

HSCR

1

ALASKA STATE LEGISLATURE

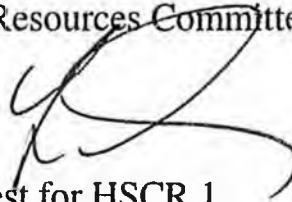


REPRESENTATIVE LES GARA

MEMORANDUM

DATE: March 28, 2003

TO: Representative Fate
Chair, House Resources Committee

FROM: Rep. Gara 

RE: Hearing Request for HSCR 1

Attached you will find a packet containing HSCR 1, which opposes the proposals put forth in E.O. 107, along with a sponsor's statement and several articles of helpful information.

I respectfully request that HSCR 1 be scheduled for hearing in the House Resources Committee at your earliest possible convenience. Please feel free to contact me with questions or thoughts at 465-2647.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Sponsor Statement: HSCR 1: Disapproving The Governor's Move of Department of Fish & Game Habitat Functions

This Resolution would override the Governor's Executive Order 107, which removes the authority of the Department of Fish & Game's Habitat Division to protect Alaska's world-renowned fishing waters. To override the EO, the House and Senate will have to pass a joint resolution by April 15. The citizen testimony on this issue has been quite overwhelming this past week. To date it is believed that more people have testified against the Governor's proposal than on any other proposal heard in this Session's House or Senate Committees.

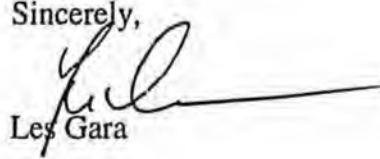
Alaska is a beacon of good fisheries management. We've done things right over the past 5 decades, and have the healthiest fisheries in the world to show for it. Giving state foresters and others without fisheries expertise the authority to make fishery protection decisions would be a step towards making the terrible mistakes most other states have made as they've degraded their fisheries.

On the Pacific Coast, for example, whole runs of salmon and steelhead have been lost. Oregon and California are great examples of why we shouldn't weaken the Habitat Division.

It has been shown that the Habitat Division processes permit applications quite quickly, contrary to the criticism of those who support the Governor's proposal. Roughly 20,000 permits have been granted in the past decade, an in 2002 permits were granted on average within 15 days.

The list of Alaskans who oppose this move is long and growing. Every Fish & Game Commissioner for the past 30 years has opposed the Governors' move, as have fishing groups such as the Alaska Chapter of Trout Unlimited; Alaska's largest active sport fishing organization, the Alaska Flyfishers Association; The Anchorage Fish & Game Advisory Committee; The Cooper Landing Fish & Game Advisory Committee; the Paxson Fish and Game Advisory Committee; The Alaska Chapter of the American Fisheries Society, and the Kenai River Special Management Advisory Board (KRSMA). Likewise, the Alaska Council of Village Presidents has opposed this move. This is a partial list of organizations that have stated their opposition to the Governor's move. Feel free to contact me if you have any questions.

Sincerely,


Les Gara

Mr. Layne G Adams
13041 Hinchey Pl
13041 Hinchey Pl
Anchorage AK, 99516

39 of 56

3/12/2003 5:13 PM

BILL#:

SUBJECT: GOVERNMENT ORGANIZATION

MESSAGE: As a hunter and fisherman I ask you to overturn EO107. This measure is strictly political. Habitat Division is essential to protecting our Alaskan legacy of healthy fish and wildlife populations. There is no way that cutting staff and moving them to DNR will speed permitting.

DISTRIBUTION: 10

Mr. Jim A Arnesen
1800 Shore Dr
1800 Shore Dr
Anchorage AK, 99515

self

Email: jarnesen@gci.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Re: Executive Order # 107. I have reservations about placing the habitat division of F&G into DNR. I am not sure that the protections needed will occur with DNR being in charge. Checks & balances are a good thing. That balance will be diminished with this order. Thank you for listening. Jim Arnesen

DISTRIBUTION: 61

Jean J Blakemore
251e Kalli Circle #4
Po Box 2931
Wasilla AK, 99654

Email:

Non Constituent Supports

BILL#: HSCR 1 DISAPPROVING EXECUTIVE ORDER 107

SUBJECT:

MESSAGE: I support HSCR1. As a former resident of Cordova the need to maintain productive fish stocks is without question. Healthy aquatic habitat is key to long term fish production. ADF&G habitat has done good work for fish resources state wide. There is no need to change!

DISTRIBUTION: 1

Garvan P Bucaria
Po Box 870293
Po Box 870298
Wasilla AK, 99687-0298

Email:

Non Constituent Supports

BILL#: HSCR 1 DISAPPROVING EXECUTIVE ORDER 107

SUBJECT:

MESSAGE: Representative Gara has summarized the essential elements justifying disapproval of Executive Order 107. Rejection of EO 107 will be in the best interests of the people of Alaska and long term maintenance of aquatic resources and habitats. I urge other legislators to support HSCR1

DISTRIBUTION: 40

Ms. Barbara L Carlson
6050 W Dimond Blvd

Anchorage AK, 99502

Email: carlson1@gci.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please act swiftly to disapprove EO 107 moving permitting authority from ADF&G to ADNR. These departments have different missions. ADF&G protects fish & wildlife resources. ADNR promotes resource development. In Alaska & in America we believe in maintaining a system of checks & balances. The whole world is watching....

DISTRIBUTION: 61

Mr. Michael P Carlson
6050 W Dimond Blvd

Anchorage AK, 99502

Email: carlson1@gci.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please act swiftly to disapprove EO 107 moving permitting authority from ADF&G to ADNR. These departments have different missions. ADF&G protects fish & wildlife resources. ADNR promotes resource development. In Alaska & in America we believe in maintaining a system of checks & balances. The whole world is watching....

DISTRIBUTION: 61

Mrs. Carol A Barnhill
15108 Highland Rd
15108 Highland Rd
Anchorage AK, 99516

Email: mccdbarnhill@gci.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I am concerned that if habitat permitting is moved to DNR our salmon will suffer the same fate as in the Pacific Northwest. They are spending millions and millions of dollars to restore lost habitat. Alaska can be a leader in salmon habitat protection. Please vote to disapprove EO 107.

DISTRIBUTION: 61

Khrystyne N Duddleston
Po Box 294
Po Box 294
Girdwood AK, 99587

Email: kyrys.duddleston@uaa.alaska.edu

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please reject EO 107. The EO will dismantle the checks and balances between resource development and habitat protection recognized as important by our founding fathers. Fish are Alaska's most important resource and must be given priority. Don't allow our salmon to go the way of Oregon and Washington's. Thank you

DISTRIBUTION: 61

Terry L Cummings

9 of 56

3/12/2003 5:13 PM

6740 E 10th Ave
6740 E 10th Ave
Anchorage AK, 99504-1514

Email:

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please do not support EO 107. Our fish and wildlife habitat needs protection and this EO would lead to weaker field review and could do major permanent harm to fish and wildlife habitat. We need stronger laws to protect the environment not weaker ones.

DISTRIBUTION: 61

William R Dunne
Po Box 15043
Po Box 15043
Homer AK, 99603-6043

Email:

Non Constituent

BILL#:

13 of 56

3/12/2003 5:13 PM

SUBJECT: FISH & GAME (BOTH)

MESSAGE: I showed up after work to testify but was told I'm not allowed to do so. I strongly oppose the transfer of habitat permitting to DNR. This proposed transfer will have long term negative effects on fisheries that provide jobs and sustenance to numerous Alaskans.

DISTRIBUTION: 61

Nina H Faust
Po Box 2994
Po Box 2994
Homer AK, 99603-2994

Email:

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: I oppose moving ADF&G Habitat Division to DNR. Protecting our fisheries and wildlife is best achieved through the present system. Please pass the resolution to disapprove EO 107 and leave the Habitat Division under ADF&G. Improving permitting process under present structure is a more effective method and safeguard checks and balances.

DISTRIBUTION: 61

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Mary-grace Duran
240 Mariner Dr
240 Mariner Dr
Anchorage AK, 99515-3607

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I respectfully oppose the Executive Order set fourth by Governor Murkowski and want my voice to be heard. Please review the voice of the people and respond ia a fair in equitable way.

DISTRIBUTION: 61

Scott Grundy

AK,

Email:

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Legislative and Executive branches are separated for good reason. Recent EO changing statute for permitting and ACM authorities to DNR will lead to the wholesale degradation of fish and game habitat that is vital to many industries. Legislature must intervene. New ADF&G Commissioner will address all of the Governor's concerns.

DISTRIBUTION: 61.

Dr. William J Hauser
3621 Hazen CIR

Anchorage AK, 99515

self and family

Email: karelbill@gci.net

Non Constituent

BILL#:

SUBJECT: FISH & GAME (FISH)

MESSAGE: We know fish are Alaska's most important natural resource to many people and ways. The EO to transfer responsibility for habitat protection from fishery scientists to a developmental agency will lead to long-term loss of fish for our children. Fishery resources are lost one culvert and project at a time.

DISTRIBUTION: 61

Mr. Micheal D Harper
49835 Leisure Lake Dr
49835 Leisure Lake Dr
Soldotna AK, 99669

Email: harper@custompcu.com

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: EO 107 -Alaska's salmon have been a state and private citizen priority since statehood. Under Governor Frank Murkowski's Executive Order salmon will no longer receive priority status. Please I urge you to DISAPPROVE EXECUTIVE ORDER 107.

DISTRIBUTION: 61

Eric M Hansen
2120 Shore Dr
2120 Shore Dr
Anchorage AK, 99515-3141

Email: erichans@mac.com

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I am strongly pro development for Alaska's future. Alaska's vast resources should not be

Public Opinion Message System

http://www.lcgis.state.ak.us/staffpom/poms_main.as

"locked up" but should be developed responsibly without destroying the wild magnificence that makes Alaska "Alaska". However I urge the Anchorage area representatives and senators to vote in joint session to disapprove EO 107.

DISTRIBUTION: 61

Marybeth S Holleman
9641 Homestead Tr
9641 Homestead Tr
Anchorage AK, 99507-6729

Email: nellie_juan@yahoo.com

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please do not allow transfer of the Department of Fish and Game Habitat Division permitting authority to the Department of Natural Resources. This would undermine the democratic process of checks and balances that we need to keep our fish and wildlife populations and their habitat healthy. It's vital our wild resources remain healthy.

DISTRIBUTION: 61

Ms. Gail M Heineman
2732 W 67th Ave
2732 W 67th Ave
Anchorage AK, 99502
Self
Email: gail_heineman@yahoo.com

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Please stop or mitigate Executive Order 107. Keep Habitat permitting in Fish and Game. Stop the Governor's order to put it under DNR. Look what happened in Oregon and Washington with most of their salmon lost to logging and dams. Don't make the same mistake here.

DISTRIBUTION: 61

Ms. Mary L Humphrey
P.o. 140903
Po Box 140903
Anchorage AK, 99514-0903

Email: maryis@pobox.alaska.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Vote NO on Executive Order 107. Mr. Rogers said it best. "I like to take my time I mean that when I want to do a thing I like to take my time to do it right. Don't fast track development. Let ADF&G Habitat continue their job.

DISTRIBUTION: 61

Ms. Gail Ito
4300 Needle CIR

Anchorage AK, 99508

private citizen

Email:

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Please veto Gov. Murkowski's reorganization of Fish and Game with DNR within the 60 day window. DNR focus" on development F&G Habitat on protecting maintaining improving. Both are necessary and complimentary a healthy check and balance - the basis of our government. Please act within the 60 day window. Thank you.

DISTRIBUTION: 60

Jennifer M Norris

Po Box 90350

Po Box 90350

Anchorage AK, 99509-0350

Email:

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: PLEASE vote to DISAPPROVE EO 107 to move permitting authority from Fish and Game to Natural Resources. These two departments have different missions. ADF&G protects fish and wildlife resources. ADNDR promotes resource development. Keeping permitting at ADF&G maintains the checks and balances needed for making sound decisions on resource issues.

DISTRIBUTION: 61

Sandra L Jones
1640 Shore Dr
1640 Shore Dr
Anchorage AK, 99515-3207

Email: sljones@kumin.alaska.com

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please list me among citizens opposed to combining Fish & Wildlife with DNR. I believe that these agencies require independence since there are times when their interests are competing.

DISTRIBUTION: 61

Joseph W Olson
11641 Paddock Ln
11641 Paddock Ln
Anchorage AK, 99516

Email: mailjwo@alaska.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: We are adamantly opposed to the Governor's intent to move habitat permitting from Fish & Game to DNR. It has become increasingly obvious to use that many legislators appear to think that they are to serve only one sector of the community (Business) at the expense of all other members (all citizens).

DISTRIBUTION: 61

Joan C Owens
1352 M St
1352 M St
Anchorage AK, 99501

Email:

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I urge you to resend EO 107 relating to habitat protection. Further please continue APOC as presently constituted.

DISTRIBUTION: 61

Marilyn W Russell
221 Well St
221 Well St
Fairbanks AK, 99701
self
Email: marilyn@ptialaska.net

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Dear Sirs and Mesdames Please support the idea of keeping the habitat division under the jurisdiction of the Dept. of Fish and Game. Such should be managed and preserved; not put under the auspices of a Department whose purpose is "development." Thank you Marilyn Russell

DISTRIBUTION: 20

Charles E Trowbridge
40710 Glacier View St
40710 Glacier View St
Homer AK, 99603-9337

Email:

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Strongly oppose moving habitat functions to DNR. The state's ability to protect habitat hinges on the differing missions currently held by ADF&G and DNR. It fosters healthy disagreement and discussion and results in the best level of protection. It's also important to maintain habitat staff contact with other divisional biological staff.

DISTRIBUTION: 61

Patrick B Walsh
P.o. Box 877
Po Box 877
Dillingham AK, 99576

Email: aawalsh@nushtel.net

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Alaska Legislators-- Please oppose EO 107. I'm a strong supporter of Alaska's economic development but taking habitat permitting from ADFG and turning it over to DNR will do far more damage than good. Fish and wildlife are the heart and soul of the Alaskan culture itself and cannot be protected by this EO.

DISTRIBUTION: 61

Anne P Wieland
Po Box 1395
Po Box 1395
Homer AK, 99603-1395

Email:
Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Please allow Representative Gara's resolution to disapprove EO 107 to be heard and urge you to pass his resolution as the Habitat Division should stay under ADF&G.

DISTRIBUTION: 61

Suzanne Strisik
2718 Lord Baranof DR

Anchorage AK, 99517

Email:
Non Constituent

BILL#:

SUBJECT: GOVERNOR

MESSAGE: I am disappointed by the Governor's attempt to eliminate Fish & Game habitat protection. He reinforces the unpleasant stereotype of an aging arrogant white man who drinks too much and has too little common sense. Please oppose his short-sighted and poorly considered plans.

DISTRIBUTION: 40

February 18, 2003

**Trout Unlimited's Comments to Alaska Boards of Fish and Game
Regarding Executive Order No.107**

What's At Stake

Executive Order No. 107 (EO), February 12 2003, transfers Title 16 permitting authority [AS16.05.840-.860 (Fishways Act) and AS16.05.870-900 (Anadromous Fish Act)] and certain other fish and wildlife habitat oversight and protection functions to the Department of Natural Resources (DNR). This transfer ignores the wisdom and experience of Alaska's fish and wildlife managers and will make the job of fish and wildlife management even more difficult than it is now.

Other than anecdotes and accusations that the Habitat and Restoration Division is the major stumbling block to all manner of projects, the governor has released no information or analysis as justification for his initiative. Although the governor claims that this major shift in resource management is in the public interest, he has refused to engage in public dialogue. That the EO has the support of the state's major resource development industries, including the commercial fishing industry, does not necessarily engender public confidence and trust in the move. Yet, the governor is assured that the consolidation of most permitting and oversight in the Department of Natural Resources will spur economic development by streamlining the project review, permitting and approval process without sacrificing the current level of environmental protection.

The Boards of Fish and Game and the Commissioner are entrusted with the duty of conserving the state's fish and wildlife resources consistent with the *public interest*. Not only does this order virtually eliminate the Department of Fish and Game's (ADF&G) ability to manage for protection of fish and wildlife habitat within the stream and riparian zone, but also abridges the power of the Boards of Fish and Game to conserve the fish and wildlife resource to ensure sustainable yield.

Trout Unlimited (TU) believes the boards have an obligation to independently examine the veracity of the claim that the department willfully delays or blocks legitimate projects and the legitimacy of the transfer of habitat authority to DNR. TU also believes that without the power to protect fish and wildlife habitat, that the boards' power to allocate and regulate utilization of the surplus yield of fish and game, especially salmon, will pale as that yield declines over time.

The "Public Interest"

Historical Roots

If the executive order were in the public interest, it meets the requirements set forth in the state constitution, Article VIII, Section 1 and Section 4. Section 1 states that it is the policy of the State of Alaska "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 4 further qualifies the resource development policy by stipulating that renewable resources "shall be utilized, developed and maintained on the sustained yield principle." Presumably, in their assertion of a "public interest," the framers of the constitution recognized that resource development projects are not always a public good and require regulation.

The constitution's concern that the public get a square deal and a square meal is rooted in the development and use of the renewable salmon resource during the territorial era. The territorial government took note as well as offense at the salmon packers rapacious exploitation of the resource and the federal government's inept management of the fishery. To underscore its anxiety that federal fisheries managers were not doing enough to protect salmon, the 1949 territorial legislature established a Department of Fisheries and Board of Fisheries to assist in the conservation of Alaska's fish and fisheries and to develop fisheries management capacity in anticipation of statehood. Thus, the constitution is predicated upon ensuring that development does not reduce the productivity of the resource base. While the constitution is prescriptive, it is not a cookbook. Concocting and preparing the recipes that transform raw resources into profitable dishes is the job of industry; while government is there to ensure the recipes do not jeopardize sustainability of the resource base.

The constitution's sustained-yield mandate forbids any action by government or private industry that would reduce the sustained yield of any renewable resource. Whether an action would have the consequence of reducing yield can only be determined through research and analysis, which can be both time-consuming and expensive. There is no escape clause for projects seeking to avoid or otherwise short cut this determination -- there are no "ifs," no "maybes," no wiggle-room whatsoever. Neither does the subordinate clause "subject to preferences among beneficial uses" in any way condition the sustained-yield requirement. On the contrary, it presupposes sustained yield. On the other hand, Article VIII does not preclude development; presumably, economic development is intrinsic to the utilization of replenishable resources. In simplest terms, the Alaska constitution admonishes: "thou shall not harm the goose that lays the golden eggs."

Hence, to achieve sustained yield of the state's wild salmon resource and to provide for the greatest utilization of the salmon, salmon production must be maintained at the highest possible level. Salmon production depends upon the productivity of the freshwater and marine environments. In a sense, habitat is the container in which the various chemical and biological actions and reactions take place that produce salmon.

Habitat is undeniably the basis for sustained yield of salmon. Indeed, salmon habitat itself is a replenishable resource. Therefore, the responsibility of government is to ensure that the habitat conditions that maximize the yield of fish are maintained, not degraded. Moreover, this responsibility is not discretionary; not optional; and certainly not conditional on other factors, be they cultural, social, political, or economic.

Securing the Public Interest

As the impetus for statehood was to provide for the public interest in the conservation and development of salmon fisheries, the first Alaska Legislature was especially concerned that the Department of Fish and Game and the Boards of Fisheries and Game have the power to both conserve and develop the fish and wildlife resource. In so doing, the legislature affirmed the territorial Department of Fish and Game's rationale for habitat-protection authority as explained in its 1950 annual report:

While it is true that overfishing is responsible for many declines, there is evidence to show that in numerous cases it is of minor or no consequence. The actual reasons are often found to be changes in the environment of the salmon due to natural and unnatural (man-made) conditions. This is especially true of the fresh water stages of its existence. Many examples could be cited. Some of the natural ones are cyclic climatic changes, floods, droughts, freezes, earthquakes, earth-slides, beaver dams and increase in predators. On the other hand, there are such man-made, or unnatural, causes as deforestation due to logging; hydro-electric, irrigation, flood control, and navigation projects; pollution, especially from pulp mills; soil conservation and reclamation schemes; gravel washing and mining operations; road construction such as stream culverts; insect control using poisonous sprays; and many others. The listing of these does not necessarily mean that all are inimical to the continuation of our salmon fisheries. It does mean, however, that if such projects are improperly and unwisely planned, the results will be disastrous to our fisheries. Alaska needs new industries, but not at the expense of her most important resource, which if properly cared for, will produce year after year. Luckily the advance of civilization has, as yet, had but very minor adverse effects on our fisheries. It therefore seemed appropriate that the Alaska Department of Fisheries institute [a new habitat division] . . . to become a "watchdog" to ward off the evil effects of advancing civilization, it is not intended to block progress. By profiting from the mistakes of the past and by cooperation of all parties, it should be possible to have new industries and still maintain our fisheries.

The revision of the Forest Practices Act in 1989 sparked a debate over ADF&G's habitat authority to protect fish streams. The debate ended by reaffirming the rationale for the department's authority: the authority to protect habitat is the power to ensure a sustained yield of fish and wildlife, the surplus of which can be made available to the public for maximum use, as allowed by regulation and managed appropriately.

In so far as habitat is the corpus that produces wealth for the State of Alaska, the Boards of Fish and Game have a fiduciary duty to protect that corpus. This corpus is the state's

original and preeminent "Permanent Fund." The boards have a joint responsibility to contest any measure or action that would undermine their fiduciary responsibility. Consequently, it would seem incumbent upon the boards to independently assess the legitimacy of the executive order. To put the matter another way: what has changed that now justifies abandoning the logic and experience of 50 years of conserving Alaska's fish and wildlife? Apart from the recent spate of anecdotes and unsupported accusations, what body of information and analysis justifies a decision to transfer Fish and Game habitat permitting and oversight functions to DNR?

Practical Considerations

Contained within the issue of the legitimacy of the executive order is the question of the practical consequence of transferring habitat permitting and oversight to DNR. The transfer of fish and wildlife habitat permitting and oversight to DNR does not alter DNR's mission, which is the conservation and development of the state's land and water resources. At first impression, providing habitat-protection authority to the agency with land and water responsibility may appear to be a good fit. Yet, on closer inspection, it is clear that DNR relegates habitat protection to a secondary concern. The reason for this is two-fold.

First, DNR's conservation and development mandate and jurisdiction extends only to state-owned land and waters, while ADFG's conservation and development mandate for fish and wildlife covers all state, federal and private lands, and all marine waters to three miles offshore. The vast majority of the 40,000 projects affecting fish habitat that the ADF&G's Habitat and Restoration Division has administered over the last 20 years are not on state land; most of these project are on privately owned land, borough land, or federal land.

Second, DNR holds oil and gas leases, sells timber, agricultural lands, leases minerals, and issues permits for activities on state owned land and water. DNR's responsibility for conservation of the state's water resource is primarily to ensure that water is 1) not over-appropriated, which would impair resource development; and 2) retained for use within the hydrologic unit. Historically, DNR has taken no responsibility to reserve instream-flow for fish and wildlife, leaving that responsibility to ADF&G, U.S. Fish and Wildlife Service and nongovernmental agencies, including The Nature Conservancy and Trout Unlimited. With respect to conservation of state lands, even though the Forest Practices Act requires the agency to enforce certain conservation restrictions on state and private lands, DNR's primary business is getting timber cut. So, when there is uncertainty about the impact of a logging plan on fish and wildlife habitat, DNR is not inclined to a precautionary approach to habitat protection. Consequently, transferring Title 16, fish-passage permitting to an agency with a land and water development mandate would seem to increase the likelihood of government mismanagement of the fish and wildlife resources in the pursuit of maximizing utilization of the land and water resource.

Due to their different missions, there have been many well-publicized disputes between ADF&G and DNR staff over stream buffers, stream buffer variations, forest plans and forest practices. The resolution of these disputes suggest the two-agency approach is more likely to ensure that decision makers and the public receive reliable information and analysis from the relevant expertise – foresters, geologists, hydrologists, and biologists. Thus, when a dispute arises between the experts, there is less likelihood that the dispute will be suppressed before it receives a public airing and the benefit of an open discussion. A few examples are illustrative:

- *Mixing zones in spawning areas:* In the mid-1990s the Department of Environmental Conservation proposed to changes to water quality regulations to allow mixing zones for toxic waste-water discharges in spawning areas. (Applications for mixing zones are allowed in less sensitive portions of salmon streams, but must receive ADF&G approval under the Anadromous Fish Act). Mixing zones in spawning areas were supported by DNR Division of Mining, but opposed by the Habitat Division. Public opposition prevented changes in the regulations.
- *Forest management:* In late 1980s, the DNR proposed to transfer management of hundreds of thousands of acres of state-owned, forest lands in the Susitna River basin to a Finnish timber company per a “forest management agreement.” DNR boosted the agreement as “streamlining” because it would allow the company to avoid the competitive timber-sale process with its associated public hearings and subsequent state oversight. Habitat Division reviewed the proposal and found it to be inconsistent with the Alaska Coastal Management Program due to lack of assurance that fish habitat would be protected or that public access for hunting and fishing would be maintained. When the public learned of these ramifications, overwhelming opposition derailed the impending agreement.
- *Oil and gas exploration:* In 1992, the DNR Division of Oil and Gas proposed to lease state lands and waters on the Kenai Peninsula for oil and gas exploration. Unfortunately the oil and gas division proposed reducing or eliminating some setbacks from water bodies for drilling rig and oil-production facilities as well as reducing or eliminating other safeguards to protect salmon streams from spills and discharges. ADF&G protested the DNR proposal. When the public became aware and involved, the stipulations that were normally required in such leases were reinstated.

The preceding examples exemplify the dynamic tension between ADF&G and DNR that stem from their different, often conflicting, but equally essential missions. These missions constitute a division of labor for the conservation and development of the state’s different resources and this division of labor has long been held to be in the public’s interest.

Therefore, if locating the fish and wildlife habitat-protection authority in DNR will not affect conservation of the fish and wildlife, then why go to the trouble of transferring it? If the argument is that the transfer will streamline the permitting process without while

maintaining the same level of environmental protection, then why not just streamline the process without transferring it? If the argument is that transferring staff to another department will improve their performance, why would that be? If the argument is about consolidating environmental permitting and authority in one agency, why is DNR the more appropriate choice than the ADF&G?

In 2002, ADF&G permittees processed about 2000 fish-passage permits; each permit averaging 14 days; with only 9 permits were denied. This doesn't include scores of other habitat appraisals by ADF&G for the Coastal Zone Management Program, Federal Energy Regulatory Commission, Forest Practices Act. ADF&G non-Title 16 reviews averaged 18 days, recognizing that many approvals for time-critical projects were provided in days and some in hours. On the other hand, DNR last year had a backlog of about 700 water rights applications – some having been in the queue for 20 years – and another 2000 miscellaneous applications yet to be processed. Moreover, in order to cope with the backlog, DNR had adopted a water-user permitting scheme that the court ruled illegal because it did not protect the public interest. Now, on top of the existing backlog, DNR will be required do ADF&G's job with less staff. Indeed, it has been announced 50 of the 85 biologists in the Habitat and Restoration Division will be eliminated. This raises the question of which ADF&G biologists would be the ones transferred to DNR. Will they be the most experienced biologists? State personnel rules and union contracts dictate that in a layoff, staff with greater seniority bumps staff in the same job class with less seniority. As a result, many permitting positions may be filled with staff from other types of projects with little or no experience in permitting.

It is difficult to understand how consolidating permitting and other habitat oversight functions in DNR will streamline permitting, spur economic development, and provide the same level of environmental protection.

The Price of Failure

Even under the Department of Fish and Game management, habitat permitting has not always prevented harm to fish and habitat, particularly from bad roads and culverts. For instance, one timber company claims to have installed up to 3000 culverts without a permit. A recent studies by ADF&G found about 55% of culverts surveyed in the Matanuska-Susitna Borough and 60% of culverts on logging roads in the Kenai peninsula impeded fish passage. The very efficiency with which ADF&G has issued Title 16 permits ought to raise questions about thoroughness of the permit review prior to approval. Streamlining this permitting even more does not bode well. For instance, in the Tongass National Forest, where logging roads have been permitted under a streamlined, federal process, roads slough into streams and nearly 70% of all culverts impede or block fish passage.

Moreover, it is important to understand that AS16.05.840-.860 (the Fishways Act) and AS16.870 -.895 (Anadromous Fish Act) do not provide strict habitat protection standards. As written, both statutes provide for agency discretion when determining fish habitat

protection requirements. Since there are no standards by which to determine the "proper protection of fish and game," how might DNR staff make this determination? In the 1980s, ADF&G attempted to adopt regulatory standards for "proper protection," but development interests and DNR successfully opposed such regulations. Ironically, the special interests that blocked adoption of regulations to provide such standards continue to criticize ADF&G for arbitrary and subjective permit decisions. Just last year, for instance, the timber industry suggested eliminating ADF&G's role in permitting fish-stream crossing structures on forest roads, which DNR Division of Forestry supported.

Conclusion

Alaska is the world's greatest reservoir of salmonid biodiversity. Alaska has plenty of pristine habitats, which is why Alaska still has plenty of salmon, steelhead, and trout. The major reason there is so much good habitat is that most of Alaska has been free of the sort of heavy human use that has proven inimical to fish. In those areas where people have settled in large numbers, where major industries operate, or where roads wind, fish habitat in Alaska has not fared much better than elsewhere.

Enforcement is a key ingredient to any regulatory program. In the last 20 years, the Habitat Division issued about 38,000 Title 16 permits; not surprisingly permit stipulation violations have occurred and projects that have been built without permits. The Department of Public Safety has been reluctant to investigate alleged fish habitat violations, let alone prosecute. To some extent, this reflects the fact that the Division of Fish and Wildlife protection budget priority (excluding marine enforcement) in relation to total state expenditures declined 32% between 1983 and 2003. (In 2003, the budget is 3/10th of one percent of state expenditures.) There is currently a proposal to eliminate the Division of Fish and Wildlife Protection and incorporate the staff into the state troopers. Moreover, DNR does not have a sterling record of enforcing its regulations or prosecuting violations. Consider the hundreds of trespass cabins, which have been built on state land. Trout Unlimited suggests that fish habitat permitting and enforcement ought to be strengthened if balance between development and conservation is to be achieved.

Therefore, Trout Unlimited urges the Boards of Fish and Game oppose the EO No. 107 by requesting the governor to withdraw his executive order. Should the governor refuse, the Boards of Fish and Game should then request that the legislature disapprove the executive orders. Finally, if there are outstanding concerns about the overall efficacy of state environmental permitting and habitat oversight functions, the Boards of Fish and Game ought to convene a special session/workshop to consider such concerns as well as urging the legislature to conduct an audit of state environmental permitting and habitat oversight functions.

Frank Rue Carl Rosier Don Collinsworth Ron Skoog Jim Brooks
c/o 7083 Hendrickson Road
Juneau, AK 99801

January 30, 2003

Dear Governor Murkowski:

As former commissioners of the Alaska Department of Fish and Game, with a combined experience of over 30 years managing the department, we urge you not to move the statutory authority and responsibility to protect Alaska's salmon, trout, and other fish resources from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

We served under Republican, Democratic, and Independence party governors and we all agree that ADF&G must continue to be responsible for protecting the stream habitat of Alaska's salmon and trout. We share the belief that the loss of this authority will result in unnecessary and potentially irreversible harm to these resources that are critical to Alaska commercial, sport, and subsistence users.

At Alaska's Constitutional Convention in 1955, our founding fathers debated whether the new state should have one resource agency or two. They understood the need to develop our oil, mineral, and timber resources, and build the roads and highways needed to open up our vast state, and they recognized the need to balance that development with protection of fish and wildlife by purposefully giving the responsibility and authority to protect in-stream fish habitat to ADF&G.

The two resource agency approach provides for appropriate checks and balances in development decisions and it recognizes the importance and value of both our renewable and non-renewable resources.

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.840).

We understand your administration's goal of streamlining economic development, but feel the problem you are trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, 2,000 "Title 16" permits are issued each year by ADF&G in an average time of just 15 days, with 99 percent of them approved. This achievement can be credited to a responsive, professional and experienced staff in the Habitat, Commercial Fisheries and Sport Fish divisions who have a long, laudable record of working collaboratively to maintain Alaska's fishery resources and the habitat on which they depend. We do not think it is possible to replicate this capability within another agency

and doing anything less will erode or destroy Alaska's capacity to aid development in ways that avoid or minimize threats to our fishery resources.

We know from experience that some would prefer not to worry about impacts of development on salmon, trout, and other fish. Life might be easier without having to ensure adequate culverts, bridges, and buffers around spawning streams, but this comes at a cost to those Alaskans who depend on fish for a job or a meal, and for whom the loss of fish habitat will mean an inevitable loss of opportunity.


Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper regulatory balance.


Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

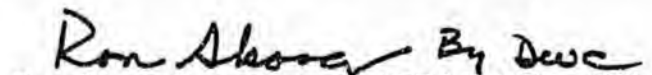
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

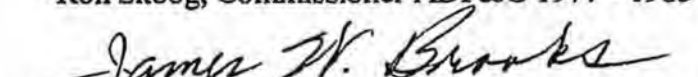
Sincerely,


Frank Rue, Commissioner ADF&G 1995 - 2002


Carl Rosier, Commissioner ADF&G 1991 - 1995


Don Collinsworth, Commissioner ADF&G 1983 - 1991


Ron Skoog, Commissioner ADF&G 1977 - 1983


Jim Brooks, Commissioner ADF&G 1972 - 1977

STATE OF ALASKA

Anchorage Fish & Game Advisory Committee

February 14, 2003

The Honorable Frank Murkowski
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski:

The Anchorage Fish & Game Advisory Committee at its regular public meeting on February 4, 2003 voted unanimously to voice our strong opposition to the proposed move of permitting from the Department of Fish & Game to the Department of Natural Resources. This vote was based on the public testimony at our meeting, the knowledge & experience of our members, and our understanding of potential impact this change could affect. All individuals that testified were adamantly opposed to this move.

In order to put this letter in perspective, I would like to provide you with some information about our AC. The Anchorage AC has a long history of taking actions to make a positive contribution to managing Alaska's natural resources for maximum use consistent with the interest of the public. Those actions have included assisting in the development of provisions for a moose hunt in Chugach State Park which was subsequently passed by the Board of Game in March of 1999. We have also contributed to formulating and supporting predator control plans as they affected GMU 13 (as well as other GMU's). Our AC also understands that development of our natural resources also includes logging and mining when it is not inconsistent with other important uses.

The concerns expressed were focused on the permitting process and the potential negative impact on the resource. In our deliberations, specific concerns were expressed about possible impact of ineffective application of the fishways provisions (16.05.840) and provisions for the protection of fish and game (16.05.870) on populations of fish. We have examined the information available on the permitting process in order to determine if these concerns were over some individual performance failures by individuals or small groups within the habitat and restoration division or a systems wide failure. The attached charts support that if anything, it is a performance rather than a system failure. Specifically, in fiscal years 1999 through 2002 the habitat and restoration division processed an average of 1974 permits each year. The T-16 permits took an average of 15 days to review in 1999, 14 days in 2000, 17 days in 2001 and 14 days in 2002. The average days to review permits regarding fish habitat did vary with the three regions, however the longest was 19 and the shortest was 7 days. When you consider the tasks involved, it does not support a systems problem that requires a system solution, such as moving the entire permitting function.

Other factors that lead us to believe that the movement of this function is not in the best interest of the State are:

1. Improved effectiveness of this division based on new appointments to fill current and future vacancies.

Serving the Alaska Board of Fisheries and Alaska Board of Game
Boards Support Section, P.O. Box 25526, Juneau, Alaska 99802

Anchorage Fish & Game Advisory Committee

Page 2

2. By taking permitting out of this area, it reduces accountability for effective decisions from the department and division which should be held accountable for an effective process.
3. Creates an opportunity for numerous groups to make legal challenges. This is often very costly and holds up the process regardless of the outcome.
4. Issues raised by unions could tie up a smooth and effective transition.

It is clear there is concern within parts of the natural resources community (fisheries, timber, and mining) about the effectiveness of the permitting process. However these concerns appear to be issues of individual instances of performance rather than system based problems. It is our belief that the first effort to address these concerns may be best made by attempting to correct the performance issues rather than moving these functions from one agency to another. We are confident that the concerns raised can be dealt with without moving this function on a case by case basis prior to moving this function to DNR.

In addition, we have done some preliminary research regarding some of the instances that you have been advised that have caused concern and it does not appear that the Habitat and Restoration Division was the primary cause of the delays. We understand that a number of individuals and groups are in the process of researching the instances that have been cited as causing a concern to identify any specific problems. We are looking forward to reviewing the results of that research as are many other concerned members of the public.

I am confident that any problems that may exist regarding permitting can be resolved by improving the process as it exists. Your administration has demonstrated this by the public meetings and forums where you have asked the public for their ideas of how to improve our state and the agencies within the State. In those forums you combined subject matter experts with informed members of the public and came up with solutions to problem areas. This approach would be more effective than expending significant funds for such services as consultants, special task forces, etc.

Sincerely,

(via email)

Bob Churchill, Chair
3415 Wentworth
Anchorage, AK 99508

cc: House Resources Committee Members
Senate Resources Committee Members
House Special Committee on Fisheries Members

**ADF&G Statewide Habitat and Restoration Division
Workload Summary, FY 99 to 02**

Table 1. Title 16 Project Reviews

Fiscal Year	Total # T 16 Project Reviews	# T 16 Permits Issued	# T 16 Denials	# T 16 No Permit Required
99	1831	1479	13	339
00	2141	1779	14	348
01	1999	1712	13	274
02	1926	1669	9	248

Table 2. Other Agency Project Reviews

Fiscal Year	Total # Reviews	Recommended Approval	Recommended Denial	Provided General Comments
99	900	530	29	341
00	1045	615	26	404
01	1267	700	49	518
02	1152	636	23	493

Table 3. Grand Total All Reviews (T 16 + Other Agency)

Fiscal Year	Reviews Completed	# Recommend Approval	Recommended Denial	General Comments
99	2731	2009	42	680
00	3186	2394	40	752
01	3266	2412	62	792
02	3078	2305	32	741

Table 4. Response Efficiency

Fiscal Year	T 16 Average # Days to Complete Review	Other Agency Average # Day to Complete Review
99	15	18
00	14	23
01	17	16
02	14	18

↑
Time to
issue T16
Permit

FY 02

ALASKA DEPARTMENT OF FISH AND GAME.
HABITAT AND RESTORATION DIVISION
FY 2002 ANNUAL PERMIT SUMMARY
GENERATED: 04-Oct-03

Table 2. GENERAL SUMMARY OF ADPE TITLE 16 AND OTHER AGENCY REVIEWS STATEWIDE

Region	Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Resp.	Average Review Days	Percent within Deadline	# Pre-issued Insp.	# Post-issued Insp.
I	Fish Habitat	248	244	0	4	14	85	545	1787
	Special Area	9	9	0	0	4	100	13	35
	Hazing Permit	3	3	0	0	18	07	0	0
	Sub Total Reg I	260	256	0	4	14	85	558	1822
II	Fish Habitat	744	648	5	91	19	84	535	450
	Special Area	118	112	2	5	25	78	10	10
	Hazing Permit	0	0	0	0	N/A	N/A	0	0
	Sub Total Reg II	862	760	7	96	20	83	545	460
III	Fish Habitat	721	472	0	142	7	88	457	623
	Special Area	14	14	0	0	0	100	26	18
	Hazing Permit	1	1	0	0	39	0	0	0
	Sub Total Reg III	736	487	0	142	7	88	483	641
JPO	Fish Habitat	68	67	2	6	13	98	18	10
	Special Area	0	0	0	0	N/A	N/A	0	0
	Hazing Permit	2	2	0	0	14	100	0	0
	Sub Total Reg JPO	70	69	2	6	13	99	18	10
Total All Regions		1926	1649	9	208	14	81	1700	2334

	Reviews Completed	Recm. Approved	Recm. Denied	General Comments
I Other Agency	238	106	2	131
II Other Agency	450	188	21	211
III Other Agency	513	322	0	187
JPO Other Agency	9	0	0	0
Total Other Agency	1163	636	23	403

	Not Reviewed	Withdrawn
I	8	2
II	33	67
III	0	1
JPO	0	0
Total Not Reviewed	41	70

Notes: 1) Regions: I = Southeast, II = Southcentral/Southwest/Western, III = Arctic/Interior/Western, JPO = Joint Pipeline Office

2) OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews. Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

3) Virtually all project reviews in Region I, and a substantial number in Regions II and III, are coordinated by OMB under a 30 or 60 day time frame. This increases the average ADPE response time.

FY 02

ALASKA DEPARTMENT OF FISH AND GAME
 HABITAT AND RESTORATION DIVISION
 FY 2002 ANNUAL PERMIT SUMMARY
 GENERATED: 04-Oct-03

Table 1. GENERAL STATEWIDE SUMMARY OF ADPS TITLE 16 AND OTHER AGENCY REVIEWS

Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Required	Average Review Days	Percent within Deadline	# Permitted Issued	# Permitted Issued
Fish Habitat	1778	1828	7	243	13	92	1652	2870
Special Area	142	135	2	8	22	82	48	54
Mooring Permits	5	8	0	0	28	67	0	0
Sub Total AS16	1925	1971	9	251	14	91	1700	2924
	Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
Other Agency	1152	636	23	483	18	88	490	420
GRAND TOTAL	3077	2607	32	734	15	90	2190	3344
Not Reviewed	38							
Withdrawn	50							

Notes:

OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews.
 Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

FROM: STOCKWELL

FAX NO. : 907-595-1548

Feb. 17 2003 10:30PM P2

SENATE OF ALASKA

Cooper Landing Fish & Game Advisory Committee

Frank H. Murkowski, Governor

Bill Stockwell, Chair
PO Box 721
Cooper Landing, AK 99572-0721
Phone: 595-1540

February 15, 2003

Honorable Frank Murkowski
Governor, State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

SENT BY FAX 2 PAGES AND BY MAIL

SUBJECT: The transfer of habitat authority from ADF&G to DNR

Dear Governor Murkowski,

At our public meeting on February 11, 2003, the Cooper Landing Fish and Game Advisory Committee discussed the transfer of habitat authority from the Department of Fish and Game to the Department of Natural Resources. The only official notice or information that we have received to date is the February 5, 2003 news release from Acting Commissioner Duffy.

As this transfer has potential impact on a very important committee function, being the local forum for fish and wildlife habitat, the committee asked me to express their concerns in this matter to you and to our Legislators, the Boards of Fisheries and Game, the Acting Commissioner of Fish and Game and the Commissioner of Natural Resources. Our concerns can be divided into two major issues, the process that this transfer took and the future protection of the habitat so vital to the sustainability of all Alaskan's common use fish and wildlife resources.

First, the process. We fully understand your constitutional authority to reorganize the executive branch and because you have already signed the executive order, we can no longer oppose the transfer of authority. However, we can ask that an open public process to assess the effects be followed before the culmination of this transfer. Process is the very backbone of public/advisory committee/board system for the management, conservation, protection, and use of fish, game and their habitat. We ask that you allow this process to be heard. The present system of fish and game habitat authority has worked for 50 years and can function successfully for a few more months. Time is not of the essence.

The Cooper Landing Advisory Committee feels that an open public process is always in the best interest of fish and wildlife

Serving the Alaska Board of Fisheries and Alaska Board of Game
Boards Support Section, 333 Raspberry Road, Anchorage, Alaska 99518-1590

PAGE 2 Cooper Landing Advisory Committee February 15, 2003

resources. We ask that the Board of Fisheries and Board of Game be given ample time and we ask the Boards to conduct a full and open comment and testimony period for the general public, effected organizations and advisory committees and that the Boards be allowed to make recommendations to you on the substance of this transfer. We also ask that the Alaska Legislature be given ample time to hear and consider the public's concerns on the issue and we ask our Legislators to conduct hearings for their constituents on this transfer.

Next, our other major concern is the future protection of the habitat so vital to the sustainability of our common use fish and wildlife resources and how the Cooper Landing Advisory Committee will continue to interface in the process. We believe, as do many Alaskans, that the proper management of the public's fish and wildlife resources are a vital part of the Alaska's future and that proper management must start with habitat protection and restoration.

Most issues that affect the Community of Cooper Landing deal with habitat. The residents and the advisory committee have over the years had a close working relationship with ADF&G on fish, wildlife and habitat issues of concern to our Community. This relationship has always included the advice and aid available from the Habitat Division. The Community feels that the loss of this asset could have a future negative impact on our quality of life and our economy. The Cooper Landing Advisory Committee is worried that the necessary coordination with ADF&G to function as the local forum for fish and wildlife habitat matters will be permanently lost and the vital habitat for fish and wildlife in our area will suffer.

Governor Murkowski, we thank you for your time and ask that you give our committee opinion and that of other advisory committees due deference prior to finalizing this transfer.

Sincerely,



Bill Stockwell, Chair

cc: Senator, District R
Representative Seaton, District 35, House Fisheries Comm.
Alaska Board Of Fisheries
Alaska Board of Game
Acting Commissioner Duffy, ADF&G
Commissioner Irwin, Dept. of Natural Resources

POSTAGE PAID

Paxson Fish and Game Advisory Committee
John Schandelmeier, Chair
HC 72 Box 7193
Paxson, Alaska 99737
(907) 822-5424

February 6, 2003

To: all State of Alaska Legislators

The Paxson Fish and Game Advisory Committee opposes merger of the Alaska Department of Fish Game's Habitat Division with the Department of Natural Resources.

We believe that these departments are very different in both focus and objectives. They should remain so. These two separate departments contribute to an effective system of checks and balances with Alaska's state government.

Wildlife habitat is important to our states' future; both for our residents opportunity to hunt, fish and recreate and for our states' economic health in the form of tourism.

The Department of Fish and Game is the agency best suited to protect and manage these most important values.



American Fisheries Society

ALASKA CHAPTER

February 10, 2003



Governor Frank Murkowski
Office of the Governor
P.O. Box 110011
Juneau, AK 99811-0001

Dear Governor Murkowski:

The members of the Alaska Chapter of the American Fisheries Society urge you not to transfer habitat permitting from the Department of Fish and Game to the Department of Natural Resources. We believe that this action will cause long-term, cumulative harm to Alaska's fishery resources. Fish are Alaska's most valuable renewable natural resource and have critical historical, cultural, and economic importance to Alaska's subsistence, commercial, and sport users. This valuable resource also represents additional opportunity for economic development.

The American Fisheries Society is the oldest and largest international scientific organization of professional fisheries scientists with nearly 8000 members dedicated to wise management and use of our sustainable aquatic resources and the continuing education of fishery scientists. The Alaska Chapter is one of over 100 subunits of the American Fisheries Society and includes more than 400 fisheries professionals who work in state and federal government, academia, and the private sector. A primary mission of the American Fisheries Society is "to ensure self-sustaining populations that support commercial and recreational fishing both now and in the future."

The Alaska Constitution states that fish and wildlife resources must be managed by the State for the sustained yield, maximum benefit and common use of all people. The framers of our State Constitution were concerned for the long-term viability of Alaska's most important renewable resource when they enacted safeguards to ensure that fish habitats would be maintained. These safeguards are a "check and balance" to assure that fishery and aquatic resources have equal standing with other important resources. This is accomplished by a review of project plans that may affect fish habitat by an independent professional fisheries scientist.

There is ample evidence from States in the Pacific Northwest that poorly designed, installed, or maintained culverts result in loss of access by fish to thousands of miles of productive habitat. Fishery scientists have estimated that the production of anadromous fish in Washington and Oregon is about three percent of historic levels; resident fish abundance is affected as well. Most of the productivity loss has been attributed to loss of aquatic habitat. Alaska is not immune to such loss; for example, recent studies of the State road system and logging roads on the Kenai Peninsula revealed that more than half of culverts block or impede fish passage to spawning, rearing and overwintering habitats.



American Fisheries Society

ALASKA CHAPTER

We, the Alaska Chapter of the American Fisheries Society, believe that if Alaska's fisheries resources are to be sustained for the benefit of all Alaskans, common property fisheries and aquatic resources must be given equal consideration with other land uses at the highest level. The best way to achieve this is to maintain the time-tested process enacted by the first State Legislature. We believe that if the review and permitting function is transferred from the Alaska Department of Fish and Game to the Department of Natural Resources the invaluable system of checks and balances that have existed in

State Statute since statehood will be lost. We believe that professional fisheries scientists within the Department of Fish and Game must continue to review and approve the design and installation of all proposed projects that affect our fish and aquatic resources in Alaska to ensure responsible stewardship of our sustainable fisheries and the healthy habitats that support them.

We encourage a dialogue (public hearings for example) concerning this matter and members of the Alaska Chapter of American Fisheries Society are available to assist if that will be useful. Please feel free to contact us if you have questions about our fishery and aquatic resources (akafs@hotmail.com).

Thank you,
Alaska Chapter of the American Fisheries Society

cc:
Senate and House Legislators

AVCP, INC.

The Association of Village Council Presidents
Office of Administration
Pouch 219, Bethel, AK 99559

Ivan M. Ivan, Chairperson
Myron P. Nanang, President
Phone (907) 543-7300
Fax (907) 543-3369



- Akicchak
- Akiak
- Alakanuk
- Andreafsky
- Aniak
- Atmautluk
- Bethel
- Bill Moore's Sl.
- Chefornak
- Chevak
- Chuvathluk
- Chuloomniwick
- Crooked Creek
- Eek
- Emmonak
- Georgetown
- Goodnews Bay
- Hamilton
- Hooper Bay
- Lower Kalakng
- Upper Kalakng
- Kaighuk
- Kipnuk
- Kongiganak
- Kotlik
- Kvethluk
- Kwigillingok
- Linn Village
- Marshall
- Mekoryuk
- Mtn. Village
- Napaimni
- Napakciak
- Napakiak
- Newtok
- Nightmute
- Nunakanyak
- Nunam Iqua
- Nunapitchuk
- Ohogamiut
- Oscarville
- Painiut
- Pilot Station
- Pitka's Point
- Platignon
- Quinhagak
- Red Devil
- Russian Mission
- Scammon Bay
- Steeteute
- St. Mary's
- Stony River
- Tuluksak
- Tuntuvliak
- Tununak
- Uinkumut

February 7, 2003

The Honorable Governor Murkowski
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

RE: Plan To Transfer ADF&G Habitat Protection Programs and Permitting to DNR

Dear Governor Murkowski,

The Association of Village Council Presidents (AVCP) was established in 1964, by and for the benefit of the tribal governments and the Native people of the Yukon-Kuskokwim (YK) Delta. Consistent with this mission, AVCP is very concerned about your plan to transfer the permitting function of the Habitat and Restoration Division of Fish & Game to the Department of Natural Resources.

Specifically, AVCP is concerned that this radical plan will significantly erode Alaska's Fishways Act (AS 16.05.840), Alaska's Anadromous Fish Act (AS 16.05.840), Alaska's Forest Practices Act (A.S. 41.17), and Alaska's Coastal Zone Management Program (AS 40.010-210). AVCP notes that these statutes and programs are absolutely critical in guiding ADF&G toward fulfilling its statutory responsibility for conservation of fish and wildlife populations and habitats.

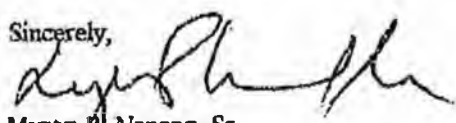
This proposal was not generated by, and is not intended to involve, any public process. It seems that this plan is designed to not only remove ADF&G from the business of issuing habitat permits but also from the business of protecting fish and wildlife habitat. AVCP would point out that the Department of Natural Resources is absolutely not capable of protecting fish and wildlife habitat. The Board of Fish's Sustainable Salmon Fisheries Policy explicitly recognizes the fundamental importance of maintaining habitat quality to sustain wild salmon biodiversity. By law, the Boards of Fish and Game and the ADF&G, not DNR, are empowered to conserve fish and wildlife.

AVCP understands that this plan would likely increase the profitability of mining, oil, and especially timber industries, but it would do so at the expense of Alaska's great wealth in terms of fish biodiversity. This would negatively impact subsistence, sport and commercial fisheries, since fisheries have long been one of the most important pillars of the Alaska economy, and in many rural areas of the State, the mainstay of the economy. But the value of healthy, natural fisheries cannot be reduced to dollar value alone.

If quality of living issues are considered, such as the importance of fishing to Alaskans, our identity, and quality of life, our fisheries may indeed have produced more in the way of true wealth and well-being than all of the extractive industries have, combined. Fish and wildlife habitat, population and harvest issues are rightfully the purview of a State Department made up primarily of fish and wildlife biologists. Likewise, land and water disposition issues are rightfully the purview of a second State Department of Natural Resources.

Pristine habitat is what sets Alaska apart from the rest of the world. If this transfer were to occur, Alaska will be one step closer to the path of ruin already followed by the Pacific Northwest and British Columbia. Alaska's reputation for fishery and habitat management will inevitably suffer.

Sincerely,


Myron P. Nanang, Sr.
President, AVCP

Cc: Sen. Ted Stevens
Sen. Lisa Murkowski
Congressman Don Young
Sen. Lyman Hoffman
Sen. Georgiana Lincoln
Sen. Donny Olson
Rep. Mary Kapsner
Rep. Carl Morgan
Rep. Richard Foster
Rep. Les Gara
House Speaker Pete Kott
Senate Majority Leader Gene Theriault
Mr. Ed Dersham, Chair, Board of Fisheries, P.O. Box 25526, Juneau, AK 99802-5526
Mr. Kevin Duffy, Acting Commissioner of Fish and Game, P.O. Box 25526, Juneau, AK 99802-5526
Mr. Ben Grussendorf, Chair, Board of Game, P.O. Box 25526, Juneau, AK 99802-5526





KENAI RIVER
Special Management Area

"Working together...for the river"

ADVISORY BOARD

March 5, 2003

Dear Representative:

During a meeting of the Kenai River Special Management Area (KRSMA) Advisory Board on February 20, our Board discussed Governor Murkowski's Executive Order No. 107, which transfers the fish habitat permitting functions, and all of the Department of Fish and Game's responsibilities to protect fish habitat and riparian buffers on logging operations from the Department of Fish and Game to the Department of Natural Resources. We urge that you take Legislative action to disapprove this executive order, and use your position to affirm that the fish and wildlife habitat protection standards for the State of Alaska are not to be compromised.

Our comments related to EO 107 are those of the KRSMA Board, and may not reflect the position of the Department of Natural Resources. The KRSMA Board was established to advise the Department of Natural Resources on issues of importance within the Kenai River watershed. We take our charge seriously as the Kenai River is the lifeblood for a tremendous segment of our Kenai Peninsula economy, from supporting a vital sportfishing and tourism industry, to supplying the largest share of the fishery resources upon which the commercial fishing industry depends. Maintaining healthy habitat is the basis for maintaining sustained salmon runs.

We are concerned that transferring the habitat permitting functions of ADF&G to ADNR will weaken the important checks and balances that must be weighed in all resource development equations. Resource development permitting decisions that are made by more than one agency will enable healthy dialogue and discussion between experts with diverse, often conflicting, but equally essential missions. Centralizing all permit decisions within one agency will increase the likelihood that decisions will be made that promote resource development at the expense of habitat preservation and protection. At what cost must we learn the lesson of the Pacific Northwest? When we, too, have lost much of our salmon resources due to the insidious loss of important habitat?

The KRSMA Board has supported the creation and implementation of the Kenai River Center (KRC) in Soldotna, a brainchild of former Kenai Peninsula Borough Mayors Don Gilman and Mike Navarre. The KRC is an award-winning example of interagency cooperation and permit streamlining and efficiency. Permit applicants are provided a "one stop" office for all of their permitting needs, having access to Borough representatives, state agency representatives from ADF&G and ADNR and federal



Kenai Area Office, Box 1247, Soldotna, AK 99669, Soldotna 262-5531
Kenai Peninsula Borough, Box 850, Soldotna, AK 99669, Soldotna 262-4441

Alaska Division of Parks and Outdoor Recreation, Department of Natural Resources, in cooperation with the Kenai Peninsula Borough.



agency representatives from EPA. Our experience in working with the ADF&G-Habitat Division staff has been positive and productive.

We do not agree with the premise that inefficiencies within the Habitat Division dictate the transfer of permitting functions to ADNR, as EO 107 alludes. Rather, the Habitat Division representatives at the Kenai River Center have been instrumental in efficiently and fairly issuing permits to hundreds of applicants yearly, while also helping to educate landowners, businesses and others regarding how they might play a role in protecting critical fish habitat along the Kenai River. Over the past decade, there has been a tremendous increase in habitat protection awareness and education among residents of the Kenai River watershed, much of it brought about by Habitat Division permitting staff.

We respectfully urge you to consider your role in promoting the responsible development of Alaska's natural resources while protecting those habitat resources that support the wealth of the state's sport, commercial and subsistence fisheries and wildlife resources. Please oppose Executive Order 107. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in cursive script that reads "Ken Lancaster". The signature is written in dark ink and is positioned above the printed name and title.

Ken Lancaster
KRSMA Advisory Board President

Cc: DNR Commissioner Tom Irwin

Alaska Public Waters Coalition

10332 High Bluff
Eagle River, AK 99577

The Honorable Frank Murkowski, Governor
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

February 10, 2003

Dear Gov. Murkowski:

Your announced decision to transfer selected permit functions from the Habitat Division of ADF&G to DNR appears to have not been well thought out! First off, why would you give more work to a Department that can not do the work it is now charge to do? DNR has been failing to protect the public trust values by managing water resources in accordance with statute and regulations for more than 10 years. Do you propose to give them Habitat's job with no more money and staff and allow them to fail in this assignment too?

If this is such a good idea, why did you not offer it during the campaign when you were asked for details on just how you would go about jump starting the Alaska economy.

Secondly, your perception of the job ADF&G's Habitat Division has been doing appears to be based on poor and inaccurate advice! Habitat has denied only 9 permits out of 2000 in the past year. That hardly constitutes an indictment of an overly aggressive public service division.

Thirdly, regarding behavior of some Habitat Division employees, I sat through four hours of town meeting with members of your transition team. There were a couple of complaints about performance of employees of the Habitat Division. It became evident to me that these should appropriately be handled by supervisor attention, rather than government reorganization.

On behalf of the Alaska Public Waters Coalition, I urge you to reconsider this matter.

Sincerely,

Keith Bayha, Steering Committee Chair

cc: all legislators

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

333 Raspberry Road
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PHONE: (907) 267-2285
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MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Bill Hanson
Regional Supervisor
Region I
Habitat and Restoration Division

DATE: February 20, 2003

SUBJECT: Region I Response to Governor Murkowski's State of the State Address and
Subsequent Press Conference Comments

During his State of the State address on January 23, 2003, and in a February 3, 2003 statewide press conference, Governor Murkowski cited several projects in the Southeast Alaska as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. The following information is presented to provide a more clear understanding of the Division's role in these projects.

The examples from H&R Region I include (1) the Juneau Golf Course; (2) Dorothy Lake Hydroelectric Project; (3) Ward Lake, and by association the Connell Lake Hydroelectric Project; (4) Falls Creek Hydroelectric Project; (5) the Ketchikan Southeast Intertie Project; and (6) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A brief summary of our response to each of these topics is provided below. More detailed explanations can be provided as needed.

In addition, in the February statewide news conference, Governor Murkowski stated that Habitat Division had sponsored a pizza party in Juneau to celebrate the closure of the Ketchikan Pulp Company mill in Ketchikan. Although we were certain that the Division had not and would not have sponsored such an event (and certainly what employees do on their own time is irrelevant), we have asked all of our staff as well as the former SE Regional Supervisor whether any such

event took place inside or outside the workplace. No one has any idea what the Governor was referring to, and we can state categorically that this statement was erroneous.

In summary, we disagree that the Division of Habitat and Restoration has caused undue delays in projects. We believe that we have provided exceptionally efficient and professional service to the state, federal government, municipalities, applicants and the public. Our staff has provided a unique and useful combination of skills that unite:

- Implementing the mission of ADF&G to protect, enhance, maintain and extend fish and wildlife as well as protecting uses of these resources;
- Substantial experience and expertise in understanding the physical, economic and technical needs and limitations of diverse industries and applicants, including mining, timber harvest, municipal development, hydroelectric development, coastal development, transportation, road construction and many others;
- Identifying and understanding creative ways to allow development activities to proceed while protecting fish and wildlife and their uses;
- A detailed knowledge, gained by experience and fieldwork, of the landscapes across Alaska.

We recognize that it takes time, money and effort to fully evaluate and carefully consider the potential effects of development activities and the options for avoiding unnecessary damage. This can only be done with a strong commitment to listening to the needs of applicants and detailed knowledge gained by field review. ADF&G has been and continues to be fully committed to both.

Discussion of Specific Projects

JUNEAU GOLF COURSE – In the February 3 press conference, the governor said, *“I don't know why we always start out with the Juneau Golf Course. But they've been trying since 1996 to get a conditional use permit granted to build a golf course. In 1998, after consulting with the Habitat Division, the Division of Governmental Coordination assented to the project. However, the Habitat's field biologist kept reopening the process by alleging that new information was required. The project's proponents have now spent more than one million dollars and I understand they still don't have a conditional use permit.”*

H&R Region I Response – Summary

The Totem Creek, Inc. (TCI) golf course project (the “Juneau Golf Course” to which the Governor refers) is proposed for undeveloped city-owned land in the Peterson Creek drainage, a cataloged anadromous watershed on North Douglas Island. Approximately 24 fish-bearing tributaries of Peterson Creek are within the project area. Peterson Creek provides habitat for a number of anadromous fish species, including pink, chum, and coho salmon, Dolly Varden char, and cutthroat trout. Currently, this watershed is in nearly pristine condition and provides excellent fishery and wildlife values. The watershed is also a popular deer hunting area.

ADF&G participated in the Alaska Coastal Management Program (ACMP) review of the golf course that resulted in issuance of a Consistency Determination (CD) on January 23, 1998. To

address CBJ and State concerns about the lack of information related to the project, TCI made a number of commitments to provide several additional documents for future planning and review. These commitments were incorporated into the project description of the CD, including future development of a wildlife management plan, pest management plan (related to use of pesticides) and others. TCI, the CBJ and the agencies all knew that these additional materials would require review in the future. ADF&G issued a Title 16 Fish Habitat permit for 23 stream crossings in a timely fashion following issuance in 1998 of the ACMP Consistency Determination (CD).

Since 1998, ADF&G has participated in the next phase of the review: the issuance of the Conditional Use Permit (CUP), which is a City and Borough of Juneau (CBJ) requirement, not an ADF&G permit. ADF&G has been consulted by the City both as an expert agency and as a legal participant in the CBJ review process. As the recognized expert on fish and wildlife for the state, ADF&G provides such assistance on a daily basis to municipalities, other agencies, commercial businesses, and the general public.

The Governor's statement points toward "*the Habitat's biologist*" who "*kept reopening the process by alleging that new information was required.*" We strongly disagree. There was no subsequent "reopening" of the process. The Department of Fish and Game, not an individual biologist, continued to work with the CBJ and TCI. The 1998 ACMP review included commitments by TCI to provide additional planning and review documents prior to construction of the golf course. The CBJ added to these requirements during their CUP process. ADF&G has worked with both the City and the applicant to obtain and review the required information.

The original ACMP project description, which describes TCI's proposal, also included the following commitment:

"There would be 66-foot buffers on each side of ordinary high water on all tributaries of Peterson Creek."

Note that this applies to **all tributaries**, not just fish habitat. It describes the applicant's proposal, not ADF&G or ACMP requirements.

An additional stipulation proposed by ADF&G was included in the final CD:

"Sixty-six foot undisturbed stream buffers measured from the ordinary high water mark on each side of the stream, and in the condition they are found today, must be maintained along all fish streams other than at road and golf cart trail crossings."

Note that this is **less stringent** than the applicant's proposal as described in the project description, since it applies only to fish streams. It does not distinguish between anadromous and non-anadromous habitat. Like all applicants, TCI had the opportunity to discuss the description and stipulation in draft, as well as the opportunity to elevate the CD to the directors and commissioners if they disagreed with any portion of the CD. TCI did not object to the description or stipulation, nor did they elevate the ACMP CD.

In 2000, after two years in which no further documents or plans related to the golf course were submitted to ADF&G for review, TCI requested that ADF&G reissue the Fish Habitat Permits for stream crossings, and applied for a Conditional Use Permit from the CBJ. At this point, TCI

objected to the 66-foot buffers on any streams other than 6 cataloged tributaries of Peterson Creek. TCI indicated that they had never intended to place such buffers on all streams or on all fish streams, despite the clear language in the CD. TCI contended that the CD inaccurately portrayed the project and their commitments, but we have found no documentation that this is correct.

Given the disagreement between TCI and the state regarding the protection of fish habitat, ADF&G agreed to work with TCI to evaluate smaller buffers on streams affected by the project. ADF&G conducted a full survey of streams in the project area, identifying 17 additional anadromous waters that TCI had not identified as fish bearing in the original project review. After considerable discussion and negotiation, TCI redesigned the golf course to minimize effects on fish habitat, and ADF&G agreed to variable-width buffers that range from no standing trees at all to 66 feet, depending on specific stream characteristics and values. ADF&G, TCI and the CBJ signed a letter of agreement pertaining to these changes in September 2002.

This is a complex project located in an area with high fish and wildlife values. The need to address such issues as use of pesticides, protection of drinking water and water quality, wetland protection and windthrow, and other issues managed by a variety of federal and state agencies as well as the CBJ have required substantial time and effort, only a portion of which has been related to ADF&G's concerns for protection of fish, wildlife, and the users of these resources.

DOROTHY LAKE HYDROELECTRIC PROJECT – In the press conference, the governor said, *“The Dorothy Lake Hydro Project, which will provide electricity to southeastern Alaska, is being held up over the concerns about eastern brook trout, which was introduced in the 1920s. One of the functions of the Department of Fish and Game commissioner is to manage, protect, maintain, improve and extend the fish, game and aquatic plant resources of the state in the interest of the economy and the general well being of the state. This statutory requirement clearly envisions a balancing of public interest, such as those embodied in the Dorothy Lake hydro project. Further, there is no specific statute or regulation that says the Department of Fish and Game has to protect non-native species, although I personally feel that they certainly should. Requirements for instream flow, intake screens and minimum water depths, which go beyond reasonable measures needed to protect the state's legitimate interest, only serve to make the project uneconomical. From a personal experience point of view, I have observed the Ward Lake system in Ketchikan, where the third lake was dammed to accommodate the Ketchikan Pulp Mills in the late 60s or thereabout, and there's a significant flow of water goes out of that dam and down in the pulp mill. There are eastern brook trout in that system previous to this dam being built, and there are eastern brook trout today. And I don't know a lot about habitat biology, but I do know that they managed to survive and they're still there for the enjoyment for folks in Ketchikan.”*

H&R Region I Response - Summary

Lake Dorothy is a 4-mile long lake at 2400 feet elevation that spills down to Lieuy Lake, then Bart Lake and finally empties into Taku Inlet, 12 miles from Juneau. The applicant, Lake Dorothy Hydro, Inc. (LDHI), has proposed a hydroelectric project that would:

- Prevent Lake Dorothy brook trout from reaching their spawning habitat in some years.
- Allow brook trout to be entrained into the hydro facility's intakes, with potential high mortality;
- Seasonally remove all water from Lower Dorothy Creek between Bart Lake and Taku Inlet, eliminating an isolated population of brook trout

ADF&G has the duty to protect, maintain, enhance and extend fish and wildlife populations under the State Constitution, duties of the commissioner, and the Fishway Act (AS 16.05.840). These statutes also recognize that fish and wildlife values must be evaluated against other beneficial uses. ADF&G has always recognized that fish and wildlife and their users are only a portion of the beneficial uses that must be considered. Clearly, considerations such as the reduction in use of fossil fuels, economics and municipal needs for electricity are valid and important uses that must be considered as well.

The statutes do not differentiate between native species and non-native species (e.g. elk, bison, eastern brook trout, and rainbow trout) or species that have been extended into additional areas (e.g. black-tailed deer, coho, sockeye and Chinook salmon).

Under §10(j) of the Federal Power Act, Federal Energy Regulatory Commission (FERC) licensing statutes recognize the importance of state input, and give state fish and wildlife agencies such as ADF&G, along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, special authority to make recommendations for terms and conditions for power projects.

ADF&G approaches all projects, including FERC licenses, in a routine, organized manner that includes: 1) Identification and analysis of fish and wildlife values (including both populations and habitat) along with the users of these resources; 2) Determination of the protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility. (Note that although our staff are very experienced, and therefore able to ask pertinent questions and suggest possible alternative measures, we normally rely on the applicant for this information); and 4) Working with the applicant to identify and select appropriate and feasible mitigation actions to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

To obtain this information, FERC and resource agencies typically ask the applicant to conduct studies in order to assess environmental effects and to determine the resource protection, mitigation and enhancement measures. FERC must obtain adequate information on all aspects of the project, including effects on fish and wildlife and natural, cultural, recreational, and tribal resources, in order to perform its NEPA environmental analysis, to assess project economics and feasibility, and to carry out other regulatory responsibilities.

FERC also needs information from studies in order to make an informed decision as to the appropriate level and type of resource measures to include in licenses, and to ensure that their decisions are supported by substantial evidence. FERC recognizes that both state and federal

agency expertise in fish and wildlife is critical to maintaining the credibility and success of the licensing process, and ensuring that the needed studies are scientifically and professionally designed. FERC regulations provide several means of dispute resolution if a dispute arises between an applicant and a resource agency or Indian Tribe regarding the need to conduct studies or gather information.

At the time of the Governor's State of the State address, ADF&G and LDHI had completed steps 1 and 2 above, and we were in the process of working through steps 3 and 4. The entire timeline and schedule for FERC licensing is set in federal regulation. Delay of the project is not at the discretion of ADF&G or other reviewing agencies, and our recommendations are not intended in any way to block the project. ADF&G's comments to FERC were due on February 19th, and have been submitted.

As confirmed in LDHI's January 21, 2003 letter to Bill Hanson, H&R Regional Supervisor, ADF&G and LDHI have worked conscientiously and well to consider all aspects of this project and discuss various options for protection, economic feasibility and off- site mitigation.

The Governor's comments on this project suggest that parallels exist between the brook trout populations potentially affected by the Dorothy Lake project and brook trout in the Ward Lake system in Ketchikan. A comparison of the potential effects of a hydroelectric project on the Dorothy Lake brook trout population and the population in the Ward Lake system would not be valid. ADF&G Division of Sport Fisheries data indicate that brook trout in the Ward Lake system occur only in Perseverance Lake, the uppermost lake in the system, which is inaccessible to anadromous fish due to a natural barrier. Unlike Lake Dorothy, therefore, fish passage needed to maintain access to spawning habitat in Perseverance Lake was not put at risk by Connell Lake Dam, nor was the Perseverance Lake brook trout population ever affected by downstream water withdrawals associated with the this dam. However, Connell Lake Dam, which was built to provide water for the Ketchikan Pulp Company in 1953, prior to any requirement for a federal NEPA review and prior to the existence of ADF&G, currently blocks several miles of stream and lake habitat that previously supported coho salmon, sockeye salmon, and steelhead.

Falls Creek Hydroelectric Project – The governor said, *"The Habitat Division, together with the US Park Service, has also contributed to the delays in moving forward in the Falls Creek Hydro project near Gustavus. Unending demands for more studies have become a hallmark for the way this division oftentimes does business, and having had a personal opportunity to pursue a FERC waiver for that particular project, which obviously would reduce dependency of Glacier Bay of power generation from diesel power, why I could never understand why everybody didn't get behind this and recognize it as a considerable contribution to the environment."*

H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be

required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

FERC licenses are issued for a 50-year period. Such a long-term project, which can essentially be renewed forever, deserves careful consideration, including studies sufficient to fully evaluate the short and long-term effects on fish and wildlife populations and their users. This commitment to making decisions on the basis of science, which includes both studies and the best judgment of highly professional biologists, is a fundamental goal and task of ADF&G.

For the Falls Creek project, ADF&G, the US Fish and Wildlife Service and the National Marine Fisheries Service have completed steps 1 and 2 above. During our most recent discussions with the applicant, he indicated that an instream flow license requirement to maintain an isolated Dolly Varden char population in the bypass reach would make the project economically unfeasible. Instream flow requirements to sustain fish production are among the basic conditions required at hydroelectric projects. Nearly all projects in operation are required to maintain instream flows if sport or commercial fish species are present.

The applicant indicated that he would investigate alternatives for off-site mitigation in lieu of the instream flow reservation, but has not returned for any further discussions with ADF&G. ADF&G is simply waiting for his proposal.

The National Park Service (NPS), which is currently the landowner, and FERC are completing an environmental impact statement (EIS) on the proposed Falls Creek project. The project also involves a complicated land swap of Glacier Bay National Park and Preserve wilderness area for state land. Under the Federal Power Act (FPA), FERC is not allowed to license a project in a national park. Therefore, legislation was enacted to change the status of land ownership contingent on agreement that the project will not adversely impact the purposes and values of the park and preserve. The Falls Creek project area will become state land only if the project is acceptable for licensing by FERC. Conservation groups provided some support for the enabling trade legislation. However, several national and Alaska groups now oppose either this land trade or the project. Locally, two neighboring Native Allotments, the Bear Track Lodge, and the Hoonah Indian Association have intervened with FERC opposing the hydroelectric project.

ADF&G has not delayed this project. Rather, we are waiting for the applicant's proposal for off-site mitigation and will be asked to comment on the EIS.

Ketchikan Southeast Intertie – In the State of the State address, the governor mentioned the southeast intertie as an example of his statement that *"On many occasions, the Habitat Division has been the sole agency opposing and delaying legitimate projects important to the state."*

H&R Region I Response - Summary

In no way did ADF&G oppose or delay this project. In our 1995 scoping comments to the Forest Service on the Tyee-Swan Lake Intertie (the Ketchikan Southeast Intertie to which the Governor refers), ADF&G sought clarification of the extent of road construction associated with the intertie project, which would construct a transmission line to connect the electrical systems serving Ketchikan, Wrangell, and Petersburg. Although road construction was included in several of the original scoping alternatives, the Alaska Energy Authority (AEA) originally proposed using helicopters instead of constructing a road. This was based on an independent feasibility study (completely unrelated to ADF&G) that concluded road construction would not be cost-effective. In our scoping comments, ADF&G indicated "...a helicopter constructed transmission line should not significantly affect fish habitat". We also stated: "Construction of the transmission line only, in the absence of the road, would eliminate the majority of environmental impacts which would need to be considered in the EIS".

The ADF&G review of the 1996 Draft EIS acknowledged clarification of the issue and stated the reduction in road construction "... has resulted in significantly fewer stream crossings, the avoidance of wetlands and other sensitive areas, less cumulative impact, fewer secondary impacts, and an overall reduction in fish and wildlife habitat losses."

Following issuance of the FEIS, ADF&G did not provide any formal additional comments, but did indicate to DGC that the EIS adequately addressed protection of fish and wildlife. ADF&G told a consultant for the Forest Service that right-of-way clearing would **not** require Fish Habitat permits, provided nothing (equipment, trees, brush, etc.) entered fish streams. The DGC Final Consistency Determination included standard conditions necessary to protect water quality by minimizing the introduction of sediments and petroleum products into streams.

Rather than delaying this project, ADF&G worked hard to ensure that it was reviewed and handled efficiently.

1996 Board of Forestry Report: The Governor's statement that *"almost all of the allegations were proven to be unfounded"* is incorrect.

The Science and Technical Committee (S/TC) organized under the auspices of the Board of Forestry, and including both agency and industry representatives, evaluated the concerns raised by ADF&G in the 1996 Board of Forestry Report. The S/TC recommended that approximately 12 issues should be handled by staff training, monitoring, or informational pamphlets to timber operators, but did not require changes to the FRPA statutes or regulations, and that one issue,

yarding corridors through riparian buffers, should be remanded back to the three resource agencies for further discussion and resolution.

The S/TC and S/TC Implementation Group further dealt with the remainder of the issues directly, with important recommendations (among others) for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources relating to the following topics:

- Requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- Ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- Removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- Recommendations for road construction in unstable or steep areas (Issue 3)
- Requiring a variation to remove trees within fish streams
- New definition of blockage to fish passage (Issues 6 and 16)
- Stream classification system and unclassified streams (Issue 17a)
- Improved slope stability standards encouraging retention of low-value and non-merchantable trees

Clearly, the concerns raised by ADF&G (which were not "allegations"), included many valid and important issues. The S/TC process was a difficult, but essential, means of handling these issues, and resulted in substantial improvements to the FRPA process.

cc: A. Ott, ADF&G
L. Trasky, ADF&G
E. Fritts, ADF&G

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Lance Trasky
Regional Supervisor
Region II
Habitat and Restoration Division

DATE: February 11, 2003

SUBJECT: Response to Governor Murkowski's February 3, 2003, Press Conference Comments

During his press conference on February 3, 2003, Governor Murkowski cited several projects in the Southcentral Region of Alaska that he viewed as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. He also stated that ". . . we have seen in the Habitat Division the development of a reputation on some major clearances, the reputation for delay, a reputation for inflexibility, and an input based on protection on the basis of personal viewpoint." We reviewed the examples cited in the governor's speech and found that there were significant errors and omissions that he was probably not aware of when he gave the speech. For example, it did not take 16 months before ADF&G issued a permit. The coastal consistency determination for the Glenn Parks Interchange was issued on March 19, 2002, not 2001 as stated by the governor. The examples the governor cited that are applicable to H&R Region II include (1) Tok Highway reconstruction projects, (2) Glenn Parks Highway interchange, (3) Sterling Highway stabilization project, and (4) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A summary of our response to each of the topics raised by the governor is provided below with more details of each project provided as attachments to this memorandum:

TOK HIGHWAY – The governor said, *“On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and mitigation measures. Habitat’s foot-dragging has caused a delay in obtaining the needed permits from the Corps of Engineers.”*

H&R Region II Response - Summary

Tok East 30 is an Alaska Department of Transportation and Public Facilities (ADOT&PF) project to upgrade the Tok Cutoff. The project includes replacement of bridges over the Chistochina River and Sinona Creek, filling approximately 28 acres of wetlands, and diverting a clear water tributary of the Copper River.

The ADF&G, in scoping comments provided on March 3, 2000, had no objection to the project concept, however, ADF&G’s comments noted that Fish Habitat Permits would be required for the Chistochina River and Sinona Creek bridges. In ADOT&PF’s project description there was no mention of a stream diversion, 28 acres of wetland fill, or placement of material below the ordinary high water line of fish bearing waters.

The ADF&G scoping response was provided initially to note resources of concern based on a general project concept, not specific details. ADF&G didn’t change its mind, ADOT&PF changed the project. When, over a year later during July 2001, the ADF&G learned that the project would require a stream diversion and 28 acres of wetland fill, we requested plans and specifications for the stream diversion, a copy of ADOT&PF’s alternatives analysis, their sediment and erosion control plan, and the mitigation plan.

On July 3, 2000, ADF&G received Fish Habitat Permit applications based on preliminary plans from ADOT&PF for bridge replacements on the Chistochina River and Sinona Creek. ADF&G issued a permit for the Chistochina River bridge on August 4, 2000 (ADF&G response time 32 days) and requested more information of the Sinona Creek crossing. On August 24, 2000, ADOT&PF provided the additional information and a permit was issued on November 13, 2000 (ADF&G response time 81 days). To date the work has not been completed

The project delays mentioned by the governor do not pertain the ADF&G. The U.S. Army Corps of Engineers (USACE) permit was not issued until April 15, 2002, and it does not go into effect until the applicant (i.e., ADOT&PF) signs the permit. However, as of February 10, 2003, ADOT&PF had not signed it. Instead, we are told, ADOT&PF is now in the process of upgrading their plans and will be submitting a revised proposal at some time in the future. In addition, final plans and specifications for the proposed stream diversion that were requested by ADF&G on August 30, 2001, and December 5, 2001, are being cooperatively developed.

A more detailed timeline of the above summary is found in Attachment 1.

Glenn Parks Highway interchange – The governor said, *“On the Glenn Parks Highway interchange, we saw another example of the Habitat division ignoring the DGC consistency*

process. The state DOT sought Title 16 permits to allow this vital infrastructure to be constructed. The final consistency determination was issued March 2001, but Habitat did not issue a permit until 2002, 16 months after the deadline for issuing permits after a consistency review becomes final. Furthermore, some of the needed Title 16 permits were held up until January 2003, nearly two years after the consistency review was finalized."

H&R Region II Response - Summary

1. The ACMP Final Consistency Determination was issued on March 19, 2002 (not 2001). The project was scheduled to begin construction in the fall of 2002 (it began in August 2002).
2. All ADF&G permits have been issued in a timely manner. The Governor implied that ADF&G permits were to be issued concurrently with the Consistency Determination, however, that document specifically states that ADF&G permits would be issued within 30 days of our receipt of detailed plans for those specific portions of the project that required our authorization. Because this is a design-build project, the plans and specifications are not available until the contractor completes them and is ready to go to work. The design build contract was awarded to CH2M Hill/ Kiewitt Pacific August 1, 2002. Habitat and Restoration worked with the contractors to modify the conceptual design to both reduce impacts on fish habitat and reduce costs. The first permit application was received by ADF&G on September 19, 2002. To date, seven Fish Habitat Permits have been issued for the project in a very timely manner with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 2.

Sterling Highway stabilization project – The governor said, "*Another example is the stabilization project on the Sterling Highway, where Anchor River scouring has been threatening the stability of the highway for several years. The Habitat Division has contributed to the delays in addressing this major safety issue because it would not agree to several proposals to install riprap. DOT was told that the Department of Fish and Game would deny any permits that proposed riprap despite assertions by DOT hydrologists that vegetated stabilization would be less effective and more expensive. Last October's flooding, however, proved the vegetation stabilization would have been much more effective. The Habitat Division has been unwilling to work with experienced highway engineers to develop alternatives that balance the interest of the traveling and public and instream habitat. I think we all agree that Alaska is entitled to safe highways."*

H&R Region II Response - Summary

The Sterling Highway Mile 161.4 project included armoring the Anchor River bank adjacent to the highway. On April 30, 2001, the Alaska Department of Transportation proposed to armor 1,000 linear feet of Anchor River streambank with riprap to protect the area from erosion. A week later resource agencies (i.e., ADF&G, EPA, USFWS) and the Kenai Peninsula Borough inspected the site with ADOT&PF representatives. In June 2001, resource agencies suggested changes to the plan that would better protect/enhance the nearshore fish habitat and simultaneously retain the riprap foundation desired by ADOT&PF. Six months later, during January 2002, ADOT&PF requested a meeting to discuss the hybrid designs. The final designs were being completed by ADOT&PF and USFWS when on April 29, 2002, high waters created by an undersized culvert on an Anchor River tributary stream caused water to overtop the road and weaken the road embankment. Under an ADF&G emergency authorization, issued immediately upon notification of the situation during the evening of April 29, 2002, the riverbank was armored on April 30, 2002, to protect the highway embankment.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 3.

1996 Board of Forestry Report – The governor said, *“In 1996 the Habitat Division delivered a report to the Board of Forestry alleging dozens of problems of implementing the forest resources and practices act, and after more than a years of scientific reviews and investigations, that consumed vast amounts of state time and state money, virtually all of the allegations were proven to be unfounded.”*

H&R Region II Response - Summary

The Forest Resources and Practices Act (FRPA) requires that ADF&G submit an annual report to the Board of Forestry (BOF) on the effectiveness of the FRPA statutes and regulations in protecting fish and wildlife resources. The law also requires that the department offer recommendations to correct any procedural or substantive problems. On January 16, 1996, ADF&G submitted its annual report pursuant to AS 41.17.047. The report was titled *1995 Report to the Board of Forestry*. The report discussed ADF&G frustrations and concerns about (1) inadequate funding, (2) interagency coordination, and (3) administration of FRPA. The report also identified a number of technical, biological, and economic issues that related to the implementation and effectiveness of FRPA. The department was simply fulfilling its responsibilities according to the statute.

The BOF then requested the formation of a Science/Technical Committee (S/TC) to review all of the concerns and issues and make recommendations to the BOF for statutory and regulatory changes. The S/TC consisted of approximately 25 state and federal scientists, state field personnel, and scientist-representatives of the fishing and timber industries. As a result of work completed during the S/TC review process, a bill (HB 373) amending parts of FRPA based upon S/TC recommendations was crafted and submitted to the state legislature. The bill was adopted and the FRPA statutes and regulations were improved.

A more detailed description of the work completed and issues addressed, as well as forest industry and agencies comments concerning the process that resulted from ADF&G's original report is provided in Attachment 4.

Should you have any questions or if I can provide addition information please do not hesitate to let me know.

cc: A. Ott, ADF&G
B. Hanson, ADF&G
E. Fritts, ADF&G

Tok Cut Off Milepost 30-38

Timeline:

- 1) January 26, 2000, ADF&G received a request for scoping comments from the ADOT&PF for Tok Cut Off MP 30-38. The request was based on the project concept, not specific details. It did not include mention of 28 acres of wetland fill or a stream diversion. On March 3, 2000, the ADF&G responded to the request for scoping comments with a letter of non objection stating that permits would be required for the new bridge at Sinona Creek, and the replacement bridge at the Chistochina River. (ADF&G review time 36 days)
- 2) On July 3, 2000 the ADF&G received permit applications for the Chistochina River and Sinona Creek bridge replacements based on preliminary plans and specifications. (see 4, 5, and 6 below for response information).
- 3) On July 17, 2001, the ADF&G received a notice from the Corps of Engineers that the project would involve the placement of fill in 28 acres of wetlands adjacent to the Copper River and would divert an unnamed tributary stream of the Copper River. This information had not been previously provided to the ADF&G. (see 7 below for response information)
- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (ADF&G response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. (ADF&G response time 32 days) To date no construction work has been done.
- 6) On August 24, 2000, the ADF&G received the additional information requested about the Sinona Creek Bridge. On November 13, 2000, the ADF&G issued the Fish Habitat Permit. (ADF&G response time 81 days) To date no construction work has been done.
- 7) On August 30, 2001 the ADF&G provided comments to the Corps of Engineers, with a copy to the ADOT&PF, expressing concerns about the wetland fill, stream diversion, the lack of plans for the stream diversion, and the lack of mitigation. This was not a change of ADF&G's previous position, but a revision based on new project information (approximately 28 acres of wetland fill and a stream diversion). (ADF&G response time 44 days)
- 8) On September 21, 2001 the ADOT&PF provided additional information regarding sediment and erosion control and wetland impacts. Plans and specifications for the stream diversion were not included.

- 9) On November 30, 2001, requests for a permit amendments were received from DOT&PF for the Sinona Creek and Chistochina River bridges. (see 10 and 11 below for response information)
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (ADF&G response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (ADF&G response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion because the September 21, 2001 information was not sufficient (ADF&G response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion. (ADOT&PF response time 172 days)
- 14) On August 13, 2002, the ADF&G conducted site inspections of the Chistochina River Bridge and the unnamed stream that the ADOT&PF plans to divert. Fish (i.e., burbot and salmonids) were found in the unnamed stream.

The Corps of Engineers permit for the project was issued on April 15, 2002. According to Jan Stuart (personal communication on February 7, 2003), of the U. S. Army Corps of Engineers Regulatory Branch, the ADOT&PF has not yet signed that permit.

According to ADOT&PF, Melissa Parker (personal communication on February 7, 2003) the ADOT&PF is upgrading plans and specifications for the entire project and will be submitting those plans in the near future.

Glenn Park Highway Interchange

Resource Concerns

The project affects approximately 30 acres of high value wetlands within the boundary of the Palmer Hay Flats State Game Refuge and two anadromous fish streams – Spring Creek and Liepitz Creek. Both these streams and their connected wetlands support very high densities of rearing and overwintering coho salmon. Spring Creek has been documented to support over 600 juvenile coho salmon per acre. Cook Inlet coho salmon stocks have been declining for many years. During the regular meeting cycle in a 1999 and then during in a special meeting in 2000, the Board of Fish (BOF) implemented changes to the commercial fishery and reduced the bag limit for coho salmon in the sport fishery in an attempt to increase escapement to Upper Cook Inlet spawning areas. The BOF reaffirmed its actions during meetings in 2002 when proposals were reviewed that would have relaxed the changes made in 1999 and 2000. Because young coho salmon spend a year or more in freshwater systems before going to the sea, it is critically important to maintain their freshwater habitat, particularly streams and wetlands like Spring Creek and Liepitz Creek that are so extremely productive.

Project Information

The Glenn Parks Interchange is a Department of Transportation and Public Facilities (ADOT&PF) “design-build” project. “Design-build” means that the ADOT&PF provides the project concept and the “design-build” team subsequently develops the specific construction plans. The ADOT&PF project concept was reviewed for consistency with the ACMP, and found consistent, with alternative measures, on March 19, 2002, not March 2001 as the Governor stated. The “Design-Build” team (CH2M Hill/Kiewitt Pacific) was selected in June 2002.

Chronology

1. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
2. March 19, 2002: The ACMP Final Consistency Determination was issued.
 - The Determination included Alternative Measure number 10, which reads as follows: *“Sufficient construction installation plans and specifications for all work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 shall be provided to the ADF&G for review and approval at least 30 days prior to beginning construction. All work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 (including springs, seeps, backwaters, sloughs, distributaries, or surface waters connected to these creeks) is prohibited without the prior written approval of the ADF&G.”* Since, at that time the “design-build” team had not been selected, and plans had not been submitted, the ADF&G could not issue a permit.

3. April 16, 2002: The US Army Corps of Engineers issued its Department of the Army Permit. This permit was later modified with an effective date of September 16, 2002 to accommodate design changes made by the contractor.
4. June 24, 2002: Anticipated date of ADOT&PF's announcement of Notice of Intent to Award the primary contract for the project.
5. August 2002: Anticipated date of award of primary contract for the project.

ADF&G Permits

Note: Project designs and specifications often changed after the design materials had been submitted to the ADF&G for review. The dates provided below refer to the dates that final plans were received.

6. On Thursday, September 19, 2002, the ADF&G received an application for the placement of temporary and permanent fill below the OHW mark of Spring Creek. On Wednesday, September 25, 2002, the contractor notified the ADF&G of their desire to begin placing fill materials the following morning. A Habitat Biologist drove to the project site and a field permit was issued to allow the work. **Time to issuance: 2 hours.**
7. On Thursday September 26, 2002, Fish Habitat Permit FG 02-II-0617 was issued authorizing and addressing all aspects of the placement of temporary and permanent fill below the OHW mark of Spring Creek. **Time to issuance: 4 business days.**
8. On Thursday September 19, 2002, the ADF&G received an application for initial construction activities associated with the replacement of the undersized 4-foot culvert. Work begins before the permit was issued. On Tuesday October 1, 2002, Fish Habitat Permit FG 01-II-0458 was issued. **Time to issuance: 8 business days.**
9. On Monday, September 30, 2002, the ADF&G received an application to place permanent fill below OHW of Spring Creek. On Monday, October 14, 2002, Fish Habitat Permit FG 02-II-0624 was issued. **Time to issuance: 10 business days.**
10. On Tuesday, November 5, 2002: ADF&G receives application for the placement of temporary fill below OHW of Spring Creek. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Monday, November 25, 2002, the Field Permit FG 02-II-0658 was issued (Later changed and recorded as FG 02-II-0692). **Time to issuance: less than 1 business day.**
11. On Thursday, November 7, 2002, the ADF&G received an application for final construction activities associated with replacement of undersized 4-foot culvert. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review

details of construction. On Wednesday, November 27, 2002, Fish Habitat Permit FG 02-II-0622 issued. **Time to issuance: 3 business days.**

12. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**
13. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**

STERLING HIGHWAY MILE 161.4

1. Resource and Statutory Concern:
 - A. High value salmon, steelhead, and Dolly Varden rearing habitat and salmon spawning habitat within this section of the Anchor River.
 - B. Anchor River chinook salmon is presently a "stock of management concern" based on chronic inability to meet escapement goals.
 - C. Anchor River supports a very popular sport fishery for chinook salmon, coho salmon, Dolly Varden, and steelhead. This sport fishery is extremely important to the local economy.

2. Was the project delayed by Title 16 permitting actions delay the project? NO
 - a. The ADF&G received a request from ADOT&PF for scoping comments in April 30, 2001.
 - b. The ADF&G, US Fish and Wildlife Service (USFWS), Kenai Peninsula Borough (KPB) and EPA conducted a site inspection with ADOT&PF on May 8, 2001.
 - c. ADOT&PF sent revised plans to ADF&G on May 23, 2001.
 - d. ADF&G sent formal recommendations on June 8, 2001, prior to ADOT&PF's comment deadline. ADF&G recommended the addition of bioengineering components to the riprap along the streambank.
 - e. ADOT&PF formally responded to ADF&G recommendations: "We (ADOT&PF) expect to have firm design drawings during winter 2001/02."
 - f. January 7, 2002, ADOT&PF requested a meeting with EPA, KPB, USFWS and ADF&G to discuss new proposal. Agencies and ADOT&PF conceptually agreed to new "hybrid" design incorporating bioengineering into riprap above the ordinary high water level.
 - g. March 28, 2002, USFWS provided ADOT&PF with a sketch of what they believed was agreed to at the January 7th meeting.
 - h. During late April 2002, spring meltwater caused a small tributary to the Anchor River to inundate an undersized culvert, overtop the Sterling Highway and damaged the road embankment. ADOT&PF placed riprap armor to stabilize roadway after consultation with ADF&G.

3. If the project was delayed, why? Our files indicate that the ADF&G responded to ADOT&PF inquiries prior to their deadlines. We were also available to meet with ADOT&PF on several occasions. The ADF&G, KPB, USFWS, NMFS and EPA all recommended ADOT&PF incorporate habitat components to the original design during initial project scoping.

4. Did the issuance of Anadromous Fish Act (AS 16.05.870) or Fishway Act (AS 16.05.840) delay the project? NO

On Monday April 29, 2002, an ADOT&PF representative contacted the ADF&G representative at home at approximately 7:00 pm concerning the flow across the road. Emergency authorization was immediately given to complete the work necessary to protect the Sterling Highway from damage resulted from an undersized culvert causing water to flow across the highway. The riverbank was stabilized on April 30, 2002 with riprap armor.

1996 Board of Forestry Report

Issues from the ADF&G report ultimately were addressed by the Science/Technical Committee (S/TC) through the following actions:

1. Approximately 12 issues addressed by the S/TC recommendation to the Board of Forestry (BOF) were that staff training, monitoring, or informational pamphlets to timber operators would be a more appropriate actions to take, rather than changing the FRPA statutes or regulations.
2. The 'yarding corridors through riparian buffers' issue was remanded back to the three resource agencies by the S/TC for resolution.
3. The S/TC and S/TC Implementation Group ultimately addressed the remaining (approx. 20) issues. The three resource agencies (i.e., ADNR, ADEC, and ADF&G) concurred with the recommendations reached by the S/TC and the S/TC Implementation Group and the BOF. A sample of the more important recommendations for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources include:

- requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- recommendations for road construction in unstable or steep areas (Issue 3)
- requiring a variation to remove trees within fish streams
- new definition of blockage to fish passage (Issues 6 and 16)
- stream classification system and unclassified streams (Issue 17a)
- improved slope stability standards encouraging retention of low-value and non-merchantable trees

The Governor's statement that "*almost all of the allegations were proven to be unfounded*" is incorrect. As a result of the work done by the S/TC and the S/TC Implementation Group, amendments to improve the FRPA were promulgated in the form of HB 373 that was passed by the legislature in 1999. If the ADF&G had not fulfilled its agency responsibility under FRPA, the bill amending parts of FRPA based upon S/TC recommendations (i.e., HB 373) would never have occurred.

The updates to the FRPA and the process used to evaluate the issues and make changes were supported by the timber industry. In testimony before the BOF on January 13, 1998, the then Executive Director of the Alaska Forest Association (AFA), Jack Phelps (currently Environment/Natural Resources Advisor to Governor Murkowski) pointed out that "*The cooperative effort between the agencies and affected industries has led to refinements in the way forest practices are performed in Alaska, and will help ensure that Alaska continues to lead the nation in both fisheries and forest management*" (see <http://www.akforest.org/fishpro.htm>). During testimony concerning HB 373 (a bill amending parts of FRPA and based upon S/TC

recommendations) on February 19, 1998, before the House Resources Committee, Mr. Phelps reaffirmed that position and stated "*In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This bill can and should enjoy full, bi-partisan support. I urge its speedy passage.*" (see <http://www.akforest.org/2-19-98.htm>). On March 6, 1998, the Alaska State House of Representatives passed HB 373 and Mr. Phelps on behalf of AFA issued a press release stating, "*This legislation, which has the strong support of the timber industry, is good for fish, it is good for the industry, and it is good for all Alaskans.*" (see <http://www.akforest.org/3-6-98.htm>) In the Final Report on Resolution of S/TC Issues (June 17, 1998), ADNR, ADF&G, ADEC, and the BOF concluded that, "the S/TC review was a positive, constructive process."