditions or remove and replace any installation constructed under permit by the permittee and which is not in accordance with provisions of the permit or of this chapter.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7)  
AS 16.05.840  
AS 16.05.870

5 AAC 95.190. STANDARDS FOR FREE PASSAGE AND PROTECTION OF FISH. (a) Free passage and movement of fish must be assured both upstream and downstream of the permitted activity or construction as may be provided through conditions of the permit.

(b) Scheduling of instream activities will be determined by the department on a site-specific basis so as to avoid or minimize adverse disturbances to fish during migration, spawning, incubation, rearing or overwintering.

(c) Blasting is prohibited within one-eighth mile of the edge of the water in any river, lake or stream unless a lesser distance is specified by the department on the permit.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.20.840  
AS 16.20.870 - 890

5 AAC 95.200. CULVERT INSTALLATION STANDARDS. (a) Each culvert placed in a river or stream frequented by fish must be installed so that at least one-fifth of the diameter of each round culvert and at least 6 inches of each elliptical or arch type culvert is set below the lowest elevation of the natural river or stream bottom at the place of installation for the full length of the culvert;

(1) this does not apply to bottomless arch type culverts;

(2) a variance may be granted by the department to avoid solid rock excavation.

(b) Culvert dimensions necessary to pass fish upstream are dependent upon the velocity of the water within the culvert when the fish are present, the time of year at which these velocities occur, the length of the culvert which must be negotiated by the fish, the species of fish present and their upstream swimming capabilities, and the size and/or age class of the fish requiring passage. The table in (1) of this section represents the maximum water velocities through different culvert lengths which can be successfully negotiated by several Alaska fish species.:

(1)

MAXIMUM ALLOWABLE CULVERT VELOCITIES IN FEET/SECOND

Length of culvert in feet	Group I Upstream migrant salmon fry and fingerlings when upstream migration takes place at mean annual flood	Group II Adult spring spawning slow swimmers: grayling longnose suckers	Group III Adult moderate swimmers: pink salmon chum salmon	Group IV Adult high performance swimmers: king salmon coho salmon sockeye salmon steelhead	Group V Juvenile slow swimmers and other adult slow swimmers: grayling, longnose suckers, broad whitefish, burbot, sheefish, humpback whitefish, Northern pike, Dolly Varden/ Arctic Char, upstream migrant salmon fry and fingerlings when migration not at mean annual flood
30	1.0	3.7	6.8	9.9	2.0
40	1.0	3.1	5.8	8.5	1.8
50	1.0	2.6	5.0	7.5	1.7
60	0.9	2.3	4.6	6.6	1.6
70	0.8	2.1	4.2	6.0	1.4
80	0.8	1.9	3.9	5.5	1.3
90	0.7	1.7	3.7	5.1	1.2
100	0.7	1.6	3.4	4.8	1.2
150	0.5	1.5	2.8	3.7	1.2
200	0.5	1.5	2.4	3.1	1.2
>200	0.5	1.5	2.4	3.0	1.2

(2) culvert velocities for Groups I-IV are based on mean annual flood ( $Q=2.33$ ); Group V is based on mean summer flow;

(3) it is the responsibility of the permit applicant to design a culvert to accommodate upstream movement of the slowest swimming fish species or age class using the system; proposed dimensions must be submitted to the department for approval;

(4) alternative drainage structures, other than culverts, must be installed if the requirements of this subsection cannot be met; a waiver may be granted under unusual, site-specific conditions;

(5) the following references can be used to compute culvert diameter when given the known fish passage criteria from (1) of this section, and the stream discharge data for a mean annual flood; these references are available for inspection at state or federal libraries in Juneau, Anchorage, or Fairbanks, or at department regional or area offices:

(A) Evans, W.A. and F.B. Johnston. Fish Migration and Fish Passage - A Practical Guide to Solving Fish Passage Problems. 1980. U.S. Department of Agriculture, Forest Service, Region 5, 63 pp.

(B) Hydraulics Manual. State of Alaska Department of Highways (Alaska Department of Transportation and Public Facilities), Box 1467, Juneau, Alaska 99801.

(C) Lauman, J.E. Salmonid Passage at Stream-Road Crossings; A Report With Department Standards for Passage of Salmonids. 1976. Department of Fish and Wildlife, Environmental Management Section, Portland, Oregon. 78 pp.

(D) McPhee, C. and F. Watts. Swimming Performance of Arctic Graveling in Highway Culverts. 1976. U.S.F.W.S. 41 pp

(E) Roadway Drainage Guide for Installing Culverts to Accommodate Fish. 1979. Engineering and Aviation Management Division, Alaska Region, U.S. Forest Service, Department of Agriculture, Alaska Region, Report No. 42, 120 pp.

(c) Each culvert must be placed in and aligned with the natural stream channel.

(d) All bank cuts, slopes, fills and exposed earth work attributable to culvert installation in streams, rivers or lakes must be stabilized to prevent erosion during and after the project.

(e) If a culvert is proposed for installation at a site which, in the determination of the department, is used for fish spawning or has significant use for rearing, the department will not approve the culvert installation plan. Instead, the department will require that an alternative site be proposed and approved, or that a bridge be installed at the proposed crossing.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.840  
AS 16.05.870 - 890

5 AAC 95.210. DIVERSION CHANNEL STANDARDS. Notwithstanding sec. 230(b) of this chapter, temporary diversion channels in all fish streams, if approved by the department on the permit, must be constructed and controlled in the following manner:

(1) the width and depth of the temporary diversion channel must equal or exceed 75 percent of the width and the depth, respectively, of the diverted stream at mean annual flood at the diversion site, unless a lesser width is specified by the department on the permit for activities undertaken during periods of lower flow;

(2) during excavation or construction, the temporary diversion channel must be isolated from water of the stream to be diverted by natural plugs left in place at the upstream and downstream ends of the diversion channel;

(3) the bed and banks of the diversion channel must be constructed of material that will not significantly erode at expected flows;

(4) diversion of water flow into the temporary diversion channel must be conducted by first removing the downstream plug, then removing the upstream plug, then closing the upstream end and then the downstream end, respectively, of the natural channel of the diverted stream;

(5) redirection of flow into the natural stream must be conducted by removing the downstream plug from the natural channel and then the upstream plug, then closing the upstream end and then the downstream end, respectively, of the diversion channel;

(6) after use, the diversion channel and the natural stream must be stabilized and rehabilitated as may be specified by permit conditions.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.840  
AS 16.05.870-890

5 AAC 95.220. STREAM, RIVER AND LAKE BANK STABILIZATION STANDARDS. (a) No person may conduct activities which affect, or may affect, the banks of streams, rivers and lakes unless:

(1) the requirements of this section are met; and

(2) the person, if a permittee, is in compliance with terms specified on the permit which the department considers necessary to minimize erosion and other results adverse to fish, game and their habitat.

(b) Snow ramps, snow bridges or approved cribbing must be used to provide access across frozen rivers, lakes and streams so as to preclude cutting, eroding or degrading of their banks;

(1) snow ramps and snow bridges must be composed only of snow or ice and must be substantially free of dirt and debris;

(2) snow bridges must be removed or breached, and cribbing must be removed immediately after final use unless otherwise specified on the permit.

(c) Removal of natural snow cover from a river or stream is only prohibited where the waterbody holds overwintering populations of fish, as determined by the department, in the vicinity of the permitted activity.

(d) Only rocks, cribbing or material approved by the department on the permit may be used for stream bank stabilization.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.840  
AS 16.05.870 - 890

5 AAC 95.230. STREAM, RIVER AND LAKE BED STABILIZATION STANDARDS. (a) No person may conduct activities in the bed of a stream, river or lake unless:

(1) the requirements of this section are met; and

(2) the person, if a permittee, is in compliance with terms specified on the permit which the department considers necessary for free passage and protection of fish during spawning, incubation, rearing, migration and overwintering.

(b) No person may channelize an anadromous fish stream.

(c) No person may excavate gravel from any portion of an anadromous fish stream which is used for spawning, or has significant use for rearing.

(d) No person may conduct activities which can act to

create potential fish entrapment basins within any portion of the floodplain which is covered by a mean annual flood.

(e) Before completion of operations, or before a time specified by the department on the permit each berm created in an anadromous fish stream must be contoured to the natural slope as it existed prior to the creation of the berm.

(f) All temporary bridges, culverts and other drainage structures must be removed upon completion of the project, or before a time specified on the permit.

(g) During any drainage structure removal, bridge pilings in streams frequented by fish must be extracted or cut off level with or below the stream bottom. When a culvert is removed, the channel must be restored to its former configuration.

(h) No material of any type, including excavated material, may be placed, stockpiled, discarded or otherwise disposed of in any anadromous fish stream, unless authorized by the department on the permit.

(i) Mining tailings in anadromous fish streams must be periodically graded to conform to the natural terrain. A schedule for grading may be established by the department on the permit.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.840  
AS 16.05.870 - 890

5 AAC 95.240. WATER QUALITY STANDARDS. Nothing in this chapter and no condition to a permit issued under this chapter relieve a person from complying with the water quality standards of the Department of Environmental Conservation as set forth in 18 AAC 70.010 - 110. Additionally, the following provisions are effective:

(1) no person may fuel in excess of 10 gallons, any type of wheeled or tracked equipment, or store any hazardous chemicals or petroleum products in any anadromous fish stream;

(2) no item treated with wood preservative that will, in the determination of the department, result in acute or chronic toxicity to fish may be placed upstream from the limit of salt water intrusion in any freshwater stream, river or lake;

(3) no storm drain or drainage ditch may discharge into the flow of any anadromous fish stream unless authorized by the department on the permit.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.870 - 890

5 AAC 95.250. WATER REMOVAL STANDARDS. Each water intake equipment structure must be centered and enclosed in a screened box, which must be constructed to prevent fish entrapment, entrainment or injury. Screen mesh may not exceed one-fourth inch.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.870 - 890

5 AAC 95.260. SHORELINE STANDARDS. (a) The quality of aquatic habitat necessary for the spawning, rearing and migration of anadromous fish is dependent upon the character and quality of the riparian lands. The distance from the shore wherein a riparian disruption may affect the quality of aquatic habitat is dependent on the slope of the shore land, the erosion and percolation potential of riparian soils, the type and amount of riparian vegetation and the type of activity causing the disruption. A habitat protection permit is required for any land clearing or filling with earthen materials within the specified distance of the mean high water line for the anadromous fish streams listed in (b) of this section, and within 50 feet of the mean high water line for anadromous fish streams not listed in (b) of this section. The department will require or approve plans and specifications designed to maintain conditions adjacent to anadromous fish streams so that water quality and spawning habitat is not degraded, canopy cover exists to prevent alteration of the thermal regime in the anadromous fish stream, and hydrological characteristics can provide for the spawning, rearing and migration of anadromous fish. The applicant's plans and specifications will be sufficient if the above conditions are met by at least one of the following:

- (1) revegetation of disturbed areas;
- (2) use of methods to contain sediments and other potential waterborne pollutants;
- (3) use of erosion control methods; or
- (4) retention of natural vegetation between the project site and the anadromous fish stream.

(b) Land clearing or fills involving earthen materials may take place only as provided in (a) of this section within the following distances of the anadromous fish streams set forth:

- (1) in the Northern Region:
  - (A) Yukon River -zero feet;
  - (B) Kuskokwim River and all glacial fed tributaries -zero feet;

(C) Tanana River and all glacial fed tributaries except the lower two miles of the Delta River -zero feet;

(D) Chena River downstream from its confluence with the Little Chena River -zero feet;

(2) in the South Central Region:

(A) Little Campbell Creek - 25 feet - (Sec. 6, T12N, R3W, S.M.);

(B) Eagle River - 25 feet - (Sec. 1, T14N, R3W, S.M.);

(C) Matanuska River - 25 feet - (Sec. 10, T16N, R1E, S.M.);

(D) Susitna River - 25 feet - (Sec. 29, T14N, R7W, S.M.);

(E) Knik River - 25 feet - (Sec. 10, T16N, R1E, S.M.);

(F) Skwenta River - 25 feet - (Sec. 20, T22N, R10W, S.M.);

(G) Copper River -25 feet - (T17S, R2E, CRM);

(H) Yentna River - 25 feet - (Sec 13, T17N, R7W, S.M.);

(I) Kahiltna River - 25 feet - (Sec. 5, T20N, R8W, S.M.);

(J) Beluga River - 25 feet - (Sec. 17, T13N, R9W, S.M.);

(3) in the Southeastern Region:

(A) Carallana Creek - 25 feet, Sec. 23, T75S, R90E, CRM;

(B) Saxman Creek - 25 feet, Sec. 4, T76S, R91E, CRM;

(C) Lemon Creek - zero feet for the lower 1½ miles, then 25 feet, Sec. 34, T40S, R66E, CRM;

(D) Granite Creek (Halibut Pt.) - 25 feet, Sec. 16, T55S, R63E, CRM.

(c) Each riparian vegetation stabilization net in use must be constructed wholly of biodegradable material, except that non - biodegradable nets may be used if authorized by the

department on the permit. Each non-biodegradeable net used must be removed after use.

Authority: AS 16.05.020(2)  
AS 16.05.251(a)(7), (12)  
AS 16.05.255(a)(7), (10)  
AS 16.05.870 - 890

#### ARTICLE 4. GENERAL PROVISIONS.

5 AAC 95.900. MITIGATION OF DAMAGES. (a) Each permittee is obligated to mitigate the adverse effects upon fish, game or their habitat created by the permittee's operation, and which were a direct result of the permittee's failure to:

(1) comply with permit terms and the provisions of this chapter; or

(2) correct conditions or change methods foreseeably detrimental to fish, game or their habitat.

(b) The obligation to mitigate in (a) of this section does not apply to unavoidable adverse effects upon fish, game or their habitat arising from an overwhelming force of nature with consequences not preventable by any due and reasonable precautions.

(c) The commissioner will specify on the permit, or by letter to the permittee, the provisions for mitigating damage to fish, game or habitat, or he will approve mitigation provisions proposed by the permittee.

(d) Notwithstanding the expiration, revocation or suspension of a permit, each permittee is responsible for his obligations arising under the terms and conditions of the permit, or under the provisions of this chapter.

Authority: AS 16.05.020(2)	AS 16.20.050
AS 16.05.251(a)(7), (12)	AS 16.20.060
AS 16.05.255(a)(7), (10)	AS 16.20.120
AS 16.05.840	AS 16.20.240
AS 16.05.870	AS 16.20.250
AS 16.20.040	AS 16.20.260

5 AAC 95.910. WAIVER OF STANDARDS. The department may waive or alter any of the requirements of secs. 190-260 of this chapter for site-specific instances if there is substantial evidence that:

(1) it is not sound engineering practice to comply with the standard, and any environmental problems that would be caused by the activity are outweighed by the public benefit that will be derived from waiver of the standard;

(2) granting the waiver or alteration will not

adversely affect fish migration, spawning, incubation, rearing, overwintering or survival in the affected system; or

(3) standards provided by regulation are not appropriate due to unique individual stream or land features.

Authority:	AS 16.05.020	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.920. NOTIFICATION. (a) When a notification is given to a permittee other than in writing, it will be promptly confirmed in writing by the department.

(b) When mail is used for notification, notification occurs upon post marking for the purpose of the sending party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.930. RETENTION OF PERMIT FOR INSPECTION AND INSPECTION OF PERMIT SITES. (a) After issuance, a copy of the permit, including any amendments, must be retained at the work site until completion of the project, and must be made available for inspection upon request by a representative of the department, or a law enforcement officer of the Department of Public Safety.

(b) For the purposes of inspecting and monitoring compliance with the conditions of the permit or the requirements of this chapter, each permittee must give authorized representatives of the department, and law enforcement officers of the Department of Public Safety, free and unobstructed access at safe and reasonable times to the permit site. Each permittee must give such assistance and furnish such information as the authorized representative or law enforcement officer may reasonably require for monitoring and inspection purposes.

Authority:	AS 16.05.020(2)	AS 16.20.040
	AS 16.05.180	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
		AS 16.20.260

5 AAC 95.940. PROGRESS REPORTS. Each permittee, if requested by the department on the permit for the purpose of ascertaining the progress of the permitted operation, must submit reports to the department, in a form and on a date satisfactory to the department.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260

5 AAC 95.950. DELEGATION OF AUTHORITY. For the purposes of administering this chapter, the commissioner may delegate his authority to designated employees of the department.

Authority: AS 16.05.020(2), (3)  
AS 16.05.270

5 AAC 95.970. WATERS IMPORTANT TO ANADROMOUS FISH. The various rivers, lakes and streams or parts of them that are important for the spawning, rearing or migration of anadromous fish have been specified by the commissioner and filed in the Office of the Lieutenant Governor as the Catalog of Waters Important for Spawning and Migration of Anadromous Fishes, December 1968, as revised March 1975. The list is adopted by reference and is available upon request from department regional offices, or from the Department of Fish and Game, Habitat Protection Section, Support Building, Juneau, Alaska, 99801. All provisions of this chapter are effective for those specified waters. The provisions of this chapter also apply to any action in a tributary of a specified anadromous fish stream that may result in pollution of or a change in the natural flow or bed of the specified anadromous fish stream.

Authority: AS 16.05.251(a)(7)  
AS 16.05.870  
AS 16.05.880  
AS 16.05.890

5 AAC 95.990. DEFINITIONS. In addition to the definitions set forth in AS 01.10.060 and AS 16.05.940, in this chapter:

(1) "anadromous fish" means fish which enter fresh water from the sea for spawning purposes, and includes anadromous Dolly Varden, rainbow trout (steelhead), arctic char, sheefish, smelt, whitefish, coastal cutthroat trout and salmon;

(2) "anadromous fish stream" means a river, lake or stream listed pursuant to sec. 970 of this chapter which is, or may at any time be important to the spawning, rearing or migration of anadromous fish, and includes all sloughs and backwaters adjoining the listed waters, and that portion of the floodplain which is covered by the mean annual flood;

(3) "berm" means an artificially raised margin, bar or other deposit composed of earthen materials, which interrupts the natural configuration of the adjacent terrain;

(4) "channelize" means excavate any course, trench, canal or furrow in or for the bed of a stream or river for the purpose of realignment;

(5) "completed application" means a form, series of forms, letter or other documents which provide all of the information necessary for the department to issue, condition or deny a permit;

(6) "deciding officer" means a habitat protection section regional supervisor, gas pipeline supervisor or their designees;

(7) "fish" means salmon, char, Dolly Varden, rainbow trout, steelhead, cutthroat trout, eastern brook trout, smelt, broad whitefish, burbot, sheefish, humpback whitefish, arctic grayling, longnose sucker, northern pike, lamprey or blackfish, in any life cycle stage;

(8) "frequented by fish" means at any time, in the determination of the department, containing resident or migratory fish;

(9) "incubation" means the life phase of a fish from egg deposition until hatching;

(10) "lake" means a ponded body of inland water that has a restricted outlet or no outlet;

(11) "mean annual flood" means a flood that will be equalled or exceeded on the average, once every 2.3 years;

(12) "mean high water line" means the upper limit of stream bed contacted by the mean annual flood;

(13) "migration" means the predictable, purposeful or seasonal movement of fish, unrestricted by other than natural influences;

(14) "mitigate" means in order of priority:

(A) avoid an impact altogether by not taking a certain action or parts of an action;

(B) minimize an impact by limiting the degree of magnitude of the action;

(C) rectify the impact by repairing, rehabilitating or restoring the affected environment;

(D) reduce or eliminate the impact over time by

preservation and maintenance operations during the life of the action;

(E) compensate for the impact by replacing or providing substitute resources or environments;

(15) "overwintering" means inhabitation by fish of a water body, including its substrate, at any time during October 1 through April 30;

(16) "permit" means a habitat protection permit including any amendment or condition issued or approved by the commissioner or his authorized designee, which has not expired or been suspended, or revoked;

(17) "permittee" means the holder of a permit and includes anyone employed, contracted or assigned by the person to whom the permit was issued to conduct a land or water use operation;

(18) "pollution" means causing alteration of a stream, river or lake to the extent that the water fails to meet the water quality standards of the Department of Environmental Conservation set forth in 18 AAC 70.10 - 110;

(19) "portion of the floodplain which is covered by a mean annual flood" means the stream and the exposed stream bed and banks between the natural vegetation on both banks, except that if the stream is braided, the exposed stream bed and banks are delimited by the natural vegetation bordering the most distant channels;

(20) "rearing" means the life phase of a fish from hatching until spawning, or any portion thereof;

(21) "regional and area office" means the Alaska Department of Fish and Game, Habitat Protection Section offices located as follows:

Region I

230 S. Franklin St., Rm. 301  
Juneau, Alaska 99801

P.O. Box 499  
Sitka, Alaska 99835

415 Main Street  
Ketchikan, Alaska 99901

P.O. Box 667  
Petersburg, Alaska 99833

Region II

333 Raspberry Road  
Anchorage, Alaska 99501

Region III

1300 College Road  
Fairbanks, Alaska 99701

Pipeline Surveillance Office

1001 Noble Street, Suite 450  
Fairbanks, Alaska 99701

(22) "spawning" means deposition or fertilization of eggs, including preparation for deposition or fertilization;

(23) "stream bed" means the ground contacted by a stream during a mean annual flood.

Authority:	AS 16.05.020(2)	AS 16.20.050
	AS 16.05.251(a)(7), (12)	AS 16.20.060
	AS 16.05.255(a)(7), (10)	AS 16.20.120
	AS 16.05.840	AS 16.20.240
	AS 16.05.870	AS 16.20.250
	AS 16.20.040	AS 16.20.260