

H B

331

HOUSE COMMITTEE RE

(9)

Date Referred: May 3, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/29/90

The RESOURCES Committee considered:

HB 331

HOUSE BILL NO. 331 [FOREST RESOURCES AND PRACTICES]

"An Act relating to forest resources and practices and to the management of forest lands; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS HB 331 (RES) [X] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Date/Dept)

- 3 [X] fiscal impact HOF+G, DNR, DEC
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Curt Munnich
Cliff Davidson
Mike Hays
Bill Huel
Richard (Dobey) with Reservation
Mike Savane
Gregory

	Do Not Pass	No Rec	Amend
<u>Curt Munnich</u>	<input checked="" type="checkbox"/>		
<u>Cliff Davidson</u>		<input checked="" type="checkbox"/>	
<u>Mike Hays</u>			
<u>Bill Huel</u>			
<u>Richard (Dobey) with Reservation</u>			
<u>Mike Savane</u>			
<u>Gregory</u>			

Curt Munnich
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Fish and Game
 Title: Forest Resources and Practices Act BRU: Habitat
 Sponsor: Rules Components: Habitat
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	297.0	297.0	297.0	297.0	297.0	
TRAVEL	31.5	31.5	31.5	31.5	31.5	
CONTRACTUAL	44.9	44.9	44.9	44.9	44.9	
SUPPLIES	2.0	2.0	2.0	2.0	2.0	
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	375.4	375.4	375.4	375.4	375.4	

CAPITAL	0	0	0	0	0	
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REVENUE	0	0	0	0	0	
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FUNDING: (Thousands of Dollars)

GENERAL FUND	375.4	375.4	375.4	375.4	375.4	
FEDERAL FUNDS	0	0	0	0	0	
OTHER	0	0	0	0	0	
TOTAL	375.4	375.4	375.4	375.4	375.4	

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	
PART-TIME	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	

ANALYSIS : (Attach a separate page if necessary)

see attached

Prepared by: Frank Rue, Director *Frank Rue* Phone: 465-1105
 Division: Habitat Date: _____

Approved by Commissioner: *William H. Miller* Date: 3/10/93
 Agency: Department of Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Continuation for CS HB 331 Fiscal Note

The fiscal impact of the Committee Substitute during the last 3 months of 1990 is one quarter of the cost for FY 91

Line 100	74.3
Line 200	7.9
Line 300	11.2
Line 400	0.5
Total Operating	<u>93.9</u>

The line item requirements for the committee substitute are the same as those identified in February 1989 (see attached memorandum) in anticipation of Forest Resources and Practices Act amendments.

The division currently has the equivalent of approximately four full-time positions working on forest practices and forest plans in southeast and southcentral Alaska. This level of staffing is woefully inadequate to deal effectively with the intensive and widespread timber activities on private, state, and federal lands.

The three additional positions for Southeastern and three additional positions for Southcentral requested here will allow the division to do a reasonable job of implementing the new act. Experience clearly shows that the act will only be successfully implemented if we have enough people to work with timber owners as they develop and implement their operations.

MEMORANDUM

State of Alaska

DEPARTMENT OF FISH AND GAME

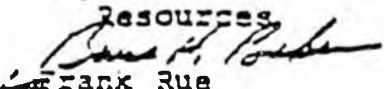
TO: Bob Loeffler
Resource Allocation
Section
Division of Land and
Water Management
Department of Natural
Resources

DATE: February 22, 1989

FILE NO.:

TELEPHONE NO.: 465-4105

SUBJECT: Forest Practices
Funding

FROM: 
Frank Rue
Director
Habitat Division
Department of Fish and Game

At last week's Forest Practices Steering Committee meeting, we understood Jim Waldo to request that agencies estimate their additional funding needs for minimum effective implementation of a revised Forest Resources and Practices Act (FPA).

The following estimates are based on the assumptions that 1) an amended FPA or associated regulations will provide performance standards for activities in riparian management zones, 2) we will need to maintain a significantly greater field presence than we are now in order to effectively implement the standards, 3) we will need to spend significantly more time participating in your department's preparation of forest management plans for state lands, and 4) the level of timber harvest north of the Alaska Range does not increase in the immediate future.

Additional Funding Requirement

Sitka Office:

Habitat Biologist II (12 months)	48.4
Line 200	4.5
Line 300	4.3
Line 400	0.5

Petersburg Office:

Habitat Biologist II (12 months)	48.4
Line 200	4.0
Line 300	4.3
Line 400	0.5

Ketchikan Office:

Habitat Biologist II (12 months)	48.4
Line 200	4.5
Line 300	4.3
Line 400	0.5

Douglas Regional Office:

Line 200	2.5
Line 300	2.0
Line 400	0.5

Subtotal 177.6

February 22, 1989

Anchorage Regional Office:

Habitat Biologist III (12 months)	55.0
Habitat Biologist II (24 months)	96.3
Line 200 (travel to Afognak, Cordova, Valdez, McGrath, Kodiak, Denai, and Mat-Su Valley)	16.0
Line 300 (Contractual for vessel and aircraft charters to reach logging areas for stream surveys and enforcement work)	30.0
Subtotal	<u>197.3</u>
TOTAL	<u>375.4</u>

Once again, these estimates reflect additional funding required for minimum effective implementation of an FPA. We assume that you will distribute this memorandum to steering committee members. If there are questions, please call either me or Bruce Baker (465-4105).

cc: Norman Cohen

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 331
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 5/16/90
Title: Forest Practices Act Revision
Sponsor: _____
Requestor: Governor

Agency Affected: Natural Resources
BRU: Forest Management
Components: Forest Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	285.9	294.5	344.5	354.8	365.4	376.3
TRAVEL	45.0	45.0	53.7	57.7	57.7	59.0
CONTRACTUAL	32.0	32.0	47.1	47.1	47.1	49.0
SUPPLIES	21.1	21.1	22.3	22.3	22.3	24.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	437.7	392.6	467.6	481.9	492.5	508.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

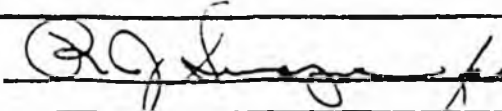
GENERAL FUND	437.7	392.6	467.6	481.9	492.5	508.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	6	6	7	7	7	7
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: George K. Hollett Phone: 762-2503
Division: Foresry Date: 5/16/90
Approved by Commissioner:  Date: 3/16/90
Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Assumptions: The following list of assumptions have a direct effect on the required funding the first five years after passage of the bill:

1. Much public involvement will be needed in the development of regulations. Travel to areas around the state and public meetings will be necessary.
2. Increased field inspections will be necessary to see that standards are being met and riparian areas are left.
3. Training of state personnel in insect and disease activities will take place.
4. Notifications will continue to increase for the next two years while the markets are high.
5. Appeals of stop-work orders and directives will take place during the first few years as all parties learn the new requirements calling for more enforcement work.
6. Board of Forestry will become more active in their operations by having more meetings and requiring more time and effort by staff.
7. Higher demand by the public for review of notifications.
8. Higher coordination of inspections, review and enforcement activities will be required of state agencies.

DEPARTMENT OF NATURAL RESOURCES
FOREST PRACTICES

Program Summary:

Due to low markets in 1986, the number of notifications received for operations on private lands declined and the division reduced the budget accordingly. Increased timber markets in 1988 has increase notifications by 173%. With no new funding available, the forest practice personnel staff months could not be increased to a level necessary to handle inspection requirements. In FY 1988 a 13% increase in inspections over FY 1987 was accomplished with the present division staff. However, in FY 1989 field inspection accomplishment decreased by 11% below FY 1988 because other duties and increased notifications demanded more office time.

The lack of travel dollars has seriously limited field inspection opportunities. A high level of inspection activity is important to not only ensure compliance with the Forest Practice Act, but to also allow identification of potential problems early enough to prevent violations. Due to the lack of adequate inspections, the character of forest practices administration has been forced away from land owner assistance and targeted toward enforcement.

Total funding needs of \$437,700 is detailed as follows:

Southeast Region - \$123,000

Add one full time Clerk Typist III at Ketchikan. This support staff will free up time now spent in the office by the Forest Practices Foresters doing administrative work and should allow for 30% more field time for necessary inspections. This will also allow the Ketchikan office to be open full time for five days per week.

Add one Natural Resource Manager I to be the Southeast Region Forest Practice Coordinator. This position will also be support forest practice work region-wide on an as needed basis and serve as the liaison between the field staff and other agency personnel.

Added travel funding will meet the necessary inspection schedule for the increased notifications.

Southcentral Region - \$149,600

Add one Forester II to the Kenai-Kodiak Area to work on the additional forest practice work that is occurring on the Kenai Peninsula. Notifications have increased from 4 in 1987 to 10 in 1989 with acres increasing from 3,287 to 41,935 during the period. Presently the only position available for the forest practice work is also responsible for all the timber sales on state land in the area. Because of this dual role neither area of responsibility has been accomplished. The new saw mill at Seward, heavy spruce bark beetle kill and large native ownerships on the Kenai Peninsula all point to increasing forest practice work for the next five years. We estimate notification acres will increase by some 58,000 acres in the next five years.

Add one Natural Resource Manager I to regional staff. The senior Forest Practices Forester will handle notifications and inspections on the remainder of the Gulf of Alaska, Valdez-Copper River, Anchorage Mat-Su and Southwest areas. Duties will also include being the coordinator between regional field personnel and other agency employees working in forest practices. The regions forest practice work has increased from 9 notifications in 1987 to 20 in 1989 and acres have increased from 6,287 to 50,286 during the same period. We estimate that at least seven (7) new operations with some 91,000 acres will begin operations in the next five years.

Additional travel and contractual funds are also required to provide the support needed to do the field inspections.

Central Office - \$165,100

Add one Forest Engineer and one Natural Resource Manager II to the Staff. The engineer is badly needed to provide expertise in soil stability, logging systems and transportation evaluations. This position would also serve as an expert witness on technical matters. Further responsibilities include research proposal evaluation, support for divisional timber sales, and audit function for Forest Practice compliance on state timber sales.

The Natural Resource Manager II position would serve as a Section Chief to assure consistent direction in state-wide forest practices inspection and enforcement is achieved. This position would also handle data-base management including reforestation verification, forest practices statistics and public notice provisions as well as be available for temporary assignment around the state to assist in field evaluations during peak periods.

FOREST PRACTICES

This position will also act as the Board of Forestry-Division of Forestry Coordinator. Meeting preparation, and gathering of research information are some of the duties that will be performed.

Development of training materials and classes for bringing operators and other agency personnel up to speed on the requirements of the FPA.

Additional travel and contractual funds are required to provide the support needed.

Northern Region

Current markets and market projections indicate a continued increase of interest in both white spruce and hardwoods in the Interior of Alaska. With Native Corporate ownerships well along on completing inventories of timber resource developments will be forthcoming in the next few years. At least one Regional corporation is involved in negotiations for development as well as contracting for feasibility studies. Two village Corporations have active sales under contract.

The increasing thoughts of development of resources along with the increase in spruce bark beetle activity indicate that the Northern Region will become involved in forest practices in the next few years. One Forester II position would need to be added within three years to be in place to handle this increase. Total increased cost in year three would be \$95,000.

Position Title Natural Resource Manager I			No. of Positions 1	Range/Step 13/A	Org. Unit 03
Time Status PRR	Staff Months 12		Location Jayman	Election District 4	
Justification					
Type of Expenditure			Amount		
1	2	3			
Salary* 3113 x 12	37,356	//////			
Benefits* 1099 x 12	13,188	//////			
Premium Pay (Included in Annual)	//////	//////			
Other	//////	//////			
Total Personal Services		//////	50.5		
Travel			5.0		
Contractual			7.5		
Commodities			2.0		
Equipment			10.3		
Other					
Total Cost			75.3		
Funding Source for Total Cost					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004		75.3		
Program Receipts/GF	1005				
I-A Receipts	1007				
CIP Receipts	1061				
Other					
* Personal Services Salary and Benefits Costs are from PACS.					

The new Forest Practice Act calls for more and better coordination between the State agencies. Field activities are handled by each agency's local personnel but region-wide coordination must take place at a higher level. The addition of one full time Natural Resource Manager I to the division's southeast region office will provide the needed forest practice coordinator. This position will also be able to fill in on forest practice work within the region on an as-needed basis, develop agency and operator training opportunities, meet with the Board of Forestry and act as a hearing officer. This position will be responsible for working on development of the new regulations and handling all of the public process of review within the Southeast Region.

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
 ORG Forest Management
 COMPONENT Forest Management

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 Revised Date

FY 91

Position Title Natural Resource Manager II		No. of Positions I	Range/Step 20/A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7
Type of Expenditure		Justification		
1	2	3		
Salary* 3590 x 12	43,080	<p>An additional full time Natural Resource Manager II position would serve as a Section Chief to assure consistent direction in state-wide Forest Practices inspections and enforcement is achieved. The position would also handle data base management including reforestation verification, forest practices statistics and public notice provisions as well as be available for temporary assignment around the state to assist in field inspections during peak periods.</p> <p>This position will also serve as staff to the Board of Forestry. Meeting preparation, taking of minutes and research information gathering are some of the duties that will be performed.</p> <p>Coordination of training opportunities and materials will assure that the same subjects are handled in a similar manner. Working with the Insect and Disease Forester and the U.S. Forest Service training classes both in the office and field will be developed to bring the divisions field staff to a knowledgeable level to handle that portion of the Forest Practice Act.</p>		
Benefits* 1217 x 12	14,604			
Premium Pay (Included in Above)				
Other				
Total Personal Services	57.7			
Travel	10.0			
Contractual	6.5			
Commodities	4.1			
Equipment	9.4			
Other				
Total Cost	87.7			
Funding Source for Total Cost				
Federal Receipts	1002			
G.F. Hatch	1003			
General Fund	1004	87.7		
Program Receipts/GF	1005			
I-A Receipts	1007			
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS.				

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
 BRU Forest Management
 COMPONENT Forest Management

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 Revised Date

FY 91

MAR-16-90 FRI 12:49 DOF DIRECTOR'S OFFICE P.09

Position Title --- Natural Resource Manager I		No. of Positions 1	Range/Step 10/A	Parq. Unit CC
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7
Type of Expenditure		Justification		
1	2	3		
Salary* 3113 x 12	37,356	////////////////////		
Benefits* 1099 x 12	13,180	////////////////////		
Premium Pay (Included in Above)	////////////////////	////////////////////		
Other	////////////////////	////////////////////		
Total Personal Services	////////////////////	50.5		
Travel		10.0		
Contractual		5.5		
Commodities		2.0		
Equipment		9.4		
Other				
Total Cost		77.4		
Funding Source for total cost				
Federal Receipts	1032			
G.F. Hatch	1033			
General Fund	1034	77.4		
Program Receipts/GF	1005			
I-A Receipts	1007			
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PPCS.				

The new Forest Practice Act calls for more and better coordination between the State agencies. Field activities are handled by each agency's local personnel but region-wide coordination must take place at a higher level. The addition of one full time Natural Resource Manager I to the division's southcentral region office will provide the needed forest practice coordinator. This position will also handle notifications and inspections in the Valdez-Copper River, Hat-Su and Southwest areas. The position will develop training opportunities for agency and operator personnel, meet with the Board of Forestry and act as a hearing officer.

This position will be responsible for working on development of the new regulations and handling all of the public process of review within the Southcentral Region.

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
 DRU Forest Management
 COMPONENT Forest Management

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Revised Date

FY 91

MAR-16-90 FRI 12:50 DOF DIRECTOR'S OFFICE P.10

Position Title Forester II		No. of Positions 1		Range/Step 16/A		Barq. Unit GG	
Time Status PFT		Staff Months 12		Location Soldotna		Election District 5	
Justification							
<p>The Kenai Peninsula has seen a large increase in Native Land timber operations which have resulted in forest practice notifications. The opening of the Chugach Native Cooperation sawmill at Seward in 1990 will provide the needed log outlet that has been missing to see a major increase of logging activity.</p> <p>The addition of a full time Forester II in the Kenai-Kodiak Area office will provide the necessary position to meet the increase and not take the only personnel available for conducting state timber sales away from their job. The spruce beetle kill facing the Kenai Peninsula is demanding all the present forester's time.</p> <p>With the support staff in place this position will be able to spend full time on forest practice work.</p>							
Type of Expenditure		Amount					
1		2		3			
Salary* 2095 x 12		34,740		////////////////////			
Benefits* 1049 x 12		12,568		////////////////////			
Premium Pay (Included in Above)		////////////////////		////////////////////			
Other		////////////////////		////////////////////			
Total Personal Services		////////////////////		47.3			
Travel				10.0			
Contractual				3.5			
Commodities				2.0			
Equipment				9.4			
Other							
Total Cost				72.2			
Funding Source for Total Cost							
Federal Receipts		1002					
G.F. Hatch		1003					
General Fund		1004		72.2			
Program Receipts/GF		1005					
I-A Receipts		1007					
CIF Receipts		1061					
Other							
* Personal Services Salary and Benefits costs are from PACS.							

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
 BRW Forest Management
 COMBINEIT Forest Management

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Revised Date

FY 91

Position Title Logging Engineer Time Status: PFT		No. of Positions 1	Range/Step 18/A	Barg. Unit GG
Staff Months 12		Location Anchorage		Election District 7
Justification The addition of one full time engineer position will provide expertise in soil stability, logging systems and transportation evaluations. Serve as an expert witness on technical matters. Further responsibilities include research proposal evaluation, and audit function for Forest Practice compliance on state timber sales. New regulations are required to be developed covering areas of road construction, location, maintenance and removal; landing location and construction; drainage construction; material sources and spoil disposal sites; log transfer, sort yards and storage facilities. All of these require the knowledge of an engineer to see that the public is being protected. The division presently does not have an engineer position and this addition will provide the needed expertise to adequately review the above actions as they come in on notifications. This position will be available for statewide work.				
Type of Expenditure		Amount		
1	2	3		
Salary* 3113 x 12	37,356	////////////////////		
Benefits* 1099 x 12	13,188	////////////////////		
Premium Pay (Included In Above)	////////////////////	////////////////////		
Other	////////////////////	////////////////////		
Total Personal Services		50.5		
Travel		10.0		
Contractual		4.5		
Commodities		3.0		
Equipment		9.4		
Other				
Total Cost		77.4		
Funding Source for Total Cost				
Federal Receipts	1002			
G.F. Match	1003			
General fun.	1004	77.4		
Program Receipts/6F	1005			
I-A Receipts	1007			
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS.				

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
 BRU Forest Management
 COMPONENT Forest Management

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Revised Date

FY 91

P. 12
 16-90 FRI 12:52 DOF DIRECTOR'S OFFICE

Position Title Clerk Typist III Time Status PFT		Staff Months 12	No. of Positions 1	Range/Step N/A	Barg. Unit CG
Location Ketchikan			Election District 1		
Justification The Ketchikan Area Office had an increase of 27% in forest practice notifications between 1987 and 1988. During 1989 some decrease was noted but the acreage size increased as a way around notification. Without support help in the office the Forest Practice Forester has been required to spend more and more time in doing administrative work. Total number of inspections during 1989 dropped. The addition of a full time Clerk Typist III will allow for about 30% more field time for the forester. With increased notifications and required inspections more field time is needed. More time in the field will help prevent damage from taking place and better cooperation between the operator and the State. Additional office help will also allow for the office to be open full time for the five days per week.					
Type of Expenditure		Amount			
1	2	3			
Salary* 1678 x 12	20,136	//////////			
Benefits* 771 x 12	9,252	//////////			
Freedom Pay (Included in Above)	//////////	//////////			
Other	//////////	//////////			
Total Personal Services	29.4				
Travel					
Contractual	4.5				
Commodities	8.0				
Equipment	5.8				
Other					
Total Cost	47.7				
Funding Source for Total Cost					
Federal Receipts	1002				
S.F. Match	1003	47.7			
General Fund	1004				
Program Receipts/GF	1005				
I-A Receipts	1007				
CIP Receipts	1061				
Other					
* Personal Services Salary and Benefits Costs are from PACS.					

REQUEST FOR
 NEW POSITION

AGENCY Natural Resources
 BRW Forest Management
 COMPONENT Forest Management

Page 1 of 1
 Revised Date

FY 91

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CS HB 331

PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: Forest Resources and Practices BRU: Environmental Quality
 Act: _____
 Sponsor: Rules Committee Components: Environmental Quality
 Requestor: Senate Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	173.5	173.5	173.5	173.5	173.5	173.5
TRAVEL	22.0	22.0	22.0	22.0	22.0	22.0
CONTRACTUAL	38.0	38.0	38.0	38.0	38.0	38.0
SUPPLIES	3.5	3.5	3.5	3.5	3.5	3.5
EQUIPMENT	15.1	15.1	15.1	15.1	15.1	15.1
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	252.1	252.1	252.1	252.1	252.1	252.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	252.1	252.1	252.1	252.1	252.1	252.1
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	252.1	252.1	252.1	252.1	252.1	252.1

POSITIONS:

FULL-TIME	3.5	3.5	3.5	3.5	3.5	3.5
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

ANALYSIS ATTACHED

Prepared by: Dave Sturdevant
 Division: Environmental Quality

Phone: 465-2653
 Date: _____

Approved by Commissioner: A. D. Kyle
 Agency: Environmental Conservation

Date: 16 Mar 90

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

The Department is responsible for water quality under State law and the federal Clean Water Act. The revised Forest Resources and Practices Act establishes the Department of Environmental Conservation as the lead agency for water quality and control of nonpoint source pollution in forest practices. The Forest Resources and Practices Act will establish the nonpoint source pollution control requirements under both State law and the Clean Water Act within the forest practices regulations. Major areas of involvement for the Department include:

- participation in development of Forest Practices regulations and best management practices, and approval of the regulations;
- development of a cooperative agreement among the Departments of Natural Resources, Fish and Game, and Environmental Conservation covering regulations, best management practices, permits, inspections, enforcement and training;
- development of an interagency "uniform enforcement policy;"
- review of forest plans and timber harvest contracts on State lands, and review of all plans of operation for timber harvest on private lands;
- inspection of timber harvest operations, provision of technical assistance, and enforcement activities; and
- development of cooperative efforts in water quality monitoring.

The Department presently has one FTE in Forest Practices for all of southeast Alaska, and .5 FTE for all of southcentral Alaska, both newly established in FY 90. To reasonably carry out its responsibilities under the act, the Department will require a minimum of 3.5 additional FTEs. Of these positions, .5 FTE would be added to the existing .5 FTE in southcentral Alaska. Two new positions would be established as field officers in southeast Alaska in addition to the one existing position. These three positions would be located in Ketchikan, Sitka and Juneau. One additional position would be established as the Forest Practices coordinator in the central office, Juneau. Additional contractual money (\$10.0) will be necessary with the Juneau position for support of field monitoring for water quality compliance.

<u>Position</u>	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Ecologist II	52.1	4.0	18.0	1.0	4.3	79.4
Env. Field Officer II	47.7	7.0	8.0	1.0	4.3	68.0
Env. Field Officer II	47.7	7.0	8.0	1.0	4.3	68.0
Ecologist II	26.0	4.0	4.0	0.5	2.2	36.7
	-----	-----	-----	-----	-----	-----
TOTALS	173.5	22.0	38.0	3.5	15.1	252.1

Position Title Ecologist II			No. of Positions 1	Range/Step 18B	Barg. Unit GGU
Time Status Permanent FF	Staff Months 12		Location Juneau		Election District
Type of Expenditure			Justification		
		Amount	<p>Timber harvest, roading and log transfer activities have increased dramatically in recent years on private lands, and are continuing on State and federal lands. Increased timber harvest activities bring with them increased potential for water quality impacts. The department has limited capacity to review timber harvest plans, to inspect field operations, to provide technical assistance, or to monitor water quality to ensure water quality standards are met. With passage of the revised Forest Resources and Practices Act, the Department will have an increased role in water quality protection under the Forest Practices program, including approval of the corresponding new Forest Practices regulations. This position is the central coordinator and interagency liaison for the Department's activities: revised regulations; Best Management Practices; water quality monitoring activities; application of water quality standards; uniform enforcement policy; technical training programs; cooperative agreements; and procedural matters. The position will participate in ongoing harvest activities, reviewing private plans of operation and State forest plans. The position also will serve as liaison with the U.S. Forest Service and other federal agencies, participating in similar activities to those described.</p>		
1	2	3			
Salary	\$38,712				
Benefits	13,342				
Premium Pay					
Other					
Total Personal Services		\$52,054			
Travel		4,000			
Contractual		18,000			
Commodities		1,000			
Equipment		4,300			
Other					
Total Cost		\$79,354			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	\$79,354			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Environmental Conservation
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Position Title Environmental Field Officer II		No. of Positions 1	Range/Step 16B	Barg. Unit GGU	
Time Status Permanent FT	Staff Months 12	Location Ketchikan		Election District	
Type of Expenditure		Justification			
Amount		<p>Timber harvest, roading and log transfer activities have increased dramatically in recent years on private lands, and are continuing on State and federal lands. Increased timber harvest activities bring increased potential for water quality impacts. The Department currently has limited capacity to review timber harvest plans, to inspect field operations, to provide technical assistance, or to monitor water quality to ensure water quality standards are met. With passage of the revised Forest Resources and Practices Act, the Department will have an increased role in monitoring and enforcement of Forest Practices. This position will be based in the Ketchikan District Office and will serve that area in Forest Practices matters. This field position, plus a similar new field position in Sitka will increase the field staff in the Southeast Region to 3.0 FTEs. The position will review and comment on plans of operation, State forest plans, and federal EISs and harvest plans; review permit applications for log transfer facilities and logging camp facilities; conduct field inspections and enforcement; and conduct water quality monitoring activities.</p>			
1	2				3
Salary	\$35,076				
Benefits	12,627				
Premium Pay					
Other					
Total Personal Services					\$47,703
Travel					7,000
Contractual					8,000
Commodities					1,000
Equipment					4,300
Other					
Total Cost					\$68,003
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	\$68,003			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component EQ Projects

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Position Title Environmental Field Officer II			No. of Positions 1	Range/Step 16B	Barg. Unit GGU
Time Status Permanent FT	Staff Months 12		Location Sitka		Election District
Type of Expenditure			Justification		
1		2	3		
Salary		\$35,076	<p>Timber harvest, reading and log transfer activities have increased dramatically in recent years on private lands, and are continuing on State and federal lands. Increased timber harvest activities bring increased potential for water quality impacts. The Department currently has limited capacity to review timber harvest plans, to inspect field operations, to provide technical assistance, or to monitor water quality to ensure water quality standards are met. With passage of the revised Forest Resources and Practices Act, the Department will have an increased role in monitoring and enforcement of Forest Practices. This position will be based in the Sitka District Office and will serve that area in Forest Practices matters. This field position, plus a similar new field position in Ketchikan, will increase the field staff in the Southeast Region to 3.0 FTEs. The position will review and comment on plans of operation, State forest plans, and federal EISs and harvest plans; review permit applications for log transfer facilities and logging camp facilities; conduct field inspections and enforcement; and conduct water quality monitoring activities.</p>		
Benefits		12,627			
Premium Pay					
Other					
Total Personal Services		\$47,703			
Travel		7,000			
Contractual		8,000			
Commodities		1,000			
Equipment		4,300			
Other					
Total Cost		\$68,003			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	\$68,003			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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Position Title Ecologist II			No. of Positions 1	Range/Step 18B	Barg. Unit GGU
Time Status Permanent PT	Staff Months 6		Location Anchorage		Election District
Type of Expenditure			Amount		
1			2		3
Salary			\$19,356		
Benefits			6,671		
Premium Pay					
Other					
Total Personal Services					\$26,027
Travel					4,000
Contractual					4,000
Commodities					500
Equipment					2,200
Other					
Total Cost					\$36,727
Funding Source for Total Cost					
Federal Receipts 1002					
G. F. Match 1003					
General Fund 1004					\$36,727
GF Program Receipts 1005					
Other					
Justification Timber harvest, roading and log transfer activities have increased dramatically in recent years on private lands, and are continuing on State and federal lands. Increased timber harvest activities bring increased potential for water quality impacts. The Department currently has limited capacity to review timber harvest plans, to inspect field operations, to provide technical assistance, or to monitor water quality to ensure water quality standards are met. With passage of the revised Forest Resources and Practices Act, the Department will have an increased role in monitoring and enforcement of Forest Practices. This field position, 0.5 FTE, will increase the existing 0.5 FTE in the Anchorage office to 1.0 FTE. This position will serve the entire southcentral region in Forest Practices matters. The position will review and comment on plans of operation, State forest plans, and federal EISs and harvest plans; review permit applications for log transfer facilities and logging camp facilities; conduct field inspections and enforcement; and conduct water quality monitoring activities.					

**Request For
New Position**

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STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB 317	SPONSOR Governor
SHORT TITLE OF BILL Forest Resources and Practices			
DEPARTMENT POSITION Support			
PREPARED BY Bruce H. Baker	DATE 5/5/89	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 5/5/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Environmental Conservation Dept. of Natural Resources	CONSTITUENT (GROUPS) AFFECTED BY BILL All users of state, municipal, or private forests, or the forest resources provided by such forested lands
ORGANIZATIONAL SUPPORT FOR BILL See attached	ORGANIZATIONAL OPPOSITION TO BILL See attached

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

See attached

ANALYSIS OF BILL/PROGRAM EFFECTS

See attached

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Organizational Support for Bill

A high degree of agreement was reached between commercial fishermen, the timber industry, major private forest owners, environmental interests, affected boroughs, and state resource agencies serving on the Governor's Forest Practices Steering Committee.

Organizational Opposition to Bill

We are aware of no opposition among Forest Practices Steering Committee members but we understand there are one or two remaining issues that timber interests believe need further resolution.

Background/Legislative Intent

The bill has been developed to ensure achievement of the intent language that is in the existing Forest Resources and Practices Act. That language requires that Alaska's forest resources furnish fish and wildlife, tourism, outdoor recreation, water, oil, and air, as well as timber and wood products, and that these resources be managed in perpetuity.

Analysis of Bill/Program Effects

The bill was developed by the Forest Practices Steering Committee on the basis of unanimous consensus. The following are major accomplishments or effects of the bill:

- Board of Forestry: Membership on the advisory Board of Forestry has been reduced from 14 to 7 members, and the composition of the board has been brought into balance, with the number of members representing users of non-timber forest resources equaling the number representing timber products.
- Performance Standards: Performance standards for forest practices that have been highly controversial are either featured in the bill itself or have been agreed to in principle by Forest Practices Steering Committee members for inclusion in the state's revision of existing forest practices regulations.
- Enforcement: Performance standards provided for in the bill are, in contrast to the existing law, enforceable, and violations of such standards may be subject to criminal action. ADNR has authority under the bill to stop violations that threaten to violate the act before they occur. The operator does, however, have the right to appeal such a decision.

Bill Analysis
SB 317
(Page 3 of 3)

- Streamside Protection: The bill contains specific streamside management standards for activities on private forest land in the coastal Sitka spruce-western hemlock forest. Provisions are included in the bill that call for the development of corresponding streamside management standards for private forest holdings in the boreal white spruce/black spruce/birch/aspens forest. Streamside management standards are also provided for state lands in the boreal forest. These standards are to be promulgated by regulation within one year.
- Forest Practices Regulations: The bill provides more specific guidance than the current law as to which forest practices regulations need to be developed for.
- Forest Management Planning for State Lands: In addition to the provision of minimum standards for streamside protection on state lands in the state's Forest Resources and Practices Act, the bill includes an amendment to a separate statute which deals with Forest Land Use Plans. The amendment requires that, among other things, fish and wildlife habitat and fish and wildlife use considerations be discussed in a forest land use plan.
- Wildlife on Private Land: The bill fosters cooperation between private forest owners and the Department of Fish and Game in identifying areas of important wildlife habitat and in developing methods for their protection.
- Forest Insect and Disease Management: Although the part of the act dealing with prevention and suppression of forest insect or disease outbreaks has been strengthened, it has been done in a way that ensures the protection of fish and wildlife and their habitat.

**Bill Analysis
Senate Bill 317**

**An Act relating to forest resources and practices and to the management of forest lands;
and providing for an effective date**

Section 1: State Timber Planning Process. Title 38 is amended to require additional planning before state timber sales. The division of forestry must prepare a site-specific plan before all state timber sales that fully integrates appropriate resource protection measures into the sale design. This site-specific design would also improve public review of individual timber sales.

The department would also be required to annually prepare a five-year timber schedule of proposed state timber sales. Except for small sales and emergencies such as salvage, a proposed sale would be required to appear on the two five-year schedules preceding the sale. The five-year schedule will inform the public and the timber industry of the state's long-term plans.

Section 2, 3 and 4: Coordinating Overlapping Agency Jurisdiction. These sections coordinate overlapping agency jurisdiction regulating timber harvest activities.

Section 2: DEC. Regulations of the amended forest practices act will serve as timber harvest standards for non-point source pollution under the leadership of DEC.

Section 3: ACMP. The amended forest practices act will serve as the Coastal Management Program for harvest activities on private land.

Section 4: DF&G. Regulations of the amended forest practices act provide the fish habitat protection standards except for those activities subject to AS 16.06.840 and AS 16.05.870.

Section 5: Board of Forestry Membership. The current 13-member board of forestry is restructured to a smaller, more balanced, 7-member board. (See section 7 for duties of the board.) It also details qualifications for board members, staffing requirements, and voting procedures.

Section 6: Board of Forestry Terms of Office. The section amends existing terms of office to provide staggered terms of office for the Board of Forestry.

Section 7: Powers and Duties of the Board of Forestry. This section amends the duties of the Board of Forestry. Existing duties include only commenting on regulations. New duties are added: providing a forum for discussion for representatives of affected interests to discuss and resolve forestry issues before they become divisive; coordinating an annual survey of research needs; coordinating the monitoring of the implementation and effectiveness of the forest practices program and making recommendations for change; and holding annual hearings in southeast, southcentral, and interior Alaska to take public testimony on the state's forest practices program.

Section 8: Technical Change, Coordination with DEC. References to DEC's program for non-point source water pollution are amended to be consistent with the coordination provisions in Section 3.

Section 9: Technical Change, Non-point Source Pollution Control. Wording is changed to make clear the meaning of the existing law concerning recognition of environmentally sensitive areas in non-point source pollution control measures.

Section 10: Standard for Soil Erosion and Mass Wasting. The section provides a standard of minimizing or preventing significant adverse effects of soil erosion and mass wasting.

Section 11: Standard for Scenic Quality. The existing standard for scenic quality near tourism and recreation areas is amended. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 12: Standard for Important Fish and Wildlife Habitat. A new standard is added that requires planning for harvest allowance be made for important fish and wildlife habitat. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 13: Records for Public and Agency Review. The division is required to maintain a records of decisions made under the act for use by the public and state agencies in assessing the effectiveness of implementation of the act.

Section 14: Regulations. This section provides a list of forestry activities subject to regulation under the act; allows the commissioner to establish regions and make appropriate distinctions between public and private land; and directs the commissioner to only adopt those regulations that yield significant benefits.

Section 15: Control of Infestation and Disease. A new section of the act is added that allows the commissioner to take action to control forest infestation and disease outbreaks that threaten forest resources.

Section 16: Variation from Requirements of the Act. The state forester is directed to allow variations from forest practice requirements established under this act. The state forester may allow variations to requirements he determines that the harm such as degradation of fish habitat or water quality not likely to occur because of site-specific circumstances of the particular activity. It allows private landowners to appeal an adverse decision by the state forester, but they must conform to the requirement during the period of the appeal.

Section 17: Review of Private and Municipal Timber Harvest Operations. The section provides an improved process for efficient and detailed review of timber harvest plans. This efficient review allows the timber industry to respond to changing timber markets but ensures that harvest operations conform to forest practices standards and regulations. The section also requires public review of private harvest plans. Review by state agencies may occur in the office or, if necessary, in the field prior to the start of the operations.

Section 18: Interagency Coordination. Because of overlapping agency expertise for issues concerning timber harvest, this section provides coordination mechanisms for DNR, DF&G, DEC, and where appropriate, coastal districts. The coordination system retains DNR as the lead agency for forest practices but ensures that the appropriate agency expertise from DF&G and DEC is included for forest practice issues that involve their expertise. The section requires that the agencies recognize fish habitat as a valuable resource within the riparian areas established under the bill.

Section 19: Riparian Management. This section of the bill provides for a streamside management program that strikes a fair balance between the needs of the timber industry and those of fish habitat and water quality protection. It provides for significant timber harvest while providing appropriate protection for public resources. Riparian standards for timber harvest differ depending on land ownership, stream, type, and region. The section also provides the intent of riparian management standards: a list of fish habitat

components that the riparian standards are designed to protect.

On private land in southeast Alaska, streamside areas of up to 30 meters will be managed for the protection of fish habitat and water quality, although timber operators will not be required to leave more than five percent of their timber volume for this purposes. In this way, strong resource protection exists without requiring any one private owner to shoulder an undue portion of the resource protection costs.

On private land outside southeast Alaska, it directs the commissioner to establish riparian protection standards and provides interim standards until regulations are drafted.

On state land north of the Alaska Range, timber harvest within 30-meters of an anadromous or high value resident fish waterbody will be allowed where adequate protection remains for fish habitat.

On state land south of the Alaska Range, no timber harvest is allowed within 30-meters of an anadromous or high value resident fish waterbody. Within the adjacent 60-meters, timber harvest must be consistent with the maintenance of important fish and wildlife habitat.

For municipal and trust lands, timber harvest within 30-meters of an anadromous or high-value resident fish waterbody must be sited and designed primarily to protect fish habitat and water quality.

Section 20: Enforcement Coordination. Because existing overlapping jurisdiction by DEC, DF&G, and the department of law, and because of additional authorities provided DNR by this bill, this section directs the agencies to establish "uniform enforcement strategy." The strategy requires a method of coordinating enforcement that avoids duplicating and inconsistent enforcement by the agencies. All agencies retain existing enforcement authorities.

Section 21: Penalties for Violations. This section amends the act by streamlining existing procedures for levying civil penalties of up to \$10,000 per violation, and adds additional enforcement authorities. Under these additional authorities, the state may issue a citation for a class A misdemeanor for violations of the act, its regulations, agency directives or stop orders; also, DNR may issue remedial orders requiring operators to repair or correct damage resulting from a violation.

Section 22: Directives. This new section provides that DNR may issue enforceable, written orders directing that timber operations that violate or would violate this act or its regulations be changed. These directives may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Directives may be appealed and operations may continue pending the outcome of the appeal.

Section 23: Stop-work Orders. If the forester determines that a violation of the act or its regulation is occurring or is likely to occur and that significant harm to public resources is likely to occur if work is not halted before a hearing, the state forester may issue a stop-work order. A stop-work order may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Stop-work orders may be appealed, but the operation must stop pending the outcome of the appeal.

Section 24: Hearing Procedures. This section amends the cumbersome hearing process existing law by deleting the requirement that hearings be held before lawyer appointed by the attorney general. The new process allows the hearing officer to be an employee of the department. The new process will be quicker, and more efficient for both the landowners and the department. It will also be significantly less costly for the department.

Section 25: Appeals and Judicial Review. This section provides appeal procedures from department decisions. It provides for appeal of DNR decisions by landowners or timber operators to the state forester, in some cases to the commissioner, and gives the option of going to court. Also it provides that parties other than an aggrieved forest landowner, timber owner, or operator may not receive judicial review of individual timber harvest decisions. Third parties may, however, seek judicial review of regulations, or of a systematic error in DNR decisions.

Section 26: State Forest Plans, technical change. This section changes existing law by deleting a list of uses to consider in completing plans; and instead referencing a similar list in Title 38 (section 1 of this bill). It eliminates confusion from two close but not identical lists with similar purposes.

Section 27: Affect on Federal Timber Harvest. Other sections of this bill set specific standards for activities on state, municipal, and private land. This section states that the bill's specific resource protection provisions, such as riparian management zones defined for private, state, and municipal lands, do not apply to timber harvest activities on federal land. However, the bill proposes that the federal government achieve a level of resource protection commensurate with that provided for on state lands. This would occur as the federal agency, primarily the Forest Service, proceeds with its normal environmental planning process for timber harvest activities. While this measure does create a broad performance test for operations on federal land, the real effect on Forest Service actions is not considered to be significant, given the generally higher federal requirements for environmental protection.

The bill assures that federal lands will not be subject to the specific forest practice act standards "either directly or for purposes of compliance with the (federal) Coastal Zone Management Act." This statement effectively severs the applicability of the Act's specific standards to National Forests and other federal lands. However, some participants in the forest practices discussions wanted to take the point one step further to resolve a long-standing discussion of what specific environmental protection the state can ask the federal government to provide on National Forest lands through the coastal management consistency process.

The forest practices act discussions did not address federal timber harvest activities in any detail. Therefore, the parties to the consensus decided that the bill was not the appropriate vehicle to include specific environmental protection standards for federal lands, nor address the application of coastal management standards to federal timber harvest activities. Instead, the vehicle to address this question will be through a change to the Alaska Coastal Management Program regulation established for timber harvest and processing by the Alaska Coastal Policy Council (CPC). Following enactment of the forest practices act, the CPC will amend this timber harvest standard as necessary to address lands not covered by the forest practices act, including federal lands. The CPC will provide for the full involvement of the federal government, industry, and the public in drafting the new timber harvest standards.

Section 28: The Act Does Not Alter Other Rights and Jurisdictions. This new section of the act confirms that it does not alter or diminish the authorities of DF&G under title 16, DEC under title 46, or any state agency under other laws. It also confirms that the act does not diminish the rights of Alaska Native or of Alaska Native corporations with respect to the Alaska Native Claims Settlement Act.

Section 29: Wildlife on Private Land. This new section provides that state agencies and private landowners will establish cooperative, voluntary processes for protection of wildlife habitat on private land.

Section 30: Definitions, technical changes. This section provides definitions necessary for the act. Few changes are made.

Section 31: Legislative Review. This section provides legislative acknowledgement that this act should be reviewed by the legislature within three years after further research and experience is gained in implementing the act.

Section 32: Repeal of Superceded Sections.

Section 33: Effective Date. An effective Date is provided: January 1, 1990.

go0529hH
Bradley
3/29/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 331 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest resources and practices
7 and to the management of forest lands; and providing
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 38.05 is amended by adding new sections to read:

11 Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may
12 not sell or harvest timber, except for isolated personal use timber
13 harvest, until a site-specific forest land use plan has been adopted.
14 A forest land use plan is required whether or not a regional or area
15 land use plan under AS 38.04.065(a) or a forest management plan under
16 AS 41.17.230 has been adopted.

17 (b) The commissioner shall base a forest land use plan on the
18 best available data, including information provided by other agencies
19 describing the immediate and long-term effects of individual and
20 collective forest activities on the timber base and on other resources
21 and uses.

22 (c) In addition to the requirements of AS 38.04.065(b), a forest
23 land use plan shall consider

24 (1) commercial timber harvesting, including related activ-
25 ities;

26 (2) harvesting of forest products for personal use;

27 (3) fish and wildlife habitat, including

28 (A) identification and protection of important wild-
29 life habitat;

1 (B) retention of riparian, wetland, and ocean-shore-
2 line vegetation critical for fish and wildlife habitat; and

3 (C) classification of water bodies according to phys-
4 ical characteristics;

5 (4) uses of forest land for nontimber purposes, including

6 (A) recreation, tourism, and related activities;

7 (B) mining, mining claims, mineral leaseholds, and
8 material extraction;

9 (C) uses of fish and wildlife;

10 (D) agriculture, including grazing; and

11 (E) other resources and uses appropriate to the area,
12 including compatible traditional uses;

13 (5) soil characteristics and productivity;

14 (6) water quality; and

15 (7) watershed management.

16 (d) A management plan prepared by the commissioner must consider
17 and permit the uses described in (c) of this section. If the commis-
18 sioner finds that a permitted use is incompatible with one or more
19 other uses in a portion of a state forest, the commissioner shall
20 affirmatively state in the management plan that finding of incom-
21 patibility for the specific area where the incompatibility is antic-
22 ipated to exist and the time period when the incompatibility is antic-
23 ipated to exist together with the reasons for each finding.

24 Sec. 38.05.113. FIVE-YEAR SALE SCHEDULE. (a) The department
25 shall annually prepare a five-year schedule of timber sales planned on
26 all lands managed by the department. The schedule must be of suffi-
27 cient specificity that it provides a basis for the department to
28 allocate its resources in considering and designing sales and in
29 conducting economic and environmental analyses. The schedule must

1 inform the public and the timber products industry of long-term plans
2 and provide a basis for public comment.

3 (b) Except as provided in (c) of this section, a proposed sale
4 may not be held unless it has been included in the two five-year
5 schedules preceding the sale. This requirement does not apply until
6 one year after the first five-year schedule is prepared under this
7 section.

8 (c) The department may adopt regulations exempting small and
9 emergency sales from the requirements of this section.

10 * Sec. 2. AS 41.17.010 is amended to read:

11 Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares
12 that

13 (1) the forest resources of Alaska are among the most
14 valuable natural resources of the state, and furnish timber and wood
15 products, fish and wildlife, tourism, outdoor recreation, water, soil,
16 air, minerals, and general health and welfare;

17 (2) economic enterprises and other activities and pursuits
18 derived from forest resources warrant the continuing recognition and
19 support of the state;

20 (3) the state has a fundamental obligation to ensure that
21 management of forest resources guarantees perpetual supplies of renew-
22 able resources, provides nonrenewable resources in a manner consistent
23 with that obligation, and serves the needs of all Alaska for the many
24 products, benefits, and services obtained from them;

25 (4) government administration of forest resources should
26 combine professional management services, regulatory measures, and
27 economic incentives in a complementary fashion, and should draw upon
28 the expertise of professional foresters in conjunction with other
29 disciplines;

1 (5) under the leadership of the Department of Environmental
2 Conservation as lead agency, the state should exercise its full re-
3 sponsibility and authority for control of nonpoint source pollution
4 with respect to the Federal Water Pollution Control Act, as amended;

5 (6) subject to AS 41.17.098(c), the provisions of this
6 chapter, and regulations adopted under this chapter, with the approval
7 of the Department of Environmental Conservation, establish the non-
8 point source pollution requirements under state law and sec. 319 of
9 the Clean Water Act for activities subject to this chapter;

10 (7) except for activities subject to AS 16.05.840 or 16.-
11 05.870 and regulations authorized by those sections, this chapter and
12 regulations adopted under this chapter establish the fish habitat
13 protection standards, policies, and review processes under state law
14 [SUBJECT TO 16 U.S.C. 1456(f) (SEC. 307(f) OF THE COASTAL ZONE MANAGE-
15 MENT ACT OF 1972, P.L. 92-583), THE PROVISIONS OF THIS CHAPTER SHALL
16 BE THE BASIS FOR FOREST MANAGEMENT STANDARDS, POLICIES, AND GUIDELINES
17 DEVELOPED UNDER THE ALASKA COASTAL MANAGEMENT ACT].

18 * Sec. 3. AS 41.17.041 is repealed and reenacted to read:

19 Sec. 41.17.041. BOARD OF FORESTRY. (a) The Board of Forestry
20 is established in the Department of Natural Resources, division of
21 forestry.

22 (b) The board is composed of nine members appointed by the
23 governor:

24 (1) a representative of a statewide commercial fishermen's
25 organization;

26 (2) a representative of a Native corporation established
27 under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act);

28 (3) a representative of an environmental organization;

29 (4) a representative of a forest industry trade

1 association;

2 (5) a professional fish or wildlife biologist who is not
3 employed in that capacity by a state, municipal, or federal government
4 agency, except for university employment;

5 (6) a professional forester who is not employed in that
6 capacity by a state, municipal, or federal government agency, except
7 for university employment;

8 (7) a representative of a statewide mining organization;

9 (8) a representative of a statewide recreational organi-
10 zation; and

11 (9) the state forester, who serves ex officio and without a
12 vote.

13 (c) The state forester is the presiding officer of the board and
14 shall, in consultation with the board, establish procedures for sched-
15 uling and organizing board meetings. Seven voting members of the
16 board constitute a quorum. Each decision of the board requires the
17 affirmative vote of each voting member present less one.

18 (d) A board member who is unable to attend a meeting may desig-
19 nate an alternate who possesses the same qualifications as the board
20 member.

21 (e) The division shall serve as staff to the board. The depart-
22 ment, the Department of Fish and Game, and the Department of Environ-
23 mental Conservation shall provide technical staffing and information
24 as needed by the board.

25 * Sec. 4. AS 41.17.047 is repealed and reenacted to read:

26 Sec. 41.17.047. POWERS AND DUTIES OF BOARD. (a) The board
27 shall review and comment to the commissioner on regulations proposed
28 for adoption under this chapter.

29 (b) The board shall provide a forum for representatives of

1 affected interests to discuss and attempt to resolve issues relevant
2 to this chapter and to the forest resources of the state.

3 (c) The board, working with the department, the Department of
4 Environmental Conservation, the Department of Fish and Game, other
5 affected agencies and parties, and the forest-dependent industries,
6 shall conduct an annual survey of research needs related to forest
7 practices. The board shall review research proposals and shall make
8 recommendations to promote research projects that would address these
9 needs to the governor and the legislature.

10 (d) The board shall coordinate the monitoring of the implementa-
11 tion and effectiveness of this chapter, the regulations, and best
12 management practices adopted under this chapter in meeting state water
13 quality standards, fish and wildlife habitat requirements, and other
14 forestry objectives. The board shall report annually to the
15 legislature and the governor on the effectiveness of this chapter and
16 regulations adopted under it, with its recommendations for changes and
17 for needed research and monitoring. The state forester, the
18 Department of Fish and Game, and the Department of Environmental
19 Conservation shall each present an annual report, independently, to
20 the board on the effectiveness of this chapter, the regulations, and
21 best management practices adopted under this chapter that protect the
22 resources for which they have statutory responsibility, and shall make
23 recommendations for changes to correct procedural or substantive
24 problems. The board shall forward the reports to the legislature as
25 part of its annual report. The board shall hold hearings at least
26 once annually in southeast, southcentral, and interior Alaska for
27 purposes of taking public testimony on the subjects.

28 * Sec. 5. AS 41.17.055(d) is repealed and reenacted to read:

29 (d) The commissioner may develop regulations under this chapter

1 as part of the state program for control of nonpoint source pollution
2 under the Federal Water Pollution Control Act, as amended. However,
3 the Department of Environmental Conservation is the lead agency for
4 water quality and control of nonpoint source pollution under that Act,
5 and the regulations are therefore subject to the approval of the
6 commissioner of environmental conservation.

7 * Sec. 6. AS 41.17.060(b) is amended to read:

8 (b) With respect to state, municipal, and private forest land,
9 the following standards apply:

10 (1) to the maximum extent possible, all applicable data and
11 information of applicable disciplines shall be updated and used in
12 making decisions relative to the management of forest resources;

13 (2) environmentally sensitive areas [AND BEST MANAGEMENT
14 PRACTICES] shall be recognized in the development of regulations and
15 best management practices that are designed to implement [IMPLEMENTA-
16 TION OF ANY] nonpoint source pollution control measures authorized
17 under this chapter;

18 (3) administration of forest land shall consider marketing
19 conditions and other economic constraints affecting the forest land-
20 owner, timber owner, or the operator;

21 (4) to the fullest extent practicable, harvested forest
22 land shall be reforested, naturally or artificially, so as to result
23 in a sustained yield of merchantable timber from that land; if artifi-
24 cial planting is required, silviculturally acceptable seedlings must
25 first be available for planting at an economically fair price in the
26 state; and

27 (5) significant adverse effects of soil erosion and mass
28 wasting on water quality and fish habitat shall be prevented or min-
29 imized.

1 * Sec. 7. AS 41.17.060(c) is amended to read:

2 (c) With respect to state and municipal forest land only, the
3 following standards also apply:

4 (1) forest land shall be administered for the multiple use
5 of the renewable and nonrenewable resources and for the sustained
6 yield of the renewable resources of the land in the manner that
7 [WHICH] best provides for the present needs and preserves the future
8 options of the people of the state;

9 (2) a [ANY] system of allocating predominant uses or values
10 to particular units within a contiguous area of land shall reflect in
11 reasonable proportion the various resources and values present in that
12 area;

13 (3) to the extent its capacity permits, forest land shall
14 be administered so as to provide for the continuation of businesses,
15 activities, and lifestyles that [WHICH] are dependent upon or derived
16 from forest resources;

17 (4) timber harvesting is limited to areas where data and
18 information demonstrate that natural or artificial reforestation
19 techniques will result in the production of a sustained yield of
20 merchantable timber from that area;

21 (5) there may not be [ANY] significant impairment of the
22 productivity of the land and water with respect to renewable re-
23 sources; [AND]

24 (6) [WHERE ECONOMICALLY PRACTICABLE,] allowance shall [MAY]
25 be made for scenic quality in or adjacent to areas of substantial
26 importance to the tourism and recreation industry; and

27 (7) allowance shall be made for important fish and wildlife
28 habitat.

29 * Sec. 8. AS 41.17.070(b) is repealed and reenacted to read:

1 (b) To maintain a record of division decision making for public
2 and agency review, the commissioner shall compile and index each de-
3 cision made under this chapter regarding directives, stop work orders,
4 waivers from requirements, decisions of hearing officers, and deci-
5 sions on appeals. The commissioner shall submit a summary of this
6 record annually to the board.

7 * Sec. 9. AS 41.17.080 is repealed and reenacted to read:

8 Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt
9 regulations necessary to accomplish the purposes of this chapter under
10 AS 44.62 (Administrative Procedure Act) regarding forest practices
11 such as

12 (1) road construction and maintenance, including

13 (A) road location, construction, maintenance, and
14 post-operation management or removal;

15 (B) landing location and construction;

16 (C) drainage structures;

17 (D) material sources and spoil disposal sites;

18 (2) timber harvesting, including

19 (A) timber harvest unit planning and design;

20 (B) felling and bucking;

21 (C) cable yarding, shovel, tractor, and wheeled skid-
22 der systems;

23 (D) landing clean-up;

24 (E) slash disposal;

25 (3) log transfer, sort yards, and storage facilities,
26 including

27 (A) location, design, and construction;

28 (B) maintenance;

29 (C) closure;

- 1 (D) log storage, rafting, and identification;
2 (4) reforestation, including
3 (A) site preparation and rehabilitation;
4 (B) prescribed burning;
5 (C) exemptions from reforestation requirements;
6 (5) prevention and suppression of forest insects and dis-
7 eases;
8 (6) salvage logging;
9 (7) vegetative management; and
10 (8) fire and flood hazard management.

11 (b) The commissioner shall adopt regulations specifying the
12 information to be submitted under AS 41.17.090(c) in the detailed plan
13 of operations to enable the division to determine whether the activ-
14 ities comply with the requirements of this chapter.

15 (c) The commissioner may establish regions, districts, or other
16 subdivisions of forest land in the state in which different regu-
17 lations apply to reflect varying conditions in the state or to facil-
18 itate administration. In adopting regulations, the commissioner shall
19 make appropriate distinctions between public and private land.

20 (d) The commissioner shall adopt only those regulations neces-
21 sary to accomplish the purposes of this chapter and shall avoid regu-
22 lations that increase operating costs without yielding significant
23 benefits to public resources.

24 * Sec. 10. AS 41.17 is amended by adding new sections to read:

25 Sec. 41.17.082. CONTROL OF INFESTATIONS AND DISEASE. (a) All
26 forest clearing operations and silvicultural systems must be designed
27 to reduce the likelihood of increased insect infestation and disease
28 infections that threaten forest resources.

29 (b) A forest landowner may not conduct or approve timber

1 clearing activities that create conditions fostering outbreaks of
2 infestation or infection that threaten forest resources on forest
3 lands belonging to another person. If the commissioner finds, after
4 notice and hearing, that there has been a violation of this subsec-
5 tion, the commissioner may

6 (1) require the forest landowner, at that person's expense,
7 to remove promptly or cure the conditions fostering outbreaks of
8 infestation or infection; and

9 (2) require the forest landowner, at that person's expense,
10 to undertake environmentally sound, effective, and cost-efficient
11 actions to control the infestation or infection in the immediate
12 vicinity of the improper timber clearing activity.

13 (c) If a forest landowner does not comply with a final order of
14 the commissioner under (b)(1) or (b)(2) of this section, the commis-
15 sioner may enter onto the land and undertake the actions ordered and
16 the landowner is liable for the cost of the actions. The commissioner
17 shall deliver to the landowner an itemized statement of expenses
18 incurred.

19 (d) The commissioner may undertake surveys and appraisals to
20 obtain data on regional insect infestations and disease conditions.
21 Upon a determination that an area is infested with forest insects or
22 infected with diseases injurious to forest resources and that the
23 infestation or infection threatens the forest land or timber of adja-
24 cent owners, the commissioner may establish the boundaries of an
25 infestation or infection zone. The commissioner may enter into an
26 agreement with an owner or with a governmental agency to control or
27 suppress infestation or infection within the zone. Upon a determina-
28 tion by the commissioner that insect and disease control work within
29 the zone is no longer necessary or feasible, the commissioner shall

1 terminate the zone.

2 Sec. 41.17.083. CLEARING OF FOREST LAND FOR NON-TIMBER PURPOSES.

3 A state agency, municipality, or public utility shall determine wheth-
4 er the timber to be removed has significant salvage value before
5 approving or conducting clearing of forest land for purposes other
6 than timber harvest. If the timber has significant salvage value, the
7 agency or utility shall salvage the timber as part of the clearing
8 process.

9 * Sec. 11. AS 41.17 is amended by adding a new section to read:

10 Sec. 41.17.087. VARIATION FROM REQUIREMENTS. (a) A forest
11 landowner, timber owner, or operator may propose for a particular
12 activity a variation from a requirement imposed by this chapter or the
13 regulations adopted under this chapter. If the state forester deter-
14 mines that the harm intended to be avoided by the requirement is not
15 likely to occur because of site-specific circumstances relating to the
16 particular activity and is not likely to cause significant harm to
17 fish habitat or water quality, the state forester shall agree to the
18 proposed variation. If the state forester does not agree to the
19 proposed variation, a forest landowner, timber owner, or operator may
20 appeal to the commissioner. The appellants shall conform to the
21 requirement during the pendency of the appeal

22 (b) The commissioner shall adopt regulations that specify the
23 standards under which a variation will be granted for harvesting
24 timber within the riparian area of

25 (1) a low gradient Type A water body with a width of five
26 feet or less; and

27 (2) other appropriate water body types.

28 (c) A determination by the state forester under (a) of this
29 section and regulations by the commissioner under (b) of this section

1 shall give due deference under AS 41.17.098.

2 * Sec. 12. AS 41.17.090 is repealed and reenacted to read:

3 Sec. 41.17.090. NOTIFICATION OF PLANS TO HARVEST TIMBER. (a)
4 Operations on forest land shall be reviewed under this section for
5 consistency with the policies and provisions of this chapter and
6 regulations adopted under this chapter.

7 (b) A forest landowner, timber owner, or operator may provide to
8 the commissioner a voluntary plan of operations that describes the
9 long-term plans for timber harvesting. The purpose of a voluntary
10 plan is to give the division and the public an early opportunity to
11 review plans, to identify areas of concern, and to allow the agencies
12 and the public to provide local knowledge and early notice of poten-
13 tial problems to the forest landowner, timber owner, or operator.

14 (c) Before beginning operations on forest land, the operator
15 shall provide the state forester with a detailed plan of operations.
16 The detailed plan of operations must include

17 (1) a description of the proposed operations, identifying
18 the land involved and the action proposed in sufficient detail to
19 inform the public of the nature and location of the proposed opera-
20 tions; the description must include a map and must be in a form suit-
21 able for duplication;

22 (2) the name, address, and approving signature of the
23 forest landowner, timber owner, and operator; and

24 (3) other information required in the regulations adopted
25 under this chapter.

26 (d) Within five days after receipt of a detailed plan of opera-
27 tions under (c) of this section, the state forester shall distribute
28 the information received under (c) of this section to affected state
29 agencies and coastal districts, and shall distribute the information

1 received under (c)(1) of this section to each member of the public who
2 has asked to receive copies of notifications for the affected area.

3 (e) Within 30 days after receipt of a detailed plan of opera-
4 tions, the state forester shall review the plan to determine if the
5 operations are consistent with this chapter and regulations adopted
6 under this chapter. Operations may begin under the plan upon the
7 expiration of the 30-day period or upon notice from the state forester
8 that the review has been completed, whichever occurs first, unless the
9 division has issued a stop work order for a particular portion of the
10 plan or has notified the operator that a one-time, 10-day extension is
11 necessary for agency review under AS 41.17.098(f). The operator may
12 proceed with operations not covered by the stop work order, notice of
13 field inspection, or the agency review. During the review of a de-
14 tailed plan of operations, if a question arises concerning the proper
15 classification of water body type for purposes of the standards in
16 AS 41.17.116(a), the Department of Fish and Game may resolve the
17 question.

18 (f) If the state forester determines that a field inspection is
19 necessary to determine consistency of the detailed plan of operations
20 or a portion of the plan with applicable standards, the state forester
21 shall notify the operator. The notice of field inspection may not
22 cover more than the minimum area necessary to determine compliance
23 with this chapter and applicable regulations. The operator shall
24 inform the state forester when the site will be available for an
25 inspection. The state forester shall conduct the field inspection
26 within 21 days after the date that the site will be accessible and
27 available unless the operator otherwise agrees, and the operator may
28 begin operations at the conclusion of the 21-day period unless the
29 state forester has issued a stop work order under AS 41.17.138.

1 (g) During the review of a detailed plan of operations, modi-
2 fications to accommodate comments may be made without requiring the
3 operator to resubmit the plan. After the review of the detailed plan
4 of operations made under (e) and (f) of this section, an operator
5 shall notify the state forester of a proposed substantial change in
6 operations by following the procedures specified in (c) - (f) of this
7 section.

8 (h) Information and paperwork required of the operator under
9 this section is limited to that necessary to accomplish the purposes
10 of this section.

11 (i) An operator shall renew a detailed plan of operations annu-
12 ally.

13 * Sec. 13. AS 41.17 is amended by adding a new section to read:

14 Sec. 41.17.098. INTERAGENCY COORDINATION AND REEVALUATION. (a)
15 In administering this chapter, the commissioner shall coordinate with
16 other agencies and affected coastal districts that have jurisdiction
17 over activities subject to regulation under this chapter.

18 (b) In a review or implementation of a detailed plan of opera-
19 tions under AS 41.17.090 and in a decision on a proposed variation
20 from requirements under AS 41.17.087, the commissioner shall consider
21 the comments of each affected state agency and, where applicable,
22 coastal districts.

23 (c) The commissioner shall give due deference to the Department
24 of Environmental Conservation in decisions concerning water quality.
25 The commissioner of environmental conservation retains the authority
26 to adopt nonpoint source pollution regulations for activities subject
27 to this chapter to the extent that regulations are not adopted by the
28 commissioner of natural resources and approved by the commissioner of
29 environmental conservation under this chapter. The commissioner of

1 environmental conservation may withdraw approval of regulations adopt-
2 ed by the commissioner of natural resources under this chapter by
3 following the procedure for the adoption, amendment, and repeal of
4 regulations under AS 44.62.180 - 44.62.290.

5 (d) The commissioner shall recognize the expertise of the De-
6 partment of Fish and Game with regard to fish and wildlife habitat.
7 On private land, the commissioner shall give due deference to the
8 Department of Fish and Game regarding effects on fish habitat from
9 timber operations including variations to riparian standards, desig-
10 nation of alternative site-specific riparian protection plans, and
11 road location decision within riparian areas. On public land, the
12 commissioner shall give due deference to the Department of Fish and
13 Game regarding effects on fish and wildlife habitat from timber op-
14 erations including timber harvest in riparian areas, variations to
15 riparian standards, and road location decisions within riparian areas.
16 In making decisions under under AS 41.17.087, the commissioner shall
17 recognize fish habitat as the primary value in riparian areas.

18 (e) In this section, "due deference" means that deference that
19 is appropriate in the context of the agency's expertise and area of
20 responsibility and all the evidence available to support a factual
21 assertion. Where due deference is given, if the commissioner does not
22 agree with a commenting agency, the commissioner shall prepare a
23 written statement of the reasons for the disagreement.

24 (f) If a disagreement described in (e) of this section exists,
25 an officer of an agency may require reevaluation of the disagreement
26 at a higher level within the agencies, or by the governor if
27 necessary, before a decision is made by the commissioner.

28 * Sec. 14. AS 41.17 is amended by adding new sections to read:

29 **ARTICLE 1A. RIPARIAN MANAGEMENT.**

1 Sec. 41.17.115. INTENT FOR RIPARIAN AREAS. The commissioner
2 shall protect riparian areas from the significant adverse effects of
3 timber harvest activities on fish habitat and water quality. The
4 management intent for riparian areas is the adequate preservation of
5 fish habitat by maintaining a short- and long-term source of large
6 woody debris, stream bank stability, channel morphology, water temper-
7 atures, stream flows, water quality, adequate nutrient cycling, food
8 sources, clean spawning gravels, and sunlight. The commissioner shall
9 adopt regulations for the protection of riparian areas; the regu-
10 lations may include higher standards of protection for fish and other
11 public resources on land managed by the department than on other
12 public land or private land. The regulations may vary by region of
13 the state and must take into consideration reasonable classification
14 of water bodies and the economic feasibility of timber operations.

15 Sec. 41.17.116. RIPARIAN STANDARDS FOR PRIVATE LAND. (a)
16 Private forest land adjacent to the following types of waters and
17 located in a coastal forest of spruce or hemlock is subject to the
18 riparian protection standards established in this section:

19 (1) along a Type A water body, harvest of timber may not be
20 undertaken within 66 feet of the water body;

21 (2) along a Type B water body, timber harvest operations
22 within 100 feet of the stream or to the break of the slope, whichever
23 area is smaller, must be conducted in compliance with slope stability
24 standards established in regulations adopted under this chapter;

25 (3) along a Type C water body, timber harvest operations in
26 the area within 50 feet of the stream or to the break of the slope,
27 whichever area is smaller, must be conducted in compliance with slope
28 stability standards established in regulations adopted under this
29 chapter.

1 (b) The commissioner shall adopt regulations for private land
2 outside of the coastal forest of spruce or hemlock that designate the
3 riparian areas to be protected and the restrictions on timber harvest-
4 ing operations within the areas that are necessary for their pro-
5 tection under the management goals established in AS 41.17.115.

6 Sec. 41.17.118. RIPARIAN STANDARDS FOR STATE LAND. (a) The
7 riparian standards for state land are as follows:

8 (1) on state forest land managed by the department that is
9 located north of the Alaska Range, harvest of timber may not be under-
10 taken within 100 feet immediately adjacent to an anadromous or high
11 value resident fish water body unless the division determines that
12 adequate protection remains for the fish habitat;

13 (2) on state forest land managed by the department that is
14 located south of the Alaska Range,

15 (A) harvest of timber may not be undertaken within 100
16 feet immediately adjacent to an anadromous or high value resident
17 fish water body;

18 (B) between 100 and 300 feet from the water body,
19 timber harvest may occur but must be consistent with the mainte-
20 nance of important fish and wildlife habitat.

21 (b) The commissioner may impose additional riparian protection
22 standards for timber harvest operations through the adoption of land
23 use plans under AS 38.04.065 and under forest management plans and
24 reports under AS 38.05.112 and AS 41.17.230.

25 (c) In the absence of a site-specific determination by the
26 Department of Fish and Game, the commissioner shall presume for plan-
27 ning purposes that a stream is anadromous if it is connected to ana-
28 dromous waters that are without Department of Fish and Game documenta-
29 tion of a physical blockage and has a stream gradient of 8 percent or

1 less.

2 Sec. 41.17.119. MINIMUM RIPARIAN STANDARDS FOR OTHER PUBLIC
3 LAND. On other public land, harvest of timber may not occur

4 (1) within 100 feet from the shore or bank of an anadromous
5 or high value resident fish water body that is located south of the
6 Alaska Range; *ex. 1000 ft*

7 (2) within 100 feet immediately adjacent to an anadromous
8 or high value resident fish water body north of the Alaska Range
9 unless the commissioner determines that adequate protection remains
10 for the fish habitat. *all right*

11 * Sec. 15. AS 41.17 is amended by adding a new section to read:

12 Sec. 41.17.125. ENFORCEMENT COORDINATION. All state agencies
13 with enforcement authority over an activity subject to regulation
14 under this chapter shall establish a uniform enforcement strategy that
15 avoids duplication and inconsistencies. All participating agencies
16 shall agree to and comply with the contents of the uniform strategy.
17 In developing and implementing the uniform strategy, each state agency
18 retains its authority to determine the appropriate remedies under the
19 statutes and regulations it administers.

20 * Sec. 16. AS 41.17.131 is repealed and reenacted to read:

21 Sec. 41.17.131. PENALTIES FOR VIOLATIONS. (a) An operator,
22 forest landowner, or timber owner who violates or permits a violation
23 of this chapter, a regulation adopted under this chapter, a directive
24 issued under AS 41.17.136, or a stop work order issued under AS 41.-
25 17.138 is liable, after notice and hearing, for a civil fine in an
26 amount not to exceed \$10,000 to be assessed by the commissioner.
27 In determining the amount of civil fine, the commissioner shall
28 consider

29 (1) the character and degree of injury to forest resources

1 and values;

2 (2) the degree of intent or negligence of the respondent in
3 causing or permitting the violation;

4 (3) the character and number of past violations caused or
5 permitted by the respondent; and

6 (4) if the information is available, the net economic
7 savings realized by the respondent through the violation.

8 (b) An operator, forest landowner, or timber owner that, with
9 criminal negligence, violates or permits a violation of this chapter,
10 a regulation adopted under this chapter, a directive issued under
11 AS 41.17.136, or a stop work order issued under AS 41.17.138 is guilty
12 of a class A misdemeanor. In this subsection, "criminal negligence"
13 has the meaning given in AS 11.81.900(a).

14 (c) Each day that a violation described in this section occurs
15 is a separate violation.

16 (d) If a respondent violates a directive issued under AS 41.-
17 17.136 or a stop work order issued under AS 41.17.138, the attorney
18 general, at the request of the commissioner, may seek an injunction
19 requiring the respondent to suspend all or part of the operations
20 until the respondent complies with the directive or stop work order,
21 and requiring the respondent to repair or correct damage resulting
22 from the violation.

23 (e) If a respondent violates a directive issued under AS 41.-
24 17.136 that requires the respondent to repair or correct damage, the
25 commissioner may proceed to repair or correct the damage using state
26 agency employees or contractors and the respondent is liable for the
27 cost of the repair. The commissioner shall deliver to the respondent
28 an itemized statement of expenses incurred.

29 * Sec. 17. AS 41.17 is amended by adding a new section to read:

1 Sec. 41.17.136. DIRECTIVES. (a) Upon a determination that a
2 planned or ongoing activity violates or would violate this chapter or
3 a regulation adopted under it, the state forester shall notify the
4 respondent in writing and direct the respondent to halt or avoid the
5 violation or to repair or correct any damage resulting from the viola-
6 tion. The written notification must include a summary of the basis
7 for the directive.

8 (b) The respondent may either comply with the directive or
9 request a hearing under AS 41.17.139 within 15 days of receipt of the
10 notification. If a hearing is requested, the respondent may continue
11 with the activity unless the state forester issues a stop work order
12 under AS 41.17.138. If the directive is affirmed by the hearing
13 officer, the respondent shall cease the activity unless a stay is
14 issued under AS 41.17.143(c) or by the superior court.

15 * Sec. 18. AS 41.17 is amended by adding a new section to read:

16 Sec. 41.17.138. STOP WORK ORDERS. (a) Upon a determination
17 that a violation of this chapter or a regulation adopted under it is
18 occurring or is likely to occur and that significant harm to public
19 resources is likely to occur if work is not halted before a hearing
20 can be held, the state forester may issue a stop work order requiring
21 the respondent to stop the violation or otherwise halt the threatened
22 harm. A stop work order must be in writing and must state the facts
23 on which it is based.

24 (b) The state forester shall immediately refer the matter to a
25 hearing officer for determination of the validity of the stop work
26 order under AS 41.17.139. The hearing officer shall consider any
27 arguments and evidence presented by the respondent within five work-
28 days after receipt of the stop work order and shall then make an imme-
29 diate decision sustaining or reversing the stop work order. The stop

1 work order is of no further effect if it is not sustained by the
2 hearing officer within the five-workday period. A stop work order may
3 be sustained only upon the same grounds on which it was originally
4 issued.

5 * Sec. 19. AS 41.17.139 is amended to read:

6 Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise
7 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject
8 to the Administrative Procedure Act (AS 44.62). A hearing under
9 AS 41.17.136 or 41.17.138 [AS 41.17.131 - 41.17.139] shall be held
10 before the state forester, a regional forester, or another employee of
11 the division with similar qualifications acting as a hearing officer.
12 A hearing on an appeal under AS 41.17.087 and a hearing under AS 41.-
13 17.082(b) shall be held before the commissioner or the commissioner's
14 designee [, APPOINTED BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF
15 THE ALASKA BAR ASSOCIATION WHO HAVE BEEN NOMINATED BY THE BOARD OF
16 FORESTRY AND WHO ARE KNOWLEDGEABLE AND EXPERIENCED IN THE SUBJECT
17 MATTER]. A person who has assisted in the preparation of the di-
18 vision's [STATE'S] case [OR WHO IS A STATE EMPLOYEE] is ineligible.
19 Hearings are not limited by common law, statutory, or judicial rules
20 of evidence; however, the hearing officer may admit only that evidence
21 that [WHICH] appears to be reliable and trustworthy. All hearings
22 shall be open to the public. Written or oral testimony may be submit-
23 ted. A party to a hearing may make written or oral argument, secure
24 the issuance of a subpoena under AS 44.62.430, offer testimony or
25 other evidence, and cross-examine witnesses. The hearing officer
26 shall endeavor, in conducting any hearing, to ensure that the respon-
27 dent understands the proceedings and that the facts supporting the
28 position of each party have been adequately presented. [HEARINGS
29 SHALL BE HELD AS CLOSE AS PRACTICABLE TO THE LOCATION OF THE ALLEGED

1 VIOLATION. TESTIMONY GIVEN AT THE HEARING SHALL BE RECORDED.]

2 (b) If the respondent notifies the commissioner within five days
3 before the hearing provided for in (a) of this section, the following
4 rules and procedures apply to the hearing:

5 (1) the hearing shall be a nonadversary proceeding, with
6 the hearing officer fully and impartially representing the interests
7 of the state and the respondent;

8 (2) the hearing officer shall thoroughly investigate the
9 facts and circumstances relating to the alleged violation, including
10 taking testimony from appropriate persons, collecting and examining
11 documents and other evidence, and performing other actions consistent
12 with due process of law; and

13 (3) the hearing officer shall issue a decision in accor-
14 dance with the applicable procedures of (a) of this section.

15 * Sec. 20. AS 41.17.139 is amended by adding a new subsection to read:

16 (c) The hearing officer shall select the location of the hear-
17 ing, giving consideration to the convenience of the parties and wit-
18 nesses. The hearing officer may permit witnesses to testify through
19 teleconferencing.

20 * Sec. 21. AS 41.17.143 is repealed and reenacted to read:

21 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by
22 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-
23 sioner under AS 41.17.082(b), 41.17.087, or 41.17.131(a) constitutes
24 final agency action that may be appealed to the superior court within
25 30 days after it is issued. Judicial review shall be as provided in
26 AS 44.62.560 and 44.62.570.

27 (b) An operator, forest landowner, or timber owner may request
28 the commissioner to reconsider the decision of a hearing officer
29 within 30 days after it is issued. Reconsideration is not a precondi-

1 tion of judicial review under (a) of this section. If reconsideration
 2 is requested, the final agency action for purposes of judicial review
 3 is a decision by the commissioner to affirm, modify, or reverse the
 4 hearing officer or to deny the request for reconsideration.

5 (c) The commissioner may stay or modify a directive or order
 6 pending administrative or judicial review. A stay or modification may
 7 not be appealed separately from an appeal of the substantive decision.

8 (d) A person, except the aggrieved forest landowner, timber
 9 owner, or operator, may not maintain an administrative or judicial ap-
 10 peal, or other action or proceeding of any kind, challenging a deci-
 11 sion or failure to act by the department with respect to the compli-
 12 ance of a timber operation on private forest land with this chapter or
 13 a regulation, standard, directive, or order issued under this chapter.
 14 This subsection does not prohibit the maintenance of an action

15 (1) for an alleged violation of a constitutional right; or

16 (2) against the department regarding a regulation, stan-
 17 dard, or systematic course of conduct that does not involve a chal-
 18 lenge to, or attempt to enjoin, stay, modify, or otherwise affect a
 19 timber operation on private forest land subject to this chapter.

20 * Sec. 22. AS 41.17.210(a) is amended to read:

21 (a) The governor may propose to the legislature the establish-
 22 ment of state forests consisting primarily of commercially valuable
 23 forest land determined by the governor to be necessary for retention
 24 in state ownership for management under the principles of multiple use
 25 and sustained yield and consistent with AS 38.04.005. The proposal of
 26 the governor shall include a report and recommendations of the commis-
 27 sioner including

28 (1) a preliminary forest inventory;

29 (2) a summary of the testimony offered at public hearings

1 held on the management of the proposed state forest in communities
2 proximately located to a proposed state forest;

3 (3) the findings of the commissioner on anticipated incom-
4 patibilities of uses described in AS 38.05.112(c) [AS 41.17.230(e)]
5 under AS 38.05.112(d) [AS 41.17.230(f)];

6 (4) written comments from appropriate state agencies on the
7 compatibility of the uses described in AS 38.05.112(c) [AS 41.17.-
8 230(e)] within the proposed state forest;

9 (5) an estimate of the cost of a full implementation of an
10 operational level forest inventory and the management plan.

11 * Sec. 23. AS 41.17.400(c) is amended to read:

12 (c) In addition to the uses described in AS 38.05.112(c)
13 [AS 41.17.230(e)], the commissioner may establish transportation
14 corridors within the Tanana Valley State Forest.

15 * Sec. 24. AS 41.17.900(b) is repealed and reenacted to read:

16 (b) For federal land,

17 (1) the degree of resource protection may not be less than
18 that established by this chapter for state land except that AS 41.17.-
19 119 establishes the minimum riparian standard;

20 (2) a timber harvest activity subject to this chapter shall
21 satisfy the requirement to be consistent to the maximum extent practi-
22 cable with the Alaska coastal zone management program if the federal
23 land management plans, guidelines, and standards applicable to that
24 timber harvest activity provide no less resource protection than the
25 standards that are established in this chapter provide for state land
26 except that

27 (A) AS 41.17.119 establishes the minimum riparian
28 standards; and

29 (B) this paragraph does not apply to a timber harvest

1 activity that requires a state or federal authorization under a
2 provision of law other than this chapter.

3 * Sec. 25. AS 41.17.900 is amended by adding new subsections to read:

4 (e) Subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coastal
5 Zone Management Act of 1972, P.L. 92-583) as to private land, this
6 chapter and the regulations adopted under this chapter establish the
7 forest management standards, policies, and review processes under
8 AS 46.40 (Alaska Coastal Management Act). This subsection does not
9 apply to timber harvest activity that requires a state or federal
10 authorization under a provision of law other than this chapter.

11 (f) This chapter does not diminish the rights, privileges, or
12 immunities of Alaska Natives or Alaska Native corporations with re-
13 spect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native
14 Claims Settlement Act), and does not alter or diminish the authority
15 of the Department of Fish and Game under AS 16, of the Department of
16 Environmental Conservation under AS 46, or of a state agency under
17 other law.

18 * Sec. 26. AS 41.17 is amended by adding a new section to read:

19 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The
20 Department of Fish and Game and the commissioner shall work coopera-
21 tively with private forest landowners and timber owners to protect,
22 maintain, and enhance wildlife habitat to the maximum extent practica-
23 ble, consistent with the interests of the owners in the use of their
24 timber resources.

25 (b) The Department of Fish and Game shall provide educational
26 and technical assistance and extension services to owners of private
27 forest land or timber to assist in identifying important wildlife
28 habitat and to assist in designing voluntary management techniques
29 that minimize adverse effects on wildlife habitat.

1 (c) The Department of Fish and Game and the landowner shall
2 cooperate in identifying areas of important wildlife habitat on
3 private forest land and in developing methods for their protection.
4 Methods of protection for wildlife habitat may include, with the
5 agreement of the landowner, the purchase of fee title, purchase of
6 conservation easements, and land exchanges.

7 (d) This section does not alter or diminish the authority and
8 responsibility of the state over wildlife on private land.

9 * Sec. 27. AS 41.17.950 is repealed and reenacted to read:

10 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the con-
11 text otherwise requires,

12 (1) "anadromous water body" means the portion of a fresh
13 water body or estuarine area that

14 (A) is cataloged under AS 16.05.870 as important for
15 anadromous fish; or

16 (B) is not cataloged under AS 16.05.870 as important
17 for anadromous fish but has been determined by the Department of
18 Fish and Game to contain or exhibit evidence of anadromous fish
19 in which event the anadromous portion of the stream or waterway
20 extends up to the first point of physical blockage;

21 (2) "board" means the Board of Forestry established in
22 AS 41.17.041;

23 (3) "broadcast chemicals" includes pesticides, herbicides,
24 fungicides, fertilizers, poisons, and any other substances

25 (A) used for silvicultural management or related
26 purposes;

27 (B) not native to the ecosystem in which they are
28 being applied; and

29 (C) having a foreseeable adverse impact on the welfare

1 of renewable resources, as determined by the commissioner of
2 environmental conservation;

3 (4) "division" means the division of forestry;

4 (5) "forest land" means land stocked or having been stocked
5 with forest trees of any size and not currently developed for nonfor-
6 est use, regardless of whether presently available or accessible for
7 commercial purposes, and includes any such land under state, municipi-
8 pal, or private ownership;

9 (6) "forest landowner" means a person who owns forest land,
10 but does not include the owner of mineral or subsurface rights only;

11 (7) "high value resident fish" means resident fish popu-
12 lations that are used for recreational, personal use, commercial, or
13 subsistence purposes;

14 (8) "multiple use" means

15 (A) the management of all the various resources of
16 forest land so that they are used in the combination that will
17 best meet the needs of the citizens of the state, making the most
18 judicious use of the land for some or all of these resources or
19 related values, benefits, and services over areas large enough to
20 provide sufficient latitude for periodic adjustments in use to
21 conform to changing needs and conditions;

22 (B) that some land will be used for less than all of
23 the resources; and

24 (C) harmonious and coordinated management of the
25 various resources, each with the other, without significant
26 impairment of the productivity of the land and water, with con-
27 sideration being given to the relative values of the various
28 resources, and not necessarily the combination of uses that will
29 give the greatest dollar return or the greatest unit output;

1 (9) "operations" means timber harvesting or activities
2 associated with timber harvesting or forest development unless
3 exempted under AS 41.17.900(a) - (c);

4 (10) "operator" means a person who is engaged in timber
5 harvesting or activities associated with timber harvesting or forest
6 development, or who contracts with others to conduct operations for
7 that person, except a person who is engaged in an operation as an
8 employee with wages or piecework as the sole compensation;

9 (11) "other public land" means state land managed by state
10 agencies other than the department, land owned by a municipality, and
11 land owned by the University of Alaska;

12 (12) "person" has the meaning given in AS 01.10.060 and also
13 includes a joint venture;

14 (13) "riparian area" means

15 (A) the areas specified in AS 41.17.116(a) on private
16 land in the coastal forest of spruce or hemlock;

17 (B) the areas specified in regulations adopted by the
18 commissioner under AS 41.17.116(b) on private land outside the
19 coastal forest of spruce or hemlock;

20 (C) the area 100 feet from the shore or bank or an
21 anadromous or high value resident fish water body on state land
22 managed by the department and on other public land;

23 (14) "significant impairment of the productivity of the land
24 and water" means an activity that may foreseeably result in prolonged
25 or substantial damage to renewable resources or prolonged or substan-
26 tial reduction of the continuing capability of the land or water to
27 produce renewable resources at their natural or historic levels;

28 (15) "silviculture" means the art of producing and tending a
29 forest, the application of the knowledge of silvics in the treatment

1 of a forest, and the theory and practice of controlling and managing
2 forest establishment, composition, and growth;

3 (16) "state forest" means an area designated by the legis-
4 lature and retained in state ownership in order to

5 (A) provide a base for sustained yield management of
6 renewable resources; and

7 (B) permit a variety of beneficial uses;

8 (17) "sustained yield" means the achievement and maintenance
9 in perpetuity of a high level annual or regular periodic output of the
10 various renewable resources of forest land and water without signifi-
11 cant impairment of the productivity of the land and water, but does
12 not require that timber be harvested in a non-declining yield basis
13 over a rotation period;

14 (18) "timber owner" means a person who owns timber on forest
15 land or who has the rights to timber, but does not own the land it-
16 self;

17 (19) "Type A water body" means an anadromous water body that
18 is

19 (A) a stream or river of any size having an average
20 gradient of eight percent or less, with banks held in place by
21 vegetation, channels that are not incised, and a substrate com-
22 posed of rubble, gravel, sand or silt;

23 (B) wetlands and lakes, including their outlets; and

24 (C) an estuarine area delimited by the presence of
25 salt-tolerant vegetation;

26 (20) "Type B water body" means an anadromous water body that
27 is a fish stream or river of any size having an average gradient of
28 eight percent or less, a channel that is incised and contained by the
29 geomorphology and not by vegetation, and a substrate that ranges from

1 rubble to bedrock; and

2 (21) "Type C water body" means a stream that is tributary to
3 anadromous waters and that is incised greater than 28 degrees, has an
4 average gradient of greater than eight percent, is narrower than 20
5 feet between ordinary high water marks, has a substrate of rubble and
6 bedrock, and is a mountain slope stream at the upper end of the water-
7 shed.

8 * Sec. 28. LEGISLATIVE REVIEW. The legislature acknowledges and recog-
9 nizes that this Act is adopted on an interim basis because it involves a
10 significant increase in agency responsibility, is based on many untested
11 assumptions, and depends for its efficacy on many factors beyond the con-
12 trol of the state. Therefore, it is the intent of the legislature that the
13 operation of this Act and regulations adopted under this Act be fully
14 reviewed and the Act amended as necessary after the second full field
15 season ends in 1992. This period is intended to allow for further research
16 and to gain experience implementing the Act and its regulations. It is the
17 intent of the legislature that a representative group be convened for the
18 review or that it be conducted by the Board of Forestry. It is the intent
19 of the legislature that the review occur with full public input and parti-
20 cipation. No later than January 1, 1993, the Board of Forestry, the De-
21 partment of Natural Resources, the Department of Environmental Conserva-
22 tion, and the Department of Fish and Game shall submit, along with the
23 reports required by AS 41.17.047(d), any proposed amendments to this chap-
24 ter. The legislature may hold hearings to consider these or other amend-
25 ments and may take whatever action is required to accomplish the intent and
26 purposes of this Act.

27 * Sec. 29. INITIAL TERMS OF MEMBERS OF BOARD OF FORESTRY. The initial
28 terms of the members of the Board of Forestry appointed under AS 41.17.041,
29 as enacted by sec. 3 of this Act, are for two members, one year; for three

1 members, two years; and for three members, three years.

2 * Sec. 30. INTERIM RIPARIAN PROTECTION FOR THE COASTAL FOREST. A
3 notification for timber harvest activities within the coastal forest of
4 spruce or hemlock filed under AS 41.17.090 before the effective date of
5 this section shall be reviewed by the commissioner of natural resources to
6 determine if the proposed operations provide protection that is substan-
7 tially equivalent to the fish habitat protection that is provided by
8 AS 41.17.116, as enacted by sec. 14 of this Act. If the commissioner
9 determines that protection that is substantially equivalent to that provid-
10 ed by AS 41.17.116 has been offered or if the forest landowner, timber
11 owner, or operator complies with an alternate protection plan proposed by
12 the commissioner, operations covered by the notification are not subject to
13 AS 41.17.116. If the commissioner determines that the notification does
14 not provide protection that is substantially equivalent to that provided by
15 AS 41:17.116, the operator must either resubmit the notification in confor-
16 mance with this standard or comply with AS 41.17.116. The failure by the
17 commissioner to make a determination on a notification within 30 days from
18 the effective date of this section constitutes a determination that the
19 notification provides protection that is substantially equivalent to the
20 fish habitat protection that is provided by AS 41.17.116.

21 * Sec. 31. INTERIM RIPARIAN PROTECTION OUTSIDE THE COASTAL FOREST.
22 Until regulations are adopted by the commissioner of natural resources
23 under AS 41.17.116(b), as enacted by sec. 14 of this Act, timber harvest
24 operations on forest land within 100 feet from the shore or bank of an
25 anadromous or high value resident fish water body must be sited and de-
26 signed primarily to protect fish habitat and water quality.

27 * Sec. 32. AS 41.17.116, as enacted by sec. 14 of this Act, does not
28 alter the terms of an existing contract or the outcome of litigation pend-
29 ing on the effective date of this Act. An amendment to or renewal of an

1 existing state timber contract must be consistent with AS 38.05 and
2 AS 41.17.

3 * Sec. 33. AS 41.17.133, 41.17.135, 41.17.137, and 41.17.141 are re-
4 pealed.

5 * Sec. 34. AS 41.17.230(e) and 41.17.230(f) are repealed.

6 * Sec. 35. AS 41.17.010(5), as amended in sec. 2 of this Act, takes
7 effect immediately under AS 01.10.070(c).

8 * Sec. 36. Sections 1, 3 - 4, 6 - 8, 10 - 11, 13 - 14, 22 - 23, 27,
9 29 - 32, and 34 of this Act take effect immediately under AS 01.10.070(c).

10 * Sec. 37. Except as provided in secs. 35 and 36 of this Act, this Act
11 takes effect October 1, 1990.

AMENDMENT

OFFERED IN THE HOUSE

DRAFT CSHB 331(Resources) (dated 3/29/90)

Page 19, line 7, after "Range" add:

"except for municipal lands"

Page 19, line 9, after "Range" add:

"and on all municipal lands"



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

To: House Resources Committee members
From: Johanna Munson
Staff, House Resources Committee
Re: CS HB 331 (Res)
Date: March 29, 1990

Changes to the bill:

Throughout the bill meters are converted to feet.

Section 2

(6) technical change, replace [SET OUT] with establish.

Section 3

Increased the board membership to add two members:

a representative of a statewide mining organization

a representative of a statewide recreational organization

The quorum changed from five to seven.

Section 11

AS 41.17.087

(a) technical [CONSISTENT WITH AS 41.17.098]

(b) The commissioner shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area of

(1) a low gradient Type A water body with a width of five feet or less; and

(2) other appropriate water body types.

(c) A determination by the state forester under (a) of this section and regulations by the commissioner under (b) of this section shall give due deference under AS 41.17.098.

Section 13 Interagency Coordination.

(f) If a disagreement referenced in (e) exists an officer of an agency may require reevaluation of the disagreement at a higher level within the agencies, or by the Governor, if necessary, before a decision is rendered by the commissioner.

Section 14

Riparian Standards for Private Land

Previously buffers were designed on a formula which requires a 50 foot no cut zone, allowed 50 % of the next 50 foot zone to be harvested with a maximum buffer volume not exceeding 5% of the commercial timber in the watershed. The formula was dropped and a 66 foot buffer was established as follows:

1) along a Type A water body, harvest of timber may not be undertaken within 66 feet of the water body

Riparian Standards for State Land:

(c) In the absence of a site-specific determination by the Department of Fish and Game, the commissioner shall presume for planning purposes that a stream is anadromous if it is connected to anadromous waters that are without Department of Fish and Game documentation of a physical blockage and has a stream gradient of 8 percent or less.

Riparian standards for other public land:

On other public land, harvest of timber may not occur

(1) within 100 feet from the shore or bank of an anadromous or high value resident fish water body that is located south of the Alaska Range;

(2) within 100 feet immediately adjacent to an anadromous or high value resident fish water body north of the Alaska Range unless the commissioner determines that adequate protection remains for the fish habitat.

Section 16

Technical correction. New language reads:

(c) Each day that a violation described in this section occurs is a separate violation. The sentence is rewritten to be consistent with other penalty provisions in current law.

Section 21

Technical change:

(d) [NO] A person, except the aggrieved forest landowner, timber owner, or operator, may [NOT] not maintain an administrative or judicial appeal, or other action or proceeding of any kind, challenging a decision or failure to act by the department with respect to the compliance of a timber operation on private forest land with this chapter or a regulation, standard, directive or order issued under this chapter.

Section 22 Technical change.

This section is added to cross reference language moved to Title 38.

a) The governor may propose to the legislature the establishment of state forests consisting primarily of commercially valuable forest land determined by the governor to be necessary for retention in state ownership for management under the principles of multiple use and sustained yield and consistent with AS 38.04.005. The proposal of the governor shall include a report and recommendations of the commissioner including

- (1) a preliminary forest inventory;
- (2) a summary of the testimony offered at public hearings held on the management of the proposed state forest in communities proximately located to a proposed state forest;
- (3) the findings of the commissioner on anticipated incompatibilities of uses described in AS 38.05.112 (c) [AS 41.17.230 (e)] under AS 38.05.112 (d) [AS 41.17.230 (f)];
- (4) written comments from appropriate state agencies on the compatibility of the uses described in AS 38.05.112 (d) [AS 41.17.230(e)] within the proposed state forest;
- (5) an estimate of the cost of a full implementation of an operational level forest inventory and the management plan.

Section 23

This section is added to cross reference language moved to Title 38.

(c) In addition to the uses described in AS 38.05.112 (c) [AS 41.17.230(e)], the commissioner may establish transportation corridors within the Tanana Valley State Forest.

Section 24

(b) For federal land,

- (1) the degree of resource protection may not be less than that established by this chapter for state land except that AS 41.17.119 establishes the minimum riparian standard;
- (2) a timber harvest activity subject to this chapter shall satisfy the requirement to be consistent to the maximum extent practicable with the Alaska coastal zone management program if the federal land management plans, guidelines, and standards applicable to that timber harvest activity provide no less resource protection than the standards that are established in this chapter provide for state land except that
 - (A) AS 41.17.119 establishes the minimum riparian standards;

and

 - (B) this paragraph does not apply to a timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

Section 25

(e) Subject to 16 U.S.C. 1456 (f) (Sec. 307 (f) of the Coastal Zone Management Act of 1972, P.L. 92-583) as to private land, this chapter and the regulations adopted under this chapter establish the forest management standards, policies, and review processes under AS 46.40 (Alaska Coastal Management Act). This subsection does not apply to timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

Section 27 Definitions:

Definitions were added:

(1) "Anadromous" waterbody means that portion of any freshwater body, or estuarine area, that:

(A) is catalogued under AS 16.05.870 as important for anadromous fish; or

(b) is not catalogued under AS 16.05.870 as important for anadromous fish but has been determined by the Department of Fish and Game to contain or exhibit evidence of anadromous fish in which event the anadromous portion of the stream or waterway extends up to the first point of physical blockage;

(7) "high value resident fish" means resident fish populations that are used for recreational, personal use, commercial, or subsistence purposes;

Section 28 The dates were changed to add one year to reflect a two year review which was originally intended.

Section 30 Interim Riparian Protection for the Coastal Forest.

This is a new section to provide for interim riparian protection.

Section 35

Originally the bill had an effective date of January 1, 1990.

Under the CS, under section 2, AS 41.17.010 (5) has an immediate effective date.

Section 36

Sections 1, 3 -4, 6 -8, 10 -11, 13 -14, 22 -23, 27, 29 -32, and 34 take effect immediately .

Section 37

And the CS provides that except for those sections listed in Sec. 35 and Sec. 36, the bill takes effect October 1, 1990.



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

To: House Resources Committee
From: Staff, House Resources Committee
Re: CS HB 331 (Resources) draft 3/29/90 go0529hH

CS HB 331 (Res)	HB 331
Sec. 1	was Sec 1 and Sec 26 1. (d)
Sec. 2	was Sec 2 and Sec 4
Sec 3	was Sec 5
Sec 4	was Sec 7
Sec 5	was Sec 8
Sec 6	was Sec 9 and 10
Sec 7	was Sec 11 and 12
Sec 8	was Sec 13
Sec 9	was Sec 14
Sec 10	was Sec 15
Sec 11	was Sec 16
Sec 12	was Sec 17
Sec 13	was Sec 18
Sec 14	was Sec 19
Sec 15	was Sec 20
Sec 16	was Sec 21
Sec 17	was Sec 22
Sec 18	was Sec 23
Sec 19	was Sec 24
Sec 20	was Sec 24 (c)
Sec 21	was Sec 25
Sec 22	is new

Sec 23	is new
Sec 24 CS SB 317 (Res)	was Sec 27 SB 317
Sec 25 (e) (f)	was Sec 3 was Sec 28
Sec 26	was Sec 29
Sec 27	was Sec 30
Sec 28	was Sec 31
Sec 29	was Sec 6
Sec 30	is new
Sec 31	was Sec 19 41.17.116 (b) (in part)
Sec 32	was Sec 19 41.17.118 (3)
Sec 33	was Sec 32
Sec 34 - 37	are new



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

To: House Resources Committee

From: Johanna Munson
Staff, House Resources Committee

Date: March 29, 1990

Re: HB 331, Forest Practices Act Sectional Analysis

Sec. 1. 38.05.112, Forest Land Use Plans, 5 Year Schedule
This section requires additional planning prior to state timber sales. The division of forestry must prepare a site-specific plan before all state timber sales that fully integrates appropriate resource protection measures into the sale design. This site-specific design would also improve public review of individual timber sales.

This section requires the department to annually prepare a five-year timber schedule of the proposed state timber sales. Except for small and emergency sales such as salvage, a proposed sale would be required to be on the five-year schedules for two years preceding the sale.

Sec. 2. 41.17.010, Declaration of Intent

This section coordinates overlapping agency jurisdiction regulating timber harvest activities. Regulations of the amended forest practices act will serve as timber harvest standards for non-point source pollution, with DEC as lead agency. Regulations of the amended forest practices act provide the fish and habitat protection standards except for those activities subject to AS 16.06.840 and 16.05.870.

Sec. 3 41.17.041, Board of Forestry

This section restructures and reduces the current board from a 14 member to a 9 member board. Drops U.S. Forest Service member, Society of American Foresters member, and adds a professional forester not employed by government, except the university. Drops the Alaska Logger Assn. member. The new board would consist of:

- 1) a representative of a statewide commercial fishermen's organization;
- 2) a representative of a Native corporation established under ANCSA;
- 3) a member of an environmental organization;
- 4) a representative of a forest industry trade association;
- 5) a professional fish or wildlife biologist not employed in that capacity, by government, except the university;
- 6) a professional forester not employed in that capacity by government, except the university;

- 7) a representative of a statewide mining organization;
- 8) a member of a statewide recreational organization; and
- 9) the state forester, who serves ex officio and without a vote.

Sec. 4 41.17.047, Duties of the Board

This section expands the existing duties to include providing a forum for resolving forestry issues; coordinating an annual survey of research needs; monitoring the implementation, taking public testimony statewide, reviewing and making recommendations for changes to the forest practices act. Current duties include commenting on regulations. It is intended to be a consensus decision making body.

Sec. 5 41.17.055 (d)

Establishes DEC as lead agency for water quality and control of nonpoint source pollution and the regulations adopted become the state program for control of nonpoint source pollution, subject to approval of the DEC commissioner.

Sec. 6 41.17.060 (b), State, municipal, and private forest land standards. Subsection (2) is a technical change to clarify existing law regarding environmentally sensitive areas in non-point pollution control measures. Subsection (5) Adds to the list of standards established for forest practices to include: significant adverse effects of soil erosion and mass wasting on water quality and fish habitat.

Sec. 7 41.17.060 (c) Additional standards for state and municipal forest land: Under (6) Changes the standard for scenic quality by requiring that allowance shall be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry, and under (7) Adds new language that an allowance shall be made for important fish and wildlife habitat.

Sec. 8 41.17.070 (b) Changes the reporting requirement to the legislature from 2 years to annually. Requires the department to record decisions made under the act for use by the public and state agencies in assessing the effectiveness of implementation of the act.

Section 9 41.17.080

Expands the list of regulations the commissioner may adopt regarding forest practices to include all phases of timber harvest and to make appropriate distinctions between public and private land; and directs the commissioner to only adopt those regulations that yield significant benefits to public resources.

Section 10 41.17.082, Control of Infestations and Disease.

Adds a new section to require the commissioner to take action to control forest infestation and disease outbreaks that threaten forest resources. It establishes the procedures for remedy of creating such conditions to include requirements for removing the conditions at the owner's expense. It establishes authority, under non-compliance, for the commissioner to enter onto the land and

take necessary action. And authority to undertake surveys to obtain data on regional insect infestation.

Section 11 41.17.087, Variation from requirements.

Adds a new section that allows a landowner or operator variation from requirements or regulations under this chapter on a site-specific basis. The commissioner shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area.

Sec. 12 41.17.090 Notification of Plans to Harvest Timber.

This section provides an improved process for efficient and detailed review of timber harvest plans which allows the timber industry to respond to changing timber markets but ensures that harvest operations conform to forest practices standards and regulations. It allows forest landowners and operators to file a voluntary plan of operations for long term plans for timber harvesting in order to give the public an opportunity to review plans and establishes that unless a stopwork order is issued, the operations may begin under the plan after 30 days, or within the time period upon notice that the review is completed. It allows for a onetime 10 day extension for the agency review.

Subsection (f) establishes a field inspection when necessary to determine consistency of the detailed plan of operations upon notification to the operator and that the scope shall be limited to the minimum area necessary to determine compliance with this chapter. The operator shall inform the state forester when the site is available for inspection. If not conducted within 21 days, or unless otherwise agreed upon by the operator and state forester, operations may begin. Subsection (g) allows for modifications to accommodate comments without requiring the operator to resubmit the plan.

Sec. 13 41.17.098, Inter-agency Coordination.

Since there is an overlapping agency expertise for issues concerning timber harvest, this section provides coordination mechanisms for DNR, F&G, and DEC. It retains DNR as the lead agency but ensures that the appropriate agency expertise from F&G and DEC is included for issues that directly are within their expertise. Adds a new section which requires the DNR commissioner to coordinate with other agencies that have jurisdiction over activities subject to forest practices and affected coastal districts.

Sec. 14 41.17.115, Intent for Riparian Areas.

Private Lands:

Along Type A water body, 66 feet no cut zone

Along Type B water body, 100 foot conditional harvest zone, in compliance with slope stability standards

Along Type C water body, 50 foot conditional harvest in compliance with slope stability standards

State Land: North of the Alaska Range:

On anadromous or high value resident fish water body:

100 foot no cut zone, unless the division determines adequate protection for the fish habitat remains.

State Land: South of the Alaska Range:

On anadromous or high value resident fish water body:

100 foot no cut zone

100 - 300 foot conditional harvest zone, consistent with the maintenance of important fish and wildlife habitat.

Other Public Land: North of the Alaska Range::

On anadromous or high value resident fish water body:

100 foot no cut zone, unless the commissioner determines that adequate protection remains for fish habitat.

Other Public Land: South of the Alaska Range:

100 foot no cut zone subject to variance procedures.

Sec. 16:, 41.17.131, Penalties

This section streamlines existing procedures for levying civil penalties of up to \$10,000 per violation and adds additional authority to allow the state to issue citations for a class A misdemeanor for violations of this act.

Sec. 17, Directives

This section provides that DNR may issue enforceable, written orders directing that timber operations that violate or would violate this act or its regulations be changed. These directives may be written as part of the DNR office or field review of private timber operations as provided under Section 12 of the act. Directives may be appealed and operations may continue pending the outcome of the appeal.

Sec. 18, Stop Work Orders

This section provides that DNR may issue Stop Work orders if the forester determines a violation of the act or its regulation is occurring, or is likely to occur, and that significant harm to public resources will result if work is not halted. A stop-work order may be written as part of the DNR office or field review of private timber operations as provided under Section 12 of this act. Stop-work orders may be appealed, but the operation must stop pending the outcome of the appeal.

Section 19, and 20 Hearing Procedures. This section amends the hearing process by deleting the requirement that hearings be held before a lawyer appointed by the attorney general. Under the new process hearing officers may be an employee of the department. The new process should be less costly for the department and more efficient for both the landowner and the department.

Sec. 21, Appeals and Judicial Review

This section provides appeal procedures from DNR department decisions. It also provides that parties other than an aggrieved forest landowner, timber owner, or operator may not receive judicial review of individual timber harvest decisions. Third parties may, however, seek judicial review of regulations or of a systematic error in DNR decisions.

Sec. 22, 41.17.210 (a), and Sec. 23, 41.17.400 (c):

Technical amendments which cite title 38. Sections 41.17.230 (e) and (f) were moved under AS 38.05.112 (c). These sections were more appropriate to public lands.

Sec. 24 41.17.900 (b) Federal lands standard.

This section would require that the degree of resource protection may not be less than that established for state lands, and be consistent with the Alaska Coastal Management Program, except that minimum riparian standards are established under 41.17.119 (other public lands). Activities that require state or federal authorization under other laws are subject to the routine Alaska Coastal Management Program (ACMP) standards and procedures.

Sec. 25 41.17.900 (e) Private lands standard.

This section establishes that the amended forest practices act will serve as the Alaska Coastal Management Program for harvest activities on private lands.

Sec. 26

This section provides that state agencies and private landowners will establish cooperative, voluntary processes for protection of wildlife habitat on private land.

Sec. 27

This section provides definitions.

Sec. 28

This section provides for legislative review.

Sec. 29

This section provides for the initial terms of members of the Board of Forestry.

Sec. 30

This section provides for interim riparian protection for the coastal forest. Notification filed prior to the effective date of this section shall be reviewed by the commissioner to determine if the proposed operations provide protection that is substantially equivalent to the fish habitat protection that is provided under 41.17.116 (private lands). If not, the operator shall comply. If the operator has not received notification within 30 days, the plan is considered substantially equivalent to the fish habitat protection under 41.17.116.

Sec. 31

Provides interim protection for riparian protection outside the coastal forest. Timber harvest within 100 feet from the shore or bank of an anadromous or high value resident fish water body must be sited and designed to protect fish habitat and water quality.

Sec. 32

Provides that existing contracts or pending litigation are not altered by the act.

Sec. 33

Repeals 41.17.133, 41.17.135, 41.17.137, and 41.17.141.

Sec. 34. Repeals 41.17.230 (e) and 41.17.230 (f) as those sections were moved to Title 38.

Sec. 35. 41.17.010 (5) becomes effective immediately.

Sec. 36. Provides an immediate effective date for those sections affected.

Sec. 37. Provides for an immediate effective date for all other sections.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 1800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1990

SUBJECT: Forest practices, etc.
(CSHB 331 (Resources))

TO: Representative Curt Menard
Co-Chair, House Resources Committee

FROM: Richard A. Bradley
Legislative Counsel 

I have prepared the committee substitute as requested.

As I have advised Johanna Munson, we have sought to remedy certain technical and stylistic problems encountered in the review of the bill.

Certain other points have been noted.

I will seek to identify those sections that have measureably been rewritten.

You may wish to review the last sentence of Sec. 41.17.-041(c).

I have deleted Sec. 41.17.043. See Sec. 28.

Sec. 41.17.055(d) is rewritten.

Sec. 41.17.083 is reorganized.

The second sentence of Sec. 41.17.087 is rewritten to seek to express what was intended. So also is (b) of that section. Please review.

In Sec. 41.17.098(c), the commissioner of environmental conservation is apparently being given the authority to overrule the regulations of the commissioner of natural resources. This will apparently be done by the DEC commissioner adopting, amending, or repealing the regulations of

Representative Curt Menard

Page 2

March 15, 1990

the DNR commissioner. While it is possible to achieve the goal this way, the result is awkward and protracted and the better solution may simply be to require that the original regulations in this area themselves be approved by the DEC commissioner.

In Sec. 41.17.116, I substituted the "break of the slope" for "slope-break".

At your request, Sec. 41.17.117 is deleted; the internal references to that section in other sections have been eliminated.

I have substituted generally "the coastal forest of spruce or hemlock" for "the coastal spruce-hemlock forest".

Sec. 41.17.118(3) has been deleted and moved to Sec. 30.

Sec. 41.17.119 is reorganized.

Sec. 41.17.139 eliminated "hearing officers" in (a) but continued to use the term in the remainder of the section. See the revision to (a).

The first sentence of Sec. 41.17.900(b) seems inconsistent with the second sentence but I do not understand the applicability of the first sentence.

Sec. 41.17.950(1), defining "anadromous water body" is reorganized.

Sec. 41.17.950(12), defining "riparian area" is reorganized.

Sec. 27, "Legislative Review", a section that is completely unnecessary, is trimmed slightly.

I note that the repealer, Sec. 31, may not mesh with the fact that there are two separate effective dates to the bill. I will seek to deal with that in a subsequent redraft of the bill.

The bill does not deal with the internal references in law to sections that are repealed in this bill. I will deal with that in the subsequent draft.

If I may be of further assistance, please advise.

RAB:mi
wkmi6/059

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF HABITAT

STEVE CLAWPER, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4106

March 15, 1990

Mr. John L. Sturgeon, President
Koncor Forest Products Co.
3501 Denali, Suite 202
Anchorage, AK 99503

Dear John,

You and others in the Timber Alliance have asked that I clarify this department's position on variations from the riparian standard on private lands for Type A, low-gradient streams with a width of five feet or less that also have low value for fish. At the working group meeting last week, I said that we have a lower level of concern for small, low-gradient streams with low fish values. However, many small, low-gradient streams provide important rearing habitat, especially for coho salmon.

Given the above understanding and the fact that the regulations on this subject are yet to be written, what I suggest here should be viewed as conceptual. It should, however, give you a better idea of the types of criteria I think will be important to capture in the regulations.

ADF&G will be most likely to agree to variations for Type A, low-gradient streams less than five feet wide with low fish values if the following criteria are met.

The proposed method of logging does not present a high risk of soil disturbance and stream sedimentation;

Bank and stream channel stability can be assured;

Sufficient trees within the 20 meter buffer are left standing and alive so there is a future source of large woody debris, and;

Trees proposed for harvest are either not likely to contribute wood to the stream or they are not important for maintaining natural stream flow or temperature.

As I said, we will need to develop these concepts further in the regulations and then see how they work in the field.

The timber industry has also asked for clarification on whether roads can cross buffers and rigging for cable logging systems can be hung from trees in buffers. There is no question that roads

March 15, 1990

will be allowed to cross buffers. Our main concern will be to have them cross as perpendicular to the buffer as is practical. Hanging rigging from trees in a buffer and any associated clearing is an issue that may come up if buffers create operational constraints. I see no problem hanging rigging in a buffer if no trees are cut or killed and damage is minimal. Where trees need to be cut, I think the intent of 41.17.115 is to address the issue in the regulations and the variation process.

I look forward to working with you and other members of the Alliance in getting the new act passed and the regulations implementing it adopted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Rue", followed by a horizontal line extending to the right.

Frank Rue, Director
Habitat Division

cc: Members of the FPA Working Group
Representative Curt Menard, Co-chairman,
House Resources Committee
Senator Bettye Fahrenkamp, Chairman,
Senate Resources Committee

The following amendments to SB 317 and HB 331 have been agreed to by the working group appointed on 2/27/90. A single concern with the language in Section .119 (1) is expected to be expressed by the Mat-Su borough in committee hearing.

FEDERAL LANDS and the ACMP:

1. Amend Section 27 of SB 317 to read as follows:

AS 41.17.900 is amended as follows:

AS 41.17.900. APPLICABILITY. (a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(b) [THE PROVISIONS OF THIS CHAPTER APPLICABLE TO STATE LAND ARE APPLICABLE TO FOREST LAND UNDER FEDERAL OWNERSHIP TO THE EXTENT PERMITTED BY LAW.] (1) The degree of resource protection on federal land shall be no less than that provided for by this chapter for state land, except that the minimum riparian standard shall be that set in Sec. 41.17.119. [HOWEVER, THE SPECIFIC PROVISIONS OF THIS CHAPTER AND ITS IMPLEMENTING REGULATIONS ARE NOT APPLICABLE TO FEDERAL LAND EITHER DIRECTLY OR FOR PURPOSES OF COMPLIANCE WITH THE COASTAL ZONE MANAGEMENT ACT.]

(2) Timber harvest activities covered by this chapter occurring on federal lands shall satisfy the requirement to be consistent to the maximum extent practicable with the Alaska Coastal Zone Management Program if the federal land management plans, guidelines and standards applicable to timber harvesting activities provides no less resource protection than the standards in this chapter provide for state land, except that the minimum riparian standard shall be that set in Sec. 41.17.119. Subsection (b)(2) does not apply to activities that require a State or federal authorization under a provision of law other than this chapter.

(c) Subject to 16 U.S.C. § 1456(f)(§ 307(f) of the Coastal Zone Management Act of 1972, P.L. 92-583), for private lands, the provisions of this chapter and the regulations adopted under this chapter set out the forest management standards, policies, and review processes for purposes of the Alaska Coastal Management Act. Subsection (c) does not apply to activities that require a State or federal authorization under a provision of law other than this chapter.

[(c)] (d) The commissioner shall exempt by regulation from the provisions of this chapter

(1) minor, small scale, or incidental commercial operations of little significance with respect to the purposes of this chapter; and

(2) operations for primarily noncommercial purposes, including, but not limited to the harvesting of timber for personal use.

[(d)] [e] 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 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 environmental conservation regulations relating to control of nonpoint source pollution. (§ 1 ch 108 SLA 1978)

(f) Nothing in this chapter diminishes the rights, privileges or immunities of Alaska Natives or Alaska Native corporations with respect to land conveyed under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), or to alter or diminish the authority of the Department of Fish and Game under AS 16 or of the Department of Environmental Conservation under AS 46 or of any state agency under other laws.

2. Delete Section 3, 28, and reference to 41.17.900 (d) in section 32 of SB 317.

STREAM DEFINITIONS:

Add a new section .950 as follows:

.950 DEFINITIONS. "Anadromous" waterbody means that portion of any freshwater body, or estuarine area, that:

(A) is catalogued as important for anadromous fish under AS 16.05 .70; or

(B) although not yet catalogued under AS 16.05.870 is found by the Department of Fish and Game to actually contain or exhibit evidence of anadromous fish, in which event the anadromous portion of the stream or waterway extends upstream to the first point of physical blockage. For state land, the department shall presume for planning purposes, and in the absence of a site-specific determination by the Department of Fish and Game, that a stream is anadromous if it is connected to anadromous waters that are without Department of Fish and Game documentation of a physical blockage and has a stream gradient of 8% or less

VARIATIONS FROM STREAM BUFFER REQUIREMENTS:

Section 41.17.087 is amended as follows:

.087 VARIATIONS FROM REQUIREMENTS. (a) A forest landowner, timber owner, or operator may propose for a particular activity a variation from a requirement imposed by this chapter or the regulations adopted under this chapter. Consistent with AS 41.17.098, if the state forester determines that the harm intended to be avoided by the requirement is not likely to occur because of site-specific circumstances relating to the particular activity and is not likely to cause significant harm to fish habitat or water quality, the state forester shall agree to the proposed variation. If the state forester does not agree to the proposed variation, a forest landowner, timber owner, or operator may appeal to the commissioner. The appellants shall conform to the requirement during the pendency of the appeal.

(b) Consistent with .098, the Commissioner shall adopt regulations specifying the criteria under which variations will be agreed to for harvesting within the riparian area of Type A. low gradient streams with a width of 5 feet or less, and other appropriate stream types.

RIPARIAN STANDARDS FOR STATE LAND:

Amend Section 41.17.118 to read as follows:

(1) On state forest land managed by the department that is located north of the Alaska Range, harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish waterbody unless the division determines that adequate protection remains for the fish habitat. On state forest and managed by the department that is located south of the Alaska Range, harvest of timber may not be undertaken within [30meters] 100 feet immediately adjacent to an anadromous or high value resident fish waterbody; between [30 and 90 meters] 100 and 300 feet from the waterbody, [ANY] timber harvest may occur but must be consistent with the maintenance of important fish and wildlife habitat.

RIPARIAN STANDARDS FOR PRIVATE LANDS:

Amend Section 41.17.116 (1) as follows:

- .116. (1) Along all Type A waterbodies,
(A) harvest of timber may not be undertaken within [15]
20 meters of the waterbody.

[DELETE PARAGRAPHS (B), (C), and (D) OF THIS SUBSECTION]
[DELETE SECTION 41.17.117]

RIPARIAN STANDARDS FOR OTHER PUBLIC LAND:

Section 41.17.119 be amended as follows:

.119 MINIMUM RIPARIAN STANDARDS FOR OTHER PUBLIC LAND. On other public land, the following minimum standards shall apply:

(1) South of the Alaska Range. [TIMBER HARVEST OPERATIONS ON FOREST LAND] harvest of timber may not be undertaken within [30 meters] 100 feet from the shore or bank of any anadromous or high value resident fish water body [MUST BE SITED AND DESIGNED PRIMARILY TO PROTECT FISH HABITAT AND WATER QUALITY]; and

(2) North of the Alaska Range. harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish waterbody unless the division determines that adequate protection remains for the fish habitat.

EFFECTIVE DATE:

Based on the sections of the bill as numbered in the current ¹⁸ legislation. Sections 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 19, and 26 shall become effective immediately upon passage of the act. The 20 meter buffer requirement will apply to notifications submitted after passage of the act. All other sections of the bill will become effective on October 1, 1990.

Also, a transition period will be defined as follows:

INTERIM RIPARIAN PROTECTION: However, notifications filed before date of passage of this act shall be evaluated by the commissioner to determine if they provide riparian protection that is substantially equivalent to fish habitat protection provided for by Sec. 41.17.116. If the commissioner determines that this test is met, or the operator complies with an alternate protection plan proposed by the commissioner, operations covered by that notification are not subject to Sec. 41.17.116. If the commissioner determines the notification does not provide substantially equivalent riparian protection, the operator must either resubmit the notification in conformance with this standard, or comply with Sec. 41.17.119. Failure by the Commissioner to make a determination on a notification within 30 days of enactment of this legislation constitutes a determination that the notification provides substantially equivalent protection.

- STATEMENT OF
DR. JAMES BROOKS
DEPUTY REGIONAL DIRECTOR, ALASKA REGION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

February 26, 1990

Mr. Chairman and Members of the Subcommittee:

I am Dr. James W. Brooks, Deputy Director of the Alaska Region of the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA). I appreciate the opportunity to appear before this Subcommittee on behalf of the Department of Commerce to discuss the provisions of H.R. 987 relating to fisheries protection and buffer zones.

The Department of Commerce/NOAA has primary Federal responsibility for the conservation, management, and development of marine living resources and shares Federal responsibility for the conservation and management of anadromous fish and the protection of certain marine mammals and endangered species under numerous Federal laws. For this reason, the Department is vitally concerned about the habitats that support these resources since the well-being of these resources and the fishing industry depends upon healthy and productive habitats.

NOAA has been involved with research on the effects of timber harvest on the Tongass National Forest since the mid-1950's. Our research staff has studied the effects of timber harvest on anadromous fish streams in the Tongass National Forest and is recognized for their expertise on logging and riparian issues. They have published extensively and have authored over 20 scientific publications which apply directly to this issue. Our habitat management staff has worked closely with the issue through evaluation of numerous environmental studies, participation on interdisciplinary teams drafting guidance documents, and through planning processes such as the Tongass Land Management Plan.

Anadromous fish streams on the Tongass National Forest support all five species of Pacific salmon (pink, chum, coho, sockeye, and chinook). The commercial harvest of salmon in southeast Alaska was valued at \$128 million (ex-vessel value) for 1989. According to the U.S. Forest Service, ninety percent of those fish came from stream habitat within the Tongass National Forest. Recreational fishing also contributes a substantial amount to the economy of southeast Alaska. Recreational fisheries in Juneau alone amount to about \$15 million annually. Subsistence fisheries for salmon in southeast Alaska amount to an additional \$2.5 to \$6.0 million annually. Reasonable and prudent timber harvest practices are extremely important to sustaining these vital fisheries.

In 1976, the NMFS Alaska Region issued a policy statement calling for mandatory buffer zones of riparian vegetation along all salmon streams. Extensive research on buffer zones and salmonid habitat requirements resulted in a revision of the NMFS Policy in May 1988. This revision, which was based on a greater understanding of the importance of buffer zones, specifies a minimum no-harvest protective buffer zone along all streams in Alaska that are important to anadromous fish.

It states:

"In order to maintain optimum production of anadromous salmonids the NMFS policy is to advocate the protection of riparian habitat through the retention of buffer zones along all anadromous fish streams and their tributaries in Alaska. NMFS will seek to ensure that a minimum buffer zone width of 30 meters (100 feet) be maintained on each side of the stream, and should consist of the natural/existing undisturbed forest. This policy addresses only the minimum buffer zone width. In some cases a wider zone is necessary to protect fisheries resources. Additional research is needed from which more site-specific prescriptions can be developed."

The buffer width recommendation is based on scientific evidence compiled from research conducted in Alaska under the auspices of the Alaska Working Group on Cooperative Forestry/Fisheries Research which is comprised of State, Federal, and private entities and from the extensive research conducted in the last 10-15 years throughout the Pacific Northwest. Scientists and managers agree that the natural undisturbed riparian vegetation adjacent to streams is a critical and integral component of fish habitat. Salmonid habitat depends on riparian vegetation in the old-growth forest to provide large woody debris (LWD), shade and

cover, temperature moderation, streambank erosion protection, and to maintain water quality. LWD is the single most important component responsible for forming the majority of habitat (e.g., pools, undercut banks, instream cover, stable spawning beds, channel morphology, etc.) critical to the production of salmonids in the Pacific Northwest and Alaska. Research in Alaska has shown that nearly all (99%) of the LWD in streams comes from trees growing within 30 meters (100 feet) of the streambank. Nearly 1/2 of the LWD was from trees that had stood on the lower bank (less than 1 meter away), and 95% was from trees within 20 meters of the stream. The distance to LWD sources, however, differ between stream channel types. The quantity of LWD in these pristine streams is high and is directly correlated with the abundance of salmonid habitat. This stream habitat sustains optimum egg-to-fry survival, provides nursery areas for juveniles, serves as overwintering refuge, and yields smolts (outmigrating juvenile salmon) which ultimately generate the adult salmon returns from the ocean.

Because the natural depletion rate of LWD resulting from decay, fragmentation, stream export, and other events is relatively high (1-3 percent per year), a continuous supply of wood from the riparian zone is needed to offset the natural loss and maintain salmonid habitat. If these streams are logged down to the streambank without leaving any buffer to replenish the natural loss of LWD, then we predict that the level of LWD will be reduced by at least 70 percent in 90 years. The abundance of

rearing salmonids would likewise be reduced over a similar time. Recovery of LWD to the original pre-logging level from the regeneration of second-growth trees next to the stream would take about 250 years. Stream productivity would also be reduced during the period of regeneration and canopy closure. It is our opinion that, as a consequence, habitat and salmonid abundance would be significantly and irreparably damaged over this period of logging and recovery.

The riparian sources of LWD on tributary streams (streams used by only resident fish or those important for water quality) upstream of anadromous streams must also be protected because these streams contribute LWD and influence water quality in important downstream habitats. Buffer zones on these streams maintain the integrity of side slopes, streambanks, and stream channels and thus reduce the threat of landslides and debris torrents which can cause excessive downstream sedimentation. In essence, old growth riparian vegetation controls and maintains the natural integrity of a stream's characteristics critical to salmonid production.

Research has shown that clearcutting to the streambank without retaining an adequate zone of riparian vegetation adversely affects fish habitat, which in turn affects fish production on both a short- and long-term basis. Short-term (1-20 years) degradation of riparian habitat can result from increased sedimentation, altered temperature and streamflow regimes, and

reduced quantity of LWD. Long-term degradation of habitat (20-200 years) can result from closure of the second-growth canopy, reduced input of LWD by the second-growth trees, changes in stream channel morphology, and chronic sedimentation from streambank erosion, landslides, and roads.

The NMFS policy advocates the use of a minimum 30-meter buffer on each side of all salmon streams and their tributaries as a recommended method of curtailing both short-term and long-term detrimental impacts on fish habitat from timber harvest. Land managers should recognize that the minimum 30-meter zone of riparian vegetation adjacent to salmon streams and tributaries represents the "out-of-stream" habitat required to protect and maintain "in-stream" habitat at optimum levels. NMFS established the 30-meter minimum because buffers less than 30 meters will not adequately maintain fish habitat. Buffers wider than 30 meters may be needed in some situations to protect the "minimum" from particular hazards such as blowdown, braided stream channels, or landslides.

The NMFS Policy of protecting the riparian habitat of all anadromous streams and their tributaries by retaining a minimum 30-meter no-harvest buffer zone applies to all Class I, most Class II, and a few Class III streams in southeast Alaska. These categories are defined as follows:

Class I streams include any natural freshwater body of water (including lakes and ponds) containing anadromous fish or eggs or high value resident sport fish or with habitat having reasonable enhancement opportunities for anadromous fish.

Class II includes streams, tributaries, and ponds with resident fish of limited sport value generally occurring in steep gradients or upstream of migration barriers.

Class III streams are tributaries which do not have fish populations but have potential water quality influence or downstream habitat.

Class II streams are of great importance because they maintain water quality and supply LWD for downstream habitat in Class I streams. Class III streams which can significantly influence water quality on downstream Class I and II streams because of their size, or have high risk for side-slope and/or streambank failure, may require the protection of a full buffer zone.

We do not intend the Policy to apply to Class III tributaries which are either ephemeral (seasonal) or intermittent or have a gradient generally greater than 8 percent. In other words, the Policy does not apply to high gradient tributaries or storm drainages which do not have salmonids or do not have continuous flow. Also, it is not necessary to require buffer zones on Class II and III streams which do not flow into a Class I stream because they do not provide habitat for anadromous fish. These streams only require harvest according to best management practices to maintain water quality standards. The high gradient and storm channels which comprise the majority of Class III streams account for the greatest amount of acreage in a watershed.

In summary, research has demonstrated the importance of the riparian zone as fish habitat and that timber harvest within 30 meters of the streambank in this zone can cause long-term damage to salmonid habitat and production. The NMFS therefore, advocates retention of a minimum 30-meter no-harvest buffer zone along both sides of all anadromous fish (Class I) streams, most resident fish (Class II) streams, and a few significant water quality influence (Class III) streams in the forest of southeast Alaska. We are prepared also to assist in defining those Class II and III streams where buffer zones would be appropriate.

The NOAA policy would provide reliable protection of fish habitat during and after timber harvest. It would also set a bottom line that will facilitate decision making. The policy is relatively simple to apply. Protection of important anadromous streams would be far less compromised by lack of expertise, inadequate data, personnel or budget limitations, or competing interests. The minimum buffer standard would provide planners with an advance knowledge of harvest limitations. It would also provide an enforceable standard that lends itself to monitoring. The ease with which this standard can be implemented, monitored, and enforced should encourage compliance by managers and industry.

We do not view the timber retained in a buffer as "lost" from timber production, but rather, as timber required for fish habitat in the true sense of multiple-use. Commercial, recreational, and subsistence fisheries share the forest as a

common base for their existence. Thus, we believe retaining a small but critical portion of the forest for production of fish is the basic precept of wise use and progressive stewardship of the land.

Mr. Chairman, this completes my prepared statement. I will be glad to answer any questions.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION

POLICY

FOR RIPARIAN HABITAT PROTECTION IN ALASKA

1988

INTRODUCTION

National Marine Fisheries Service (NMFS) issued a policy statement in 1976 on the "Protection of Fisheries Resources During Logging Operations in Alaska". This policy called for a mandatory buffer zone of riparian vegetation along both banks of all salmon streams; buffer width was to be based on resource values, topography, wind-firmness, and stream size. Some management activities (e.g., selective harvesting) could be allowed within the prescribed buffer zone. The policy was issued because of the importance of anadromous salmonids in Alaska's economy and because of continuous degradation of fisheries habitat by logging activities. New information and experience suggests that our policy be revised. What follows is our revised statement of policy and the supporting background information.

THE POLICY

In order to maintain optimum production of anadromous salmonids the NMFS policy is to advocate the protection of riparian habitat through the retention of buffer zones along all anadromous fish streams and their tributaries in Alaska. NMFS will seek to ensure that a minimum buffer zone width of 30 meters (100 feet) be maintained on each side of the stream, and should consist of the natural/existing undisturbed forest. This policy addresses only the minimum buffer zone width. In some cases a wider zone is necessary to protect fisheries resources. Additional research is needed from which more site-specific prescriptions can be developed.



DISCUSSION

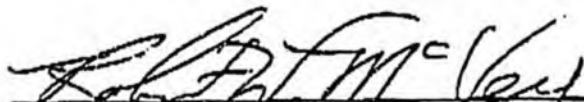
Research conducted under the auspices of the Alaska Working Group on Cooperative Forestry/Fisheries Research has confirmed that riparian vegetation is an important and essential component of anadromous salmonid habitat. This streamside zone is required to sustain optimum egg-to-fry survival, smolt yield, and adult returns. Riparian vegetation left along streams protects salmonid habitat from the effects of clearcutting by maintaining the natural temperature regime, maintaining channel stability, maintaining undercut banks and instream habitat, preventing erosion and sedimentation, providing cover for winter habitat, and permitting adequate sunlight for food production. In essence, riparian vegetation controls and maintains the natural integrity of a stream's characteristics which have evolved in harmony with the development of the old-growth forest for hundreds of years.

Clearcutting without retention of an adequate zone of riparian vegetation can affect habitat, which in turn affects fish production on both a short- and long-term basis. Short-term (1-20 years) impacts can result from increased sedimentation, altered temperature and flow regimes, and reduced quantity of large woody debris. Long-term impacts (20-100 years) can result from closure of the second-growth canopy, reduced input of large woody debris, changes in stream channel morphology, and continued sedimentation from bank erosion, landslides, and roads.

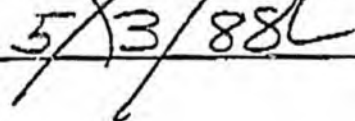
Properly designed buffer zones are an effective management tool for protecting riparian vegetation and can help prevent both short- and long-term adverse impacts on fish and wildlife habitat. Current research by NMFS shows that nearly all of the large woody debris in streams of southeastern Alaska originates from trees within 30 meters (100 feet) of the streambank. Other research shows that canopy shading necessary to maintain natural stream temperature regimes also comes from trees within 30 meters of the stream. These two factors, large woody debris and canopy cover, control stream characteristics essential to salmonid habitat. They also are directly related to the quantity and quality of trees within the riparian zone. There are indications that situations exist where a 30-meter buffer zone is not adequate. There are also special situations in which removal of riparian vegetation is considered a fishery habitat management option to open the forest canopy. In the absence of definitive research findings, buffer zone width in these areas should be set through an interdisciplinary team approach. Team members should take into account wind-firmness, topography, values of fisheries and wildlife habitat, and other resource uses.

Special techniques for selective harvesting of timber within the prescribed boundaries of the buffer zone may be beneficial in some cases for enhancing aquatic productivity; however, prescriptions for stream-side harvest of timber are premature pending research to determine whether there might be long-term impacts on fish habitat.

APPROVED BY:


ROBERT W. MCVEY, Director, Alaska Region

Date:


5/3/88

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TESTIMONY OF ROBERT W. LOESCHER
before the
JOINT HOUSE/SENATE RESOURCES COMMITTEE
regarding revisions to the Forest Practices Act

January 31, 1990

MY NAME IS ROBERT W. LOESCHER AND I AM EXECUTIVE VICE PRESIDENT OF SEALASKA CORPORATION. SEALASKA HAS BEEN AN ENTHUSIASTIC SUPPORTER OF THE CONCENSUS PROCESS FOR ADDRESSING POSSIBLE CHANGES TO ALASKA'S FOREST PRACTICES ACT SINCE ITS INCEPTION IN LATE 1987. SEALASKA HAS DEDICATED CONSIDERABLE TIME AND RESOURCES WORKING WITH OTHER STEERING COMMITTEE PARTICIPANTS TO CRAFT CONCENSUS LEGISLATION, AND HAS WILLINGLY COMPROMISED ON A BROAD RANGE OF MATTERS OF SUBSTANTIAL CORPORATE IMPORTANCE. THE RESULTS OF OUR EFFORT, AND THE EFFORTS OF OUR COLLEAGUES, APPEAR IN SB 317, AND ITS HOUSE COUNTERPART HB 331. AS WE HAVE SAID BEFORE, SEALASKA SUPPORTS THAT LEGISLATION AND URGES THE LEGISLATURE TO ENACT IT THIS SESSION.

SEALASKA RECOGNIZES THAT DIFFERENCES REMAIN ON TWO IMPORTANT ISSUES. THE FIRST IS THE APPLICATION OF THE ACT'S NEW STANDARDS TO FEDERAL LANDS; THE SECOND INVOLVES THE DEGREE OF RIPARIAN PROTECTION APPROPRIATE FOR STATE LANDS. IT IS OUR HOPE THAT THOSE PRINCIPALLY INVOLVED IN THIS ISSUE CAN QUICKLY REACH AN AGREEMENT THAT WILL LEAVE ALL STEERING COMMITTEE PARTICIPANTS SATISFIED WITH THE LEGISLATION AS A WHOLE.

OVER THE PAST SIX MONTHS, THE STATE HAS BEGUN THE ARDUOUS TASK OF WRITING IMPLEMENTING REGULATIONS TO THE LEGISLATION, AND SEALASKA HAS SUPPORTED THAT EFFORT. INEVITABLY, THAT EXERCISE HAS ALERTED THE STEERING COMMITTEE TO THE NEED FOR A NUMBER OF TECHNICAL CHANGES TO THE LEGISLATION. A NUMBER OF THESE CHANGES HAVE BEEN DISCUSSED BY THE STEERING COMMITTEE, AND ALL THE PARTICIPANTS AGREE THAT TECHNICAL AMENDMENTS CAN AND MUST BE MADE TO THE LEGISLATION WITHOUT JEOPARDIZING THE UNDERLYING CONSENSUS.

FOR EXAMPLE, SB 317 PROVIDES THAT THE LEGISLATION'S RIPARIAN PROTECTION REQUIREMENTS CANNOT RESULT IN THE FORCED RETENTION OF MORE THAN 5% OF AN OPERATOR'S TIMBER. THE BILL CURRENTLY PROVIDES THAT THIS CEILING WILL BE MEASURED ON A SO-CALLED "BASAL AREA" BASIS--A BASIS WHICH THE STEERING COMMITTEE NOW CONCEDES IS A CUMBERSOME MEASURE THAT ADEQUATELY PROTECTS NO ONE'S CONCERNS. AS A RESULT, PARTICIPANTS HAVE AGREED TO AN AMENDMENT WHICH WOULD ESTABLISH THE MEASURE AS EITHER BASAL AREA, OR ANY "OTHER COMPARABLE MEASURE." THE TECHNICAL TASK OF DEVISING AN APPROPRIATE ALTERNATIVE MEASURE WILL THEN BE DONE IN THE DEPARTMENT OF NATURAL RESOURCES' REGULATIONS.

FURTHER, THE STEERING COMMITTEE AGREED TO ESTABLISH A TECHNICAL AMENDMENT PROCESS, UNDER WHICH COMMITTEE MEMBERS WOULD FORWARD PROPOSED TECHNICAL AMENDMENTS TO THE PRINCIPAL STATE AGENCIES INVOLVED. THE RESULT, HOPEFULLY, WILL BE A

PACKAGE OF TECHNICAL AMENDMENTS THAT WILL YIELD A BETTER BILL WITHOUT GENERATING ADDITIONAL CONTROVERSY.

OBVIOUSLY, THE LEGISLATURE IS GOING TO EXERCISE ITS INDEPENDENT JUDGMENT ON THIS LEGISLATION. IN THE COURSE OF DOING SO, IT WILL BE ASKED TO CONSIDER AMENDMENTS BOTH TECHNICAL AND SUBSTANTIVE. I'M SURE THAT ALL STEERING COMMITTEE PARTICIPANTS WILL RECOGNIZE THAT THIS DEBATE IS AN INHERENT PART OF THE LEGISLATIVE PROCESS. THE FOREST, WE HOPE, WILL NOT BE LOST FOR THE TREES. WHILE STEERING COMMITTEE PARTICIPANTS WILL INEVITABLY DISAGREE OVER WHETHER A PARTICULAR AMENDMENT IS A TECHNICAL IMPROVEMENT, OR A REOPENER, I HOPE THAT NONE OF US LOSE SIGHT OF THE OVERALL GOALS WE ARE DEDICATED TO ACHIEVING. THE STRUCTURE OF THE LEGISLATION, AND ITS PRINCIPAL ELEMENTS, ARE A SOUND, CREATIVE, AND WORKABLE COMPROMISE. AND, IT IS MY HOPE THAT THE REMARKABLE ATTRIBUTES OF THIS LEGISLATION ARE NOT LOST IN THE MORE TECHNICAL DEBATE THAT BEGINS TODAY.

THANK YOU FOR THE HARD LOOK THAT I KNOW YOUR COMMITTEES WILL GIVE THIS LEGISLATION, AND SEALASKA LOOKS FORWARD TO WORKING WITH YOU IN THE COMING MONTHS.

Testimony of Thyas Shaub
For The Alaska Loggers Association
Joint House-Senate Resources Committee Hearing
January 31, 1990
Juneau, Alaska

Senator Fahrenkamp, Representative Menard and Davidson, and members of the Committee, my name is Thyas Shaub. I am director of governmental affairs for the Alaska Loggers Association (ALA).

The Alaska Loggers Association formed in 1957 as a private, non-profit organization comprised of companies related to Alaska's forest products industry. Currently there are 115 regular member companies and 180 associate member companies. The regular members companies alone have over 4000 employees who are directly involved in timber operations.

My testimony before you today will be very similar to the message I gave you last May and at the joint hearing held in Palmer in October. We still have two major concerns: 1) the effect of this legislation on the management of federal timberlands and 2) the mandated 30 meter no harvest zone on state lands south of the Alaska range.

The Alaska Loggers Association is part of the newly formed Forest Alliance. You all received information packets about the Forest Alliance last week. The Forest Alliance members are currently working on a few amendments including the federal and state land issues I have mentioned.

Regarding the coastal zone management issue on federal lands - as we understood it, the revision of the act was to apply to private, state and municipal lands only. It was understood that it would be neutral to federal lands. However, because the Forest Practices Act serves as the standard for the Coastal Zone Consistency process, federal lands were affected.

Although the Alaska Loggers Association has been through several draft amendments to remedy this problem, we have not yet landed on the solution. We could easily have an amendment that would satisfy the industry but our goal is to forward an amendment to you that is acceptable to the Forest Service and the State of Alaska. We have begun meetings that will hopefully lead us to that end.

Regarding the buffer issue on state land we have a problem with a rigid 30 meter no harvest zone. We recognize the importance of the protection of fish habitat and water quality. We believe this can be achieved with a more flexible

standard that would allow for site specific decision making by the regulating agencies. The original steering committee agreement allowed for this type of flexibility on state land. If necessary, a flexible standard could be made more stringent on a local level through the land planning process. During legislative drafting this standard for state land was changed to a 30 meter no harvest zone. We would like to see the flexibility restored.

I would like to emphasize that through alot of hard work and dedication by all who were involved, the Forest Practices Steering Committee came very close to consensus. However we did not reach complete consensus. As I have explained, we still have a couple problem areas to fix before the Alaska Loggers Association can fully support this legislation.

I will keep you informed as to the progress of the amendment language regarding these issues.

Thank you for the opportunity to testify.

TESTIMONY OF THYES SHAUB
FOR THE ALASKA LOGGERS ASSOCIATION
FOR THE HOUSE RESOURCES COMMITTEE

Representative Menard and Davidson, and members of the Committee, my name is Thyes Shaub. I am director of governmental affairs for the Alaska Loggers Association (ALA). The ALA supports the consensus process established by Governor Cowper and we believe it will ultimately result in legislation we can support. The legislative proposal before you represents hard work by many individuals in a sincere effort to reach a compromise on a wide variety of issues. That process, however, is not yet complete. There are still unresolved issues which need to be addressed and which can be addressed during the time between sessions so that a reasonable Forest Practices Act can be passed in the next session of the Legislature.

One key issue which is not yet resolved is the impact the legislation before you would have on federal lands through the Federal Coastal Zone Management Act and Section 27 of this proposed legislation (as found on page 25 of the bill). When the consensus process was still in the formulative stage, the ALA was advised by Department of Natural Resources (DNR) officials that the State Forest Practices Act would have no impact on federal land. On that basis, the federal operators and the Forest Service were not invited to join the Steering Committee which produced this legislation. There was a serious debate within the DNR about whether the ALA should be on the Steering Committee because there was to be no impact on federal lands. Ultimately, the ALA was added as a member of the Steering Committee because so many of the

loggers it represents harvest timber on private lands - it was not granted entry because of any intended impact on federal lands.

The ALA has served on the Steering Committee throughout this process and participated in all the discussions. The ALA participation was based on the presumption that the State Forest Practices Act would not apply to federal land.

Upon receipt of the legislative language, we notified the Steering Committee that the understanding going in had not been kept, and that indeed, the legislation did apply to federal lands through consistency determinations. We presented a proposal to deal with the issue. Since that proposal was unacceptable to the personnel from the Division of Governmental Coordination, we prepared an alternative proposal which is attached. Through April 30, 1989, we were in touch with members of the Division of Governmental Coordination regarding a compromise.

Section 27 of the proposed legislation states as follows:

Section 27. AS 41.17.900(b) is repealed and re-enacted to read:

(b) The degree of resource protection on federal land shall be no less than that provided by this chapter for state land. However, the specific provisions of this chapter and its implementing regulations are not applicable to federal land either directly or for purposes of compliance with the Coastal Zone Management Act. (emphasis added)

This clearly impacts federal lands to the same extent State lands are impacted by the proposed legislation.

Accordingly, to deal with this issue, ALA's federal timber operators needed to participate on the Steering Committee to review the proposals for State land. Since the proposed legislation is now going to affect federal land, it is only fair that we have the time to explain these issues to you and show you the need for such amendments prior to your passage of this bill.

The approach taken in the proposed legislation is far more prescriptive than that previously taken with respect to management of public resources in Alaska. On federal land, the operating management philosophy is multiple-use. Up to this point, the standards on federal land under multiple use have been much tighter than under the existing Forest Practices Act and we believe more than adequate to protect resources on federal land. In short, we do not need the change in management philosophy represented in this bill to apply to federal land. The ALA should have the opportunity to bring before you its members who operate on federal land, including the Forest Service which manages it, to describe to you why these changes which may be needed for private land are not needed for the federal public land.

Should you elect to go forward with this legislation anyway, we would urge that the bill be amended to strike Section 27 and in lieu thereof, insert the language for a new Section 405(b) which is attached to this testimony. That language would require that operations on federal land achieve the higher of existing federal requirements on the National Forest or the standards from the Coastal Zone regulations which existed prior to the time those

regulations were preempted by the passage of the State Forest Practices Act in 1978. .

In addition to the concern about impact on federal lands described above, our members are also concerned about the impact on State lands under AS 41.17.118. That section precludes timber harvest in certain areas of the State within 30 meters of "anadromous or high value resident fish water body" and requires unspecified forms of protection 30 to 90 meters from the water body. While there is no question that maintenance of fish and game habitat is of equal importance with timber as part of multiple use management, it has always been the case that trade-offs are left to the discretion of the land managers. The proposed prescription takes that discretion away. This issue needs careful examination prior to passage of this legislation.

Regrettably, there has been a lot of discussion about what might happen if the legislation introduced two days ago is not enacted this year. Specifically, there has been talk of habitat regulations and regulations under Section 319 of the Clean Water Act being promulgated. Such sanctions should not be applied unless and until the process breaks down. The Steering Committee should be reassembled, with the ALA included, and a determination made whether or not this legislation is going to affect federal lands. If it is not intended to affect federal lands, then language should be worked out between the Division of Governmental Coordination and the ALA and the Steering Committee, which will resolve the problem. If it is determined that the legislation is to affect federal

lands, then the pulp mills, the Forest Service, and at least one sawmill should be made part of the Steering Committee and the entire proposed action be reviewed to determine what changes should be made in the proposed legislation to account for that. In any event, the process should continue.

Thank you for the opportunity to testify.

ANCHORAGE OFFICE

THE ENSERCH CENTER
550 WEST SEVENTH AVENUE, SUITE 1200
ANCHORAGE, ALASKA 99501
PHONE: (907) 277-6693
TELEX: 090-26-486
TELECOPY: 907-279-1959

**ROBERT B. BAKER
MICHAEL T. THOMAS
LEROY J. BARKER
**L. G. BERRY
HAROLD E. SNOW, JR.
JAMES K. BARNETT
**JULIA B. BOCKMON
JOSEPH D. DARNELL
JOHN R. FITZGERALD
GREGORY G. SILVEY
SUSAN M. WEST
**CARL W. WINNER

WASHINGTON OFFICE

1050 THOMAS JEFFERSON STREET, N.W.
SIXTH FLOOR
WASHINGTON, D.C. 20007
PHONE: (202) 333-4400
TELECOPY: (202) 337-0940

STEVEN W. SILVER
BRADLEY D. GILMAN

ROBERTSON, MONAGLE & EASTAUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
JUNEAU, ALASKA 99802

May 6, 1989

JUNEAU OFFICE

COURT PLAZA BUILDING, SUITE 800
240 MAIN STREET
P.O. BOX 21211
JUNEAU, ALASKA 99802
PHONE: (907) 586-3340
TELEX: 099-45-376
TELECOPY: 907-586-6818

OF COUNSEL
F.O. EASTAUGH

ROYAL ARCH GUNNISON (1873-1918)
R. E. ROBERTSON (1885-1961)
M. E. MONAGLE (1902-1995)
JAMES F. CLARK
PAUL M. HOFFMAN
D. ELIZABETH CUADRA**
ROBERT P. BLASCO
MARY A. NORDALE
THOMAS J. SLAGLE

ADMITTED IN WASHINGTON, D.C.**
AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

The Honorable Bettye Fahrenkamp
Chairman, Senate Resources
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

The Honorable Curt Menard
The Honorable Cliff Davidson
Co-Chairmen, House Resources
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Fahrenkamp, Representative Menard and
Representative Davidson:

You had asked for a short memorandum in layman's terms describing the difference between what is presently proposed in Section 27 of the proposed State Forest Practices Act and what is proposed in the Alaska Loggers Association's (ALA's) attached amendment with respect to application of the proposed State Forest Practices Act to federal land. This is an extremely complicated subject, and thus the shorter and more general the explanation, the more likely one is to fall into technical error. With this caveat in mind, we make the following points:

(1) What the Federal Coastal Zone Management Act Requires. National Forest and other federal lands are excluded from the Alaska Coastal Zone. However, Section 307(a) of the Federal Coastal Zone Management Act of 1972 requires:

Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs (emphasis added).

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Representative Curt Menard
Representative Cliff Davidson
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The term "consistent to the maximum extent practicable" is defined in 15 C.F.R. Sec. 930.32, which states in pertinent part in subsection (a):

Accordingly, when read together, Sections 307(c)(1) and (2) and 307(e) require federal agencies, whenever legally permissible, to consider state management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

In California Coastal Commission v. Granite Rock, 480 U.S. 572 (1987), the United States Supreme Court found that these requirements even extended to obtaining state permits where they did not conflict with federal law.

In short, the ALA believes that, absent some explicit direction from the Alaska Legislature, the Federal Coastal Zone Management Act will require the application of the State Forest Practices Act to National Forest land through CZM consistency determinations.

(2) What Section 27 of the Proposed Act Requires.
Proposed Section 27 would repeal AS 41.17.900(b) and re-enact it to read as follows:

(b) The degree of resource protection on federal land shall be no less than that provided by this chapter for state lands, however, the specific provisions of this chapter and its implementing regulations are not applicable to federal lands either directly or for purposes of compliance with the Coastal Zone Management Act. (emphasis added)

The underlined language makes it explicit that the State Forest Practices Act, as it applies to state land is the standard which the federal program must meet "to the maximum extent practicable." The language which is not underlined states that the federal agencies only have to meet the substantive standards of the State Forest Practices Act, not the procedural requirements. Thus, reading the entire section together, it makes the proposed State Forest Practices Act the standard for federal land even though the procedural requirements of the State Forest Practices Act would not apply.

Federal land timber operators are gravely concerned about what may emerge as the State standards when regulations are promulgated pursuant to the directions of the proposed State Forest

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Act. The proposed Forest Practices Act moves away from normal multiple use management, as heretofore practiced on State lands and presently practiced on federal lands, to a more prescriptive type approach (see proposed Sec. 14). The requirement in the law for the 30 meter no harvest zones along streams and the prescriptive regulations which will be written under new AS 41.17.080 on state lands could result in preventing timber development on the approximately 32 million acres of state forest land.¹ While the Alaska Legislature may see this as necessary to protect state resources, federal timber operators believe that federal resources on the Tongass National Forest have been well managed under the multiple use system. They want to keep a system which uses the expertise of land managers in making site specific determinations of multiple use trade offs pursuant to performance based standards rather than replace it with centrally drawn regulations, produced at someone's desk, which may or may not apply to site specific situations.

Federal timber operators have no idea what regulations will be promulgated under the prescriptive direction of AS 41.17.080. Further, there is no question that they will be subject to lawsuits on consistency grounds to determine whether or not harvesting in the riparian zone on federal lands meets the same standards as would be achieved on State lands with its 30 meter no harvest zone.

(3) What the ALA Proposal Would Do. The ALA proposal first would make a finding that for consistency purposes, it is in the public interest to have a different system (multiple use) on federal land than the system on state lands (prescriptions).

In subsection (b), the amendment states that the standards the State will use for purposes of consistency determinations will be the higher of what is in the Forest Service's Federal Forest Management Program or what had been the State Coastal Zone regulations for timber processing prior to passage of the State Forest Practices Act in 1978 (which preempted those regulations). This will assure the continued high standard that the Forest Service has achieved on National Forest, but retain the existing multiple use management approach.

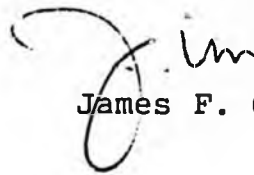
¹ Unlike the provision for private lands in the proposed State Forest Practices Act, there is no 5% cap on the amount of timber on State or municipal lands which can be precluded from harvest.

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The ALA reasonably believed going into this process that there would be no fundamental change in the way National Forest lands are managed were the proposed State Forest Practices Act to become law. The attached amendment would enact that commitment into law. While it is true that language could be crafted which would prevent the proposed State Forest Practices Act from applying to National Forest land without nailing down what the new standard would be in statute, the ALA is opposed to this approach. The standard for consistency with the State Forest practice standards is set forth in the existing Forest Practices Act and the 5% protection for private landowners is in the statute. Accordingly, it would be unfair for our federal timber operators to give up their present statutory protection and be left to the vagaries of what the ACMP might do in the future by way of regulation.

Thank you for the opportunity to provide this information. Please let me know if there are any questions we can answer.

Yours very truly,



James F. Clark

JFC:sd/506
Attachments

PROPOSED ALASKA LOGGERS ASSOCIATION AMENDMENT
SETTING FORTH THE STANDARDS FOR DETERMINING
THE CONSISTENCY OF THE STATE
FOREST PRACTICES ACT ON NATIONAL FOREST LAND

The material now in Section 27 of the proposed bill is deleted and new Section 27 would read as follows:

AS 41.17.900(b) is repealed and re-enacted to read

(b)(i) The Legislature finds that it is in the public interest that the standards set forth in subsection (ii) be the State standards for purposes of 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L. 92-583) and the Alaska Coastal Zone Management Act, AS 46.40.010 et seq. (Sec. 1, Ch. 108 SLA 1978), even though the standards set forth in subsection (ii) may be different from the standards for the protection of forest resources under this Act.

(ii) For purposes of 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L. 92-583) and the Alaska Coastal Zone Management Act, AS 46.40.010 et seq. (Sec. 1, Ch. 108 SLA 1978), standards incorporated in applicable federal land and resource management plans promulgated pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, (16 U.S.C. 1601 et. seq.) shall serve as the forest management standards, policies, and guidelines developed under the Alaska Coastal Management Act, AS 46.40.010 et seq. (Sec. 1 Ch. 108 SLA 1978), for activities on National Forest Lands so long as those standards and policies meet or exceed the following standards:

(A) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(B) free passage and movement of fish in coastal water must be assured; and

(C) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, minimize adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

(D) onshore storage of logs must be encouraged;

(E) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(F) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage patterns (put-to-bed); and

(G) stream crossings, including bridges and culverts, must be kept to a minimum number, must be designed to withstand seasonal high water and flooding, and must provide for the free passage and movement of fish.



Sport Fishing Alaska

1401 Shore Drive, Anchorage, Alaska 99515 (907) 44-8674

January 29, 1990

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To: ~~Representative Curt Menard, FAX #907-463-5661~~
Chairman, House Resources Committee

Note: Please distribute to Senator Fahrenkamp, Chairman, Senate Resources and the members of both the Senate and House Resource Committees

Attn: Senator Betty M. Fahrenkamp, Representative Curt Menard, Co-Chair
1/31/90 Joint Meeting House State Resource Committees

Re: Revision to State Forest Practices Act

From: Russ Redick, FAX #907-349-4330

I am writing to express my support for the substantial changes to the present Forest Practices Act which are being considered for your committee. I support including a requirement for substantial mandatory buffers of undisturbed forest along fish streams in SB 317 and HB 331 because the maintenance of stream vegetation is necessary to maintain stream productivity and ultimately the states commercial, recreational, and subsistence fisheries. I have two concerns about the present bill. First, the 15 meter no cut and 15 meter selective cut buffers on state and borough lands in many cases will not be adequate to maintain stream productivity. As most Alaskans know, even our small streams meander across their flood plain and many will move more than 50 or 100 feet in the 80 to 100 years it takes to regenerate mature spruce, birch, and cottonwood trees after stream banks have been cut. Many of our larger streams move laterally more than 100 feet in one year! This means that the source of large woody debris and ultimately stream productivity will be lost very early in the rotation period unless larger buffers are provided. These small buffers will also not provide enough of a visual screen from clear cut areas to maintain a high quality sport fishery and sport fishing business in areas where extensive clear cutting occurs. Because of the visual impact of clear cuts, businessmen offering sport fishing trips will not be able to attract clients who demand a "wilderness" type experience.

A second problem is that as currently written, the maintenance of even these token buffers is at the discretion of the State Division of Forestry. I am very concerned that the Division of Forestry will be inclined to delete those buffers rather than maintain them. The present wording only appears to give the Department of Fish and Game, which has the responsibility and expertise to protect fisheries resources, an advisory role when the land owner or land manager requests a waiver under the statute. To maintain a proper balance between logging and state's fishing industries, I request that the wording be changed to require Department of Fish and Game concurrence on any waivers from these buffers.

I am also very concerned that the logging industry has apparently decided to renege on agreements made in the Forest Practices Act negotiation process and is requesting that the Legislature delete mandatory buffers on private lands and limit the buffer zones on public lands to the same 15 meters required on private lands for the reasons previously expressed. I am also very concerned that the logging industry is attempting to limit or remove the Department of Environmental Conservation and Department of Fish and Game current authority to regulate forest practices to protect fisheries habitat and water quality on private and public forest lands. I urge you not to make any of these changes in the draft legislation.

Thank you for your consideration.



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

DEC 13 1989

Mr. F. Dale Robertson
Chief, Forest Service
U.S. Department of Agriculture
12th and Independence, S.W.
Washington, D.C. 20090-6090

Dear Mr. Robertson:

Thank you for your letter explaining the Forest Service's (FS) approach to balancing timber harvest practices and riparian fish habitat protection in the Tongass National Forest. We recommend, however, that the FS adopt the National Marine Fisheries Service's (NMFS) riparian habitat protection policy, which requires minimum 30-meter no-harvest buffers on all anadromous fish streams and their tributaries. The advantages of the NMFS policy are that it provides reliable protection of fish habitat, sets a bottom line that should reduce conflict among in-field decisionmakers, and is easy to enforce.

Based on our knowledge of the old-growth forest ecosystem in Alaska, riparian vegetation is a critical component of fish habitat. Research has shown that salmonid habitat and stream channel stability depend on the old-growth trees within 30 meters of the streambank to provide large woody debris, shade, temperature control, and streambank protection. Timber harvest in this zone will decrease salmonid production.

Your letter states that the FS "requires a no harvest buffer zone along streams when needed to maintain or enhance fish habitat and maintain water quality; the width of the buffer to be dependent on the on-site conditions." The NMFS agrees that site-specific evaluations are theoretically the best way to manage streamside zones. In reality, however, the FS policy has failed because it is too complex and relies on too many people variously interpreting FS guidance to protect riparian vegetation.

The major drawback of the FS site-specific approach is that it relies on field staff to decide the need for, and size of, any buffer, and to defend that recommendation against other competing interests. On-site field determinations require a high level of expertise in fish habitat requirements and an extensive data base. Experience has shown that the influence of timber harvest goals often results in inadequate buffers from a fish habitat perspective. On-site evaluations should play an important role in determining those situations where the fish resource or on-site conditions (e.g., soil, windthrow hazards, braided channels) require a greater than 30-meter buffer.

A minimum buffer standard has the added advantage of providing advance knowledge of harvest limitations, and being an



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enforceable regulation that lends itself to monitoring. The ease with which a buffer standard can be enforced should also encourage compliance by industry.

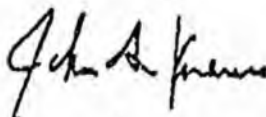
Your letter also states that the FS "allows for harvesting of trees within the streamside zone when such action will improve fish habitat or when there is little risk of damage to stream conditions." The NMFS policy recognizes the potential to enhance some fish habitat by selective timber harvest; however, there has been no research in Alaska to validate that selective harvest practices will improve salmonid habitat. In fact, the scientific evidence indicates that altering the natural stream temperature regime or the quantity/size of large woody debris will negatively impact salmonid production. The NMFS recommends that the FS develop habitat restoration techniques for salmon streams already impacted by logging rather than attempt to "improve" existing habitat through streamside timber harvesting.

The FS should compile statistics on the locations and widths of buffers that have been required over the past five years to provide an indication of the effectiveness of the site-specific approach that may require riparian habitat restoration. Without these data, it is not possible to assess the effectiveness of past decisions or defend the efficacy of the current FS guidance. We heartily recommend such a review commence immediately and offer our assistance toward the project.

As you note, NMFS personnel have spent considerable time working with Alaska Region FS representatives on the Southeast Area Guide, Tongass Land Management Plans, Southeast Alaska Multiresource Model, Aquatic Habitat Management Handbook, and other planning/guidance materials. The NMFS assisted the FS in preparation of these documents, but has never endorsed the FS guidance as the preferred approach to protect salmon habitat.

In summary, the NMFS' research has demonstrated that timber harvest within 30 meters of the streambank can cause irreparable damage to salmon habitat and production. Consequently, we urge the FS to adopt a 30-meter minimum no-harvest requirement on all anadromous fish streams and tributaries in the Tongass National Forest. This guideline would help the FS achieve their goal to "preserve the biological productivity of every fish stream on the Tongass" (Tongass Land Management Plan page 92).

Sincerely,



John A. Knauss



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

JUL 28 1989

Honorable George Miller
Chairman, Subcommittee on Water,
Power and Offshore Energy Resources
Committee on Interior and Insular Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding the amount of commercial timber that would be typically included within a 100-foot or 30-meter streamside buffer zone within the Tongass National Forest.

We believe application of 100-foot or 30-meter buffers protect Alaska's salmon and trout habitat. The timber retained in a buffer for fish habitat should not be viewed as the amount "lost" to the timber industry, but viewed as what is required for fish habitat in the true sense of multiple-use. Salmonid fisheries and timber industries share the forest as a common base for their existence. Retaining a small but critical portion of the forest for the Nation's fisheries seems to us to be an example of wise use and management in its finest sense. We believe these buffers must be maintained for optimum production of fish. A detailed explanation is enclosed.

We look forward to working with the Subcommittee in the future on this or other issues relating to anadromous resources.

Sincerely,

/s/ James W. Brennan

James W. Brennan
Assistant Administrator
for Fisheries

Enclosure

cc: F; GCF; LA5-F(2); F/MB(Everett); F/CU(2); LA; F/AKR(Faris);
F/PR; F/PR3(Risenhoover)
CONTROL NMFS #11549
F/PR3:ARisenhoover:427-2325:07/11/89:WPDISK2-MILLER



**NATIONAL MARINE FISHERIES SERVICE
BUFFER STRIP USE AND ESTIMATED TIMBER SUPPLY IMPACTS**

The National Marine Fisheries Service (NMFS), Alaska Region issued a policy recommendation in 1988 for the protection of riparian vegetation stating that 30 m is the minimum width required to provide shade and future sources of large woody debris (LWD) necessary for instream habitat. NMFS' policy recommendation is based on extensive research which indicates that salmonid (trout and salmon) abundance is dependent on habitat derived from and influenced by the old-growth forest adjacent to streams, particularly the canopy for shade and temperature regulation and LWD. The quantity of LWD in these productive streams is high (60-80 pieces per 100 m length of channel) and is directly correlated with the abundance of salmonid habitat. Because the natural depletion rate of LWD resulting from decay, fragmentation, stream export, etc. is relatively high (1-3 percent per year), a continuous supply of wood from the riparian zone is needed to offset the natural loss and maintain salmonid habitat. If these streams are logged without leaving a buffer of at least 30 m to replenish the natural loss of LWD, it is estimated that the level of LWD will be reduced by 70 percent in 100 years. Recovery of LWD to the original pre-harvest amounts from the regeneration of second-growth trees next to the stream is estimated to take about 250 years. Riparian habitat, therefore, is the principal source of salmonid habitat and must be protected in order to maintain Alaska's salmon and trout at optimum production.

The amount of timber "retained for fish habitat protection" (i.e., loss of potential timber for industry) is dependent on the interpretation or definition of anadromous streams and tributaries. NMFS Alaska Region uses the U.S. Forest Service, Alaska Region (FS), Aquatic Habitat Management Unit (AHMU) definition of stream classes which are based on fish use. The FS Stream Classification System (Channel Typing) is also used by NMFS to identify and characterize stream channels from standard 1:1000 aerial photographs and to determine stream class designations. Under the AHMU system, streams are classed according to fish use:

- Class I- Streams with anadromous or high value resident sport fish or with habitat having reasonable enhancement opportunities for anadromous fish;
- Class II- Streams with resident fish populations of limited sport fish value generally occurring in steep gradients or upstream of migration barriers; and

Class III- Streams with no fish populations but have potential water quality influence on downstream habitat.

Most streams or reaches of a stream in a watershed are a mixture of Class I, II, and III, with Class I generally being the lower gradient valley bottom streams, Class II being the mid-slope streams, and Class III being the upper slope, high gradient tributaries.

The 30 m buffer policy of NMFS applies primarily to all Class I and II streams. The policy does not apply to Class III streams which are either ephemeral or intermittent or have a gradient generally greater than 8 percent; these can be very numerous and occur as drainage channels at higher elevations. Our policy does not require buffers alongside the numerous drainages which generally cannot be seen from aerial photographs or which are visible only following clear-cutting. These drainages constitute the most acreage of forest land and cause the greatest discrepancy of views on the "lost timber production" issue.

In this regard, an estimate of the amount of timber retained for fish habitat protection can be made by identifying stream channel types from aerial photographs, classifying them according to fish use, and then calculating the amount of timber by volume class in a 30 m buffer on both sides of the stream channel. The FS using its graphic information system has made some of these calculations and has presented its findings at several meetings involving NMFS personnel. For example, in a FS prepared document dated June 16, 1989, a quadrangle examined from north Kuiu Island on the Tongass (Port Alexander C-1) showed that only 9 percent of the productive forest volume would be contained within a 30 m buffer on all Class I and II streams. Anadromous streams most likely accounted for less than 4 (included in the 9) percent. The high gradient tributaries or intermittent drainages which do not need buffers, accounted for an additional 22 percent. Information presented by the FS on the 1989-94 Ketchikan Pulp Company Operating Area DEIS for Prince of Wales Island showed that the amount of timber retained by leaving 30 m buffer strips along Class I, Class II, and some Class III streams amounted to 10.7 percent. Both these estimates closely agree with a field survey conducted in 1978 by a Fisheries Task Force for the Tongass Land Management Plan. This survey found that 11 percent of the timber in the Tongass National Forest would be retained for salmonid habitat protection if 100-foot buffers were required.



National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 5, 1990

Michael A. Barton, Regional Forester
USDA Forest Service, Region 10
P.O. Box 21628
Juneau, Alaska 99802

Dear Mr. Barton:

The National Marine Fisheries Service (NMFS) Regional Office and Auke Bay Laboratory, have completed our review of the Final Supplement to the Environmental Impact Statement (SEIS) for the 1981-1986 and 1986-1990 operating periods for Alaska Pulp Corporation Long-Term Timber Sale Contract, dated November, 1989. These comments supplement our December 27, 1989, comments regarding the Record of Decision (ROD). We did not have an opportunity to review the Phase II Draft SEIS within the timeframe specified by the Forest Service, therefore, we feel it is particularly important that we provide feedback on the Final.

Riparian Management:

As you are aware, based on substantial research conducted by NMFS (e.g. Murphy *et al.*, 1986, and Murphy and Koski, 1990), we have concluded a minimum of 100 foot no-harvest riparian zones should be left on each side of class I and II salmon streams. Such buffer strips provide large woody debris for critical habitat, promote channel stability, protect water temperature and dissolved oxygen levels, and reduce sedimentation of streams. Anything less than 100-foot no-harvest buffers pose a significant long-term threat to water quality and fish habitat. In some situations buffers wider than 100 feet are needed to protect fish resources, such as where there are particular hazards to blow-down, braided channels, landslides, heavily logged drainages, and temperature sensitive streams. Class III streams typically do not provide habitat for salmonids, but, inadequate protection of these streams can cause landslides and debris torrents with excessive sedimentation on downstream fish habitat in Class I and II streams. Consequently, the integrity of the stream banks and side slopes of these streams must be maintained by applying Best Management Practices or including a minimum of 100 foot no-harvest zones, when necessary.

The streamside protection measures adopted in the SEIS and ROD, in our opinion, are inadequate, and will result in irreparable long-term harm to anadromous fish habitat and significant impacts to water quality. The Forest Service has treated buffer widths as negotiable, rather than establish a minimum protective width. The SEIS calls for buffers of less than 100 feet on numerous Class I and II streams. In Analysis Areas II and III, over 50



percent of salmon streams have buffers of significantly less than 100 feet. Moreover, the SEIS presents no buffers of over 100 feet, although these will be needed to adequately protect many streams. As far as we are aware, there is no evidence to support the conclusion that buffers of less than 100 feet will adequately protect fish habitat in Alaska, particularly over the long term, whereas there is substantial research demonstrating that buffer strips of at least 100 feet are effective.

The SEIS says little about what protective measures will be used on Class III streams, except to note that they will involve "usually leaving 10 percent of the adjacent stand." (SEIS, Vol. AA12 at 4-33). Such limited measures may not be adequate to protect many Class III Streams. Those Class III streams can significantly influence water quality on downstream Class I and II streams because of their size, or have the potential for side-slope and/or streambank failure, therefore, may require full buffer strip protection. Most Class III streams, however, will only require Best Management Practices to protect side-slope and streambank stability for maintenance of water quality standards.

Equally concerning as the inadequate width of proposed buffer strips, is the fact that the SEIS authorizes selective harvesting of 20 percent of the trees in buffer zones. Thus, even the streams with 100-foot buffers do not meet NMFS's minimum recommendations since selective harvest may be allowed within that zone. There has been no research done in Alaska which shows selective harvest in a buffer zone, even if done with extreme care, affords adequate long-term protection to salmon habitat. The scientific evidence indicates it will usually have negative effects on salmonid production. Moreover, selective harvesting is operationally difficult and can damage the remaining trees in the buffer strip. In our opinion, selective harvest within buffer zones of 100 feet or less will generally result in inadequate stream protection. Selective harvest outside 100-foot buffers, however, might be a sound management practice to insulate buffers and make them more wind firm.

If the Forest Service wishes to examine the effectiveness of narrower buffer widths or selective harvest within buffers, it should do so through a carefully controlled research study where valid scientific measurements can be made. The use of 50-foot buffers and selective harvest in buffers throughout the contract area, on the other hand, will likely result in inadequate protection of fish habitat and no scientific validation of their effectiveness.

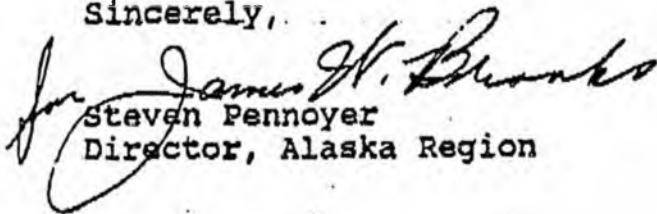
Monitoring:

Certain logging and roading practices can have significant impacts on fish habitat and water quality. For the past decade, the Forest Service has indicated their streamside management

practices in Alaska would insure minimal impacts to fish habitat and would protect water quality. We are not aware of any Forest Service research or monitoring in Alaska supporting this assertion. Contrary to this, the NMFS-Auke Bay Laboratory and others have shown through research, that certain Forest Service practices in Alaska have likely caused irreparable long-term damage, including reduced fish production, impaired water quality, and damaged fish habitat (See, Murphy et al., 1986).

The Forest Service has done very little monitoring to measure the impacts of timber activities in Alaska on fish habitat and water quality, or to measure the effectiveness of Forest Service streamside management practices in protecting fish habitat. There continues to be a need for such information. Without it, it is difficult to evaluate the true effectiveness of the Forest Service streamside management prescriptions for protecting fish habitat and water quality. In our opinion, these practices are often inadequate to protect fish habitat and insure compliance with water quality standards. The Forest Service has the primary responsibility for ensuring that fish habitat and water quality are not impacted by logging on National Forest lands, and that the effectiveness of Forest Service management practices are adequately researched and monitored. We would be glad to assist in developing such monitoring or research programs.

Sincerely,


Steven Pennoyer
Director, Alaska Region

LITERATURE CITED

Murphy, M.L., J. Heifetz, S.W. Johnson, K V. Koski, and J.F. Thedinga. 1986. Effects of clear-cut logging with and without buffer strips on juvenile salmonids in Alaskan streams. *Can. J. Fish. Aquat. Sci.* 43:1521-1533.

Murphy, M.L., and K V. Koski. In press 1990. Input and depletion of large woody debris in Alaska streams and implications for streamside management. *North American Journal of Fisheries Management*, American Fisheries Society, Bethesda, MA.

SUMMARY OF NMFS AUKE BAY LABORATORY RESEARCH
ON STREAMSIDE MANAGEMENT ISSUES

Prepared by K V. Koski and Michael Murphy, January 1989

Auke Bay Laboratory (ABL) has been involved in research on the effects of logging since the mid-1950s when it launched the first major study on the west coast at Hollis, Alaska, with the Fisheries Research Institute (University of Washington) and the Northern Forest Experiment Station. Since that time, ABL has done extensive research on the two major issues of concern: salmonid habitat in streams and bark deposition at log transfer facilities.

Research on streams in the last 10-12 years has focused on the habitat of salmonids that require extended rearing in streams for one or more years (e.g. coho salmon) because these fish may exhibit cumulative effects from logging activities.

The Alaska Working Group of Cooperative Forestry-Fisheries Research, which had its beginning in 1979, has been instrumental in bringing researchers, managers, and industry representatives together to identify, prioritize, and investigate issues of greatest concern. Accomplishments of this group have been recognized coast-wide and have led to the best cooperation and progress towards resolving conflicts between fisheries and logging ever seen in Alaska.

Guidelines were developed for log transfer facilities which were adopted by the Governor's Timber Task Force and now are currently used by EPA and the Corp of Engineers in the Permit Process. Streamside management also was identified as a major issue and has been the focus of research by ABL, ADF&G, and Forest Science Laboratory (FSL) since 1982. Results of much of this research have been published and either implemented or under consideration by USFS and Native Corporations. Unfortunately, some study results have been misinterpreted; consequently, a summary of the results of each pertinent report prepared by NMFS has been paraphrased and attached to this document (Attachment No. 1).

Basically, ABL's research has shown that (1) buffer zones are highly effective in protecting fish habitat in southeastern Alaska from potential damage by logging activities; (2) woody debris is an essential component of stream channel morphology and forms important habitat for salmonids; (3) winter habitat (e.g. pools with woody debris cover) are critical to overwinter survival of salmonids; (4) "channel-type" stream classification is a valuable tool for determining streamside management prescriptions; (5) most (i.e. 98%) of the woody debris in a stream comes from within 30 m of the stream; and (6) woody debris can form stable habitat (e.g. pools and riffles) for at least 200 years. Based on these findings and results from other research along the Pacific Coast, NMFS prepared a policy statement (Attachment No. 2) in May 1988 for "Riparian Habitat Protection in Alaska" to document the need for protecting salmon habitat and to clarify results of NMFS research.

SUMMARY OF NMFS AUKE BAY LABORATORY RESEARCH REPORTS
ON EFFECTS OF LOGGING AND STREAMSIDE MANAGEMENT

Buffer Zone Effectiveness

1. Effects of clear-cut logging with and without buffer strips on juvenile salmonids in Alaskan streams. Michael L. Murphy, Jonathan Heifetz, Scott W. Johnson, K V. Koski, and John F. Thedinga. 1986. Canadian Journal of Fisheries and Aquatic Sciences, 43:1521-1533.

Buffer strips used in Southeast Alaska are effective in protecting fish habitat. Buffer strips allow increased primary (periphyton) and secondary (invertebrate) production, and provide a source of additional new woody debris after logging. In the short term, buffers can increase the recruitment of fry (young-of-the-year), and sustain survival of both fry and parr (one or more years of age) through winter. In the long term, buffers provide a source for recruitment of new debris for the stream and thus maintain stream channel integrity and fish habitat indefinitely. Blowdown of trees in a buffer zone provides valuable rearing habitat; however, excessive number of trees could impair fish passage or damage spawning habitat.

Clear-cutting without buffers damages fish habitat by reducing the amount of undercut banks, canopy density, pool volume, and woody debris. Coho fry density was higher in summer in clear-cut streams than in either old-growth or buffered streams because of higher periphyton and invertebrate production; however, this higher density was not sustained through the winter because of the reduced habitat. There were significantly fewer coho parr in clear-cut streams because of damaged winter habitat resulting from a loss of woody debris and pools, collapsed undercut banks, and a destabilized or sedimented substrate.

Most pools were formed by woody debris, and pool volume and debris volume in streams were directly related.

2. Effects of logging on the abundance and seasonal distribution of juvenile steelhead in some southeastern Alaskan streams. Scott W. Johnson, Jonathan Heifetz, and K V. Koski. 1986. North American Journal of Fisheries Management, 6:532-537.

During summer, steelhead fry were largest and most abundant in clear-cut streams, which had more sunlight, higher temperatures, and higher periphyton and invertebrate production than did buffered and old-growth streams. In winter, fry density in clear-cut streams declined 79% because of unsuitable habitat. Densities of parr were also highest during summer in the clear-cut streams, probably because of the increased food; however, the reduction in parr density during

winter and the increase in parr density in buffered and old-growth streams in winter imply that parr migrated to areas of preferred habitat (i.e., areas with pools and abundant cover). Any benefits derived from canopy removal by clear-cutting were negated by a reduction in the amount of critical winter-rearing habitat.

3. Effects of logging on winter habitat of juvenile salmonids in Alaskan streams. 1986. Jonathan Heifetz, Michael L. Murphy, and K V. Koski. North American Journal of Fisheries Management, 6:52-58.

Most wintering coho salmon, Dolly Varden, and steelhead trout occupied deep pools with cover (i.e. upturned tree roots, accumulations of logs, and cobble substrate). Riffles, glides, and pools without cover were not used. Seventy-three percent of all pools were formed by woody debris. Streams in clear-cut areas without buffer strips had significantly less area of pool habitat than streams in old-growth areas. Buffer strips protected winter habitat of juvenile salmonids by maintaining pool area and cover within pools and provide future sources of woody debris. Concerns about effects of blowdown in first- to third-order streams may be unfounded because blowdown in these streams often bridges the channel creating additional habitat. On larger streams, buffer strips should be designed to minimize potential damage from blowdown yet ensure long-term sources of debris.

4. Evaluation of buffer strips for protection of salmonid rearing habitat and implications for enhancement. K V. Koski, Jonathan Heifetz, Scott Johnson, Michael Murphy, and John Thedinga. 1984. In: Thomas J. Hassler, Ed. Proceedings of Pacific Northwest Stream Habitat Management Workshop, Humboldt State University, Arcata, CA.

Buffer strips were effective in protecting rearing habitat of salmonids from the impacts of clear-cut logging in southeastern Alaska. The rearing capacity of a given stream is illustrated by the concept of limiting factors or "bottleneck". In this study, a bottleneck occurred in clear-cut streams in fall and winter: densities of fry, which were high in summer when food was abundant, decreased in winter because habitat was inadequate. In streams in old-growth forest, the bottleneck occurred during summer: abundance of food was too low to maintain high densities of juvenile salmonids and, consequently, excellent winter habitat was not used. High food production in summer produced high densities of juvenile salmonids in the buffered streams, and the densities remained high throughout the winter because the critical habitat was maintained. Manipulation of the canopy cover to increase fish production is a logical enhancement measure provided critical habitat is maintained or improved. Buffer strips could become a useful tool for stream management.

5. Effects of logging on size and age composition of juvenile coho salmon in Southeast Alaska. John F. Thedinga, Michael L. Murphy, Jonathan Heifetz, K V. Koski, and Scott W. Johnson. In Press.

Short-term effects of logging on age composition and size of juvenile coho salmon were studied in 18 streams in Southeast Alaska in 1982-3. The number of fry (age 0) in summer and winter was proportionately higher in buffered and clear-cut streams than in old-growth streams, whereas parr (age 1 and older) size did not differ among treatments. Fry and parr were larger in southern Southeast Alaska than in the northern region of Southeast. Size was directly related to periphyton biomass and benthos density in the streams. However, the larger fry in buffered and clear-cut streams compared to old-growth streams was probably due primarily to earlier fry emergence that resulted from increased stream temperatures. The advantages of earlier emergence and increased abundance of food in summer to fry in logged streams were negated in parr, possibly because their diet, growth rate, and habitat preferences change with age and size. The maintenance of critical overwintering habitat is essential to optimum smolt production.

Streamside Management Issues

1. Relationship between stream classification, fish, and habitat in Southeast Alaska. M. L. Murphy, J. M. Lorenz, J. Heifetz, J. F. Thedinga, K V. Koski, and S. W. Johnson. 1987. USDA Forest Service, Wildlife and Fisheries Habitat Management Note No. 12.

The Channel Type System (CTS) for classifying streams, based on geomorphic, hydrologic, and vegetative features on aerial photographs, was evaluated to test whether it could allow managers to control variability among streams by grouping reaches with similar habitat. Salmonid abundance and habitat characteristics differed significantly between channel types, indicating that the CTS can be used effectively to control variability among streams. Large woody debris (LWD) was most abundant in large floodplain channels, and least abundant in large bedrock-controlled channels. Nearly all (98%) LWD in the streams came from trees rooted within 30 m of the stream bank. Windthrow and undercutting by the stream accounted for 75% of the LWD in the streams. Differences in salmonid populations and habitat, however, were inconsistent between regions of Southeast Alaska. Regional inconsistency may have resulted because fish populations or habitat differed between regions or because personnel in each region classified stream channels differently. With further development, the CTS should be an excellent tool for more effective management of fish habitat.

2. Input and depletion of large woody debris in Alaska streams and implications for streamside management. M. L. Murphy and K V. Koski. (in Press) North American Journal of Fisheries Management.

Natural rates of input and depletion of large woody debris (LWD; >10 cm diameter) in Southeast Alaska streams were studied to provide a basis for managing streamside zones to maintain LWD for fish habitat after timber harvest. In 32 stream reaches in old-growth forest, LWD was inventoried by size and state of decay, and its age was determined from the age of trees growing on it. Age of LWD ranged from 1 to 226 years, and persistence of LWD in the streams was directly related to LWD bole diameter. Assuming steady-state conditions in old-growth forest, LWD input and depletion were calculated from the abundance and age of LWD in decay classes. Annual depletion from biological decay and export by the stream ranged from 0.3% of large (>60 cm diameter) LWD in small muskeg channels to 2.7% of small (10-20 cm diameter) LWD in large bedrock-controlled streams. Based on the depletion rate of LWD, a model was developed to determine the number of trees needed in streamside zones to maintain natural quantities of LWD after timber harvest.

3. Large woody debris in forested streams in the Pacific Northwest: Past, Present, and Future. P. A. Bisson, R. E. Bilby, M. D. Bryant, C. A. Dolloff, G. B. Grette, R. A. House, M. L. Murphy, K V. Koski, and J. R. Sedell. 1987. Pages 143-190 In Streamside management: Forestry and fishery interactions. College of Forest Resources, University of Washington, Seattle.

This paper reviews the form, function, and management of large woody debris (LWD) in streams, and reaches three major conclusions: (1) LWD enhances the quality of fish habitat in all sizes of stream. (2) Removal of most trees from the streamside zone during logging, combined with thorough stream cleaning and short-rotation timber harvest, has altered the sources, delivery mechanisms, and distribution, size, and stability of LWD in streams, leading to reduced overwinter survival of salmonids and changes in salmonid abundance and species composition. (3) There is an urgent need for studies that focus on protection of existing LWD in stream channels and recruitment of new debris from the streamside forest.

4. Influences of forest practices on aquatic production. S. V. Gregory, G. A. Lamberti, D. C. Erman, K V. Koski, M. L. Murphy, and J. R. Sedell. 1987. Pages 143-190 In Streamside management: Forestry and fishery interactions. College of Forest Resources, University of Washington, Seattle.

Timber harvest potentially alters solar radiation, water temperature, sediment, nutrients, litter, woody debris, and channel structure--all of which influence the productivity of streams. Periphyton production generally is enhanced by canopy removal and increases in nutrients

and temperature that often accompany timber harvest. Microbial processes also may be enhanced by increases in nutrients, detrital quality, and temperature. Aquatic invertebrates and fish may increase in response to the increased abundance of food. These potential benefits, however, may be negated if temperature tolerances are exceeded, if spawning habitat becomes sedimented, or if winter habitat is damaged. Furthermore, after about 15 to 20 years, the second-growth forest densely shades small streams and may reduce aquatic productivity to below levels in old-growth forest.

5. Die-offs of pre-spawn Adult pink salmon and chum salmon in southeastern Alaska. Michael L. Murphy. 1985. North American Journal of Fisheries Management 5:302-308.

About 300 pre-spawn adult pink salmon and chum salmon died in August 1981 in the intertidal reach of Porcupine Creek, a small stream in old-growth forest on Etolin Island, southeast Alaska. A combination of low stream flow and neap tides triggered the die-off, and the mortality represented about 1% of the 1981 adult return of pink and chum salmon to Porcupine Creek. Anoxia, rather than high temperature, caused most of the deaths because the maximum stream temperature was 19°C--well below lethal temperatures. Conditions similar to those in 1981 recur in Porcupine Creek about once every 8 years. This type of die-off also appears to be common in other streams in southeastern Alaska and can be predicted from the number of salmon returning, amount of precipitation, and height of tide.

6. Fine sediment and salmonid production: a paradox. F. H. Everest, R. L. Beschta, J. C. Scrivener, K V. Koski, J. R. Sedell, and C. J. Cederholm. 1987. Pages 98-142 In Streamside management: Forestry and fishery interactions. College of Forest Resources, University of Washington, Seattle.

Laboratory studies have demonstrated potential negative effects of fine sediment on invertebrates, salmonid egg-to-fry survival, and salmonid growth, but field studies of logging generally have failed to isolate effects of fine sediment from other habitat changes. A more holistic view of the role of sediment in stream ecosystems is needed. Undisturbed forest streams have stored abundant sediment in their channels and maintained an equilibrium between sediment input and sediment routing. An abundance of large woody debris in old-growth forests played an important role in the storage and routing of sediments. Throughout much of the western United States, forest management has broadly changed sediment storage and equilibrium, with a concurrent loss of roughness elements and accelerated routing of sediment through fluvial systems. Stable channels containing stored sediment and large woody debris are more productive at every trophic level than either degraded channels mainly devoid of sediment or channels that are aggraded and unstable. Thus there is a middle ground between too much and too little sediment in salmonid streams.

The long-term emphasis of forest practice rules on control of water quality and fine sediment must be expanded to a more holistic view. Protection of streamside vegetation and physical structure of salmonid habitat must be given equal weight.

7. History of studies of fisheries and forestry interactions in southeastern Alaska. D. R. Gibbons, W. R. Meehan, K V. Koski, and T. R. Merrell, Jr. 1987. Pages 297-329 In Streamside management: Forestry and fishery interactions. College of Forest Resources, University of Washington, Seattle.

Studies of fishery-forestry interactions in Alaska have evolved through four phases. In the first, prior to 1950, there was little concern about the effects of logging on fish habitat until the late 1940s, when the pulp industry began to develop rapidly. The second phase, from early 1950s to mid-1960s, was a period of research on the spawning and incubation requirements of pink and chum salmon. Studies were concentrated near Hollis, on Prince of Wales Island. Effects of logging on sedimentation and streambed stability were studied, and techniques were developed to sample intragravel egg and fry populations and to determine physical and chemical features of the streambed. In the third phase, from the mid-1960s through the 1970s, logging expanded rapidly, giving rise to concerns about effects on salmon species, such as coho, that spend lengthy periods rearing in streams. Emphasis was on habitat requirements of rearing salmonids. The fourth phase, from about 1980 to the present, has been characterized by two important changes: (1) emphasis on extensive, quantitative comparisons of fish productivity in many logged and undisturbed streams, and (2) a new spirit of cooperation and compromise between forestry and fishery agencies and their industrial counterparts. Out of this has come the formation of the Alaska Working Group on Cooperative Forestry-Fisheries Research, which has listed and prioritized research, facilitated shared logistic support of field studies, and coordinated studies by different organizations working on similar problems.



UNITED COOK INLET DRIFT ASSOCIATION

BOX 4649 - KENAI, ALASKA 99611

January 30, 1990

Bettye Fahrenkamp, Chair
Senate Resources Committee
Room 125, Capitol Building
Juneau, AK 99811

Curt Menard, Co-Chair
Cliff Davidson, Co-Chair
House Resources Committee
Room 125, Capitol Building
Juneau, AK 99811

Dear Senator Fahrenkamp, Representative Menard, and Representative Davidson:

Since the joint House and Senate Resource Committees will be discussing Forest Practices Act legislation introduced by the Governor, the United Cook Inlet Drift Association (UCIDA) Board felt it might be timely to pass on a few initial comments to committee members.

UCIDA supports the Governor's legislation with the following conditions:

First, any deviation from the "consensus" agreement proposed by the timber industry will necessitate UCIDA withdrawing all support and pressing for alternative legislation. This is especially true of buffer strips on state land and Federal consistency provisions.

Secondly, the site specific nature of the "agreement" on private lands makes funding of the legislation an integral part of the overall plan to institute this agreement. Indeed, as stated in the Final Report (June, 1989) of the Alaska Forest Practices Act Review (p. 4) "The parties' agreement is to the entire plan, not to individual parts of it. Thus, if the agreement is changed, including failure to pass funds to implement it (emphasis ours), the parties are not bound to continue their support."

Given the importance of funding, UCIDA respectfully requests your insight **as soon as possible** into the probability of funding being provided should the bill pass.

Finally, the first draft regulations by the Department of Forestry to implement the Forest Practices Act agreement were totally unacceptable. They merely served to water down provisions seen by the fishing industry as essential to implement the "spirit and intent of the agreement." UCIDA regards the proper wording of implementing regulations as a vital part of the agreement.

In conclusion, UCIDA appreciates the joint Resources Committees taking the time to review the Forest Practices Act agreement. At this time, UCIDA supports the Governor's bill and requests its passage as submitted. Our major concern early in this legislative session is that attempts to alter the agreement, a lack of funding or indeed failure to pass any legislation simply furthers the interests of those in the timber industry who are quite satisfied with the status quo. In that event, both Alaska's forests and our attempts to foster a working relationship with the timber industry will suffer.

Sincerely,

Theo Matthews
MB

Theo Matthews
President

- cc: Governor Cowper
- Senator Fischer
- Senator Szymanski
- Senator Kerttula
- Representative Swackhammer
- Representative Navarre
- United Fishermen of Alaska

Klukwan Forest Products' Testimony To the Joint House and
Senate Resource Committees Hearings on the Proposed
Amendments to the Alaska Forest Resources and Practices Act
HB 331 and SB 317

January 31, 1990

Senator Fahrenkamp, Representative Menard, Representative Davidson, and members of both House and Senate Resource Committees, I am Ronald R. Wolfe, Chief Forester for Klukwan Forest Products, and it is my pleasure to offer testimony on behalf of Klukwan Forest Products and on behalf of its parent corporation Klukwan, Inc.

As you know we participated extensively in last year's effort to review the Forest Practices Act. Substantial Corporate resources have been devoted to this review, in a sincere effort on our part to resolve resource conflicts in a way that allows our industry to continue to develop, and at the same time protect the other valuable resources (such as fish and water quality).

The forest industry has the potential to help diversify the State's economy, provide revenues to the State from the sale of State timber, provide good paying jobs, improve access

and transportation systems, provide benefits to other resources (such as wildlife and fish), and lastly maintain the health of Alaska's forests. A healthy forest is less likely to be devastated by epidemic populations of bark beetles, which also creates a virtual time bomb for catastrophic wildfire to follow.

A well balanced Forest Practices Act is necessary for these good things, and others, to occur. This Act must meet or at least help meet the needs of the Forest Industry so it can continue to grow and be successful. Our industry has certain fundamental needs, among them are:

1. Timber.
2. Single agency administrative review.
3. Commensurate benefits to costs.
4. Sensible enforcement measures.

I offer the following to elaborate on these needs, and would like to emphasize Klukwan Forest Products is interested in publicly owned timber as well as privately owned timber.

TIMBER

Private land owners must not be prohibited from harvesting their timber in an economical manner. Public timber must be available for the industry to purchase on a rational

economic basis and process. Both sources of timber must be available to the industry in a manner that recognizes the market place in which we compete.

SINGLE AGENCY ADMINISTRATIVE REVIEW

In order to respond to our markets and conduct our business in an economical manner, an efficient administrative process is necessary. This concept is true for both private and public sources of timber. Klukwan Forest Products understands we must have agency review and input to operate in a responsible manner. However, this must occur efficiently.

COMMENSURATE BENEFITS TO COSTS

Each standard, regulation, administrative process or where applicable, each authorization obtained from the State represents a cost to the industry either directly, indirectly or a forgone opportunity cost. To justify these costs the protection attained must offer a commensurate level of protection or benefit to other valuable resources.

SENSIBLE ENFORCEMENT MEASURES

The single state enforcement strategy is necessary to create a sense of fairness.

Fortunately, Klukwan Forest Products is able to support most of SB 317/HB 331. Unfortunately, we are not able to support all of the provisions. However, we are working with our industry counterparts, and with appropriate Agency representatives to prepare technical amendments that will clarify aspects of the bill which we can't support.

One substantive problem exists with the relationship of the Forest Practices Act to the Coastal Zone Management Program on public lands. We are in the process of meeting with Agency representatives seeking to find an agreeable compromise to all affected parties. We remain hopeful this will be successful.

Lastly, Klukwan Forest Products supports stream protection as we have testified before Congress on Tongass reform legislation. However, we do not support provisions in SB 317/HB 331 for State lands south of the Alaska Range. In our view it is excessive and is unfounded scientifically. Much of the research was conducted here in Southeast Alaska, and the process that prepared the protection measures was focused on Southeastern.

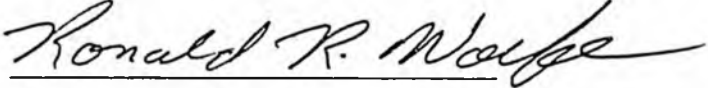
This was recognized and a separate requirement was developed for the Interior Forests which is Region IIb. Region IIa is

entitled to riparian protection based on good science and a focused process to identify necessary protection measures.

Klukwan Forest Products will continue to work for a successful Forest Resource and Practices Act which we can fully support.

Thank you for this opportunity to testify.

I would be happy to answer any questions you may have.

A handwritten signature in cursive script, reading "Ronald R. Wolfe". The signature is written in dark ink and is positioned above a horizontal line.

Ronald R. Wolfe

Chief Forester



STREAMSIDE IMPACTS

As Related To
Alaska's Forest
Practices Act
Of 1979;
The Need For
The Passage
And
Implementation
Of More
Effective
Legislation

Natzuhini Creek Tributary
Hydaburg
1986

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This booklet was produced by:
**Alaska Conservation Foundation,
Southeast Alaska Seiners Association, and
Tongass Conservation Society**

Pictured on cover:
MASSIVE SOIL FAILURES

Numerous landslides and massive soil failures have been caused by road construction and logging that destabilized soils on steep slopes. The debris torrent in this stream ended where coho spawning and rearing habitat begin.

Introduction

HISTORY AND BACKGROUND

Under current state statutes and regulations, there are no existing enforceable requirements for buffer strips which would limit streamside logging.

The Fish Passage Act (AS 16.05.840) and the Anadromous Fish Act (AS 16.05.870) were passed many years ago, before extensive drainage-wide logging on state or private lands. Under these acts, the Alaska Department of Fish and Game (ADFG) requires permits to assure fish passage and can put conditions on the amount of activities within a stream, but does not have authorities that extend beyond the active catalogued stream floodplains. The Alaska Department of Natural Resources also does not enforce the retention of standing streamside timber. The 1979 Forest Practices Act, administered by ADNR, requires no significant streamside or habitat protection beyond that legislation passed decades ago.

Biologists from the natural resource agencies such as the National Marine Fisheries Service, the Alaska Department of Fish and Game, the U.S. Fish and Wildlife Service, and the United States Forest Service agree unanimously that buffers of standing trees are needed for maintaining stable stream ecology and salmon productivities in streams scheduled for logging.

Bank-to-bank streamside clear-cutting and the lack of adequate buffer strips on salmon streams became standard operating procedures following the private-lands logging boom which began in Southeast Alaska in the early 1980's. Due to a number of factors an enforceable solution has never been become state law. Uniform and enforceable minimum standards are needed for the long-term protection of Alaska fisheries habitats.

Enforceable buffer strip standards, legislated by our state government, are important to the state of Alaska. They are important for both it's people and for the long-term fresh-water life stages of these invaluable fisheries.

PHOTOGRAPHIC EXAMPLES

HOW LAND MANAGEMENT PRACTICES AFFECT FISHERIES HABITATS

The following photographs show some ways in which current land management practices in Southeast Alaska affect fisheries habitats and stream ecology. It is the intent of this booklet to give the viewer a general overview of a complex subject and to show stream related impacts under the present Forest Practices Act. These photos of logging-induced stream impacts were taken during 1986, 1987, and 1988 on privately-owned lands on Prince of Wales Island in southern Southeast Alaska. Some impacts are short-term, while others may not occur for several years, or even decades, following logging. In such cases effects on streams are not only very difficult to quantify, but may go undocumented. The full effects of long-term changes in stream ecology depend on many factors. These effects may not emerge until researchers gather data throughout an entire logging rotation. Much of the impact to fisheries, however, can be reduced by leaving adequate buffers along fish streams.

HOW LAND MANAGEMENT PRACTICES AFFECT WILDLIFE

The fragmentation and reduction of important forest habitat seriously affects wildlife in Southeast Alaska. However, as the focus of this publication is only upon streamside impacts, wildlife concerns will not be discussed within the context of this booklet.

INADEQUATE STREAMSIDE BUFFERS

Stable stream conditions are necessary for good fish production. Logging adjacent to streams disrupts the natural state. Young salmon lose their protective cover and, water flow levels and streams channels are altered. Reduced shade in summer and freezing winds in winter can significantly change water temperatures. Silt and logging debris easily enter the stream.



Election Creek
Klawock
1987

Stream # 103-60-10270

DRAINAGE WIDE CLEAR-CUTS

Drainage-wide clearcuts have significant impacts to both fish and wildlife in Alaska. Most long-term effects on fisheries of the removal of all timber from entire drainage systems are still largely unknown. The buffer strip shown here is inadequate because it does not provide the necessary cover, bank stability, and protection from blowdown.

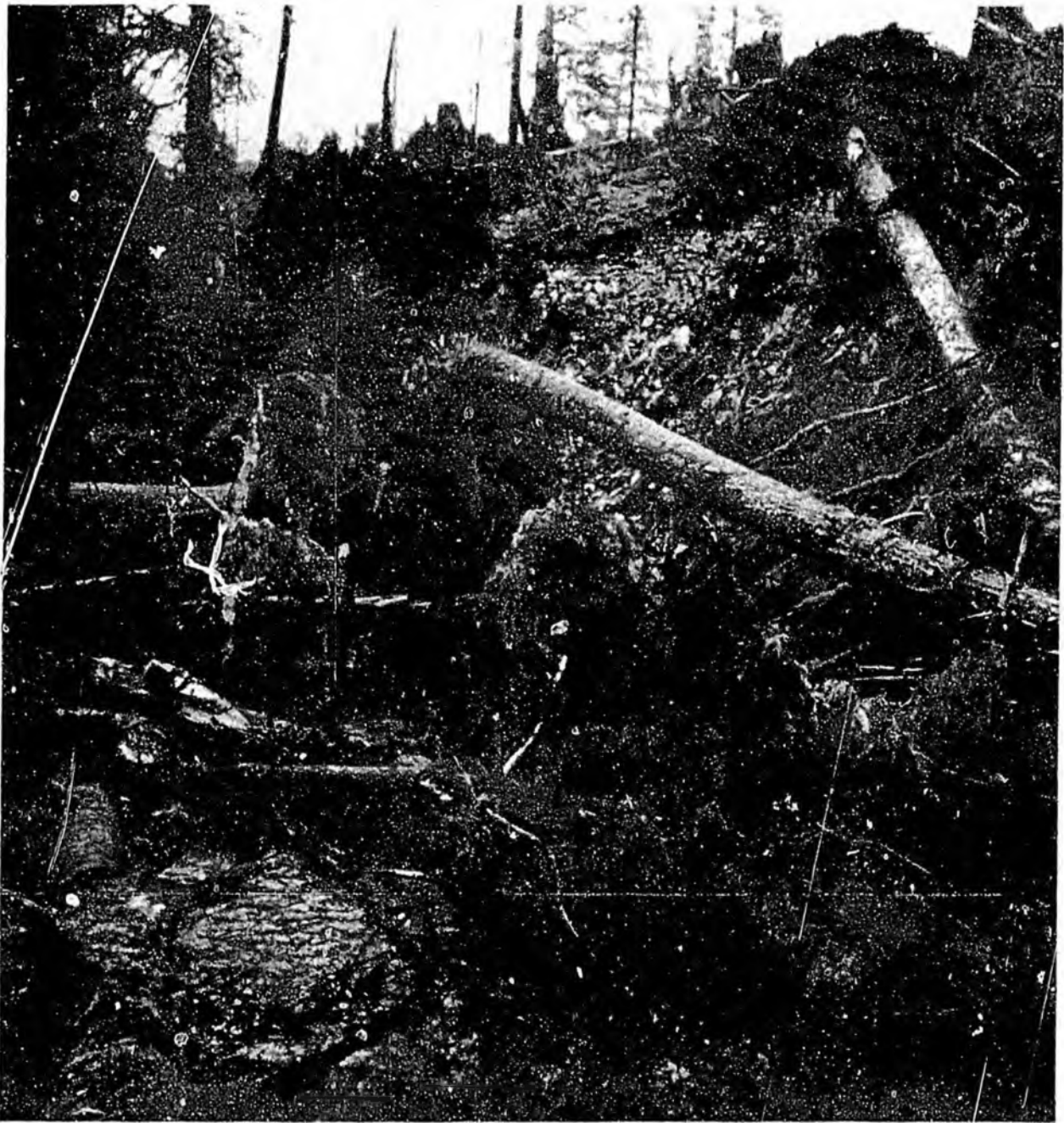


Natzuhini Creek
Hydaburg
1986

Stream # 103-40-10350

LOSS OF SPAWNING AREAS

This one tree buffer strip near an estuary blew down into this high-density pink salmon spawning area. Gravels in the bottom of the stream are used by salmon to lay their eggs in summer or fall. The eggs remain there until spring of the following year. The results of this blow-down into the stream could be devastating to the salmon. The blow-down changes the shape of the stream by scouring in some places and forming sand bars in others.



Deer Creek
Hydaburg
1988

Stream #103-25-10150

DIMINISHED WATER QUALITY-SEDIMENTATION

This photograph, taken in early June of 1987, shows siltation of a salmon stream during steelhead spawning and the later part of the silver salmon period of egg incubation. At this time the eggs of the adult salmon are in the gravels of the stream, and are especially sensitive to stream changes. The reduced water quality shown here is a result of road construction and improper drainage control.

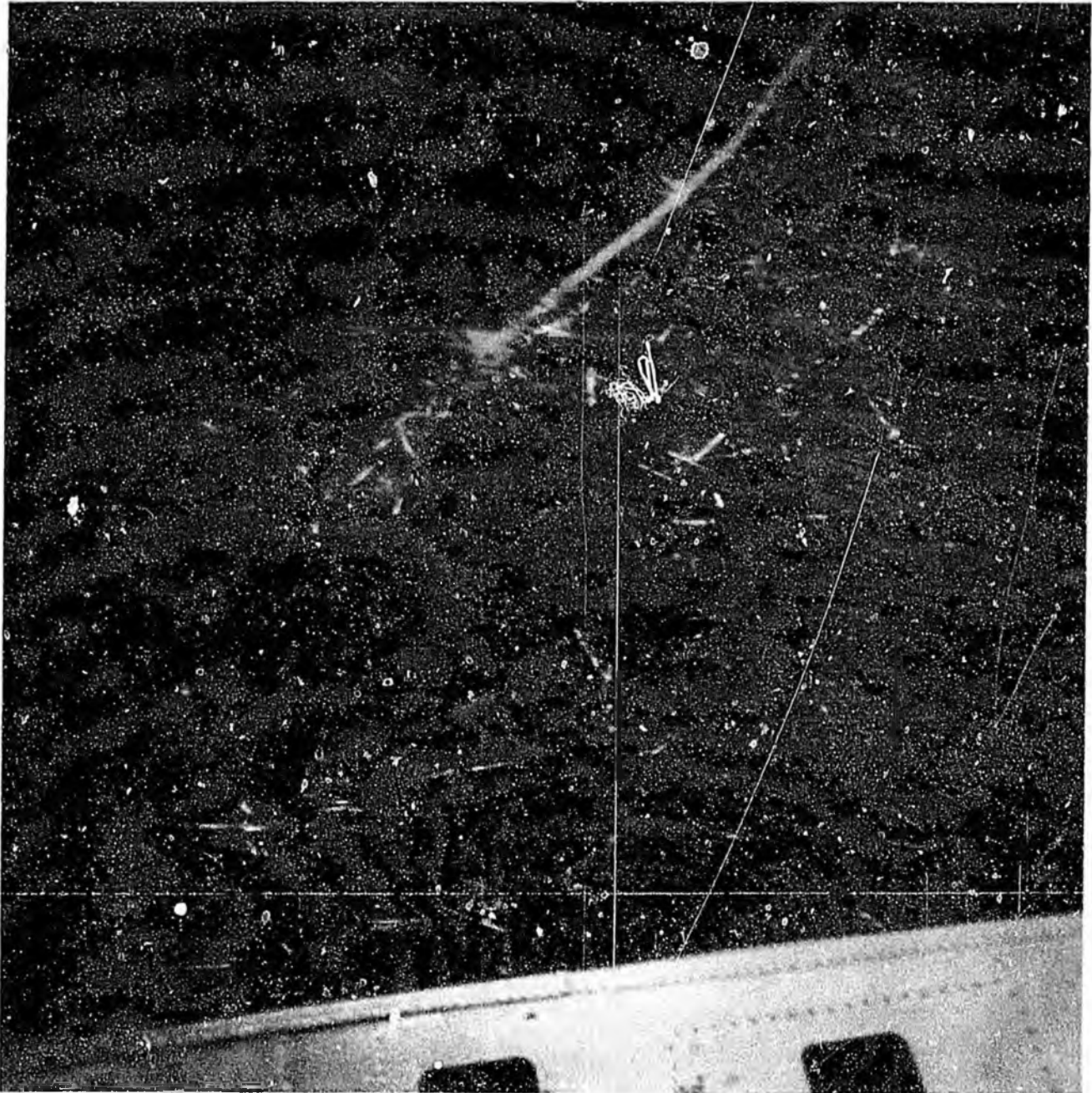


N.F. Deer Creek
Hydaburg
1987

Stream # 101-25-10150-2014

DIRECT AND INDIRECT IMPACTS TO SMALL REARING TRIBUTARIES

Dense networks of small streams which are nurseries for small fish are highly impacted by the sometimes unavoidable felling of trees into the stream during logging. Other impacts from logging activities next to fish-rearing streams are the alteration of the streambank itself, yarding trees through the stream, and the loss of the vegetation along the streambank which gives it stability. Following the initial impacts, other consequences, especially related to sunlight and the temperature of the water may occur as the vegetation along the stream and the form of the stream change over time.



Crab Creek Tributaries

Craig

1987

Stream # 103-60-10500

LOSS OF SALMON AND TROUT REARING AREAS

Portions of many streams, like Steelhead Creek, on Prince of Wales Island, have recently been logged to the streambank. About three-fourths of all pools in a stream are formed by large logs which fall into the stream. Fish then use these areas to rest and eat because in these pools they don't have to fight the current. As streams are logged, the large debris diminishes. Another consequence of removing trees from streambanks is the collapse of the streambank itself. Researchers have found that overhanging streambanks also provide salmon with rearing areas and that these areas can be reduced by at least 50% following logging activities.



Steelhead Creek
Klawock
1987

Stream # 103-60-10290

HYDROLOGICAL CHANGES

With extensive removal of the tree and vegetative cover from an area, water run-off is rapid. High fluctuations in stream flow can result. Swift water from recurring flooding can cause reductions in the numbers of young salmon living in such streams. Reduced flows can also affect the quality of the stream or cause the loss of salmon of all age classes. Additionally, logging the upper reaches of a watershed can influence the stream in the lower reaches of the drainage system. It therefore becomes important to also consider the smaller streams that affect the entire drainage.



Natzuhini Creek
Hydaburg
1987

Stream # 103-40-10350

UNAFFECTED STREAMS

The old growth timber found adjacent to unimpacted streams perform several essential functions for fisheries resources. Many major fishery-related conflicts in logging areas would be reduced if windfirm buffers were left on streams. The National Marine Fisheries Service Policy states that a minimum buffer zone width of 30 meters (100 feet) of natural existing undisturbed forest should be maintained on each side of all anadromous streams.



Blossom River
near Ketchikan
1988

CONCLUSIONS

The fisheries resource of Southeast Alaska is dependent largely upon the continued quality of our streams and lakes. These waters are the habitat for several species of salmonid fishes, which contribute materially to the livelihood of the commercial fisheries industry. These streams and lakes are also prime habitat for sport fish, both anadromous and resident.

Numerous studies have demonstrated that timber harvest and roading operations affect fisheries habitats. Impacts can vary, depending on the type of streamside management. Factors associated with logging practices which can affect the habitat of anadromous and resident fish populations include large organic debris, channel stability, stream temperature, nutrient cycling, streamflow and sediment. These factors are often interrelated, and the total cumulative effects may have the greatest impact.

Salmon have specific requirements that are highly influenced by both land management and water quality. Logging and road-building can alter the habitat requirements that are critical to salmon. These activities can be compatible with the production of salmon only if adequate consideration is given to the aquatic environment during both planning and operational stages of road building and logging operations. The 1979 Forest Practices Act is inadequate for the protection of Alaska's valuable fisheries resources. A major deficiency is the lack of a uniform and enforceable minimum standard for streamside buffer-strip protection. Research has confirmed that riparian vegetation is an essential component of salmonid habitat. The National Marine Fisheries Service, Alaska Region Policy (appendix B) advocates minimum 100 ft. buffers zones on each side of all anadromous streams and their tributaries, and that buffers should consist of the natural/existing undisturbed forest.

Appendix A

Much of what follows has been taken directly from : "Logging in Southeast Alaska and It's Relationship to Wildlife Fisheries, and Economics," A report by the Territorial Sportsman, Inc., Juneau, 1985. "The Forest Ecosystems of Southeast Alaska", Meeham, 1974. 1989-94 Operating Period for the Ketchikan Pulp Company Long-term Sale, Vol. 1, 1989.

Inadequate Streamside Buffers

The riparian zone and stream ecosystem are closely linked: events that occur in the riparian zone can directly affect the status of the stream. The riparian zone provides nutrients and organic material that is utilized by a wide diversity of invertebrates. Large organic debris (LOD) stabilizes stream channels, forms pools and undercut banks, and provides concealment for juvenile salmon. Trees provide shade during the summer that limits high stream temperatures. There is also evidence that trees on streams provide an insulative layer that can help moderate the effects of low winter temperatures. Riparian zones act as a buffer or filter against sediment and debris.

Clearcutting to stream-banks disturbs the natural relationship between riparian and stream ecosystems causing changes that can be expressed in terms of salmon production. Tschaplinski and Hartman (1983) found logging to the streambank and leaving no buffer zone was detrimental to juvenile coho salmon. Culp and Davis (1983) concluded that buffer strips at least 10 meters wide are necessary to maintain normal levels of organic material and detritus in coastal streams.

In Southeast Alaska, Murphy and Koski reported that streams in clearcuts had more fry than streams in old growth, but that with buffer strips, streams had more fry than either clearcuts or old growth. However within clearcut streams, increased summer fry production is nullified by reduced winter habitat (Mason 1976) and since clearcuts have less LOD than undisturbed streams, the winter mortality would be expected to be greater. Buffer strips, on the other hand, optimize the winter carrying capacity by providing more large organic debris.

The streamside forest vegetation plays an important role in regulating heat exchange on small forested streams by providing tree cover that maintains water temperature within the evolutionary range of fish (Beschta and Platts, 1986). Small streams with large surface areas and low water volume are the most susceptible to heat gains or loss. When shade-producing streamside vegetation is removed, water temperatures may be increased several degrees.

Drainage Wide Clear-cuts

The long-term effects of the removal of all timber from a drainage system are still largely unknown. The problems may be magnified when drainages are logged in a single short entry. Numerous studies demonstrate timber harvest and roading affect fisheries habitats (summarized in: Gibbons 1982; Chamberlin 1982; Hartman and Houby 1982; Elliot 1985; Schwan et al. 1985). Major areas of concern are changes in channel stability, stream temperature, large organic debris, nutrient cycling, streamflow and sediments. Disruptions of this type, either drainage-wide or site specific, can cause both short and long-term effects on fisheries habitat.

Loss of Spawning Areas

Near the estuary at Deer Creek on Hetta Inlet, the loggers did an adequate job felling the trees away from the stream. However, the logging plan delineated a one-tree buffer strip that, several months afterwards, was blown into Deer Creek. Numerous trees and some root wads fell directly into good salmon spawning habitat. Collapsed banks and soil disturbances resulted in sediments deposited into the stream. Immediately following the blowdown, a sand bar began to form in spawning habitat, and the stream channel changed.

Two major freshwater habitat types are necessary to salmonids, i.e., spawning areas and nursery or rearing areas. The primary function of spawning habitat is to provide an environment suitable for the development of the eggs and alevins up to the time of hatching and emergence from the gravels. Pink and chum salmon utilize the freshwater habitat only for spawning and incubation of eggs. Spawning takes place in late summer and early fall, eggs hatch generally from late November through early January, and the fry emerge from the streambed gravels from late March through May, with most migrating immediately to the sea. The fry of coho, king, and sockeye salmon and steelhead trout remain in the stream for one or more years.

The spawning habitats of the various species of salmon and trout, both anadromous and resident, are basically similar. They must consist of suitable gravel spawning beds and a continuous supply of high quality water, and be protected from physical damage as well as damage to the biological community. The spawning environment 1.) must contain sufficient quantities of suitable gravel, 2.) provide sufficient surface and intragravel water flow to assure adequate levels of oxygen to, and the removal, of metabolic wastes from the developing embryos, 3.) maintain temperatures which assure proper development and time of emergence of the eggs and fry, and 4.) be free of sediment which would inhibit development of embryos due to oxygen depletion that would physically inhibit or prevent emergence of fry.

Water temperature plays a key role in regulating the duration and timing of incubation, hatching, and emigration from the freshwater to the saltwater. If development is accelerated by even a very minor temperature increase (2 or 3 degrees) due to removal of streamside vegetation, fry may emerge earlier than normal in that stream. Early emergence often occurs at a time of spring floods, when many stream-rearing fry are swept out to sea.

Research has shown that after clearcut logging streamflow generally increases. Increased flow during periods of intense rainfall and/or snowmelt can cause mortality of eggs and alevins from gravel bed movement. Shifting gravels can displace eggs from their protective gravel cover, exposing them to predators, dessication, etc. Shifting gravels can also physically damage eggs and alevins or cause deep burial due to gravel redistribution. High stream stages also move debris, such as excavated streamside stumps and trees, which in turn cause gravel excavation and redeposition, changing the stream channel.

Sediments introduced into the stream, dramatic temperature changes, alterations in streamflow and streambank conditions are important factors affecting the freshwater phases of salmon production. Consideration for habitat in Southeast Alaska during timber harvest needs to be directed to the protection of spawning habitat. With a high percentage of the best salmonid-producing streams scheduled for logging under current timber harvest plans in Southeastern Alaska, it is essential that forest management guidelines be developed to maintain salmon populations.

Diminished Water Quality-Sedimentation

Sediment in streams is a consequence of natural geologic processes and of disturbances due to human activity. Steep ground and large amounts of rainfall, both common in Southeast Alaska, make the land sensitive to such activities as road construction and log yarding.

Erosion of the soil and subsequent sedimentation in streams is a major concern associated with road building and timber harvesting. There are six primary ways sediments are introduced into streams as a result of roading and timber harvest: 1.) landslides due to logging on steep slopes, 2.) soil movement associated with roadbuilding, 3.) road runoff, 4.) stream channel disturbance, 5.) installation of bridges and culverts, 6.) yarding of trees adjacent to or across streams or their tributaries.

Sediment, which directly or indirectly affects fish, occurs in two forms. The first is suspended, i.e. as part of the free-flowing, above-streambed water. In this form it causes the murky appearance of the water. Suspended sediment is harmful to fish if the concentrations are high and persistent. In high concentrations over time, silt accumulates on the gill filaments and inhibits the ability of the gills to aerate the blood.

The second form is deposited, i.e. as particles which have settled out of suspension and have been deposited on and among streambed gravels, on aquatic vegetation, etc. Sedimentation of this type can change the particle size and composition of streambeds. Spawning habitat can be affected by a decreased rate of flow of oxygen-bearing waters within the gravels where the salmon eggs and alevins are incubating. In addition, sediment may act as a physical barrier to the emergence of fry up through the gravel (Hall and Lantz 1969). A third effect of deposited sediment is reduction of habitat used by aquatic insects. A reduction of insects can effecting the food chain, causing a reduction in the growth rate and condition of rearing fishes.

Organic sediment is also a factor contributing to degradation of fish habitat. Bark from logging activities can create a significant oxygen demand as it decomposes, and it can produce excessive amounts of slime bacteria which then may suffocate incubating eggs and alevins (Hall and Lantz 1969, Burns 1972).

Direct and Indirect Impacts to Small Rearing Tributaries

The rearing environment must provide the food, living space, cover and water quality necessary for good growth and survival of fish populations. Good rearing habitat is often slow-moving water, rich in plant and animal life, and ranges from small streams and tributaries, through sloughs, side channels, and shore areas of major streams and rivers, to ponds and lakes of varying size. In many places in Alaska small fish rearing tributaries are very close together. Dense networks of small tributaries are affected by the felling of trees into their channels, logs crossing their channels, logging debris, siltation, disruption of streambanks and the removal of vegetation.

In the past, consideration for fish habitat in Southeast Alaska during timber harvest was often directed only toward the larger spawning streams. Today, the great importance of the smaller rearing areas is being recognized. Small streams are often more dramatically affected by changes than are the larger streams and rivers.

Loss of Salmon and Trout Rearing Areas

Logging to the streambank can result in the loss of what is called LOD or Large Organic Debris. LOD is large woody material that intrudes into the stream channel, and in a productive habitat is continuously provided. Moderate amounts of logs and large debris naturally provide rearing and resting pools for juvenile salmon and trout. Streamside trees which fall into the stream create well covered pools, the most important component of rearing fish habitat. LOD stabilizes gravels used for spawning. It is also a source of channel stability. The roots of streamside trees stabilize streambanks, thereby preventing excessive bank erosion. Logs are also an important source of energy in streams, and the bulk of the nitrogen supply of a stream comes from woody debris. Murphy (1987 Draft) speculates a 30-50% decrease in carrying capacity for rearing coho salmon may occur 50 years after streamside clearcutting. This is due to the lack of recruitment of large organic debris of appropriate size and length.

In Southeast Alaska, studies of winter habitat have found that fish used only habitat that had large organic debris. With decreasing water temperature, swimming performance declines, and fish seek shelter from floods by moving to deeper water and to recesses provided by LOD (Bustard 1975). Mason (1976) has shown that regardless of the size of the summer population of fish, the annual production in the form of smolt was directly related to the amount of winter habitat available. Logging practices that remove all the timber to the streambank remove the natural source of LOD. The small, young second-growth does not replace old-growth Sitka spruce and hemlock as a source of large debris. The young material is also easily floated and will not appear as a stable feature as did the large spruce and hemlock. Of great concern to fishery managers are the long-term effects of LOD loss on habitat. Swanson et al. (1974) suggests that large organic debris gradually disappears when the source of recruitment is removed and does not return to former levels until 100 years after cutting. Sedell and Triska (1976) indicate that 300 years or more may be required for levels of large organic debris to recover.

As with large organic debris and other factors influencing fish habitat, water temperature must be considered with respect to salmon rearing areas. Coho and Dolly Varden use slow-moving, or even still waters in tributaries, sloughs, beaver ponds, or just side meanders of the main stream. Sockeye require a lake system for early rearing and chinook look for large rivers. In all rearing areas, water temperature changes affect food organisms such as aquatic insects and other invertebrates which respond to temperature changes in terms of species composition as well as biomass.

Hydrological Changes

Immediately following extensive cutting, there is a general increase in normal levels of streamflow. Chamberlin (1982) lists examples showing annual increases in runoff 20-40 percent greater than pre-logging levels. Greater flow increases may be caused by rain-on-snow events or when heavy rainfall coincides with rapid snowmelt. Considerable evidence suggests that harvesting in British Columbia may have contributed to deteriorating fish habitat in a region where rain-on-snow events are common (Chamberlin 1982).

The combination of increased streamflow after clearcutting and natural flooding can have a dramatic impact on rearing salmonids. Winter floods can rapidly reduce summer populations of fish, and population of juvenile coho salmon can be severely depleted after floods. Because fish choose foraging sites based on size and velocity conditions, both higher minimum flows and higher peak flows can reduce fish populations.

A 1981 study in Porcupine Creek on Etolin Island in Southeast Alaska concluded that once the clearcut watershed turned into a rapidly growing second-growth stand (more than 20 years old) streamflow may be less. In the long-term this has the potential to reduce the minimum summer streamflow and exacerbate salmon kills, especially in times of summer drought. In August of 1989, the Alaska Department of Fish and Game reported the death of more than 25,000 salmon on Prince of Wales Island. Stream temperatures between 60 and 66 degrees were recorded, which is about 10 degrees higher than normal. The Alaska Department of Fish and Game made associations between lack of adequate streamside buffers and elevated water temperatures.

Massive Soil Failures

Road construction activities and logging can trigger landslides by destabilizing soils on steep slopes. The slide shown in this photo and several others occurred in a drainage near Hydaburg at the time of logging road construction in 1986. The debris torrent ended at the beginning of coho salmon spawning and rearing habitat, with flows into downstream waters still chocolate brown when examined eight months later.

The collapse of slopes can occur in all types of soils, but there are basic elements that affect the stability of a slope: 1.) the steepness of the side slope, 2.) the soil and geologic materials, 3.) rise and fall of the water table.

Road construction on this steep mid-slope logging road, located in an area with unstable soils, initiated this landslide. High-lead logging, a common logging practice in Southeast Alaska, also contributes to soil failures.

An additional problem is found on unstable soils on steep slopes. Landslides and debris flows may seriously retard regeneration on steep slopes by removing the soil mantle down to glacial till or rock and by covering high-site land on lower slopes and valley bottoms with debris and rubble. Slides are common throughout Southeast Alaska, but their frequency is greatly increased after logging (Bishop and Stevens 1964, Swanston 1971). Bishop and Stevens (1984) noted a four-fold increase in the rate of landslides in the Maybeso Creek valley, on Prince of Wales Island, following clearcutting. On a mile-square cutting unit in Maybeso valley, 11 percent of regeneration plots were disturbed by slides, 8 percent being eroded to bedrock or glacial till and 3 percent covered by debris (Harris 1967).

Neither the frequency of occurrence nor the extent of damage resulting from landslides or road building is reported or monitored in a standardized fashion by the various governmental agencies in Southeast Alaska.

Unaffected Streams

The old growth timber found adjacent to these unimpacted streams perform several important functions for fisheries resources. The retention of forest canopies next to productive fish habitats can provide input of large woody debris over time, reduce the potential for dramatic temperature changes, maintain high water quality, provide insect fallout and other fish food sources, stabilize stream hydrology and watershed run-off, prevent siltation, protect instream invertebrate populations, prevent streambank collapse, keep excessive logging debris from reaching the channel, and provide for the essential ecological components dependent upon undisturbed riparian habitats.

Old growth characteristically has a mix of tree heights and diameters resulting in a diffuse light environment. Old trees and snags which die and fall over perform a vital function in stream ecology. As large trees topple, they create small gaps in the canopy, allowing light to penetrate to the stream, stimulating the food chain. The fallen trees create the large organic debris in the stream which account for about three-fourths of the rearing pools in a stream. Without these instream structures, streams begin to resemble drainage ditches, especially at flood stages.

Appendix B



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21568
Juneau, Alaska 99802-1668

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION

POLICY

FOR RIPARIAN HABITAT PROTECTION IN ALASKA

1988

INTRODUCTION

National Marine Fisheries Service (NMFS) issued a policy statement in 1976 on the "Protection of Fisheries Resources During Logging Operations in Alaska". This policy called for a mandatory buffer zone of riparian vegetation along both banks of all salmon streams; buffer width was to be based on resource values, topography, wind-firmness, and stream size. Some management activities (e.g., selective harvesting) could be allowed within the prescribed buffer zone. The policy was issued because of the importance of anadromous salmonids in Alaska's economy and because of continuous degradation of fisheries habitat by logging activities. New information and experience suggests that our policy be revised. What follows is our revised statement of policy and the supporting background information.

THE POLICY

In order to maintain optimum production of anadromous salmonids the NMFS policy is to advocate the protection of riparian habitat through the retention of buffer zones along all anadromous fish streams and their tributaries in Alaska. NMFS will seek to ensure that a minimum buffer zone width of 30 meters (100 feet) be maintained on each side of the stream, and should consist of the natural/existing undisturbed forest. This policy addresses only the minimum buffer zone width. In some cases a wider zone is necessary to protect fisheries resources. Additional research is needed from which more site-specific prescriptions can be developed.



DISCUSSION

Research conducted under the auspices of the Alaska Working Group on Cooperative Forestry/Fisheries Research has confirmed that riparian vegetation is an important and essential component of anadromous salmonid habitat. This streamside zone is required to sustain optimum egg-to-fry survival, smolt yield, and adult returns. Riparian vegetation left along streams protects salmonid habitat from the effects of clearcutting by maintaining the natural temperature regime, maintaining channel stability, maintaining undercut banks and instream habitat, preventing erosion and sedimentation, providing cover for winter habitat, and permitting adequate sunlight for food production. In essence, riparian vegetation controls and maintains the natural integrity of a stream's characteristics which have evolved in harmony with the development of the old-growth forest for hundreds of years.

Clearcutting without retention of an adequate zone of riparian vegetation can affect habitat, which in turn affects fish production on both a short- and long-term basis. Short-term (1-20 years) impacts can result from increased sedimentation, altered temperature and flow regimes, and reduced quantity of large woody debris. Long-term impacts (20-100 years) can result from closure of the second-growth canopy, reduced input of large woody debris, changes in stream channel morphology, and continued sedimentation from bank erosion, landslides, and roads.

Properly designed buffer zones are an effective management tool for protecting riparian vegetation and can help prevent both short- and long-term adverse impacts on fish and wildlife habitat. Current research by NMFS shows that nearly all of the large woody debris in streams of southeastern Alaska originates from trees within 30 meters (100 feet) of the streambank. Other research shows that canopy shading necessary to maintain natural stream temperature regimes also comes from trees within 30 meters of the stream. These two factors, large woody debris and canopy cover, control stream characteristics essential to salmonid habitat. They also are directly related to the quantity and quality of trees within the riparian zone. There are indications that situations exist where a 30-meter buffer zone is not adequate. There are also special situations in which removal of riparian vegetation is considered a fishery habitat management option to open the forest canopy. In the absence of definitive research findings, buffer zone width in these areas should be set through an interdisciplinary team approach. Team members should take into account wind-firmness, topography, values of fisheries and wildlife habitat, and other resource uses.

Special techniques for selective harvesting of timber within the prescribed boundaries of the buffer zone may be beneficial in some cases for enhancing aquatic productivity; however, prescriptions for stream-side harvest of timber are premature pending research to determine whether there might be long-term impacts on fish habitat.

APPROVED BY:

Robert W. Mcvey
ROBERT W. MCVEY, Director, Alaska Region

Date:

5/3/88

REFERENCES

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Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

May 6, 1989

The Honorable Cliff Davidson & The Honorable Curt Menard
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Sirs:

The Southeast Alaska Conservation Council (SEACC) would like to go on record supporting HB 331 which revises the current Forest Practices Act.

WE MUST MAKE IT CLEAR THAT WE SUPPORT THIS LEGISLATION ONLY IF NO CHANGES ARE MADE, WHATSOEVER. Your choice today is to either bow to the last minute demands of the Alaska Loggers Assoc., or to approve HB 331 intact.

HB 331 is the result of months of arduous work by many diverse parties to solve major problems in State forest practices law through the consensus process. SEACC's board and staff have invested an enormous amount of time and energy in making this consensus work. Consensus development was based on the trust that the final result would be supported by all participating parties and passed by the Alaska Legislature unamended. As with all compromises, no one is entirely happy with everything, but at this point we believe it represents a workable solution to current management problems.

The health of Alaska's commercial fisheries is of utmost importance. Therefore, federal land management agencies who manage the public trust of land, river systems and habitat, should grant the same level of riparian habitat protection as established for State lands in HB 331.

This is especially critical to residents of Southeast Alaska where 90% of the salmon harvested in the region are spawned and reared in Tongass National Forest watersheds. We should not put these fisheries at risk.

SEACC, along with 5 other groups, endorsed this point in the Steering Committee meeting on February 13, 1989 by stating that "on all publicly owned lands on all stream types, there will be a minimum no cut buffer strip of 100 meters within a 300 meter RMZ" (see attachment). The language in HB 331 has drastically reduced the 100 meters to 30 meters, but we are willing to accept that standard as a rock-bottom minimum.

Thank you for your prompt scheduling of this important legislation.

Sincerely,

Bart Koehler/Executive Director

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1798
PHONE: (907) 465-2400

May 6, 1989

The Honorable Cliff Davidson
The Honorable Curt Menard
Co-Chairs, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representatives Davidson and Menard:

The bill before you represents substantial changes to the Alaska Forest Practices Act. It is the result of almost six months of work by representatives of the timber industry, the state resource agencies, and fishing and environmental groups. I believe that this bill, as a result of hard work and compromises by all interest groups, will allow Alaska's forest practices program to both meet the needs of Alaska's growing timber industry and achieve appropriate protection for public resources such as fish habitat and water quality. I would like to take this opportunity to explain the consensus mediation process used to arrive at this bill--the Alaska Forest Practices Act Review--and explain the provisions of the bill.

Last year, the Governor directed the state resource agencies to conduct a public review of the Forest Practices Act and to make recommendations for any improvements in the Act, its regulations, and implementation. In order to facilitate an objective and balanced review, a steering committee was formed, including representatives of timber landowners and operators, state agencies, and users of public resources that are affected by forest practices. Because the agencies felt it would be possible to review the state's forest practices program and meet both the needs of the timber industry and resource protection needs for fish habitat and water quality, the committee attempted to operate by unanimous consent. This approach ensured that the committee's decisions respected all interests.

The bill before you achieves near-total consensus; it has the support of representatives of Native corporations, boroughs, fishing groups, and environmental groups. There have been questions raised about a provision of the bill that might affect harvest on federal land through the Alaska Coastal Management

Representative Davidson
Representative Menard

- 2 -

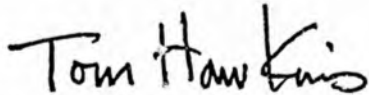
May 6, 1989

Program. (For information on that section, please see the attached bill analysis, Section 27.) Agency staff will be available during the committee hearing to discuss any questions raised on this issue.

The committee's long and difficult work was not completed until early this week, and so the bill could not be introduced earlier. However, because of the importance of the bill and the extraordinary and fragile achievement of achieving near-total consensus on these controversial issues, I urge your prompt and favorable consideration.

Attached is an analysis of the bill.

Sincerely,



for Lennie Gorsuch
Commissioner

Attachment

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
HB 331

May 3, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to forest resources and practices and to the management of forest land. This bill would make substantial changes in the Alaska Forest Practices Act to meet the needs of a growing and viable timber industry in Alaska while ensuring the protection of public forest resources, including fish habitat and water quality.

Last year, I directed the state resource agencies to conduct a public review of the Forest Practices Act and to make recommendations for improvement in the Act, its regulations, and implementation. In order to facilitate an objective and balanced review, a steering committee was formed including representatives of timber land owners and operators, state agencies, and users of public resources that are affected by forest practices. Because I felt that it would be possible to review the state's forest practices program and meet both the needs of the state's growing timber industry while achieving appropriate protection for public forest resources, the committee attempted to operate by unanimous consent. This approach ensured that the committee's decisions respected all interests.

The bill provides for a streamside management program that strikes a fair balance between the needs of the timber industry and those of fish habitat and water quality protection. It provides for significant timber harvest while providing appropriate protection for public resources. Riparian standards for timber harvest differ depending upon land ownership, stream type, and region. For example, on private land in southeast Alaska, streamside areas of up to 30 meters will be managed for the protection of water quality and fish habitat, although timber operators will not be required to leave more than five percent of their timber volume for this purpose. In this way, strong resource protection exists without requiring any one private owner to

shoulder an undue portion of the resource protection costs.

The bill provides an improved process for efficient and detailed review of timber harvest plans. This efficient review allows the timber industry to quickly respond to changing timber markets, but ensures that harvest operations conform to forest practice standards and regulations. To coordinate overlapping agency jurisdiction, the provisions of the bill and the regulations will serve, with the approval of the commissioner of environmental conservation, as the forest practice standards for the Department of Environmental Conservation's program to control nonpoint source pollution. Except for activities subject to AS 16.05.840 or AS 16.05.870, the regulations will also serve as the upland fish habitat protection for timber harvest activities.

A system of coordination between state agencies with enforcement authority over timber operations is established to ensure consistent and non-duplicative action. The Department of Natural Resources would have additional enforcement authority, including the authority to issue stop-work orders, to impose civil and criminal penalties, and to issue remedial orders to correct damage resulting from the violation of forest practices standards. The administrative enforcement process is simplified by providing for hearings to be conducted by an employee of the Department of Natural Resources with appeals to the commissioner.

An additional planning process would be required under the bill before state timber sales. The additional planning will improve public review and will require the state to plan timber harvests that fully integrate resource protection into the sale design. The department would also be required to annually prepare a five-year schedule of proposed timber sales for state land. Except for small sales and emergencies such as salvage, a proposed sale would have to appear on the two five-year schedules preceding the sale. The five-year schedule will inform the public and the timber industry of the state's long-term plans.

Finally, the Board of Forestry would be restructured to a smaller, more balanced membership. This balanced board would provide a forum for representatives of affected interests to discuss and resolve forestry issues before they become divisive. The board has the authority to provide advice concerning research and implementation of the Forest Practices Act and regulations. The board would include a member or representative of a fishing organization, a Native corporation, an environmental organization, and a forest industry trade association as well as a professional fish or wildlife biologist and a professional forester.

Drafts of this bill have been discussed extensively by the members of the Forest Practices Act Steering Committee and with other representatives of the timber industry, environ-

mental groups, and fishing organizations. The bill is the product of discussion and compromise to meet the major concerns of all those affected by its provisions.

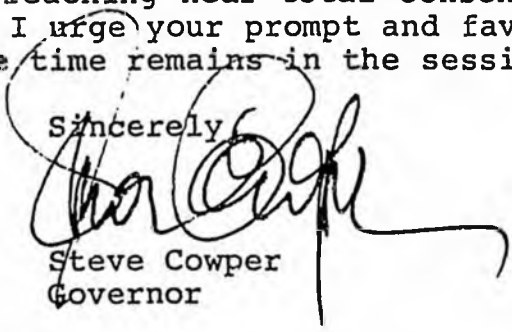
The bill I am transmitting achieves near consensus; it has the support of all but one of the steering committee members. It is supported by representatives of Native corporations, boroughs, fishing groups, and environmental groups but not by the Alaska Loggers Association (ALA).

The ALA objects to a provision of the bill that the association believes would affect harvest on federal land through the Alaska Coastal Management Program. AS 41.17.900(b), in the current law, requires federal harvest to be consistent with the Alaska Forest Practices Act. The bill proposes to amend the law to ensure that the general level of resource protection must be consistent, but that the federal harvest need not follow the specific provisions of that Act. The ALA still fears that this amendment might disrupt an orderly federal planning process that provides sufficient protection.

I realize that it is late in the session for introducing a bill, however, the committee's long and difficult work was not completed until early this week. I felt that it was important to allow the committee to conclude its work and was therefore unable to introduce this bill earlier in the session.

Because of the importance of the bill, and the extraordinary and fragile achievement of reaching near-total consensus on these controversial issues, I urge your prompt and favorable consideration in what little time remains in the session.

Sincerely,



Steve Cowper
Governor

★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907/452-4761

May 4, 1989

The Honorable Steve Cowper
Governor, State of Alaska
PO Box A
Juneau, Alaska 99811

Dear Governor Cowper,

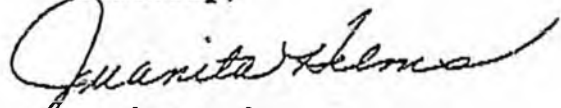
I am writing in support of introduction and passage of the Alaska Forest Practices Act revision. The intent of this legislation has been painstakingly hammered out over the past months by the Forest Practices Review Committee. The committee had representation from all groups interested in the Management of Timber and other resources, which are found in, or depend on forest ecosystems.

My support for this legislation is based on its impact on the Forest Resources within the Fairbanks North Star Borough. I further believe that it is important to preserve the work that has gone into arriving at the agreements which are the core of the revision legislation.

Throughout the forest practices revision process, the various boroughs have been provided with representation in the form of John Duffy/Ted Smith who are from the Mat-Su Borough, and who consulted with us regularly as the process went through. I do feel that there are some areas where further research is necessary to determine what protection measures are really necessary for the protection of Fish and Wildlife habitats. In spite of these areas where questions remain, the legislation is a step in the right direction, and provides the framework for further refinements through operation of the Board of Forestry.

I would appreciate your support of this legislation.

Sincerely,

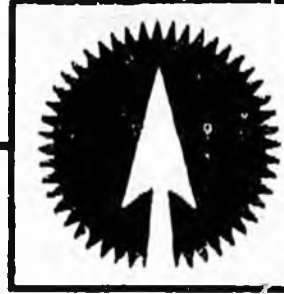


Juanita Helms, Mayor
Fairbanks North Star Borough

cc: Lennie Gorsuch, Commissioner
Department of Natural Resources

Bob Loeffler, FPA Coordinator
Department of Natural Resources

Alaska Loggers Association, Inc.



111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-5114

May 3, 1989

The Honorable Curt Menard
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Menard:

The Alaska Loggers Association (ALA) is disappointed to learn that a state forest practices bill has been introduced by the Governor that does not prevent the application of the state forest practices to federal land through the consistency provisions of the State Coastal Zone Management Act. This is distressing because at the onset of the forest practices revision process, the ALA was advised that the process would move only by consensus agreement. This was the mechanism which was designed to cause negotiations to continue to resolution or stalemate. We were not aware that a stalemate had been reached until today. Indeed, as late as Sunday, April 30, we were still discussing alternative language with the Division of Governmental Coordination that might resolve one of the major problems which the Alaska Loggers Association has with the legislation, which had been presented to the Steering Committee.

The second reason why the state action is distressing is that it had been agreed going into this process that the State Forest Practices Act was to have no impact on federal land. Indeed, there were some within the Department of Natural Resources who agreed that the ALA should not even be included on the Steering Committee because there was no intent to impact federal land.

In order not to impact federal land, several positive steps needed to be taken in the legislation. Two weeks before the negotiations among the members of the Steering Committee ended, the legislation was

SERVING ALASKA'S TIMBER INDUSTRY

Alaska Loggers Association, Inc.

produced and the Alaska Loggers Association learned that the State Forest Practices Act would apply to federal land through the consistency provisions of the Coastal Zone Management Act. We immediately raised the concern in an effort to find a resolution satisfactory to all sides. The ALA proposed language, the Division of Governmental Coordination found unacceptable. At that point, a second proposal was made based upon discussions between the ALA's attorney, a member of the Division of the Governmental Coordination staff and the Attorney General's office. This proposal, as we said earlier, was also under discussion through Sunday, April 30th.

Attached to this letter is our last proposal for legislation solving the Coastal Zone problem from the ALA's point of view. We urge that legislation not go forward in this session of the Legislature so that the consistency problem and other problems can be taken care of between the sessions of the Legislature in an orderly way. We pledge to work to resolve this issue with the Governor's office, the Department of Natural Resources and the Consensus Group Steering Committee in the meantime. If legislation does go forward, please consider the attachment as our request for an amendment.

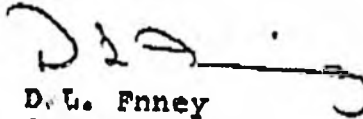
Another major issue of concern has to do with management on state land. The 30 meter no cut zone plus due deference to the Alaska Department of Fish and Game (ADF&G) for the next 60 meters is unacceptable to the ALA. While we understand that there may be changes in the language submitted by the Governor, we really need time to review those changes and to determine their significance.

In the event that the legislation introduced today is delayed until the next session as we are requesting, we would also urge that the Habitat Regulations from the ADF&G and/or Section 31⁰ regulations under the Clean Water Act by DEC and ADF&G be delayed through your good offices pending a resolution in the next session of the Legislature of the key issues facing the state through the State Forest Practices Act.

Alaska Loggers Association, Inc.

We appreciate your courtesy on this matter.
Please let me know if you have any questions.

Sincerely,



D. U. Finney
General Manager

DLF:es

cc Commissioner Lenny Gorsuch
Denby Lloyd

SENT BY: RONEA/JUNEAU

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**SECTION 205. STANDARDS FOR DETERMINING
THE CONSISTENCY OF TIMBER HARVESTING
AND PROCESSING ON A NATIONAL FOREST LAND**

a. The Legislature declares that applicable federal land and resource management plans promulgated under the Forest and Rangeland Renewable Resources Planning Act of 1976, as amended (16 U.S.C. Sec. 1601 et. seq.), meet or exceed State standards for the protection of forest resources.

b. For purposes of 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L.-92-583) standards incorporated in applicable federal land and resource management plans promulgated pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, (16 U.S.C. 1601 et. seq. shall serve as the forest management standards and policies for activities on National Forest Lands so long as those standards and policies meet or exceed the following standards:

(i) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(ii) free passage and movement of fish in coastal water must be allowed; and

(iii) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, minimize adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

(iv) onshore storage of logs must be encouraged;

(v) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(vi) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are

returned to their pre-road natural drainage patterns (put-to-bed); and

(vii) stream crossings, including bridges and culverts, must be designed to withstand seasonal high water and flooding, and must allow the free passage and movement of fish.

Whitestone Logging, Inc.

Box 389
Hoonah, Alaska 99829

May 5, 1989

Senator Bettye Fahrenkamp
Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp,

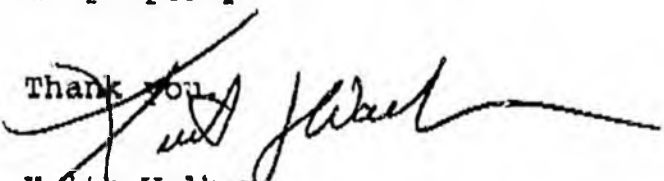
I am starting to believe that there is something seriously wrong with the Cowper administration. The State is cutting out jobs and money for social programs on one hand while promoting the revision of the Forest Practices Act that would necessitate the hiring of a large number of fish biologists.

The fish biologists provided the information to the Governor via their clones in the environmental movement that there was a greater need for fish biologists. After reading the proposed legislation it would seem that the whole purpose of a forest is to produce fish.

The most important concept that this Act should address is the protection of the soil. If the soil is protected by proper placement of roads and structures, by the use of sound logging systems and by proper bank stabilization and forest regeneration then clean water and good fish habitat are assured. The purity of the water from a managed forest is an indicator of soil health.

I feel that this Act revision is a hasty and ill conceived piece of legislation, imported from the Lower 48, that is poorly suited to Alaskan conditions. I would request that you defer this legislation until the next session so that I may have time to dismember it properly.

Thank you


Keith Walker
Forester

cc: Peter Goll
Curt Menard
Cliff Davidson

Time

Box 020241
Juneau, Alaska 99802

May 5, 1989

Cliff Davidson
Honorable ~~Betty Farenkamp~~
Hans Senate Resources Committee
Alaska Legislature
Juneau, Alaska

R. Farnsworth Davidson
Dear ~~Senator Farenkamp~~:

HB 331
For the Record ~~SB-317~~

I endorse speedy committee approval and passage of this Forest Practices Bill. It is the result of compromise and mediation between representatives of all effected parties.

In my view, substantial damage occurs to salmon streams without the buffer strip provision contained in the bill. Mud slides into creeks after logging killing eggs and small fry. Exhibit 1, a Fish and Game memo, documents 47 landslides in Southeast alone last November. These slides occur during heavy rains in four year cycles. Without the buffer, mud damages our salmon resource.

Fish kills result from high summer temperature when the umbrella of trees are cut. Exhibit 2 is a list the Forest Service compiled last year showing up to 30,000 estimated salmon kills resulting from the high temperatures which result when we cut trees next to streams. This SB 317 will reduce the effects of clearcutting.

Staff monitoring is not done adequately. I have discovered the state has no turbidity meters which are instruments for measuring how much mud is in the water; like tankers without tug escorts, logging without monitoring is an invitation to destruction of a priceless living resource which the oil spill should have made everyone aware can no longer be accepted. Exhibit 3 gives but one example of roads build directly into salmon streams in 1988. As Exhibit 4 from Fish and Game makes clear, "policies regarding streams be inadequate for stream protection." As we must do with oil, so we must also do with timber. We must error on the side of caution and create buffers which eliminate some need for monitoring. As Exhibit 5 shows, almost three years elapsed between a promise of the Forest Service and today. I swear, no consistent monitoring for State Water quality regulation occurs on salmon streams in Southeast Alaska. The legislature has provided not enough money and no staff are regularly assigned to monitor water quality with instruments.

Please pass out today ~~SB 317~~

[Signature]
Alan Stein
fisherman

To: Gary Gunstrom
Regional Research Supervisor
Commercial Fisheries
Juneau, Region I

Date: January 6, 1989

From: John Edgington
Land Use Project
Commercial Fisheries
Petersburg

Subject: Landslides

Observations of landslide areas stopped abruptly with the addition of new snow and poor flying weather. Reports of landslides will probably continue again with the start-up of spring activities.

The following areas and numbers of landslides have been reported:

<u>Area</u>	<u>Landslides</u>	
Lake St. Nicholas	3	
Rush Creek	1	* (tributary of Goose Cr.)
Ratz Harbor	1	* (more than one)
Buster Creek	1	
Deer Bay	2	
Natzuhini River	3	*
Big Salt	1	
Long Island	2	
Fubar Creek	1	
Anita Bay	1	
Mitkof Island	4	
Kupreanof Island	2	
S. Kulu Island		
Elena Bay	1	
W. Thetis Bay	1	*
Gedny Harbor	1	
Crowley Bight	1	
Howard Cove	1	
N.W. Affleck Creek	1	
Three Mile Arm	1	
E. Port Camden	1	
N. Kulu Island		
Saginaw Creek	7	*
Security Bay East	3	*
Saginaw Bay East	1	*
Kadake Creek	1	*
Rowan Bay	1	
Muddy River	1	(Thomas Bay)
Pavlof Creek	1	*
Kadashan River	1	*
Kennel Creek	1	*
Kelsall River	1	*

Total 47 12 * = Salmon Stream Influence

Exhibit 1

Fish Kill listing

Wanapum / 126 kills

new	old	Stream name	stream no.	est mort	peak enc	rep. yrs	notes
1	13	Vu Inlet Cr	101-23-19	2000	24000	1977	.
2	14	W. Cove	101-30-09	<500	6000	1977	.
3	15	Keta River	101-30-30	<500	24000	1977	.
4	16	Cabin/Bartholomew Cr	101-55-09	<500	20000	1977	.
5	12	Traitors River	101-90-29	15000	108100-'77	1963.77	.
6	17	Naha River	101-90-50	20000	90000	1977	.
7	18	Port Stewart Cr	101-90-92	7000	17000	1977	.
8	19	Sunny Cr	102-40-87	1500	50000	1977	.
9	57	Harris River	102-60-82	.	.	1986	12.000 pinks
10	11	Lower Karta River	102-60-97	.	.	1982	.
11	20	Nutkwa Cr	103-21-08	500-1000	17600	1977	.
12	03	Shinaku Cr	103-60-13	.	.	1987	.
13	04	Steelhead Cr	103-60-29	.	.	1987	.
14	05	Black Bear Cr	103-60-31	.	.	1987	.
66	06	Port St Nicholas	103-60-59	.	.	1987	.
70	56	Trocadero Bay	103-60-75/77	.	.	1986	n. and s. streams 8% of run
15	21	Sarheen Cr	103-90-04	1000	35000	1977	.
16	22	Naukati Cr	103-90-26	500	5000	1977	.
17	01	Staney Cr	103-90-30	2000-1977	60200-'77	1977.79.87	.
18	02	Sheheen Cr	103-90-42	500-1000	50000-'77	1977.87	.
19	23	Kell Bay Cr	105-10-32	2400	13800	1977.87	87:506
20	24	Tunehean Cr	105-32-04	500-1000	6600	1977.79	.
21	51	Irish Cr	105-32-12	.	.	1979	.
22	25	Big John Cr	105-32-16	400	1000	1977.79	.
23	26	Calder Cr	105-42-05	1500	31520	1977	87:600
24	27	El Capitan Cr	105-42-09	5000	45000	1977	87:200
25	28	Shipley Bay	105-43	500-1000	9000	1977.87	87:400
26	50	Long Cr	105-43-06	25 coho	.	1974	reported by John Edgington
27	29	Falle Cr	106-21-04	3000	29500	1977.79	.
28	30	Trout Cr	106-21-04	105	6925	1977	.
29	31	Mosman Cr	106-22-08	1500-200	37500	1977	.
30	32	Burnett Inlet	106-22-14	unknown	3000	1977	.
31	33	Navy Cr	106-22-16	8000	29000	1977.79	.
32	08	Porcupine Cr	106-30-10	300	22000	1981.79	79:500 out of 50000
33	34	Big (108) Cr	106-30-80	500	34800	1977	.
34	35	Exchange Cove	106-30-85	57	9275	1977	.
35	07	Anan Cr	107-20-01	10000	146000-77	1951.77.79	more yrs? FS fish ladder 1979
36	36	Canoe Pass	107-20-20	200	13150	1977	.
37	37	Menafae Cr	107-20-30	1500	42000	1977	.
38	38	Fool's Inlet	107-20-70	1000	16400	1977	.
39	39	Thoms Cr	107-30-30	2500	27000	1977.79	.
40	09	Snake Cr(Olive Cove)	107-30-70	30000	63000-1977	1949.77	.
69	55	Blind Slough	108-30-45	.	.	1987	fr. Don Cornelius-juv-dried up
41	10	Sashin Cr	109-10-09	.	.	1981	.
42	59	Tyee Cr east	109-30-16	1140	.	1987	.
43	52	Kadake Cr	109-42-30	3400	.	1987	obs Lonnie Anderson. fisherman
44	60	Saginaw Bay S Rd	109-44-37	3300	.	1987	.
45	61	Saginaw Cr	109-44-39	2400	.	1987	.
67	53	Band Cove	109-45-43	5-600	.	1987	.
68	54	Washington Bay	109-51-07	2-300	.	1987	.
46	40	Rowan Bay 1	109-52-07	400	11600	1977	.
47	41	Rowan Bay 2	109-52-08	2450	8733	1977	.
48	42	Alacks Cr	109-62-13	1870	27500	1977.87	87:13500.100 chum
49	43	Sample Cr	109-62-14	360	22400	1977	.
50	44	Petrof Bay East Arm	109-62-20	1385	4000	1977	.
51	45	Petrof Bay head	109-62-22	unknown	4200	1977	.

*EXHIBIT 2
logged.*

MEMORANDUM

State of Alaska

TO: Jack Gustafson
Area Habitat Biologist
Habitat Division
Department of Fish and Game
Ketchikan

DATE: November 9, 1988

FILE NO:

TELEPHONE NO: 755-2331

FROM: Glenn Freeman *G.F. Freeman*
Fisheries Biologist
Department of Fish and Game
Habitat Division
Klawock

SUBJECT: Field Inspection of
Forest Service Rooding/
Logging Activities at
Rush Peak

On November 3, 1988 an interagency field inspection was conducted by U. S. Forest Service and Alaska Department of Fish and Game staff in the upper Thorne River drainage, near Rush Peak. The following individuals were present during the inspection: Debbie Norton, Acting Thorne Bay District Ranger; Vince Harke, Biological Technician; Bill Sills and Ken Methvin, Engineers from the Ketchikan F. S. Supervisor's Office; and myself. The purpose of this inspection was to document existing and potential impacts adjacent to and within Rush Creek, cataloged anadromous stream #102-70-10580-2017-3010-4018, as caused by approved Forest Service rooding and logging activities.

Perhaps a letter dated March 6, 1987 from John Erickson, Fish and Wildlife Staff Officer and Biologist for Thorne Bay Ranger District (at that time), to the District Ranger best summarizes the district's fisheries staff feelings regarding the Rush Creek work. In the second and third paragraphs of this letter Mr. Erickson stated, "Because of the quality of this habitat and the high potential impacts associated with this proposed road construction I recommend that another location be found for the road or delete the road totally from the area. Possible impacts are channel construction, siltation of spawning and rearing habitat and mass wasting into the creek."

Road 3013-200 was constructed during September 1988 parallel to upper Rush Creek, above Rush Lake, in sections of steep terrain. Of particular concern is road construction in a steep section approximately 0.5 miles north of the new bridge crossing over Rush Creek. The road was constructed to within approximately 30 feet of Rush Creek in this steep area where a natural slide had already been documented by fisheries staff at Thorne Bay Ranger District. Material from the natural slide appeared to extend just to the edge of the stream channel. Additional overburden approximately 40 feet in width slid downslope from an origin immediately adjacent to the new road, atop and slightly upstream of portions of the natural slide and into Rush Creek. Forest Service personnel would not or could not comment on the date(s) of the roadside slide. Large materials introduced into the stream channel by the

Exhibit 3

slides prior to this inspection did not appear to significantly alter the normal stream flow at this site. However, the upper slide appears active and there appears to be a high probability that additional overburden will continue to impact the stream channel. Road stability in this area is also a major concern. Subsurface runoff was observed atop bedrock on the upslope of the road, at the site of the recent slide. Road ditching improvements appeared to be necessary to reduce erosion potential in this stretch. Excavated materials from roading activity were endhauled to the vicinity of a rock pit located approximately one mile north of the slides, along the 3013-200 Road. Vegetative slash covered the area exposed by the latest slide. Grass seed was apparently not spread atop soils exposed in conjunction with this roading project.

A 70-foot Hamilton metal bridge was installed on about October 1, 1988 across Rush Creek near the end of the 3013-200 Road, approximately 0.5 miles south of the slides. Prior to the bridge, the stream had a main channel approximately 33 feet wide along the east bank and two smaller side channels. Seemingly every fisheries consideration was ignored at this stream crossing. Heavy equipment crossings, instream work, and bridge installation all occurred well outside the requested timing window of May 15-August 15 set by Forest Service fisheries staff. The high water stream channel at the bridge crossing was effectively narrowed from a pre-project (i.e., natural) width of 117 feet to approximately 35 feet. The new 35 foot "stream width" includes a 72 inch CMP culvert which was installed to accommodate the middle side channel, the latter not discernible during this inspection. Road fill displaced the remaining 82+ feet of original stream width at the stream crossing. Thus, the side channel along the west stream bank was completely blocked by road fill. The blocked side channel flowed during normal conditions prior to bridge installation, according to Vince Harke. This side channel appears to have provided high quality coho rearing habitat prior to the road crossing. Two juvenile salmonids, apparently coho, were observed near the head end of the blocked side channel. Installation of a CMP should be considered during the window period to restore flows in this side channel if the bridge may not be removed for several years. The immediate vicinity of Rush Creek at the crossing site was characterized by potentially high quality coho spawning gravels. On an October 13 fisheries survey, Vince said he observed active coho spawning immediately upstream and downstream of the bridge. Specifically, he observed 14 live, spawning adult coho and 40 completed redds along the portion of Rush Creek upstream of Rush Lake. Fisheries staff (FS) were present but were not notified of the bridge work outside the identified timing window. The decision to do this work was reportedly that of the District Ranger.

* XXX



November 9, 1988

Ken Methvin and Bill Sills stated that an attempt was made by the contractor to bridge heavy equipment on logs above the stream but that the logs were actually ground on the streambed upon crossing. Ken said that he recommended the use of a 15 to 20 foot diameter CMP culvert at the stream crossing rather than the "maximum width" Hamilton bridge which was installed. Debbie Norton inquired what was to be done with the road fill in the channel when the bridge is pulled. I suggested this decision should be made by fisheries staff at a later date and that such work be done during the window period.

Road construction was completed along the 3013-225 Road up to the first stream, a resident fish tributary some 600 feet above the confluence at Rush Creek. The contractor was on hand at this site to express his interest in completing the stream crossing and the remainder of the road. Upon discussion of fisheries concerns to protect downstream water quality and limit cumulative impacts to Rush Creek, Debbie denied the contractor's request. Road 3013-220 parallels Rush Creek north from the 3013-200 Road intersection along the east stream bank. Road construction was completed to a rock pit above and adjacent to Rush Creek, opposite from the slides approximately 0.5 miles from the 3013-200 Road intersection. An additional 0.5 miles of the 3013-220 Road is proposed to access proposed Unit 597-32. The completed portion of this road crossed about five small water quality tributaries of Rush Creek. Small CMP culverts were installed at each road crossing. Timber within portions of Unit 597-18 on both sides of the road were felled prior to this inspection. The rock pit appears to be located only 200-300 feet upslope from Rush Creek. Water quality problems associated with the rock pit have resulted in impacts to Rush Creek as noted in a Forest Service memo dated October 27, 1988.

In summary, road design and construction timing of the 3013-200 Road system was a disaster from a fisheries and water quality standpoint. Future monitoring should be conducted to address existing and potential problems associated with the slides, stream channel changes, LOD and debris transport at the constricted bridge crossing, and cumulative water quality impacts to Rush Creek.

Copies of available Forest Service memos and correspondence regarding the Rush Creek area are attached for additional information.

cc: Steve Hoffman, Area Management Biologist, Sport Fish Division, Ketchikan

Frank Rue
Director
Habitat Division

February 10, 1989

465-4290

Weekly Report
2/6 - 2/10

Richard D. Reed
Regional Supervisor
Habitat Division

Items for the Governor's Report: none

Items for the Bulletin: none

Items for the Commissioner: none

Items for the Director:

1. Forest Service: With the occurrence of several recent events it is becoming more evident that several FS policies regarding streams may be inadequate for the protection of fisheries habitat. These are chronic-type problems which need to be resolved so that suitable habitat protection standards are automatic and large amounts of staff field time are not consumed having to attempt to address each new impact that arises. These problems include, but are not limited to, inadequate stream crossing designs, the placement of culverts in spawning habitat, the replacement of bridges with CMPAs, ignoring construction timing windows, not following the correct construction timing window for the species present, blasting streambanks in haphazard attempts to create rearing habitat, not following the recommendations of FS biologists, restraining the limits as to the recommendations which can be made by FS biologists, the claim of loggers that they can fell into cataloged anadromous habitats, provided the trees and limbs are removed within 48 hours, and the perception of District Rangers that they need to consider ADF&G input on these concerns as advisory only and that adherence to stream protection standards are not within the state's authority or responsibility.

Within the last several months, in the Ketchikan area, examples of these problems include a misguided habitat "enhancement" (blasting) project on Ward Creek, road crossing designs which would block fish passage on the Control Lake-Coffman Cove road, an undesirable roading alignment resulting in massive soil failures entering Rush Creek spawning habitat building the Rush Creek

Exhibit 4

stream crossings in spawning habitat without timing (no ADF&G contact), improper timing standards on newly issued contracts, and bridge removals followed by the installations of inadequate permanent culverts. The latest example includes numerous crossing structures in the Lancaster Cove area where the design and construction timing are inadequate for the protection of fisheries resources. It seems that once again the time has arrived to attempt to resolve these concerns collectively, rather than individually.

cc: Region I Staff
A. Ott, Habitat
L. Trasky, Habitat
D. Anderson, Game
R. Bosworth, Subsistence
B. Sele, FRED
F. Gaffney, Sport Fish
S. Marshall, Comm. Fish.



United States
Department of
Agriculture

Forest
Service

Region 10

P.O. Box 21628
Juneau, AK 99802-1628

Reply to: 2600

Date: April 20, 1987

COMMISSIONER'S OFFICE
RECEIVED
APR 21 1987

Mr. Don Collinsworth, Commissioner
Alaska Department of Fish and Game
P.O. Box 3-2000
Juneau, AK 99802

DEPARTMENT OF FISH AND GAME

Don
Dear Mr. Collinsworth:

We have reviewed with interest the long-term cooperative monitoring study proposal by Gary Gunstrom of your Region 1 Commercial Fish Division Staff. It is a very timely suggestion since we are presently examining our monitoring activities in relation to the effectiveness of our aquatic habitat management prescriptions associated with all land management activities, including the expected benefits from our fish habitat improvement structures and treatments. We plan to continue focusing our monitoring efforts in these areas and improve our ability to measure the effectiveness of these practices in achieving our goal of maintaining and improving fish habitat production.

After our analysis of information and funding needs is complete, we will be contacting the Department to discuss the opportunities for solidifying these monitoring efforts into an effective cooperative venture. We expect to have our analysis completed in the near future.

We appreciated receiving Gary's letter.

Sincerely,

PHILIP J. JANIK
Director of Wildlife
and Fisheries Management

040987 1420 WLF 2600 DG



Exhibit 5

MEMORANDUM (Brief Communications)

State of Alaska

TO:	Name <i>Alan Stein</i>	Dept./Div./Sect.
FROM:	Name <i>Gary Gunstrom</i>	Dept./Div./Sect.
SUBJ.:	<i>Phil Davik's reply</i>	Date <i>2/16</i>

Found it! There was never any follow to this.

G.

FPA and Federal Lands

Senate Bill 317 sets specific standards for timber harvest activities on state, municipal and private lands. The bill also states that its specific resource protection provisions, such as riparian management zones defined for private, state and municipal lands, do not apply to timber harvest activities on federal lands. However, the bill proposes that the federal government achieve a level of resource protection commensurate with that provided for on state lands. This would occur as the federal agency, primarily the Forest Service, proceeds with its normal environmental planning process for timber harvest activities. While this measure does create a broad performance test for operations on federal land, the real effect on Forest Service actions is not considered to be significant, given the generally higher federal requirements for environmental protection.

The bill assures that federal lands will not be subject to the specific FPA standards "either directly or for purposes of compliance with the [federal] Coastal Zone Management Act." This statement effectively severs the applicability of the Act's specific standards to National Forests and other federal lands. However, some participants in the FPA discussions wanted to take the point one step further to resolve a long-standing discussion of what specific environmental protection the state can ask the federal government to provide on National Forest lands through the coastal management consistency process.

The FPA discussions did not address federal timber harvest activities in any detail. Therefore, the parties to the consensus decided that the bill was not the appropriate vehicle to include specific environmental protection standards for federal lands, nor address the application of coastal management standards to federal timber harvest activities. Instead, this will be accomplished through a change to the Alaska Coastal Management Program regulation established for timber harvest and processing by the Alaska Coastal Policy Council (CPC). Following enactment of the FPA, the CPC will amend this timber harvest standard as necessary to address lands not covered by the FPA, including federal lands. The CPC will provide for the full involvement of the federal government, industry and public in drafting the new timber harvest standard.

Options for relating to management of federal lands under Forest Practices Act.

Option 1 (Current SB 317/HB 331):

OBJECTIVE: Creates a broad performance test for operation on federal lands, but severs the applicability of specific FPA standards to federal lands.

LANGUAGE AS 41.17.900(b):

The degree of resource protection on federal land shall be no less than that provided for by this chapter for state land. However, the specific provisions of this chapter and its implementing regulations are not applicable to federal land either directly or for purposes of compliance with the Coastal Zone Management Act.

Option 2:

OBJECTIVE: Keep FPA neutral with respect to federal land management.

LANGUAGE AS 41.17.900(b):

The legislature finds that it is in the public interest that the state standards under 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L. 92-583) may be different from the standards for the protection of forest resources under this Act, and the provisions of this chapter and its implementing regulations are not applicable to federal land either directly or for purposes of compliance with the Coastal Zone Management Act.

Option 3:

OBJECTIVE: Establish in statute specific standards for review of federal activities which are distinct from FPA standards and which are based on the prior Coastal Policy Council regulatory standard.

LANGUAGE AS 4.17.900(b):

(1) The legislature finds that it is in the public interest that the standards set forth in subsection (2) be the state standards under 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L. 92-583) even though those standards may be different from the standards for the protection of forest resources under this Act.

(2) For purposes of 16 U.S.C. Sec. 1456(c) (Section 307(c) of the Coastal Zone Management Act of 1972, P.L. 92-583) standards incorporated in applicable federal land and resource management plans promulgated pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, (16 U.S.C. 1601 et. seq.) shall serve as the Alaska Coastal Management Act (Sec. 1 Ch. 108 SLA 1978) timber harvest and processing standard on National Forest Lands so long as those standards and policies meet or exceed the following standards:

(i) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(ii) free passage and movement of fish in coastal water must be assured; and

(iii) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, prevent adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats;

(iv) onshore storage of logs must be encouraged;

(v) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(vi) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage patterns (put-to-bed); and

(vii) stream crossings, including bridges and culverts, must be kept a minimum and designed to withstand seasonal high water and flooding, and must provide for free passage and movement of fish.

City of Tenakee Springs

RESOLUTION 90-12

In the Council
March 22, 1990

Introduced by
Robert Pegues

A RESOLUTION FOR THE CITY OF TENAKEE SPRINGS, ALASKA
SUPPORTING CHANGES IN ALASKA STATUTES TO PROVIDE
MINIMUM 100 FT BUFFERS ALONG ANADROMOUS STREAMS

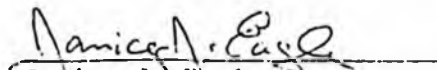
- WHEREAS, the fisheries resource of Southeast Alaska is dependent largely upon the quality of our streams and lakes; and
- WHEREAS, these waters constitute the habitat of the resource which is the life-blood of the commercial fisheries industry, and produce also the stock for the sports and subsistence fisheries; and
- WHEREAS, numerous studies have demonstrated that timber harvest and roading operations affect, often negatively, fisheries habitat; and
- WHEREAS, factors associated with logging practices which can affect the habitat of anadromous and resident fish populations include large organic debris, channel stability, stream temperature, nutrient content, stream flow and sediment; interrelated factors whose total accumulated effects often have the greatest impact; and
- WHEREAS, the 1979 Forest Practices Act does not provide minimum enforceable standards to safeguard the integrity of this critical environment during both planning for logging activities and operation of road building; then
- THEREFORE BE IT RESOLVED by the common council of the City of Tenakee Springs, Alaska to urge the Alaska State Legislature to adopt changes in the statute to provide minimum 100 foot buffer zones on each side of all anadromous streams and their tributaries, and that buffers should consist of the existing, natural undisturbed forest.

ADOPTED 4 YES, 3 ABSENT THIS 22ND DAY OF MARCH 1990



Robert P. Wagner
City Council President
ex officio MAYOR

ATTEST:



Janice J. Eagle
City Clerk

Testimony of Robert G. Loiselle
For The Forest Alliance
House Resources Committee Hearing

HB 331

March 15, 1990

Juneau, Alaska

The Forest Alliance is a broadly constituted organization of forest land owners, manufacturers, loggers and others having commercial and professional interests in the proper management and development of forest lands. The members of the Alliance include all of the major private timber owners in the state of Alaska. The Alliance was formed in late 1989, and has undertaken the special mission of bringing the broad support of the timber industry to the Forest Practices Act, Senate Bill 317 and House Bill 331.

At the beginning of the legislative session, the Forest Practices Act had the general support of the Forest Alliance and its members. We believed that there were only a few points of disagreement between the timber industry and the other interested groups, and that these differences were not insurmountable. As we testified on February 27, a proposal from the United Fishermen of Alaska had been made that very day, and we believed that the proposal could form the basis for agreement on the terms of the Forest Practices Act.

As a result of hard work on the part of the members of the Alliance, the other interested groups, the state agencies, and particularly our moderator, Diane Mayer, we believe that agreement

has been reached upon the terms of a bill that enjoys the support of the Forest Alliance, as well as all of the other interested parties.

This bill incorporates a number of carefully drawn provisions reflecting compromise on a number of issues of great importance to the interested parties. In our view, it can establish a new framework for environmentally sound development of Alaska's forested lands. We urge you to adopt this bill, and the amendments agreed by the interested parties, without significant change.

As a result of the management prescriptions embodied in the act, the members of the Alliance will contribute valuable resources, in the form of merchantable timber left standing and in the form of increased operating costs, to the protection of public resources. The Alliance has agreed to a provision of the act that makes the new riparian standards or their substantial equivalent, effective upon passage of the act, in order that these new protective measures be implemented as soon as possible. In fact, many Alliance members are already voluntarily providing buffer zones and a number of major land owners have put strict buffer provisions in their timber sale agreements.

Wise development and protection of forested lands will require the commitment of significant state resources to develop final regulations implementing the Forest Practices Act and to make available the expertise of the state's foresters, biologists, soil scientists and water quality specialists. In that regard, the members of the Forest Alliance believe that adequate funding of the act, as proposed by the state agencies, is essential. We ask that

you give special consideration to these fiscal requirements and that you provide the funding necessary to carry out the purposes of the act.

Having stated the support of the Alliance for the act, I want to turn to three of the provisions of the bill for special comment.

Proposed AS 41.17.116(1), as set out in the proposed amendment, would impose a 66-foot no-harvest zone along virtually all anadromous fish streams that flow through private lands. The members of the Alliance have accepted this requirement on the understanding that appropriate relief from this strict prescription will be afforded under the variations provision, proposed AS 41.17.087. The proposed new subsection (B), we believe, will require the commissioner to adopt regulations providing for the more or less routine agreement to variations in the riparian no-harvest requirement in certain cases. These cases are those where measures other than the full 66-foot no-harvest zone would provide for effective protection of fish habitat. We also expect that variances will be granted to permit such things as hanging logging rigging in the buffer zones or the cutting of a few trees for narrow yarding corridors to permit logs to be brought through the zone, as long as they are suspended and do no damage to the zone. This technique permits road building to be minimized, a result that all parties find desirable. And clearly, the road construction across the buffer zones will be permitted as long as the disruption to the zone is minimized, particularly by making the crossings as perpendicular to the zone as possible.

Proposed AS 41.17.119 changes the riparian standard for other public land from essentially a 100 foot conditional harvest zone to a 100 foot no-cut zone. This is the one issue that the working group was not able to reach agreement on. The representative of the Mat-Su Borough, an Alliance member, will be asking for support for more local control on this issue than is provided for in the bill. We are confident that you will be able to find an equitable solution to this one remaining issue.

We note that Section 27 of the bill continues in effect a provision that dictates the degree of resource protection on federal lands. We question the effectiveness under the federal constitution of any state law that attempts to regulate federal lands, except in a manner allowed by federal law, such as the Coastal Zone Management Act. The provisions of proposed AS 41.17.900(b) (1), as currently written, would not, we believe, pass constitutional scrutiny. Alliance members whose activities may be affected by this provision will likely challenge its constitutionality if it is ever applied to regulate directly timber harvest on federal lands.

In conclusion, let me again state that the Forest Alliance supports SB 317/HB 331 with the amendments being proposed. We ask that you adopt the bill without significant further amendment.

I would be happy at this time to respond to any questions you may have.



UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106
Juneau, AK 99801
907-586-2820

March 28, 1990

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kona Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Selnere Association
Seafood Producers Cooperative
Southeast Alaska Selnere
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association

The Honorable Dorothy Jones, Mayor
Matanuska/Susitna Borough
PO Box 1603
Palmer, AK 99645

Dear Mayor Jones:

The United Fishermen of Alaska and the Southeast Alaska Conservation Council have been very involved in a new Forest Practices Act for the State of Alaska.

Your representative, Ted Smith, has been not only diligent, but fair and forth right in his presentation of your municipal concerns. We would like to take this opportunity to address and clarify the two points that were not resolved to your apparent satisfaction.

State Buffer Requirement

The buffer requirements for state lands include a 200 foot zone that is maintained for important fish and wildlife habitat protection. It was not our intent, nor is it our wish, to blindly preclude timber harvest in this zone. At the request of Mr. Smith, we recently inserted the phrase "timber harvest may occur . . ." in that zone. This is the only place in this act that addresses the important habitat needs for wildlife. But, as you are well aware, some of the best habitat is created by logging.

Mayor Dorothy Jones

March 28, 1990

Page 2

Municipal Land Buffers

We feel that the difference between the "green book" standard and the new standard of 100 foot no-cut buffers is simply this: through the use of the variance section of the act, and good field work, there will be no net difference. The change occurs when enforcement of regulation efforts are poor. It is very important to fishing groups that the minimum zones exist, so that if field management activity is decreased, there will always be a minimum level of riparian protection.

While we are aware that your borough feels that this is intrusive into the self-determination of borough affairs, we think that the Forest Practices Act provides the framework that fosters cooperation between owners, agencies and users.

Yours sincerely,

Ken Castner
Executive Director, UFA

Steven Kallick
Staff Attorney, SEACC

FOREST PRACTICES ACT TASK FORCE STEERING COMMITTEE

Agency Members

Norman Cohen
Deputy Commissioner
Dept. of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802-2000

Tom Hawkins
Assistant Commissioner
Dept. of Natural Resources
P.O. Box 107005
Anchorage, AK 99510-7005

Amy Kyle
Deputy Commissioner
Dept. of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99811-1800

Jan Caulfield
Coastal Program Coordinator
Div. of Governmental Coordination
P.O. Box AW
Juneau, AK 99811

Gerry Engle, Program Mgr.
Minerals and Forest Products
Division of Business Development
Dept. of Commerce and Economic Development
P.O. Box D
Juneau, AK 99811

Public Members

John Duffy
Planning Director
Matanuska-Susitna Borough
P.O. Box 1608
Palmer, AK 99645

Ted Smith, Assemblyman
Matanuska-Susitna Borough
P.O. Box 1026
Willow, AK 99688

Bob Ellis/Steve Kallick
Southeast Alaska Conservation Council
P.O. Box 021692
Juneau, AK 99802

Pete Islieb
United Fishermen of Alaska
211 4th St., Suite 106
Juneau, AK 99801

Nancy Lethcoe
Prince William Sound Conservation Alliance
Cordova District Fishermen United
Box 1313
Valdez, AK 99686

Bob Loescher
Sealaska Corp.
One Sealaska Plaza
Juneau, AK 99801

Ron Wolfe
Klukwan Forest Products, Inc.
P.O. Box 34659
Juneau, AK 99803-4659

Alan Phipps/Cliff Eames
Susitna Valley Assoc.
Alaska Center for the Environment
700 "H" St., Suite 4
Anchorage, AK 99501

Larry Smith
Southcentral Council of Fish & Game Advisory Committees
Fritz Creek, AK 99603

John Sturgeon
Koncor Forest Products
3501 Denali, Suite 202
Anchorage, AK 99503

George Woodbury, Chairman
Timber Issues Committee
Alaska Loggers Assoc.
111 Stedman, Suite 200
Ketchikan, AK 99901

Others individuals who should get info.

Bob Dick, Director
Division of Forestry
Dept. of Natural Resources
P.O. Box 107005
Anchorage, AK 99510-7005

All members of Senate/House Resources Committees



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Silver Spring, Maryland 20910

JUL 28 1989

Honorable George Miller
 Chairman, Subcommittee on Water,
 Power and Offshore Energy Resources
 Committee on Interior and Insular Affairs
 House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding the amount of commercial timber that would be typically included within a 100-foot or 30-meter streamside buffer zone within the Tongass National Forest.

We believe application of 100-foot or 30-meter buffers protect Alaska's salmon and trout habitat. The timber retained in a buffer for fish habitat should not be viewed as the amount "lost" to the timber industry, but viewed as what is required for fish habitat in the true sense of multiple-use. Salmonid fisheries and timber industries share the forest as a common base for their existence. Retaining a small but critical portion of the forest for the Nation's fisheries seems to us to be an example of wise use and management in its finest sense. We believe these buffers must be maintained for optimum production of fish. A detailed explanation is enclosed.

We look forward to working with the Subcommittee in the future on this or other issues relating to anadromous resources.

Sincerely,

/s/ James W. Brennan

James W. Brennan
 Assistant Administrator
 for Fisheries

Enclosure

cc: F; GCF; LA5-F(2); F/MB(Everett); F/CU(2); LA; F/AKR(Faris);
 F/PR; F/PR3(Risenhoover)
 CONTROL NMFS #11549
 F/PR3:ARisenhoover:427-2325:07/11/89:WPDISK2-MILLER



**NATIONAL MARINE FISHERIES SERVICE
BUFFER STRIP USE AND ESTIMATED TIMBER SUPPLY IMPACTS**

The National Marine Fisheries Service (NMFS), Alaska Region issued a policy recommendation in 1988 for the protection of riparian vegetation stating that 30 m is the minimum width required to provide shade and future sources of large woody debris (LWD) necessary for instream habitat. NMFS' policy recommendation is based on extensive research which indicates that salmonid (trout and salmon) abundance is dependent on habitat derived from and influenced by the old-growth forest adjacent to streams, particularly the canopy for shade and temperature regulation and LWD. The quantity of LWD in these productive streams is high (60-80 pieces per 100 m length of channel) and is directly correlated with the abundance of salmonid habitat. Because the natural depletion rate of LWD resulting from decay, fragmentation, stream export, etc. is relatively high (1-3 percent per year), a continuous supply of wood from the riparian zone is needed to offset the natural loss and maintain salmonid habitat. If these streams are logged without leaving a buffer of at least 30 m to replenish the natural loss of LWD, it is estimated that the level of LWD will be reduced by 70 percent in 100 years. Recovery of LWD to the original pre-harvest amounts from the regeneration of second-growth trees next to the stream is estimated to take about 250 years. Riparian habitat, therefore, is the principal source of salmonid habitat and must be protected in order to maintain Alaska's salmon and trout at optimum production.

The amount of timber "retained for fish habitat protection" (i.e., loss of potential timber for industry) is dependent on the interpretation or definition of anadromous streams and tributaries. NMFS Alaska Region uses the U.S. Forest Service, Alaska Region (FS), Aquatic Habitat Management Unit (AHMU) definition of stream classes which are based on fish use. The FS Stream Classification System (Channel Typing) is also used by NMFS to identify and characterize stream channels from standard 1:1000 aerial photographs and to determine stream class designations. Under the AHMU system, streams are classed according to fish use:

- Class I- Streams with anadromous or high value resident sport fish or with habitat having reasonable enhancement opportunities for anadromous fish;
- Class II- Streams with resident fish populations of limited sport fish value generally occurring in steep gradients or upstream of migration barriers; and

July 3, 1989

The Honorable George Miller
Chairman, Subcommittee on Water, Power
and Offshore Energy Resources
United States House of Representatives
Washington, DC 20515

Dear Congressman Miller:

This is in response to your June 14, 1989 letter requesting an analysis of the protected timber supply impacts of Section 104 of the Tongass Timber Reform Act (H.R. 987, House Report 101-84). I am writing you on my own behalf as a professional fisheries research biologist with about 25 years experience studying the effects of logging on salmonids. An official National Marine Fisheries Service response will follow shortly.

Abundance of salmon and trout in southeast Alaska is directly related to the abundance of pristine habitat. Though southeast Alaska streams are relatively small in size, collectively they contribute to major commercial and recreational fisheries worth over \$100 million annually. Their abundance (2500-3000 cataloged streams), size, and low productivity coupled with the topography of southeast Alaska make them vulnerable to logging impacts. Because of the continued degradation of salmon habitat by logging, the National Marine Fisheries Service (NMFS), Alaska Region issued a Policy in 1988 for Riparian Habitat Protection in order to maintain optimum production of anadromous salmonids.

NMFS's Policy is based on extensive research which shows that salmon and trout abundance is dependent on habitat derived from or influenced by the old-growth forest adjacent to streams, particularly canopy cover and large woody debris (LWD). It is well documented that buffers provide cover and shade and that the canopy density from a 30-meter wide buffer is sufficient to emulate the natural shade and stream temperature characteristics found in a stream in an old-growth forest. LWD is the principal structural feature of forested streams in Alaska and the Pacific Northwest and is responsible for forming the majority of habitat (e.g., pools, undercut banks, instream cover, stable spawning beds, etc.) critical to the production of salmonids. Nearly all of the LWD in streams comes from trees growing within 30 meters (100 feet) of the streambank. The quantity of LWD in these pristine streams is high (60-80 pieces per 100 meters length of channel) and is directly correlated with the abundance of salmonid habitat. Because the natural depletion rate of LWD resulting from decay, fragmentation, stream export, etc. is relatively high (1-3 percent per year), a continuous supply of wood from the riparian zone is needed to offset the natural loss and maintain salmonid habitat. If these streams are logged without leaving a buffer of at least 30 meters

in width to replenish the natural loss of LWD, then we estimate that the level of LWD will be reduced by 70 percent in 100 years. Recovery of LWD to the original pre-logging level from the regeneration of second-growth trees next to the stream would take about 250 years. As a consequence, habitat and salmonid abundance would be significantly and irrevocably damaged over this period of logging and recovery. Because riparian habitat is the source of LWD for salmonid habitat, it must be protected in order to maintain Alaska's salmon and trout at optimum production.

NMFS Policy of advocating the protection of riparian habitat through the retention of buffer zones along both sides of all anadromous fish streams and their tributaries is intended to provide forestry and fisheries managers with a management prescription and tool to protect and maintain salmon and trout habitat during and after timber harvesting. The amount of timber "retained for fish habitat protection" (i.e., impact on timber supply) by applying the Policy is dependent on the correct interpretation of NMFS intention in the statement "... all anadromous fish streams and their tributaries ..." Anadromous fish refers to all five species of Pacific salmon and to all anadromous trout and char. Any natural freshwater body of water (including lakes and ponds) containing anadromous fish or eggs is considered an anadromous stream. Any stream or tributary to an anadromous stream containing resident salmonids (nonanadromous) is considered a tributary. Streams without anadromous or resident salmonids, but which can influence anadromous or resident salmonid habitat downstream is considered a tributary. NMFS uses the United States Forest Service (USFS), Alaska Region, Aquatic Habitat Management Unit (AHMU) definition of Stream Classes based on fish use. The designation of Stream Class to a specific stream, tributary, or reach of stream is determined from the USFS Stream Classification System (Channel Typing) which uses aerial photographs to identify and characterize streams from geomorphological features. Thus, under the AHMU and Stream Classification Systems, streams and tributaries are Classed according to fish use and Channel Typed according to physical features of the stream and location in the watershed:

STREAM CLASSES (USFS AHMU Handbook)

- Class I- Streams and tributaries with anadromous or high value resident sport fish or with habitat having reasonable enhancement opportunities for anadromous fish;

- Class II- Streams and tributaries with resident fish populations of limited sport fish value generally occurring in steep gradients or upstream of

migration barriers;

Class III- Tributaries with no fish populations but have potential water quality influence on downstream habitat.

CHANNEL TYPES and STREAM CLASS DESIGNATION (from Table I, USFS AHMU Handbook, FSH 6/86 R-10 Trans)

<u>Stream Class</u>	<u>Channel Type</u>
I	E1, E3, E4, C1, C2, C3, C7, B1, B2, B3
I/II	E2, D4, D5, C4, C5, B5, B6
II	D3, B4
III	D1, D2, B7, A1, A2, A3, A4, A5

NMFS met with USFS personnel in Juneau on June 9, 1989 to explain that the Policy was not intended to be interpreted literally and that unimportant tributaries in a watershed were not subject to buffers. A reasonable and appropriate definition of "tributaries" was discussed and the following criteria for the the application of the 30-meter buffer policy to streams on the Tongass were agreed upon:

1) The minimum buffer zone width of 30 meters (100 feet) applies to all anadromous fish streams and their perennial tributaries which can be identified by the USFS stream classification system (i.e., Channel Typing) and includes Classes I, II, and III.

2) BMP's for maintenance of water quality standards will apply to all streams and tributaries.

3) Roads are permitted to intersect buffer zones for stream crossings as provided for by existing standards and guidelines (e.g., Alaska Dept. Fish and Game Title 16)

4) Roads parallel to streams are not permitted in buffer zones.

5) Yarding of logs through buffer zones is not permitted; however, if feasible, full suspension of logs over the top of trees within a buffer is permitted.

Most streams and tributaries in a watershed are a mixture of Class I, II, and III with Class I generally being the lower gradient valley bottom streams and tributaries, Class II being the mid-slope streams and tributaries, and Class III being the upper slope, high gradient tributaries. The 30-meter buffer policy of NMFS applies to all Class I and II streams and tributaries and in some cases to Class III tributaries which flow year-around (perennial) and have flow large enough to directly influence down-stream habitat. The policy does not apply to Class III tributaries which are either ephemeral (seasonal) or intermittent or have a gradient generally greater than 8 percent; these can be very numerous and usually occur as small storm channels at higher elevations. Thus, generally speaking, the policy applies to all low to moderate gradient salmon and trout streams and tributaries which are perennial and does not apply to high gradient tributaries or storm drainages which do not have salmonids or do not have continuous flow. Most all of the streams and tributaries which can be classified by the USFS Channel Type system using aerial photographs should have a 30-meter buffer on each side of the stream. The numerous intermittent tributaries and storm channels which generally cannot be seen from aerial photographs or which are visible only following clear-cutting do not require buffers. These Class III tributaries and storm channels constitute the most acreage of productive forest land and are the source of the discrepancy or controversy between the USFS, timber industry, and fisheries biologists on the amount of productive forest land excluded from timber harvest. While recent USFS estimates of the "timber supply impacts" have been as high as 31 percent of the productive forest land, a more realistic estimate of the impact resulting from the NMFS Policy would be 9 percent. The difference in estimates of 22 percent is attributable to the inclusion of Class III tributaries not identified in the GIS in the USFS total. Nonidentified Class III tributaries are not subject to NMFS buffer policy, but are protected through application of Best Management Practices (BMP's) to meet Environmental Protection Agency (EPA) approved State water quality standards.

The amount of timber retained for fish habitat protection (i.e. protected timber supply) is estimated for a given stream by classifying it into stream Channel Types from aerial photographs, designating Classes according to fish use, and then calculating the amount of timber by acreage and volume class in a 30-meter buffer on both sides of the stream channel. The USFS has made these calculations using their Geographical Information System (GIS) and has presented their findings at meetings including a presentation at the Alaska Forest Practices Act Review in March, 1989 and a meeting on June 9, 1989 between USFS and NMFS personnel. One example the USFS presented was their calculations from a quadrangle of North Kuiu Island on the Tongass National Forest (Port Alexander C-1) with a total land area of 140,000 acres. The GIS calculated that 9 percent of the productive forest land (acres

and total volume mmbf) would be removed with a 30-meter riparian buffer. This calculation, in agreement with NMFS's Policy, was based on timber retention along all Class I and II streams and tributaries and some of the important Class III tributaries, all of which were classified according to Channel Types from aerial photos. Based on the GIS calculations, biologists from NMFS and Alaska Dept. of Fish and Game in consultation with USFS biologists, believe that Class I (anadromous) streams only would amount to less than half (4 percent) of the 9 percent of the timber retained for habitat protection. The high gradient and intermittent tributaries, and storm channels which are not identified by Channel Typing or aerial photos (i.e., not identified in the GIS) would amount to an additional 22 percent if buffer were required. However, these noninventoried tributaries are usually insignificant and do not require buffers under the NMFS Policy; therefore, the additional 22 percent should not be included in the estimate of area of productive forest reduced by buffers. These small tributaries without salmonids can account for the highest proportion of streams or acreage in a watershed, but only require BMP's for maintenance of Alaska State Water Quality Standards.

Mr. Scott Russell, Biologist, USFS, Ketchikan Area, Tongass National Forest estimated the effects of a 30-meter buffer on the amount of operable timber that would be excluded in the 1989-94 Operating Period KPC Long-term Sale Draft EIS (395,966 operable acres). He applied a buffer to all fish and non-fish streams that were Channel Typed and found 10.7 percent of the operable timber would be excluded.

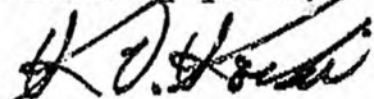
His estimates did not include the streams that could not be inventoried from aerial photos. Scott also thought that the anadromous streams would amount to less than about 4 percent of the operable timber. A study supporting the previous examples was conducted by a Fisheries Task Force (Fisheries Task Force Working Report, Tongass Land Management Plan, USFS, Juneau, AK, April 1978, 36pp) to determine the extent of fisheries habitat protection by the application of a 100 foot buffer on salmon streams and their tributaries on 14 watersheds in the Tongass National Forest. The total retained for fisheries habitat protection as extrapolated to the entire Tongass National Forest was 11 percent of the timber volume. A report prepared by the Sealaska Corporation on Jan. 16, 1989 shows that a total of 49 percent of their study area acreage and timber volume on Prince of Wales Island would be contained in fish stream protection using a 100 foot buffer. However their data also shows that only 8 percent of this retention would apply to the important Class I and II streams, the remainder was for Class III tributaries (37 percent) most of which did not require buffers and for areas made inoperable because of buffer zones (4 percent).

NMFS policy is intended to protect Alaska's salmon and trout abundance through the application of proven management techniques

and sound biological data. Because the fisheries and timber industries share the forest as a common base for their existence, a specific level of old-growth forest must be maintained for optimum production of fish. The timber retained in a buffer for fish should not be viewed as the amount "lost" to the timber industry but viewed as what is required for fish habitat in the true sense of multiple-use. Certainly, NMFS intent is not to create a severe impact on the timber industry, but through its Policy it is defining what is the minimum riparian vegetation necessary for salmon and trout habitat in order that the two industries can coexist.

Thank you for the opportunity to express my views on the NMFS's Policy and its relationship to the Tongass timber supply. Please let me know if I can be of further assistance.

Sincerely yours,



K V. Koski, Ph.D
Fisheries Research Biologist

P.O. Box 210154
Auke Bay, AK 99821
(907) 789-0429

May 5, 1989

KFP

Koncor Forest Products Company

3501 Denali, Suite 202
Anchorage, Alaska 99503
(907) 562-3335 FAX (907) 562-0599

Senator Bettye Fahrenkamp
P.O. Box V
Juneau, AK 99811

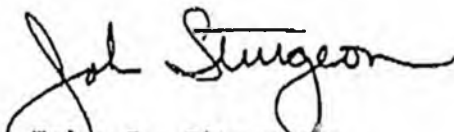
Dear Senator Fahrenkamp:

It is Koncor's understanding that a hearing has been scheduled for Senate Bill 317 which will revise the current forest practices law. Koncor would like to go on record supporting this proposed legislation.

Koncor has spent a tremendous amount of time and money working to develop the language in this proposal. All parties that worked on the development of this compromise can readily point out concerns. However, that is to be expected of any product developed by a compromise process. Since this is a product of compromise we can support it only if no changes are made. A change could tip the balance that we all worked so hard to secure.

The private land owners of Alaska are making some tremendous sacrifices in this revised forest practices legislation. The legislature should assure that State agencies do not exceed the intent of these statute changes through unreasonable regulations. If unreasonable regulations are promulgated the sacrifices of private landowners could quickly be converted into a death sentence for Alaska's forest products industry.

Sincerely,



John L. Sturgeon
President

JLS/mlm

South-Central Timber Development, Inc.

6 March 1990

Senator Bettye M. Fahrenkamp &
Members of the Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp & Members of the Committee:

Re: S.B. 317 or H.B. 331
Forest Practices Act Revisions

This bill is an astounding attack on private property rights. It is destructive of freedom, an Alaskan's most precious right, after life itself. It materially advances state control over production and the means of production. As the long-tormented countries of Eastern Europe try to shake off socialism and restore capitalism and liberty, the state government of Alaska, imitating the U.S. federal government, is bent on an ever-expanding take over of private property rights. The state is pursuing, in Friederick Hayek's phrase, a "fatal conceit": "The government knows best." "Only the government can competently manage the resources." We have very little private land of any kind in Alaska, compared to the total acres of uplands and tidelands. The privately owned forest lands of Alaska constitute no more than perhaps five percent of the total acreage within Alaska's boundaries; this private land has been extracted from the public domain over a painstakingly long period of time, and by a very arduous course; but apparently the state government cannot bear to part with significant and thorough-going control over the small percentage of Alaska not owned by a government.

This legislation is not destined to expand Alaska's forestry economy, or even to retain the level now realized. It is regressive and punishing and tinged in totalitarianism. It creates an omnipotent state apparatus over the privately owned forest lands of our state.

The cost to the state treasury of this newest intrusion of state government into private rights and property is conservatively estimated at \$1.2 million per year. Much more could be spent on these questionable and reprehensible activities; no doubt, in future years, the agencies will require a greatly expanded budget for these good socialist works. Thus, at a time when all the political talk is about reducing state expenditures, along comes this act to spend more money; hire more government inspectors, naysayers and gumshoes; and put state spending further out of control. Is anyone serious about reducing the budget?

I was in the audience in the Capitol when the House and Senate Resources Committees held a joint hearing on the Forest Practices Amendments on 31 January 1990. Regrettably, I did not realize I had to sign up as a witness, and so missed the opportunity to give these views.

Though Mr. Sturgeon, Chairman of the Forestry Board, did not give you my name, I am the representative of the Alaska Miners Association on the Alaska Board of Forestry. The proposed legislation eliminates the Miner's slot on the Board. Mr. Steve Borell, Executive Director of the Alaska Miners, has already written to you protesting the deletion.

1. The Board: Poorly Constituted and Non-Functioning.

The Forestry Board, under the new legislation, would likely end up with a majority of anti-development forces. Only two of the six voting members would have to be connected with forestry. The peculiar consensus required for the Board to act [AS 41.17.041(c) requires near unanimity] is a special hamstringing device. Your own intimate experience with obtaining eleven votes, or twenty-one votes, is proof enough that government by consensus will not be a government of accomplishment.

2. Alaska Will Plan Forever, but Probably Never Achieve A Big Forest Products Industry.

AS 38.05.112(a) requires a site-specific forest land use plan in spite of the fact that regional or area plans have already been accomplished. The intent is for "plans, plans, plans"! Wood markets may crash before Alaska is ever ready to enter seriously into the world of timber production and manufacturing. This reluctance to act--this same propensity to plan endlessly--is also evident in the statute under which state forests are to be created [AS 41.17.200 et seq.]: Notwithstanding that land has already been classified for "forestry" under the Alaska Lands Act, upon the creation of a state forest, entirely new plans are required, no doubt in the hope that some or most of the forest land will be dedicated to other purposes. State forests are "multi-purpose." if at least two purposes must be stipulated for a particular forest area, they may be "scenic quality," and "recreation," even though the land is a "state forest."

3. A Bureaucratic Straitjacket.

Alaska forestry on state lands is put into a strait jacket in AS 38.05.113(b). The provision that a proposed sale must have been on the schedule for two full years before an actual sale can take place destroys flexibility and dynamism. In truth, the last thing either sought by the authors or to be realized from this legislation would be a dynamic forest industry in Alaska.

4. "Scenic Quality" Is a Concept Peculiar To the Eye Of the Beholder.

AS 41.17.060(c)(6) compels the state to harvest its lands or not harvest at all, in deference to "scenic quality" in "areas of substantial importance to the tourism and recreation industry." This is an entirely subjective and maundering "standard" that will result in endless debate and delay. Is "scenic quality" the "forest primeval" or a carefully kept and supervised forest? What is an "area of substantial importance?" What is the "tourism and recreation industry?" Who is to say that tourists would not want to see some human progress and the intelligent activity of homo sapiens occurring on the forest lands of Alaska? Tourists get bored with endless miles of untouched woods.

5. Industry Will Be Suffocated By Regulations.

AS 41.17.080(d) expresses the pietistic hope that the commissioner will avoid making regulations which increase costs, but yield no benefits to public resources. The whole tenor and spirit of the legislation proposed is that timber cutting is detrimental to "public resources." Under the aura of this act the commissioner will be able to find no regulation which does not somehow benefit the public resource.

6. Statute Declares Timber Harvesting A Deleterious Activity.

As a matter of fact, under AS 41.17.115, the bill would have the State of Alaska declare by statute that timber harvest activities do, in fact, have significant adverse effects on fish habitat and water quality. This is nothing less than an outrage. In truth, timber harvest activities may benefit fish habitat and water quality.

7. The State Commands: Thou Shalt Be Naked To Thine Enemies.

If a private land owner decides to timber his land he must submit to the state government, in advance of logging, and each year thereafter, detailed plans of his proposed operations so that both the state and "members of the public who have asked to receive copies of notifications for the affected areas" can be fully informed about the private owner's business plans. Both the preservationists as well as business competitors and people bearing malice towards the applicant will have a powerful weapon to wield against this poor private land owner. Why should the State of Alaska force such public disclosure? The State bears no risk in such compulsion for disclosure, but the State certainly increases the risk of the private land owner. The total business intentions of the logger as to the entire drainage must be disclosed, for the current year and for all future years. This is communism at its best. No matter how many years contemplated operations may take, the operator must renew this plan every year. This fantastic onus should assure that a large cadre of bureaucrats will be fully employed while there are trees to cut in Alaska. "Private property" is a noun without much content at

the rate the State proposes to take away rights historically associated with private property. [AS 41.17.090(a)]

8. The Confusion of Multiple Regulators All From The State of Alaska.

The proposed statute builds in conflict and practically assures conflict, controversy and turf battles by having two departments--two commissioners--both in charge of regulating nonpoint source pollution. Must we, with malice aforethought, make life so complicated, difficult and impossible to live? [AS 41.17.098(c)]

9. The Act Will Drive Away New Forest Industry and Fetter What We Already Have; We Could Have a Massive Forest Products Economy.

I am told that only six or seven states in the nation have adopted a forest practices act of any sort, governing all forestry operations on private lands. Alaska was in the "vanguard" in adopting such legislation in 1978, under the sponsorship of then Representative Mike Miller of Juneau. Now, this new proposal would gild the lily and drive industry away, and it will prevent the expansion of existing industry. With energy, imagination and dedication, Alaska could attain a wood products industry with an annual value in the billions of dollars. That will take certain statutory assistance; it will take a commitment and resolve on the part of the state government and its bureaucracy. Senate Bill 317 and House Bill 331 go in the opposite direction; it's "killer legislation," and constitutes a vast harassment of the present and future industry, and an impenetrable discouragement to economic expansion.

10. This Legislation May Destroy Any Economic Activity In the Buffer Zone.

Before commencing "operations" on forest land, the operator or owner must provide the state forester with a comprehensive plan of operations. I take this legislation to mean that before someone can clear a riverside or lakeside woods for a non-timberlands use, such as a lodge or camp, the would-be developer or entrepreneur will have to first seek the permission of this state, which may never be given because of the buffer rules in this legislation.

11. Laws and Regulations Amount to Strangulation.

The additional regulations hurled upon Alaska citizens under this proposed act are heaped upon the already vast array of federal and state permits, interactions and jurisdictional overlaps already on the statute books. Even before this proposal is enacted, or if it is never enacted, the mass of permitting and regulatory interference in the natural resource industries is bewildering, appalling and in opposition to economic development and expansion. Indeed, economic activity in the resource

development field has already contracted in Alaska; we have become a highly undesirable place in which to do business.

12. Why Prefer Fish Over Timber? Timber Will Be More Valuable.

In the sections on riparian management, the rights of fish over timber are baldly enunciated. The state is making a clear and unequivocal preference for fish, though, in time, the economic value of timber can be expected to substantially exceed that of the fish affected by the riparian regime.

13. The Pillage of Private Property.

The application of these stringent water body buffer area standards to private land amounts to the pillage of Alaskans owning forests bordering on water bodies. People owning a few acres of land containing timber, if they happen to be in a riparian area, could stand to lose their right to harvest any timber whatsoever, depending on how any of the state agencies may interpret AS 41.17.117(a). It is said that some of the Alaska Native Corporations owning substantial volumes of timber under grants from the United States through ANILCA have received legal advice to the effect that the Forest Practices Act amendments affecting private property would not constitute a "taking" under the federal or state constitutions. What amounts to an illegal "taking" is being constantly litigated. Legal rulings change with changing attitudes towards socialism and capitalism. Judge Robert Bork's book, The Tempting of America, will act as a catalyst to restore devotion to private property. The U.S. Supreme Court has arrested its flirtation with totalitarian government by its pro-private property decisions in Nollan and First Evangelical Lutheran Church. Furthermore, there is no compulsion on the Alaska legislature to enact this huge attack on the rights of private property. If Alaska stands for anything, it ought to stand for individual freedom and the right to be left alone. Why must we seek to create an anti-property, socialist state in the far north?

13. Buffers Around Wetlands and Estuaries, Too.

I may be that your land is not along a river or a lake; it may border a wetland or an estuary. Nevertheless, a large buffer or ring of trees is commanded to be left standing, under penalty of \$10,000 per day fines or jail, or both.

14. The Regulations Not Yet Written May Do the Most Mischief of All.

AS 41.17.116 leaves much mischief to be done at the hands of the commissioner who will write and adjust regulations regarding private property timber. I would think if the state has decided to take away private property and private rights, it could at least do so by passing legislation. However, the regulation method can be blamed upon the work of a faceless bureaucrat, instead of an elected official. The full extent of the

devastation this bill will foist upon Alaska is as yet undisclosed.

15. The Bias Against Tree Harvesting.

In AS 41.17.116(a)(1)(D) the commissioner has the discretion to let the operator harvest timber in the buffer zone, provided that the operator leaves timber standing somewhere else; this other place does not have to be a riparian area. Why must such timber be left standing? This is one of many places reflecting the bias against timber harvesting.

16. The Dead Hand of a Rule Running for a Hundred Years.

The operating plan put upon the land prevents harvesting of timber outside an "operating area" until the "next rotation period." This latter phrase is never defined, but it could easily exceed a time span of over 100 years; apparently, the operating plan would constitute some sort of covenant running with the land. It may be that the spruce bark beetle would devour the trees the state forester would not allow to be cut, but no human being shall be so allowed under penalty of fine and imprisonment. Already, spruce under state management and control for many years has been killed by the beetle in volumes of hundreds of millions of board feet, but clearly there is more joy to the bureaucrat in lording it over human beings than over beetles. [AS 41.17.117(b)]

17. Compensation Provisions Arbitrary and Capricious.

The state forester is authorized to prevent an owner from cutting his timber even if that prevention will result in more than 5% of the basal area being left standing. The forester may do this by paying (whom?) for this timber at the "current market value"; this means "current" as of the time the operating plan is submitted and approved, but the harvest may not have occurred under the plan for another several years, which makes this cash payment provision utterly arbitrary and unfair. No one knows what the timber will be worth several years hence. [AS 41.17.117(c)(3)]

18. AS 41.17.117, the Heart of the Compromise, Is Fuzzy Obfuscatory, and the Poorest Kind of Law.

If a law drafter had deliberately attempted to make a statute's meaning fuzzy or obfuscated, he could not have done much better than Section 117. The strains of the so called "consensus" which generated this extremely critical section caused a lack of clear understanding of what the collectivity compromised upon. Is it a true compromise or is it a white washing of irreconcilable differences? And, of course, this section of the law, as a clear guide to the bureaucrats in charge of its administration, fails absolutely.

19. In State Lands, Vast Swaths of Trees Are Forbidden To Be Cut.

The state land standards differ from the private land standards; in fact, state timber north of the Alaska Range is treated differently than that south of the Range. Apparently, the environmentalists are less concerned about Interior Alaska. That is at least lucky for the Interior. In state timber the new law contemplates an absolute preference for fish and wildlife habitat over timber interests in a 600' wide riparian swath, extending the length or circumference of the water body.

20. Endless Harrassment By Multiple State Agencies.

AS 41.17.125 contains the noble invitation to all state agencies concerned to avoid duplication and inconsistency in their enforcement. Contrarily, however, all agencies keep their own rights to determine and exact remedies. Therefore, there will be little uniformity, but a great multiplicity of harassment or worse.

21. Big Penalties For All Concerned.

In the sections devising civil and criminal penalties it seems that a land owner or a timber owner can be fined or jailed if he "permits" a violation, even if the violator is a different person called an "operator." If one allows an operator to harvest trees perhaps that is "permitting a violation." This statute, obviously, would much prefer that the land owner and timber owner protect themselves by not allowing anyone to harvest timber. [AS 41.17.131]

22. An Arbitrary Hearing Procedure Lacking in Fundamental Justice.

The new hearing procedures have deleted the requirement that the hearing officer be trained in the law and admitted to its practice. [AS 41.17.139] People in the Division of Forestry will now appoint the judges in these grave judicial proceedings, but they shall not be people of the law, but rather employees of the Department of Natural Resources.

The Administrative Procedures Act of Alaska is not applicable to these kangaroo court proceedings. There is no requirement that any witness be required to give evidence under oath. The former rule that hearings be recorded has now been deleted, presumably so that the arbitrariness in these proceedings taking away one's property and one's right to operate one's business and one's right to work is hidden from view--a sort of Star Chamber approach.

23. The Delusion of No Third Party Suits.

The people in the so-called "consensus group" who believe they have obtained a great benison in AS 41.17.143(d), whereby

third parties are not allowed to file suits under the statute, are probably deluding themselves. I would think in a short time this provision will either be deleted or else found to be unconstitutional in Alaska.

24. Eliminating the Constitutional Provision of Preferences Among Beneficial Uses.

Under the definitions, the "significant impairment of productivity" rule apparently compels that Alaska land and water keep producing renewable resources at their natural or historic levels, making no provision for what Article VIII of our state constitution calls "preferences among beneficial uses." [AS 41.17.950(6)(C) and (12)]

25. A State Forest Without Timber.

The definition of a state forest never mentions trees, silviculture or forestry; it simply talks about "renewable resources" and "a variety of beneficial uses." What an utter farce! [AS 41.17.950(14)]

26. No Stability, Peace or Consensus.

At the late January hearing in the capitol, a number of pro-passage witnesses testified that this new legislation would bring "stability" and "predictability." The implication is that the environmentalists and the developers will achieve a long term armistice, and enjoy years of mutual cordiality and deference. The history of the Tongass Forest legislation over the past 15 years, and the governmental activity in the Chugach National Forest utterly belie this naive contention. The legislature meets every year, and the opposing parties can be expected to seek changes favorable to themselves when the occasion arises. A new legislature is not bound by this so-called "consensus." In fact, the last section of this proposed legislation classifies the law as "interim" because it is "based on many untested assumptions." The silliest untested assumption of all is that this zombie will bring "stability" to the parties.

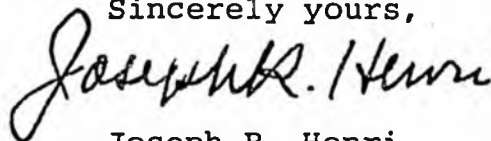
It has often been said that Alaska is a land full of rugged individualists, yet over the last 15 years we have witnessed an almost pathological quest to have government run or regulate everything. The clear implication of so much regulation is that those who own land and timber are not to be trusted with the running of their own affairs. Under the new laws and regulations, the Alaskan government will act as trustee and guardian. But it will be a bad trustee and a faithless guardian because its efforts are not to benefit the owners of the land, but rather to serve the new religion of environmentalism at the expense of the beneficiary of the trust. Alaskans are becoming wards of the state, in the worst connotation of that phrase.

In an article entitled "Profits Are For Rape and Pillage," Forbes Magazine of 5 March 1990, makes an astute observation:

At the very time when government regulation is discredited and out of favor nearly everywhere, it is making a comeback in the environmental field. Although political and economic arguments for socialism are derided around the world--and the power of the market to allocate resources intelligently is widely acclaimed--environmentalism is being used as an excuse for the government to move back into managing the minutiae of our lives.

No matter that private property rights are pushed aside or despised, no matter that the cost to the state treasury is in seven figures annually to perpetrate the violation of private property, no matter that hirelings, agents, inspectors, and gumshoes will be added to the ever-swelling ranks of the state bureaucracy, this cause of so controlling the five percent of Alaska having privately owned forests is a holy calling, a crusade, a zealot's hegira. As Robert Crandall of the Brookings Institute says, "When you're carrying out a crusade, you don't ask what's the cost of the religion."

Sincerely yours,



Joseph R. Henri
President

JRH/df

cc: Members of the House Resources Committee
Phil Haldsworth, Alaska Miners Association
Kent Dawson, Alaska Miners Association
Steve Borell, Alaska Miners Association
Becky Gay, Resource Development Council
Thyes Schaub, Alaska Loggers Assn., Juneau

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

May 5, 1989

The Honorable Bettye Fahrenkamp
Chairman, Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The bill before you represents substantial changes to the Alaska Forest Practices Act. It is the result of almost six months of work by representatives of the timber industry, the state resource agencies, and fishing and environmental groups. I believe that this bill, as a result of hard work and compromises by all interest groups, will allow Alaska's forest practices program to both meet the needs of Alaska's growing timber industry and achieve appropriate protection for public resources such as fish habitat and water quality. I would like to take this opportunity explain the consensus mediation process used to arrive at this bill -- the Alaska Forest Practices Act Review, and explain the provisions of the bill.

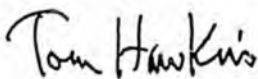
Last year, the Governor directed the state resource agencies to conduct a public review of the Forest Practices Act and to make recommendations for any improvements in the Act, its regulations, and implementation. In order to facilitate an objective and balanced review, a steering committee was formed, including representatives of timber land owners and operators, state agencies, and users of public resources that are affected by forest practices. Because the agencies felt it would be possible to review the state's forest practices program and meet both the needs of the timber industry and resource protection needs for fish habitat and water quality, the committee attempted to operate by unanimous consent. This approach ensured that the committee's decisions respected all interests.

The bill before you achieves near total consensus; it has the support of representatives of Native Corporations, boroughs, fishing groups, and environmental groups. There have been question raised to a provision of the bill that might affect harvest on federal land through the Alaska Coastal Management Program. (For information on that section, please see the attached bill analysis, Section 27.) Agency staff will be available during the committee hearing to discuss any questions raised on this issue.

The committee's long and difficult work was not completed until early this week, and so the bill could not be introduced earlier. However, because of the importance of the bill and the extraordinary and fragile achievement of achieving near-total consensus on these controversial issues, I urge your prompt and favorable consideration.

Attached is an analysis of the bill.

Sincerely,



Lennie Gorsuch
Commissioner

**Bill Analysis
Senate Bill 317**

**An Act relating to forest resources and practices and to the management of forest lands;
and providing for an effective date**

Section 1: State Timber Planning Process. Title 38 is amended to require additional planning before state timber sales. The division of forestry must prepare a site-specific plan before all state timber sales that fully integrates appropriate resource protection measures into the sale design. This site-specific design would also improve public review of individual timber sales.

The department would also be required to annually prepare a five-year timber schedule of proposed state timber sales. Except for small sales and emergencies such as salvage, a proposed sale would be required to appear on the two five-year schedules preceding the sale. The five-year schedule will inform the public and the timber industry of the state's long-term plans.

Section 2, 3 and 4: Coordinating Overlapping Agency Jurisdiction. These sections coordinate overlapping agency jurisdiction regulating timber harvest activities.

Section 2: DEC. Regulations of the amended forest practices act will serve as timber harvest standards for non-point source pollution under the leadership of DEC.

Section 3: ACMP. The amended forest practices act will serve as the Coastal Management Program for harvest activities on private land.

Section 4: DF&G. Regulations of the amended forest practices act provide the fish habitat protection standards except for those activities subject to AS 16.06.840 and AS 16.05.870.

Section 5: Board of Forestry Membership. The current 13-member board of forestry is restructured to a smaller, more balanced, 7-member board. (See section 7 for duties of the board.) It also details qualifications for board members, staffing requirements, and voting procedures.

Section 6: Board of Forestry Terms of Office. The section amends existing terms of office to provide staggered terms of office for the Board of Forestry.

Section 7: Powers and Duties of the Board of Forestry. This section amends the duties of the Board of Forestry. Existing duties include only commenting on regulations. New duties are added: providing a forum for discussion for representatives of affected interests to discuss and resolve forestry issues before they become divisive; coordinating an annual survey of research needs; coordinating the monitoring of the implementation and effectiveness of the forest practices program and making recommendations for change; and holding annual hearings in southeast, southcentral, and interior Alaska to take public testimony on the state's forest practices program.

Section 8: Technical Change, Coordination with DEC. References to DEC's program for non-point source water pollution are amended to be consistent with the coordination provisions in Section 3.

Section 9: Technical Change, Non-point Source Pollution Control. Wording is changed to make clear the meaning of the existing law concerning recognition of environmentally sensitive areas in non-point source pollution control measures.

Section 10: Standard for Soil Erosion and Mass Wasting. The section provides a standard of minimizing or preventing significant adverse affects of soil erosion and mass wasting.

Section 11: Standard for Scenic Quality. The existing standard for scenic quality near tourism and recreation areas is amended. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 12: Standard for Important Fish and Wildlife Habitat. A new standard is added that requires planning for harvest allowance be made for important fish and wildlife habitat. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 13: Records for Public and Agency Review. The division is required to maintain a records of decisions made under the act for use by the public and state agencies in assessing the effectiveness of implementation of the act.

Section 14: Regulations. This section provides a list of forestry activities subject to regulation under the act; allows the commissioner to establish regions and make appropriate distinctions between public and private land; and directs the commissioner to only adopt those regulations that yield significant benefits.

Section 15: Control of Infestation and Disease. A new section of the act is added that allows the commissioner to take action to control forest infestation and disease outbreaks that threaten forest resources.

Section 16: Variation from Requirements of the Act. The state forester is directed to allow variations from forest practice requirements established under this act. The state forester may allow variations to requirements he determines that the harm such as degradation of fish habitat or water quality not likely to occur because of site-specific circumstances of the particular activity. It allows private landowners to appeal an adverse decision by the state forester, but they must conform to the requirement during the period of the appeal.

Section 17: Review of Private and Municipal Timber Harvest Operations. The section provides an improved process for efficient and detailed review of timber harvest plans. This efficient review allows the timber industry to respond to changing timber markets but ensures that harvest operations conform to forest practices standards and regulations. The section also requires public review of private harvest plans. Review by state agencies may occur in the office or, if necessary, in the field prior to the start of the operations.

Section 18: Interagency Coordination. Because of overlapping agency expertise for issues concerning timber harvest, this section provides coordination mechanisms for DNR, DF&G, DEC, and where appropriate, coastal districts. The coordination system retains DNR as the lead agency for forest practices but ensures that the appropriate agency expertise from DF&G and DEC is included for forest practice issues that involve their expertise. The section requires that the agencies recognize fish habitat as the primary value within the riparian areas established under the bill.

Section 19: Riparian Management. This section of the bill provides for a streamside management program that strikes a fair balance between the needs of the timber industry and those of fish habitat and water quality protection. It provides for significant timber harvest while providing appropriate protection for public resources. Riparian standards for timber harvest differ depending on land ownership, stream, type, and region. The section also provides the intent of riparian management standards: a list of fish habitat

components that the riparian standards are designed to protect.

On private land in southeast Alaska, streamside areas of up to 30 meters will be managed for the protection of fish habitat and water quality, although timber operators will not be required to leave more than five percent of their timber volume for this purposes. In this way, strong resource protection exists without requiring any one private owner to shoulder an undue portion of the resource protection costs.

On private land outside southeast Alaska, it directs the commissioner to establish riparian protection standards and provides interim standards until regulations are drafted.

On state land north of the Alaska Range, timber harvest within 30-meters of an anadromous or high value resident fish waterbody will be allowed where adequate protection remains for fish habitat.

On state land south of the Alaska Range, no timber harvest is allowed within 30-meters of an anadromous or high value resident fish waterbody. Within the adjacent 60-meters, timber harvest must be consistent with the maintenance of important fish and wildlife habitat.

For municipal and trust lands, timber harvest within 30-meters of an anadromous or high-value resident fish waterbody must be sited and designed primarily to protect fish habitat and water quality.

Section 20: Enforcement Coordination. Because existing overlapping jurisdiction by DEC, DF&G, and the department of law, and because of additional authorities provided DNR by this bill, this section directs the agencies to establish "uniform enforcement strategy." The strategy requires a method of coordinating enforcement that avoids duplicating and inconsistent enforcement by the agencies. All agencies retain existing enforcement authorities.

Section 21: Penalties for Violations. This section amends the act by streamlining existing procedures for levying civil penalties of up to \$10,000 per violation, and adds additional enforcement authorities. Under these additional authorities, the state may issue a citation for a class A misdemeanor for violations of the act, its regulations, agency directives or stop orders; also, DNR may issue remedial orders requiring operators to repair or correct damage resulting from a violation.

Section 22: Directives. This new section provides that DNR may issue enforceable, written orders directing that timber operations that violate or would violate this act or its regulations be changed. These directives may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Directives may be appealed and operations may continue pending the outcome of the appeal.

Section 23: Stop-work Orders. If the forester determines that a violation of the act or its regulation is occurring or is likely to occur and that significant harm to public resources is likely to occur if work is not halted before a hearing, the state forester may issue a stop-work order. A stop-work order may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Stop-work orders may be appealed, but the operation must stop pending the outcome of the appeal.

Section 24: Hearing Procedures. This section amends the cumbersome hearing process existing law by deleting the requirement that hearings be held before lawyer appointed by the attorney general. The new process allows the hearing officer to be an employee of the department. The new process will be quicker, and more efficient for both the landowners and the department. It will also be significantly less costly for the department.

Section 25: Appeals and Judicial Review. This section provides appeal procedures from department decisions. It provides for appeal of DNR decisions by landowners or timber operators to the state forester, in some cases to the commissioner, and gives the option of going to court. Also it provides that parties other than an aggrieved forest landowner, timber owner, or operator may not receive judicial review of individual timber harvest decisions. Third parties may, however, seek judicial review of regulations, or of a systematic error in DNR decisions.

Section 26: State Forest Plans, technical change. This section changes existing law by deleting a list of uses to consider in completing plans; and instead referencing a similar list in Title 38 (section 1 of this bill). It eliminates confusion from two close but not identical lists with similar purposes.

Section 27: Affect on Federal Timber Harvest. Other sections of this bill set specific standards for activities on state, municipal, and private land. This section states that the bill's specific resource protection provisions, such as riparian management zones defined for private, state, and municipal lands, do not apply to timber harvest activities on federal land. However, the bill proposes that the federal government achieve a level of resource protection commensurate with that provided for on state lands. This would occur as the federal agency, primarily the Forest Service, proceeds with its normal environmental planning process for timber harvest activities. While this measure does create a broad performance test for operations on federal land, the real effect on Forest Service actions is not considered to be significant, given the generally higher federal requirements for environmental protection.

The bill assures that federal lands will not be subject to the specific forest practice act standards "either directly or for purposes of compliance with the (federal) Coastal Zone Management Act." This statement effectively severs the applicability of the Act's specific standards to National Forests and other federal lands. However, some participants in the forest practices discussions wanted to take the point one step further to resolve a long-standing discussion of what specific environmental protection the state can ask the federal government to provide on National Forest lands through the coastal management consistency process.

The forest practices act discussions did not address federal timber harvest activities in any detail. Therefore, the parties to the consensus decided that the bill was not the appropriate vehicle to include specific environmental protection standards for federal lands, nor address the application of coastal management standards to federal timber harvest activities. Instead, the vehicle to address this question will be through a change to the Alaska Coastal Management Program regulation established for timber harvest and processing by the Alaska Coastal Policy Council (CPC). Following enactment of the forest practices act, the CPC will amend this timber harvest standard as necessary to address lands not covered by the forest practices act, including federal lands. The CPC will provide for the full involvement of the federal government, industry, and the public in drafting the new timber harvest standards.

Section 28: The Act Does Not Alter Other Rights and Jurisdictions. This new section of the act confirms that it does not alter or diminish the authorities of DF&G under title 16, DEC under title 46, or any state agency under other laws. It also confirms that the act does not diminish the rights of Alaska Native or of Alaska Native corporations with respect to the Alaska Native Claims Settlement Act.

Section 29: Wildlife on Private Land. This new section provides that state agencies and private landowners will establish cooperative, voluntary processes for protection of wildlife habitat on private land.

Section 30: Definitions, technical changes. This section provides definitions necessary for the act. Few changes are made.

Section 31: Legislative Review. This section provides legislative acknowledgement that this act should be reviewed by the legislature within three years after further research and experience is gained in implementing the act.

Section 32: Repeal of Superseded Sections.

Section 33: Effective Date. An effective Date is provided: January 1, 1990.



TESTIMONY BY ROBERT W. LOESCHER,
SENIOR VICE PRESIDENT, RESOURCE MANAGEMENT
SEALASKA CORPORATION,
BEFORE THE HOUSE RESOURCES COMMITTEE

My name is Robert W. Loescher. I am the Senior Vice President, Resource Management for Sealaska Corporation. Sealaska is in business throughout the State and the Pacific Northwest in fish processing and marketing, timber harvesting, export marketing of round logs, mineral development, and has investments in Alaska oil businesses. Our company headquarters are here in Juneau. Sealaska is the largest single private landowner in Southeastern Alaska. Our 16,500 shareholders reside primarily within the boundaries of the Tongass National Forest and in the Pacific Northwest.

The purpose of Sealaska's testimony is to praise the efforts of the forest practices steering committee. Sealaska fully supports the committee's consensus legislation and encourages the Resources Committee to also endorse the consensus legislation. I might add that KONCOR, a joint venture of one regional and 18 village corporations is unable to attend but supports Sealaska's testimony.

Achieving consensus among so diverse a group of people, and on so complex and controversial a matter, is a remarkable achievement. The bill that the steering committee has given you satisfies the major concerns of interests ranging from state agencies, to fishermen, to environmentalists, to the timber industry itself. By definition, then, it is legislation that is in the public interest.

The legislation, of course, comes to you late in the session. Everyone on the steering committee regrets that, but everyone also recognizes it was inevitable. The State of Washington took over one year to complete the same consensus-building process; Alaskans, who are at least as enthusiastic at protecting their own interests, achieved a virtually final compromise in six months.

Sealaska knows that you will consider the legislation as quickly as your responsibilities as legislators allow. If you are able to enact the consensus bill this session, everyone on the steering committee will be grateful.

There is, apparently, one issue outstanding among some steering committee participants. That issue involves the extent to which this legislation will affect forestry activities on federal lands within the coastal zone. From the outset, the

steering committee decided that tackling the issue of federal lands would be impossible, given our time constraints. As a result, the committee agreed that, whatever its product, it would not affect the status quo on federal lands. Accordingly, key people involved in federal timber land management were not seated on the steering committee. Sealaska believes that this issue can be solved in a way that is neutral in its effect on federal lands, and that the way can be cleared for progress on the bill.

If, because of that remaining problem, or the simple press of time, the legislature cannot act this year, Sealaska Corporation is encouraging both you and the administration use your influence, and your authority, to assure that between now and next January, the consensus spirit of the steering committee does not collapse.

Our fear is that if a bill does not pass, the 15 participants on the steering committee will scatter to the winds. Individual interest groups will prepare their own special interest legislation, and the resource agencies will develop unilateral administrative regulations without considering the interagency coordination required to effectively regulate the forest industry. If that occurs, the spirit of cooperation, common sense of mission, and recognition of interests of all concerned groups that has prevailed at steering committee meetings would be lost. As a

result, the legislature would be faced next session with 15 very different views on how forest practices ought to be regulated in this state. The resultant legislative battle will be bitter, and we think unproductive. Strong leadership is needed to hold the committee's product together, and at this stage we believe that this leadership can only be provided by the administration and the legislature.

Sealaska has a special stake in ensuring the ultimate success of the steering committee's effort because we played a role in initiating this process. In March, 1988, Sealaska proposed to Governor Cowper that a task force of representative interest groups be established to attempt to develop consensus streamside -- or riparian -- management standards. Governor Cowper, in turn, concluded that there were a number of additional issues involving the regulation of forest practices that might benefit from negotiated resolution by the parties involved. Earlier, the State of Washington had established the so-called Timber, Fish and Wildlife -- or TFW -- process, which brought to the bargaining table virtually every interest group affected by forestry activities. Through intensive mediation, the TFW process was able to develop, by consensus, a new state Forest Practices Act, and new ground rules for timber operations in that state. Governor Cowper established a parallel process in Alaska last fall, using the same mediators who had been so successful in Washington. Thus began a

negotiating effort that has kept many of us, both within and outside government, occupied on a virtual full-time basis over the past six months.

Under the steering committee's bill, industry has agreed to leave up to 5% of its timber to satisfy new, stringent stream-side protection standards. The requirement will force Sealaska to leave substantial volumes of extremely high quality timber. Industry also agreed to provide the Department of Natural Resources with sweeping new powers to change or halt logging operations on private land. It agreed to new, stricter standards on disease and insect control, and to a new system of objective, enforceable rules on a range of forest practices.

On the other hand, under the bill private timber operators would not require a state forestry permit; rather, the existing notification system would be retained. And, environmental groups have agreed to something they have never agreed to before: a specific statutory prohibition on lawsuits aimed at stopping private timber operations. State agencies would be required to coordinate any enforcement action. Other state programs that might have resulted in inconsistent or duplicative forest practices rules would be rolled into the Forest Practices Act itself.

Through the negotiating process, each side made major concessions -- concessions that would not have been made outside the special atmosphere of the steering committee process. And if the momentum stops here, Sealaska believes that those concessions will be taken back. And frankly, Sealaska also believes that if legislation is not enacted to guide agency rulemaking, some agencies may, during the interim, attempt to use inappropriate and ambiguous statutory authorities to create their own versions of acceptable forest practices rules. Two proposed agency initiatives pose a particular threat to rational resolution of forest practices issues:

(1) The Department of Fish and Game has indicated its desire to use its limited authority over activities in anadromous streams as a basis for writing new regulations that would establish wide streamside buffer zones and other upland land use controls; and

(2) Fish and Game has also recommended that the Department of Environmental Conservation use a new and untested federal planning law as a basis for creating a new, comprehensive land use control scheme by regulation. Under §319 of the Clean Water Act, DEC may prepare plans for controlling so-called non-point source pollution in limited cases. ADF&G has asked DEC to

establish a land use permit program for forestry activities on the basis of that federal statute.

Should either the DEC or Fish and Game initiatives be pursued, our consensus would collapse. The legislature has a major stake in the steering committee's product -- both because of the significant public resources expended to create it, and because it is a fundamentally good bill. Of course, the best way to preserve the committee's product is to pass the legislation this session. But, if that proves impossible, the legislature needs to ensure that no state agency, in the interim, promulgates regulations that would jeopardize the ultimate enactment of the committee product.

THE
CONSTITUTION
OF THE
STATE OF
ALASKA



LEGISLATIVE INFORMATION OFFICE
3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99503

Stephen McAlpine
Lieutenant Governor

Article VIII

Natural Resources

Section 1 - Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2 - General Authority.

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Section 3 - Common Use.

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 4 - Sustained Yield.

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Section 5 - Facilities and Improvements.

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

Section 6 - State Public Domain.

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

Section 7 - Special Purpose Sites.

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

Section 8 - Leases.

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

Section 9 - Sales and Grants.

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

Section 10 - Public Notice.

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Section 11 - Mineral Rights.

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Section 12 - Mineral Leases and Permits.

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

Section 13 - Water Rights.

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Section 14 - Access to Navigable Waters.

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Section 15 - No Exclusive Right of Fishery.

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amendment approved August 22, 1972 - Effective October 14, 1972.]

Section 16 - Protection of Rights.

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Section 17 - Uniform Application.

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Section 18 - Private Ways of Necessity.

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

SALMON BAY PROTECTIVE ASSOCIATION
BOX 422 Petersburg, Alaska 99833

Press Release

Dateline January 24, 1989 Juneau Alaska

Alan Stein President of SBPA stated that " Today after consulting with eight seafood processors in Southeastern Alaska, who have contributed to the Salmon Bay Protective Association, I am authorized by them to announce the Southeast Conference revised position does not represent their interests and that their interests are 100 foot no cut buffer strips on class I, II, and important class III streams and complete protection of million dollar a year watersheds,"

Terry Gardiner of Silver Lining Seafoods, a member of the Ketchikan Chamber of Commerce and former speaker of the Alaska House of Representatives, stated that "nobody from the Southeast Conference consulted with me before the release of the revised position." He stated, "I'm not sure the SE Conference now represents the fishing sector of the community."

Stein stated that "the SBPA wants the Southeast Conference to truly reflect all the users of the Tongass. To be more than a single user position, the SE Conference would have to endorse mandatory buffers on class I, II and important III streams and restore full protection to the important fishery watersheds, including the million dollar fishery at Salmon Bay on Prince of Wales Island."