

**EO**

**107**

**(File 1 of 3)**

# LEGAL SERVICES

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## MEMORANDUM

February 25, 2003

**SUBJECT:** Executive Order 107 (Work Order No. 23-GS1071\A)

**TO:** Representative Paul Seaton

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to your request for information regarding Executive Order 107 (cited herein as EO 107).

**BACKGROUND.** Executive Order 107 provides for the transfer of certain permitting functions from the Department of Fish and Game to the Department of Natural Resources and the transfer of certain functions within the Department of Natural Resources.

The authority of Governor Frank Murkowski to issue EO 107 arises from art. III, sec. 23, Constitution of the State of Alaska. Article III, sec. 23, of the Alaska Constitution states:

**Reorganization.** The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

This executive order power of the governor is discussed in the Alaska Constitutional Convention Proceedings (pages 2226-2229) and it appears clear that the delegates viewed it as providing the governor the power, as an administrative matter, to reorganize the functions of the executive branch, but not to enlarge, diminish, or otherwise alter those functions.

The power of the governor to amend statutes as necessary to reorganize the executive branch is a legislative power that is conferred on the governor by the Alaska Constitution. The power to pass laws is conferred upon the legislature by the Alaska Constitution art. II, sec. 1 which states: "The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a

membership of forty." As a consequence of the doctrine of separation of powers which is inherent in the Alaska Constitution (Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975)), one branch of government is prohibited from encroaching upon and exercising the powers of another branch. The blending of governmental powers is permitted only to the extent granted by the constitution and will not be inferred. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). Just as the legislature's power over executive branch appointments is limited to the confirmation of certain appointments as expressly provided by the constitution (Id.), and just as the governor's power to veto appropriations made by the legislature is limited to that provided by the constitution (See, Alaska Legislative Council v. Knowles, 21 P.3d 687 (Alaska 2001)), the governor's executive order power is limited to that expressly set out in art. III, sec. 23. The governor's executive order power will be narrowly construed and will be confined within the bounds expressed in the constitution.

#### DISCUSSION AND SPECIFIC QUESTIONS.

You have asked a number of questions regarding the effect of EO 107 on the role of the Department of Fish and Game issuing permits for fishways (AS 16.05.840) and anadromous fish streams (AS 16.05.870). The best way to address your questions is to answer each one separately.

*ONE: Can the legislature amend EO 107 or can it only disapprove it?*

The legislature has only two options in regard to an executive order. Either the legislature accepts the executive order as the governor presented it, or the legislature may disapprove the executive order. The state constitution contains the requirement that disapproval of an executive order is accomplished ". . . by resolution concurred in by a majority of the members in joint session . . ." (Article III, Section 23) This must be complied with or any attempt by the legislature to disapprove an executive order will probably be held invalid by the court. The legislature has no power to amend an executive order directly, although it may seek to enact legislation that amends statutes affected by an executive order.

In addition to the procedure set out in the constitution, Uniform Rule 49(a)(4) provides

A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a standing committee of each house and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

*TWO: Will the Department of Fish and Game have any legal authority over what is now Title 16 permitting for anadromous fish streams under AS 16.05.870 or fishways under AS 16.05.840?*

Representative Paul Seaton

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EO 107 transfers all authority currently exercised by the commissioner of fish and game over permitting for anadromous fish streams and fishways to a newly created deputy commissioner of fish and game. The deputy commissioner of natural resources will exercise all of the authority formerly exercised by the commissioner of fish and game. The executive order does not expressly provide for any role for the Department of Fish and Game in the permitting process for anadromous fish streams or fishways.

*THREE: Is there any legal responsibility for the Department of Natural Resources to ask for the opinion of the Department of Fish and Game on anadromous fish stream permits or fishway permits? Is the Department of Natural Resources under any legal obligation to follow recommendations of the Department of Fish and Game?*

The answer to both questions is no. The Department of Natural Resources is not required to consult with the Department of Fish and Game regarding those permits. The Department of Fish and Game will still be able to provide its advice to the deputy commissioner of natural resources, regardless of whether it is solicited or not by the deputy commissioner, but the deputy commissioner is not required to follow that advice.

*FOUR: Under the statutory changes made by EO 107, will the Department of Fish and Game have any legal responsibility for monitoring, enforcing, requiring compliance, and evaluating anadromous fish stream permits or fishway permits?*

The answer is no. The statutory changes made by EO 107 repeals the permitting function for anadromous fish streams and fishways from AS 16. Once those provisions are removed from AS 16 the Department of Fish and Game is no longer responsible for monitoring, enforcing, or otherwise implementing those provisions unless the new provisions added to AS 41.14 authorize the department to provide those functions. The new statutory provisions regarding anadromous fish stream permits and fishway permits do not give any responsibility for implementing any of those provisions to the Department of Fish and Game.

*FIVE: What is the role of the commissioner of natural resources in the issuance of anadromous fish stream permits and fishway permits under EO 107? The executive order appears to vest the deputy commissioner of natural resources with authority to issue the permits. Is this authority delegated to the deputy commissioner by the commissioner of natural resources?*

The responsibility for issuance of anadromous fish stream permits and fishway permits is assigned by law to the deputy commissioner. There is no delegation of authority from the commissioner to the deputy commissioner. The commissioner is still the chief executive officer of the Department of Natural Resources and supervises the deputy commissioner of natural resources, however the deputy commissioner, not the commissioner, has the legal responsibility for issuing anadromous fish stream permits and fishway permits.

*SIX: Under EO 107, what would be the appeals process for anadromous fish stream permits and fishway permits and how would it differ from the present process of the Department of Fish and Game?*

An appeal of the decision of the commissioner of fish and game in regard to an application for an anadromous fish stream permit under AS 16.05.870 is subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 which provides for appeal procedures, a hearing before a hearing officer, and judicial review of the agency decision. An appeal of the decision of the deputy commissioner of natural resources in regard to an anadromous fish stream would also be subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630. Section 41 of the executive order provides that functions of the Department of Natural Resources relating to the protection of fish and game under AS 41.14.870 (anadromous fish stream permits) is subject to AS 44.62.330 - 44.62.630. The appeals process for anadromous fish stream permits is not changed by the executive order.

There are no formally established appeal procedures regarding fishway permits under AS 16.05.840. Appeals under AS 16.05.840 are not subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 and the commissioner of fish and game has not adopted any regulation specifically relating to such appeals. Upon the transfer of responsibility for fishway permits to the Department of Natural Resources, the department may adopt appeals procedures that it considers necessary by regulation.

*SEVEN: Will the Department of Natural Resources public notice requirements apply to anadromous fish stream permits and fishway permits issued by the department?*

The new provisions regarding anadromous fish stream permits and fishway permits added by EO 107 do not require public notice of applications for or issuance of those permits.

The public notice provisions of AS 38.05.945 do not apply to anadromous fish-stream permits and fishway permits. However those permits could, through the enactment of separate legislation, be added to the list of items under AS 38.05.945 for which the Department of Natural Resources must provide public notice.

*EIGHT: AS 16.05.870 says the Department Fish and Game must provide for "proper protection." Is there any legal definition for "proper protection"? If not, under EO 107 how will "proper protection" be defined?*

There is no legal definition of "proper protection." Proper protection is whatever protection is appropriate under the circumstances. The commissioner of fish and game has never defined "proper protection", though the term is used in numerous fish and game statutes and regulations. The commissioner of fish and game determines what constitutes proper protection on a case by case basis. Under EO 107, the deputy commissioner of natural resources may exercise his/her discretion to determine what constitutes proper

protection in each case. The deputy commissioner may adopt regulations as necessary to define "proper protection" if he/she so chooses.

*NINE: Under AS 16.05.840 a fishway must be provided only when the commissioner of fish and game determines that a fishway is necessary. Is there any legal standard defining "when it is necessary to provide for fish passage"? Under the statutory changes made by EO 107, will the determination of when it is necessary to provide for fish passage be exclusively within the discretion of the deputy commissioner of natural resources?*

There is no standard for determining when "it is necessary to provide for fish passage" by requiring the establishment of a fishway. The commissioner of fish and game exercises his/her discretion in making that determination. Even if the commissioner makes the determination that a fishway would be necessary to provide for fish passage, the commissioner has the authority under AS 16.05.850 to waive the requirement for a fishway in favor of a hatchery if the cost of a fishway is too great. If EO 107 takes effect, then the deputy commissioner of natural resources will have the same discretion that is currently exercised by the commissioner of fish and game in regard to fishways around or over dams and other obstructions to fish passage.

*TEN: When EO 107 takes effect, will the Department of Natural Resources have a broader mandate giving it permitting authority over all lands? If so is there a conflict legal or otherwise with the department's more limited mandate for state lands?*

When EO 107 takes effect the Department of Natural Resources will be responsible for issuing anadromous fish stream permits and fishway permits. The requirements for these permits will apply throughout the state on state, private, and other government land<sup>1</sup>. One of the major responsibilities of the Department of Natural Resources is for the management of state lands. There is no conflict between the responsibilities of the department for the management of state land and the regulation of private, state, or other government activities in the waters of the state. The legislature may assign any functions it considers appropriate to the Department of Natural Resources. Likewise, the governor by executive order may transfer any function currently assigned to another state agency to the Department of Natural Resources. There are virtually no constitutional limits on the types of functions that can be assigned to the department. If, for policy reasons, the legislature determines that the scope of the department should be limited to matters directly related to state land then it can limit the functions of the department accordingly by law.

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<sup>1</sup> The applicability of these permit requirements to federal land depends on the nature of the federal land involved. In some cases, the state will not be able to require the federal government or its agents or contractors to comply with the permits if the requirements interferes with a federal program. The supremacy clause of the federal constitution protects the federal government from having to comply with state regulations that interfere with the mission of federal agencies.

*ELEVEN: Will federal agencies have to go to the Department of Natural Resources for their in-stream permitting rather than the Department of Fish and Game?*

To the extent that the federal government is subject to, or submits itself, to the state permitting process for anadromous fish streams and fishways, the federal government will have to apply for those permits through the Department of Natural Resources. The Department of Fish and Game will no longer have any responsibility for those permits after EO 107 takes effect.

*TWELVE: Under EO 107 what happens to the due deference currently accorded to the Department of Fish and Game under AS 41.17 in regard to streamside buffer areas?*

Under AS 41.17 (commonly referred to as the Forest Resources and Practices Act) buffer areas must be established around an anadromous water body on private land under AS 41.17.116, around an anadromous or high value resident fish water body on state land under AS 41.17.118, and around an anadromous or high value resident fish water body on state land not managed by either the Department of Natural Resources or the University of Alaska under AS 41.17.119. The Department of Fish and Game is responsible for cataloging anadromous fish streams and for identifying uncatalogued streams that exhibit evidence of anadromous fish. The Department of Fish and Game is also responsible for identifying water bodies containing high value resident fish.

Under AS 41.17.098(d) the commissioner of natural resources must give due deference to the Department of Fish and Game in regard to the effects of timber operations on fish habitat, including the effects of variations from the riparian standards established under AS 41.17.117 - .119.

When EO 107 takes effect, the expertise and views of the Department of Fish and Game are no longer entitled to deference under AS 41.17. Section 23 of the executive order provides that the deputy commissioner of natural resources is the expert on fish and wildlife habitat for purposes of AS 41.17. All deference formerly accorded to the Department of Fish and Game in regard to the effects of timber operations on fish habitat must now be accorded to the expertise of the deputy commissioner of natural resources.

*THIRTEEN: Is the due deference currently accorded to the Department of Fish and Game under AS 41.17.098(d) equivalent to the authority of the Department of Fish and Game to issue anadromous fish stream permits and fishway permits?*

Due deference accorded to the Department of Fish and Game under AS 41.17 is completely separate and distinct from the authority of the department to issue anadromous fish stream permits. The due deference requirement provides that the Department of Natural Resources is to defer to the advice given by the Department of Fish and Game in regard to the effect of timber operations on fish habitat. The due deference provisions give the Department of Fish and Game much more input into the

timber management process than does the anadromous fish stream permits. The anadromous fish stream permits relate mostly to activities occurring in the stream bed, while the due deference provision gives the department an opportunity to address activities occurring above the stream that may affect fish habitat.

*FOURTEEN: Is the requirement for due deference to the expertise to the Department of Fish and Game more effective than providing an opportunity to review and consult?*

The "due deference" provision gives the Department of Fish and Game a much more effective means to affect timber operations as necessary to protect fish and wildlife habitat than would the opportunity to consult. Under AS 41.17.098(e) and (f), "due deference" means that deference that is appropriate in the context of the agency's expertise and area of responsibility and all the evidence available to support a factual assertion. Where due deference is given, if the commissioner [of natural resources] does not agree with a commenting agency, the commissioner shall prepare a written statement of the reasons for the disagreement. . . . If a disagreement [between the agency and the commissioner] . . . exists, an officer of an agency may require reevaluation of the disagreement at a higher level within the agencies, or by the governor if necessary, before a decision is made by the commissioner."

An opportunity to consult would provide the Department of Fish and Game with the ability to provide advice and insight into fish and wildlife habitat issues, but the responsibility for matters affecting habitat would be made solely by the Department of Natural Resources.

*FIFTEEN: Under EO 107 does the Department of Natural Resources have an obligation to give due deference to the Department of Fish and Game?*

None of the provisions of the executive order provide that the Department of Natural Resources must give due deference to the Department of Fish and Game in regard to anadromous fish stream permits, fishway permits, or fish and wildlife habitat matters under AS 41.17.

\* \* \*

There are two provisions of EO 107 where the governor appears to have exceeded his authority.

First, in sec. 5 of the executive order a new sec. 41.14.165 is added to provide that a peace officer may issue a citation for violations of the requirements of the fish passage and anadromous fish stream permits. Included in the new sec. 41.14.165 is a requirement that the Alaska Supreme Court shall determine which misdemeanors under the new AS 41.14 are appropriate for disposition without court appearance. Also included in that section is a requirement that the court establish an advisory committee consisting of certain members, including judges and the chairs of the House and Senate judiciary

committees. The governor's executive order authority is a limited authority to restructure the executive branch of state government. That authority does not allow the governor to place duties on either the legislative or judicial branch of government. In this case, both the Alaska Supreme Court and the legislature could completely ignore the requirements imposed by this section because the governor does not have the authority to impose any duty on them through an executive order.

Second, in sec. 45 of the executive order a provision is added to protect certain Department of Fish and Game employees from losing their "police officers retirement benefits" if they are transferred to the Department of Natural Resources by the order. This section does not involve a reorganization of functions of the executive branch. Instead, it relates to the retirement benefits accorded to state employees under law. No matter how well intentioned the purpose of this section may be, the governor does not have the power under an executive order to change laws regarding employee retirement benefits.

In both instances, the change the governor sought to make may be necessary and appropriate to fully achieve the intent of the executive order. However, the changes cannot be made in an executive order. In the event that the executive order does take effect, it would be advisable that the legislature enact these provisions in legislation so that there would be no legal uncertainties in regard to the duty of the Alaska Supreme Court in relating to bailable offenses and bail schedules for offenses under AS 41.14 and in regard to the status of retirement benefits for certain employees who are transferred to the Department of Natural Resources by the executive order.

\* \* \*

EO 107 makes a number of technical conforming amendments to the numerous statutes that must be changed to conform to the transfer of responsibility from the commissioner of fish and game under AS 16.05.870 to the deputy commissioner of natural resources under AS 41.14.870. However, the executive order fails to amend two statutes that should be amended to eliminate soon to be obsolete references to AS 16.05.870. AS 46.15.035(c) and 46.15.037(c) provide for the reservation of a volume of water necessary to protect fish habitat in anadromous fish streams identified by the Department of Fish and Game under AS 16.05.870 when the state approves the transfer of water from one hydrologic unit to another, or when the state sells water from a hydrologic unit. Both of these statutes should be amended to replace the reference to "AS 16.05.870" with "AS 41.14.870". The executive order cannot be amended, so these changes must be made in a separate bill.

\* \* \*

If I may be of further assistance, please advise.

GU:med  
03-186.med

**Subject: Conflict Resolution Chart, EO 107**

**Date:** Fri, 11 Apr 2003 11:07:01 -0800

**From:** janet burleson <janet\_burleson@dnr.state.ak.us>

**To:** Scott Ogan <senator\_scott\_ogan@legis.state.ak.us>,  
Linda J Hay <linda\_hay@legis.state.ak.us>,  
Kim S Elton <senator\_kim\_elton@legis.state.ak.us>,  
Ginny Austerman <ginny\_austerman@legis.state.ak.us>,  
Bruce Weyhrauch <representative\_bruce\_weyhrauch@legis.state.ak.us>

DNR needs to advise you of a correction to the Conflict Resolution Chart that DNR and Fish and Game distributed at the Senate Resource hearing and the House State Affairs hearing regarding EO 107. We also sent this correction to the House Fisheries Committee.

Please call if you have any questions.

**CORRECTION**

Please note that a correction needs to be made to the Conflict Resolution chart that was distributed at the Committee hearing. Under the existing framework, the Coastal Policy Council does not have jurisdiction over matters relating to FRPA. If there are any conflicts that must be resolved, the two commissioners must elevate the conflict to the Governor's office for final resolution - not the CPC.

**Subject: Re: Dingle Johnson Funds**

**Date:** Mon, 17 Mar 2003 16:53:52 -0900

**From:** Gordon J Williams <gordy\_williams@fishgame.state.ak.us>

**To:** Ginny Austerman <Ginny\_Austerman@Legis.state.ak.us>

**CC:** Kevin Brooks <kevin\_brooks@fishgame.state.ak.us>

*Question asked  
by Mike Milligan*

Hi Ginny,

No, there are no Dingle-Johnson (DJ) funds being transferred to DNR. The DJ funds received for habitat related work are being retained in Fish and Game for use on the habitat functions that will continue to be undertaken at the department. This is consistent with the current situation as GF is used for our permitting activities.

Gordy

Ginny Austerman wrote:

> Gordy:

>

> I hope you can answer a question that came up the other night at the  
> State Affairs Hearing on the Habitat Division Transfer. Are Dingle  
> Johnson Funds being used to pay for Habitat Division Activities? If so,  
> is there a breakdown you can give me for the State Affairs Committee.

>

> Thanks,

> Ginny Austerman

**Subject: follow up info**

**Date:** Tue, 11 Mar 2003 18:55:08 -0900

**From:** "Patricia Harris" <Pat.Harris@noaa.gov>

**To:** Representative\_Bruce\_Weyhrauch@legis.state.ak.us

**CC:** john hudson <jhudson@alaska.net>

Dear Representative Weyhrauch (Bruce),

Thank you again for taking time to meet with John Hudson, Jack Picolo, and me yesterday. I realize you are extremely busy as a new legislator and committee chair.

You expressed interest in the memo from regional habitat supervisors discussing the statements Governor Murkowski made regarding the habitat division's permitting record. These are attached for your information.

Also I have gotten new information regarding loss of federal funding resulting from the transfer of permitting authority from ADFG to ADNR that I would like to pass on to you. I was concerned that the state would lose the authority to review FERRC license applications because federal funds currently support that position in ADFG and there is no mechanism to transfer the funds to ADNR. I was told by the ADFG Habitat Regional Supervisor that the FERRC review responsibility will transfer to ADNR but not the funding. So the FERRC review will be done by an ADNR biologist, who will have it added to a workload that must also accommodate processing permits from the areas where field offices will be closed. The FERRC review position is currently a full time job so the attention given reviews will necessarily be diminished under ADNR. This is a small detail but points to what could be a serious impediment to speedy permit reviews. I apologize that I didn't have a full picture of the situation when we spoke yesterday.

You asked for suggestions that might make the transferring of permitting authority more workable and assure your constituents that habitat protection will not be shortchanged. I offer the following:

1. In some regions additional biologists will be needed at ADNR to handle permit review in an expedited manner. In Southeast, the three

follow up info

biologists transferred from ADFG will be expected to handle the volume they did at ADFG plus that of the closed field offices (an additional 4 FTEs) plus FERRC review.

2. Clarification of the role of the divisions remaining in ADFG is needed. ADFG biologists and the public need reassurance that the expertise of ADFG biologists will be available to and utilized by ADNR biologists.

Thanks you again for your kind attention. Although I am using my NMFS email to send you this message, my comments are strictly my own and do not reflect the position of NMFS or Auke Bay Laboratory.

Best Regards  
Pat Harris

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Patricia Harris <[pat.harris@noaa.gov](mailto:pat.harris@noaa.gov)>  
zoologist  
NMFS  
Auke Bay Lab

# STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 267-2285  
FAX: (907) 267-2464

### 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

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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 19<sup>th</sup>, 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 FEIS 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

**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.

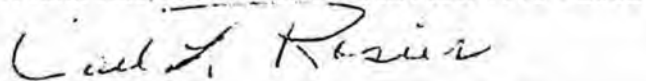
Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of 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.

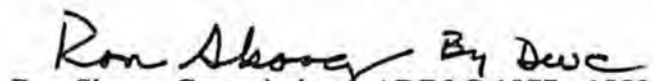
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

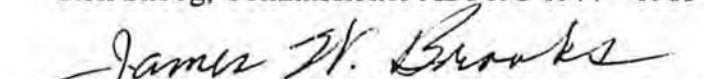
Sincerely,

  
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

Celia Rozen  
3711 Amber Bay Loop  
Anchorage, Alaska 99515

February 26, 2003

MAR 05 2003

The Honorable Bruce Weyhrauch  
House State Affairs Committee  
State Capitol, Room 102  
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

As the chair of the House State Affairs Committee, I believe it is your obligation to assure that a meaningful hearing occurs on the merits of EO 107.

Separate authorities and missions empowered the Departments of Fish and Game and Natural Resources via legislative action at statehood. These mandates stemmed directly from the Alaska Constitution. Therefore, it is completely inappropriate for the executive branch to contravene existing law without legislative debate and consent. Approval via inaction by the legislature would be public policy at its most irresponsible and least accountable.

Such an important change in state government cannot be characterized by legislative inaction. Accordingly, a hearing needs to occur in which every member of your committee is thoroughly educated about the ramifications of this EO on the functioning of state government. The need for a special concurrent resolution needs to be seriously considered by your committee due to the problems with this EO – legal, procedural, substantive, public policy, and human resource problems, too numerous for one letter.

I believe legal challenges will be brought forward in the courts should this EO become law. As a lawmaker, you should not allow this flawed EO to go forward. The overwhelmingly negative reaction to this EO from the public should convince you that it is not in the best interests of this state. Please join in a special concurrent resolution within sixty days.

Sincerely,

  
Celia Rozen

Dear Representative Weyhrauch,

I am writing to express my concern about the impending transfer of fish habitat protection from ADF&G to DNR. Fisheries is the largest private employer in this state. As a fisheries professional, it is my opinion that habitat protection is the most important component of conserving our fisheries resources for future generations. It was the destruction of habitat, and not overfishing, that was the primary cause of the precipitous declines in salmon in the Pacific Northwest.

I find the governor's rationale for transferring and cutting staff inconsistent and illogical. He gives several examples of projects he thinks should have been permitted more rapidly. If the law prevents them from being permitted, why not change the law? If the staff are not implementing the law correctly, that's a personnel matter, not an organizational one.

Fish habitat should be assessed by experts with local knowledge. ADF&G's mission requires employing such people. I'm worried that as the current staff leave, their DNR-hired replacements won't have the same expertise and the same professional relationships with the local biologists. Please try and forestall this short-sighted reorganization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Milo Adkison', followed by a long horizontal line extending to the right.

Milo Adkison  
1019 Edwin Place  
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(907) 780-6330  
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THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Gustavus, Alaska  
March 9, 2003

Rep. Bruce Weyhrauch  
Chair, House State Affairs Committee

MAR 11 2003

Dear Representative Weyhrauch:

I am writing to urge you to oppose transfer of the Habitat Division from the Department of Fish & Game to the Department of Natural Resources. I know that you personally are concerned about Alaska's fisheries and you have already in this session proposed legislation to benefit the salmon fisheries. I hope you recognize that maintenance of the Habitat Division within ADF&G is crucial to a future of abundant salmon in Alaska.

I am rather familiar with the Alaska Dept. of Fish & Game, and aware of the essential role played by the Habitat Division. I have also seen that the Dept. of Natural Resources has traditionally had far less concern for fish and game habitat. Instead, DNR has served as our natural resources development agency. As an example, in the 1980s DNR's Division of Forestry conducted timber sales on state lands northwest of Icy Bay (part of what is called the Yakataga Area), allowing a 13-mile clearcut with only one break along an ocean coast that has numerous cold streams and important wildlife habitat. Habitat protection requirements prescribed by ADF&G were frequently ignored by the DNR. Somewhat scandalized, in the late 1980s the Legislature mandated DNR to do an Area Plan for the Yakataga Area. DNR turned this task over to its Division of Forestry, and I know from listening to recordings of inter-agency meetings that the ADF&G Habitat Division had to fight tooth and nail for any habitat protections that were put into that plan. Moving the Habitat Division into DNR and reducing its staff of biologists will spell an end to meaningful checks and balances in the oversight of development projects in Alaska.

We cannot use the rhetoric of "doing development the right way" when we've essentially gotten rid of meaningful oversight. We are looking at developments that need careful study by biologists with a depth of knowledge about fisheries and wildlife. Governor Murkowski wants to build new roads. The Environmental Impacts section of the new Tongass Land Management Plan (TLMP) states that, "The greatest threat to the fish resource is caused by roads" (Chapter 3-64). The TLMP fisheries panel concluded that over time we will be looking at considerable risk to our salmon fisheries from timber harvest and roading (Ch. 3-56 to 3-65). Just in the matter of road culverts, a recent inter-agency study (ADF&G and U.S. Forest Service) concluded that 66% of the culverts on spawning streams are assumed to be inadequate for fish passage, and 85% of culverts on resident fish streams (non-spawning streams) are assumed inadequate (Tongass Road Condition Survey Report, June 2002, ADF&G Technical Report, Habitat & Restoration Div. #00-7). The landmark 1995 *Report to Congress: Anadromous Fish Habitat Assessment* (U.S. D.A. Forest Service) further describes concerns related to timber harvest programs. All of the above concerns have been stated with regard to the Tongass National Forest, on which stricter protections apply than on state and private lands.

In the past we have seen the muzzling of ADF&G and U.S. Forest Service biologists who were concerned about damage to habitat. A high profile case was the muzzling of the inter-agency committee that wrote the Viable Populations Strategy, a strategy required by the U.S. Forest Management Act. I suspect that with the few remaining Habitat biologists under the authority of the Commissioner of Natural Resources, the silence will be permanent.

I understand that the statistics do not back up allegations that the Habitat Division has

Dear Representative Weyhrauch,

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Sincerely,

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# ALASKA CENTER *for the* ENVIRONMENT

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House State Affairs - Public Comments on Executive Order 107, March 11, 2003

Dear Committee members:

Representative Bruce Weyhrauch

Representative James Holm

Representative Nancy Dahlstrom

Representative Bob Lynn

Representative Paul Seaton

Representative Ethan Berkowitz

Representative Max Gruenberg

MAR 14 2003

Thank you for this opportunity to provide comment on Executive Order 107. I am here representing Alaska Center for the Environment, Alaska's largest home-grown public interest environmental organization with over 8,000 dues-paying members.

## Checks and Balance

We recognize the need to develop our states resources but also identify the responsibility to conserve and protect the state's fish and wildlife resources. Alaska's economy and Alaskans depend on our unique fish and wildlife. Commercial and sport fishermen, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife. Fish and Game has the authority under the Fishway Act, Anadromous Fish Act and Forest Practices Act to manage the state's fish and wildlife resources through upholding proper stream buffers and approving suitable culverts for safe fish passage.

In order to fully comprehend and assess the impacts of the Governor's proposal, the missions of ADF&G and DNR need to be understood. They are very different. The Department of Fish & Game's mission is to protect and develop Alaska's fish and wildlife resources while DNR's mission is to promote development of the state's resources. These two missions balance each other providing a system of checks and balances and an opportunity for fish and wildlife biologists to work with developers through the permitting process. That is why the first state legislature created two separate resource agencies to manage the state's unique and diverse resources.

By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development. We believe that if the permitting function is transferred to DNR, the balance will be tilted away from habitat protection to the long-term detriment of our fish and wildlife resources.

## Substantive Change

The fundamental purpose of the Fish and Game Habitat division Title 16 permitting is to ensure free and efficient movement of fish and to protect the natural productivity of the aquatic life found in the streams. This authority has been in place since 1959, and applies equally to all persons, governmental agencies, and industries in Alaska.

Under the proposed EO, for the first time in Alaska's history, Fish and Game permitting and habitat protection will no longer reside in the Department of Fish and Game. Fish and Game will lose its authority, as the Habitat division will be eliminated, cutting 22 jobs and transferring 36 positions to DNR. This is far more than a process change; this is a major substantive and statutory change. The EO will change the standard of scrutiny. The system of checks and balance will be gone. There will be no need for DNR or industry to work out problems with ADF&G. The appeal process will be entirely through DNR.

## Science vs. Politics

In recent years, a growing body of research in Alaska and the Pacific Northwest has documented the widespread impacts that poorly designed or installed culverts can have on fish passage and productivity. Experience has shown that the direct involvement of biologists knowledgeable about fish and fish habitat in the review of culvert designs and installation plans is the single most effective means of preventing fish passage problems. This gives biologists that ability and authority to respond to both individual environmental conditions and the needs of operators.

Only a small percentage of the streams that support spawning and rearing salmon and other anadromous fish have been identified in Alaska. Without review of plans and specifications, there is a substantial risk that many anadromous streams as well as resident fish streams may be blocked, and a significant amount of fish production lost, as has already occurred throughout the Pacific Northwest.

ADF&G staff are the state's experts on fish habitat and fish passage, including design, construction, and maintenance of culverts that simulate natural stream conditions and provide adequate passage for adult and juvenile fish. ADF&G has conducted research on the swimming capabilities of various species of fish in Alaska, and assessed the capability of hundreds of culverts to pass fish, on thousands of miles of forest roads in Alaska. Over the last ten years, we have learned that designing and installing culverts that will pass fish in the short term and also continue to pass fish over time requires applying knowledge of fish to individual conditions. Designs must take into account the swimming habits and abilities of the fish species present as well as site-specific hydrologic and hydraulic conditions such as stream gradient, velocity, substrate, and annual flow.

Governor Murkowski's plan prevents Fish and Game biologists from speaking up about the impacts on wildlife and fish habitat from industrial development. Under the super DNR, Fish and Game biologists and even the ADF&G Commissioner roles would only be advisory, with no power to prevent destruction of habitat. All decisions would be

made by DNR, the department responsible for resource development. The costs of this proposal are borne on backs of Alaska's fish and wildlife and the Alaska residents and businesses that depend on them.

### Justification

The Murkowski Administration contends that the Habitat Division stands in the way of "legitimate projects" for personal reasons. When Governor Murkowski's examples and Habitat's permitting history is examined in detail, it is clear Habitat permitting is timely (especially in comparison to DNR) and the cited examples show how ADF&G is upholding the standards required to protect habitat under state law.

Permits are issued in a very timely manner when applicants provide ADF&G staff with the necessary basic information. Of nearly 2000 Title 16 permit applications received in FY02, 99.5% of the applications received permits or were told that no permit was required with an average of 14 days processing time. Currently DNR has a backlog of 700 water rights applications, 20 years old or older. 3000 miscellaneous applications, such as water rights transfers, have yet to be processed.

If there are problems with personnel and personal views and actions impeding projects, then this is a management situation and should be handled through proper discipline.

The facts relating to in-stream permitting don't point out a streamlining problem. Nor does it appear that moving Title 16 permitting to DNR will speed up the process. With less staff and less balance, it appears that proj proposals may well lead to litigation and more delays.

We urge the legislature to bring this issue to the House and Senate floors to be debated and we urge the legislature to support the resolution to disapprove Executive Order 107.

Thank you again for this opportunity to provide public comment.

Sincerely



Seth Little  
Legislative Coordinator  
Alaska Center for the Environment

MAR 17 2003

**ALASKA HUNTERS UNITED**  
**A Proud Voice for Conservation**  
PO Box 876485  
Wasilla, Alaska 99687

March 10, 2003

Dear Fellow Wildlife and Hunting Advocate:

We would like to introduce ourselves—and to ask for your help. Alaska Hunters United: A Proud Voice for Conservation is a new organization of hunters whose focus is the conservation of wildlife and wildlife habitat. Our Guiding Principles are:

- Our fundamental priority is to ensure the long-term conservation of wildlife populations and their habitats in Alaska.
- We proudly recognize the vital role hunters have played in the conservation of wildlife and habitat in North America over the past 100 years.
- We support diverse opportunities for people to use and enjoy Alaska's wildlife consistent with sustained use.
- We support all methods and means of hunting that are safe, legal, and ethical, while recognizing cultural differences.
- We respect other wildlife values and uses and will build upon common ground with others.

Alaska Hunters United are very concerned about Governor Murkowski's Executive Order to **transfer the permitting authority and other responsibilities of the Alaska Department of Fish and Game's Habitat Division to the Department of Natural Resources**. Since statehood the responsibility for protecting Alaska's wildlife, fish, and habitat **throughout the state**, and the responsibility to develop timber, oil and gas, mining, and similar resources on **state-owned** land, have resided in separate agencies. When conflicts between these two missions have arisen, those conflicts have been resolved by elevating them to the agency heads and, if necessary, the governor.

Governor Murkowski's Executive Order **eliminates this essential check and balance**, and instead will allow all such decisions to be made solely by the Department of Natural Resources. We need development in Alaska -- development that occurs with reasonable protection of Alaska's legacy of healthy and resilient fish and wildlife populations. Alaska's fish and wildlife populations themselves provide important economic benefits to the state through commercial and sport fishing, hunting, and tourism, as well as priceless subsistence, recreational, and cultural benefits to Alaska's people.

Governor Murkowski's Executive Order 107 transfers ADFG's permitting authorities under the Anadromous Fish Act and the Fishway Act to DNR. Fish habitats will receive less protection. ADFG will no longer be reviewing logging plans and monitoring logging operations on private, state, and federal lands **Wildlife, fish and their habitats would be the inevitable casualties of such a transfer.**

Other changes are expected to occur independently of the EO. We understand that:

- Twenty-two Habitat Division employees will **lose their jobs**, 36 staff will be transferred to DNR, and 20 will be retained at ADFG. The staff remaining at ADFG will be dispersed into several divisions. Alaska will lose the benefit of years, and in some cases decades, of experience. With fewer employees, those remaining biologists will spend far less time in the field consulting with developers, providing field approval for projects, and checking on projects as they proceed.
- Fewer biologists means **permits will take more time to process, not less**. In fact, Habitat's permitting efficiency has been impressive: in 2002 the division reviewed almost 2000 Title 16 permit applications; the average time to process them was 14 days, and only nine were denied. On the other hand, DNR has a backlog of about 700 water rights applications, some of them pending for as long as 20 years.
- ADFG's involvement in state and federal land use planning will suffer. Currently the Habitat Division solicits and consolidates comments from throughout ADFG's diverse programs to ensure that ADFG communicates effectively with one voice. While ADFG might still comment on land management planning through area biologists in varying divisions, those divisions are already short on staffing and time, so ADFG's participation will be minimal and disjointed. Without the Habitat Division, ADFG will be a less effective player in planning efforts that have major, long-term implications for Alaska's fish and wildlife resources.

Many people have already spoken out against this proposal, including Governor Murkowski's own ADFG transition team, five former ADFG commissioners, the Alaska Fisheries Society, several commercial fishing organizations, and several advisory boards.

Executive Order 107 goes into effect on April 15 unless a majority of the legislature sitting in joint session **disapproves** the order. Presently, several legislative committees are holding hearings and Senator Elton and Representative Gara have introduced House and Senate Resolutions to override the Governor's Executive Order. We urge your group—and your members—to contact the following legislators and ask them to disapprove the Governor's Executive Order:

1. Attend the House Fisheries Committee **hearing** March 18<sup>th</sup>,
2. **Contact** "Important Committee Chairs or Other Leaders" (see next page), and
3. **Contact** your legislators and ask that they allow the resolutions to reach the House and Senate Floors for debate and passage.

Directions on how to contact your legislators and how to contact the Legislative Information Office in your area to participate in hearings are attached. If you're able to send us a copy of your letter we'll distribute it to other interested legislators.

Finally, if you'd like more information about Alaska Hunters United please don't hesitate to get in touch. Thanks.

Sincerely,

*ROB HARDY* *SY MAN*

Rob Hardy  
Alaska Hunters United

## Contacting your Legislators

The **best** way to communicate with the legislature is by letter, fax, or phone. Since many offices ignore emails, an email should be your last choice. The best legislators to target are: those who chair or sit on committees to whom the EO has been referred or who have expressed an interest in holding hearings; those with whom you already have a good relationship; and the leadership. We've provided contact information below:

The **address** for all legislators is:

Senator/Representative \_\_\_\_\_  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

The **email address** for all legislators is:

Senator/Representative\_First Name\_Last Name@legis.state.ak.us.

### Important Committee Chairs or Other Leaders

Rep. Paul Seaton, Chair, House Special Committee on Fisheries (465-2689/ph); (465-3472/fax).

Rep. Bruce Weyrauch, Chair, House State Affairs (465-3744/ph); (465-2273/fax).

Sen. Kim Elton, Senate Resources (465-4947/ph); (465-2108/fax).

Senate President Gene Therriault (465-4797/ph); (465-3884/fax).

House Speaker Pete Kott (465-3777/ph); (465-2819/fax).

### To find your legislators name

Through the **web**, <http://w3.legis.state.ak.us/legdist/23/legdist23.htm>

**Call** the Legislative Information Office in your town:

Anchorage, 269-0111

Barrow, 852-7111

Bethel, 543-3541

Cordova, 424-5461

Delta Jct, 895-4236

Dillingham, 842-5319

Fairbanks, 452-4448

Glennallen, 822-5588

Homer, 235-7878

Juneau, 465-4648

Kenai Peninsula, 283-2030

Ketchikan, 225-9675

Kodiak, 486-8116

Kotzebue, 442-3880

MatSu, 376-3704

Nome, 443-5555

Petersburg, 772-3741

Seward, 224-5066

Sitka, 747-6276

Tok, 883-5020

Valdez, 835-2111

Wrangell, 874-3013

**ALASKA LONGLINE FISHERMEN'S ASSOCIATION**  
403 Lincoln Street, Ste. 237, Sitka, AK 99835

March 12, 2003

Dear Members of the Committee,

On behalf of the Alaska Longline Fishermen's Association, I wish to express our strong opposition to E.O. 107, the transfer of habitat permitting authority from the Department of Fish and Game (ADF&G) to the Department of Natural Resources.

As you may be aware, fisheries around the Nation have been dramatically curtailed and in some cases even closed due to poor stock condition. The socioeconomic implications of these closures have been extreme. Loss of habitat and habitat damage has played a major role in most of these fishery disasters. While some of Alaska's fisheries currently face marketing challenges, stocks are healthy and productive. Again, stock health is directly related to habitat health—although in Alaska's case, healthy habitat is the cause, not the culprit. Generations of Alaskan's have based coastal resource decisions on the importance of balancing development with long-term resource health. Given the importance of fisheries to Alaska's economy, the balance demands that fisheries habitat be carefully safeguarded. ADF&G has played that balancing role with remarkable success, and has received world-wide recognition for outstanding management of Alaska's fish stocks.

I expect the committee has received statistics on the effectiveness of Fish and Game's permit review process. The numbers that impressed our membership were that ADF&G processes on average 2,000 permits per year, and of those 99% are approved or granted in 15-17 days. Clearly the process is successful at protecting habitat, as well as facilitating careful development. In other words—there is absolutely no justification for transferring permitting authority away from ADF&G. The system is working.

In sum, while fisheries in other States have been curtailed or closed due to poor stock health, Alaska's fish stocks are healthy and productive. Resource disasters and successes can in many cases be directly traced to habitat health. ADF&G has done an exemplary job of balancing coastal development with habitat health, safeguarding Alaska's world class fish stocks while facilitating careful development. Transferring permitting authority away from ADF&G can only jeopardize this balance, and may sacrifice long-term resource productivity for short-term gains. Alaska economy, particularly Alaska's coastal economy, should not be placed in such jeopardy. On behalf of ALFA's approximately 100 members, I urge you to oppose E.O. 107.

Thank you for your time and attention. Sincerely,



Linda Behnken, director



## *Alaska Marine Conservation Council*

Box 101145 • Anchorage, Alaska 99510

(907) 277-5357 • (fax) 277-5975

amcc@akmarine.org • www.akmarine.org

Alaska Marine Conservation Council  
Testimony Re: Executive Order 107  
March 11, 2003

Mr. Chairman, Committee Members,

Thank you for the opportunity to address you. For the record, my name is Paula Terrel and I am testifying on behalf of the Alaska Marine Conservation Council (AMCC). AMCC is a statewide organization with almost 1,000 members. Our members are fishermen, subsistence harvesters, marine scientists, conservationists, small business owners and others, all of whom are linked by a desire to protect and restore our ocean environment through sustainable fishing practices, habitat protection and local stewardship. Our board is comprised largely of commercial fishermen.

Alaska Marine Conservation Council opposes EO 107 which would move the Alaska Department of Fish and Game's (ADF&G) permitting functions to the Department of Natural Resources (DNR). There are only downside risks for fishermen from this move.

Some say there will be no change in protection because the statutes are not being changed. This does not offer much comfort. The fact remains that fishermen have looked to the Department of Fish and Game's Habitat Division for the protection of their fisheries and have benefited from the balance which is provided by having both the Department of Fish and Game and the Department of Natural Resources involved in resource decisions. The status quo initiated at statehood has served Alaska's fisheries well.

We believe there is one very large misconception regarding the definition of the problem. The DNR Commissioner and the Governor have said that the problem is with multiple permitting and not with the approximately 2000 single permits which the Habitat Division issues each year in an average of 15-17 days. This is the basis for a critical misunderstanding. The permitting functions under consideration for transfer to DNR relate to **instream issues, e.g. primarily salmon**, and these are almost always single permits which are issued. The Anadromous Fish Act and Fishway Act permitting functions, which are to be transferred under EO 107 do not appear to be the problem.

Rather, the problem people are referring to are **the big projects, most of which require multiple permits, often involving federal agencies, such Corps of Engineer, Fish and Wildlife, and other state agency approvals, etc.**

So, transferring ADF&G's Title 16 permitting authority to DNR does not address the problem of multiple permits.

We have several questions and urge this Committee to request the Administration's response:

1. Is EO 107 really addressing the problem that the Administration wants to resolve? If the problem that needs addressing is indeed multiple permitting, why is the Administration focusing on the instream permitting process which is almost always a single permit?
2. Would the DNR Deputy Commissioner continue the historical practice of the Fish and Game Commissioner to delegate the authority for making the initial permitting decisions to the habitat biologists? Would these decisions therefore become subject to the process for appeals to the DNR Commissioner?
3. Under EO 107, the DNR Deputy Commissioner would have broad discretion to interpret the Anadromous Fish Act. For example, the Deputy Commissioner would "determine the waters in the state that are **important** for the rearing, spawning, and migration of anadromous fish," and the DNR Deputy Commissioner would decide what constitutes "**important habitat**," and what constitutes "proper protection" for the rearing, spawning and migration of anadromous fish in "**important**" streams. Similar discretion is afforded under the Fishway Act. Given the differing mandates of the Department of Natural Resources and the Department of Fish and Game, what safeguards would prevent this discretion from becoming unduly conflicted or compromised because it would now reside with the DNR Deputy Commissioner?
4. The National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce has a similar structure as is being proposed by EO 107. For example, NOAA Fisheries is responsible for **both** the promotion of fisheries in federal waters and the protection of fisheries resources. This has caused increased litigation, introduced costly delays, and contributed to agency gridlock. How would DNR avoid similar problems?
5. Will the Administration implement the recommendation of the 38 member transition team which the Governor convened and which suggested that the decision to move the Habitat Division to DNR "...be deferred until the new Commissioner is in place and his/her HD Director have time to evaluate HD programs..."

The Governor and the Acting Commissioner of Fish and Game and the Commissioner of the Department of Natural Resources have assured the public on several occasions that "the same level of environmental protection will continue to be provided for Alaska's fish and wildlife." Under EO 107, the Habitat Division authority for issuing permits and for the monitoring, compliance and enforcement of these permits would now be the responsibility of DNR, but with fewer biologists.

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At minimum, AMCC urges this committee and the Alaska Legislature to request the following commitments from the Administration:

- 1) A commitment by the Governor that the habitat biologists who are being transferred from the Alaska Department of Fish and Game would be "housed" in the newly formed Office of Habitat Management and Permitting;
- 2) A commitment by the Governor that, under this reorganization, the DNR Deputy Commissioner would delegate the authority for issuing and signing the Anadromous Fish Act and Fishway Act permits to the habitat biologists who have been transferred from Fish and Game.
- 3) A commitment by the Department of Natural Resources to require the State Forester to grant "due deference" under the Forest Practices Act to the Office of Habitat Management and Permitting on issues relating to the harvest of trees from within the 66 foot stream buffers on salmon streams on private land. The inclusion in the Forest Practices Act of this "due deference" to ADF&G was key to the fishing industry's support for the Forest Practices Act.
- 4) A commitment by the Department of Natural Resources that there would continue to be the same level of permit monitoring, compliance and enforcement as previously existed under ADF&G.

According to the Pacific Seafood Processing Association report, Impact of the Seafood Industry on Alaska's Economy "the commercial fishing and seafood processing industries accounted for approximately \$552 million in value added for 1999." The mining industry accounted for \$225 million, and the forestry industry accounted for \$179 million. The fishing industry is the largest private sector employer in Alaska. Governor Murkowski has indicated his intention to increase Alaska's resource production, including fisheries. It is imperative that increased timber and mining activities not occur to the detriment of fisheries.

AMCC concludes by restating its concern about the downside risks to fisheries of EO 107, and its opposition to the transfer of habitat permitting functions, and asks the Legislature and the Governor to ensure that Alaska's world renowned renewable fishing industry and the habitat upon which it depends is not compromised.

MAR 13 2003

## Alaska Public Waters Coalition

10332 High Bluff  
Eagle River, AK 99577  
March 11, 2003

Rep. Weyrauch, Chair, House Committee of State Affairs

The Alaska Public Waters Coalition is comprised of organizations and individuals concerned about sound management of Alaska's public trust resources, which include water and fish and wildlife. Please add our name to the growing list of those opposed to the Governor's Executive Order 107.

From the information that has come to light so far, it is evident that the Governor has been the victim of poor staff work! The examples he cited of delay and wrong doing by the Division of Habitat have not stood up to scrutiny. Legislative committee files already contain sufficient testimony and documentation to convince anyone of this fact.

The thinking that went into crafting and enacting the Fish and Wildlife Coordination Act, the Anadromous Fish Act, and the Fishway Act should not be negated by such shallow and flawed thinking as that which produced EO 107. The record of the Habitat Division speaks for itself.

It is essential that your committee, and the others to which resolutions to reject this executive order has been assigned, promptly evaluate the facts and the public will and vote to pass the resolutions before the April deadline. Failure to do so will be a blot on this Legislature that will long be remembered.

Sincerely,

Keith Bayha, Chair

**Headquarters:**  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515

**Regional Office:**  
601 West 5<sup>th</sup> Ave., Suite 600  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643



### **EXECUTIVE ORDER 107**

#### **Moving the Habitat Division of Fish & Game into the Department of Natural Resources**

The Alaska State Chamber of Commerce, representing approximately 700 business members and Alaska's local chambers of commerce, supports the Governor's proposal to make the Department of Natural Resources the lead agency for all State permitting and incorporate the permitting function of the Habitat Division of Fish & Game into DNR in order to consolidate permitting authority.

With this move, the Alaska State Chamber believes that the Governor is doing what business people do every day: increasing the level of service, speeding up processes, cutting costs, meeting customer needs and identifying efficient problem-solving methods.

Members of the Chamber believe this move will ensure a high standard of environmental protection, reduce the cost of government and encourage future investment in Alaska.

We support Executive Order 107 and respectfully urge the Legislature to do the same.

Submitted by Pamela La Bolle, ASCC President



MAR 14 2003

## Alaskans Working For Alaska!

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HEADQUARTERS . 626 "F" Street . Anchorage, Alaska 99501

Phone: (907) 277-5200 . Fax: (907) 277-5206 . [hq@afscmelocal52.org](mailto:hq@afscmelocal52.org) . <http://www.afscmelocal52.org>

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The State Affairs Committee, House of Representatives

Hearings on E.O. 107

Testimony of Mike Robbins

On Behalf of ASEA/AFSCME Local 52

In Opposition to the Transfer of Habitat Division to DNR

Rep. Weyhrauch, Members of the Committee, my name is Mike Robbins. I am appearing as a representative ASEA/AFSCME Local 52. I am an attorney and a Union Business Agent. I also have a Master's degree in Ocean & Marine Affairs. The Union is opposed to executive order 107 and urges the members of the State Affairs Committee to vote to rescind this order.

The plan represented by E.O. 107 should be subjected to a full and complete process of legislative review with meaningful hearings before such a drastic measure is implemented by state government. The Order violates the Alaska Constitution, Articles II and III (Separation of Powers Doctrine) and Article XII, Sec. 6 (Merit System) and 7 (Retirement Rights) as it attempts to amend legislation and enact legislation. The Order violates the Collective Bargaining Agreement, articles 12 and 14.

**Separation of Powers Doctrine.** Executive order 107 attempts to amend statutes which establish a retirement system for these Fish & Game employees. This system will be diminished or impaired if E.O. 107 is implemented. It also violates the merit principle that has been statutorily endorsed by the legislature at AS 23.40.070(3). Since the Order amends legislation, it violates the separation of powers doctrine and is unlawful for that reason as well. This makes it unconstitutional in violation of Articles II, sec. 1 and III, sec. 1.

The legislature is empowered to consider legislation and enact laws. Forty-three years ago, it established the Department of Fish & Game and the Department of Natural Resources, each with a different role designed to balance different public interest objectives. In the 1970's it passed statutes concerning public employees and the retirement system. In 1983, it passed a statute giving fish & game employees a 20-year retirement package. The Executive branch is to carry out and implement the legislature's statutes. This E.O attempts to amend and repeal several of these laws. This is an unconstitutional violation of the separation of powers doctrine.

**Merit Principle violation.** The Union's immediate fear is the loss of jobs for 60% of the Habitat Biologists as rumored early on in this process. So far 22 employees have been laid off and 18 positions will not be filled. These professionals have been targeted for elimination in a

planned gutting of the habitat protection permitting process. In the State of the State speech, the Governor claimed that "the Habitat division has been the sole agency opposing and delaying legitimate projects important to the state." We already know that only a small percentage (< 1%) of applications is denied and that none had to do with the projects mentioned in that speech. But the intent to punish the Division Employees for alleged faulty performance was clear. This violates Article XII, sec. 6, of the Alas. Const., that states "the merit principle will govern the employment of persons by the State." The Alaska Supreme Court has interpreted the merit principle to require the recruitment, selection, and advancement of public employees under conditions of political neutrality. *APEA v. State*, 831 P.2d 1245 (Alaska 1992). Such statements do not exhibit political neutrality.

At a Governor's press conference on February 3, 2003, remarks appear to target Habitat Biologists for termination because they are alleged to have "dragged their feet" and been "inflexible" and made "protection input on the basis of personal viewpoints." The Union believes E.O. 107 is punitive toward these employees. It is hoped that the legislature will do the right thing and not allow the merit principle to be ignored at the expense of these dedicated public employees.

Remarks at the press conference also claimed that Habitat was "foot-dragging" and "caus[ing] a delay in obtaining needed permits" for the Tok Highway Project. The Resources Committee has heard testimony that the Tok Highway project was changed by the designers and that streams and wetlands impacted by the road were omitted from the original plans. Further, the permits were issued and not acted on by the road developers for more than a year after issuance. Therefore, any "foot-dragging" was the stepchild of the developers, not the Habitat Biologists.

Several other projects were mentioned in the press conference and the State of the State speech which show inaccurate information being provided to the Governor. For instance, the Glenn-Parks Highway interchange permits were all issued timely. The final consistency determination was issued in March, 2002 (not 2001 as claimed in the press conference). And the project began timely in August, which was earlier than scheduled. All ADF&G permits were issued ahead of schedule, with no delays. Much of the other information relied on by the Governor was inaccurate and faulty.

**Retirement System Impaired.** The union is also concerned about loss of retirement benefits of habitat employees and questions what happens to rights of Fish & Game Employees who are in the 20-year retirement program? The Habitat Employees who are members of the twenty-year retirement program adopted for fish & game employees have a constitutional right to membership in their respective retirement systems. Accrued benefits of these retirement systems shall not be diminished or impaired. Alas. const. Art. XII, sec. 7, states:

Retirement systems. Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

In 1983 the Legislature adopted chapter 27, section 4, SL and 1983, which provides

Sec. 4. A person holding a position as a "qualified employee of the Department of Fish and Game" on the effective date of this Act, continues to accrue service credit as a peace officer under AS 39.35 until (1) that person's employment is terminated with the Department of Fish and Game; or (2) that person elects to irrevocably relinquish peace officer status under AS 39.35.527.

Qualified employees such as biologists and other Habitat Division employees employed in the department of fish and game are considered peace officers entitled to participate in the twenty-year retirement system. Once the Fish & Game employees are moved to DNR they will no longer be entitled to participate in this twenty year retirement program as a matter of law because they will no longer be employed by the department of fish and game. A change in the terms of their retirement means that they have to work 10 more years before their full retirement vests. This impairs their retirement system.

Further, the public employer would not be contributing as much each pay period into their retirement accounts. This also impairs their retirement system. For these additional reasons, E.O. 107 is unconstitutional in violation of Alaska Constitution Article XII, sec. 7.

**Collective Bargaining Agreement Violations.** The Collective Bargaining Agreement between ASEA/AFSCME Local 52 and the State of Alaska provides for progressive discipline. This means if a Member is not performing timely or is otherwise improperly performing their job, then the employer has the right to discipline. Progressive discipline requires notice to the Employee of the bad or improper conduct, right to representation, and an opportunity to be heard. These are basic constitutional rights of representation and due process, recognized as applying to public employees by the U.S. Supreme Court in the *Weingarten* and *Loudermill* decisions. The State's progressive discipline procedure which follows a pattern including: training, letters of instruction, verbal reprimands, written reprimands, suspension and demotion BEFORE termination. None of this occurred in this case. Instead, at a press conference Monday (2/3/03), remarks appear to target Habitat Biologists because they are alleged to have "dragged their feet" and been "inflexible" and made "protection input on the basis of personal viewpoints." These allegations were relied on to support the conclusion that the Division should be transferred to DNR. Since the transfer of duties and positions is based on performance, then the action violates the CBA by imposing excessive discipline in violation of article 14.

The E.O. also violates CBA Article 12 concerning the purpose of reorganization. The State of the State speech and the Governor's press conference both contain statements about poor job performance by these members. Several meetings have occurred attended by such staffers as

Jim Clarke and others who have advised the Habitat employees that 20 layoffs are likely but that the number could reach 50 of the Division of Habitat employees. When reorganization is structured for the purpose of constructively discharging specific employees, then Article 12 of the CBA is violated. That has occurred in the context of E.O. 107.

**Protecting Alaska's Environment in the Public Interest.** This Executive Order represents poor policy and essentially repeals legislation. At the February 3, 2003, press conference, the Governor claimed that these Habitat professionals intentionally delay development projects. There is no basis for such allegations. This Division employs more than 80 professionals who have served Alaskans by assessing dangers to our State's salmon streams and other critical habitat, providing permit stipulations necessary to protect these vital resources.

As experts have already testified, Washington and Oregon offer shocking evidence of uncontrolled development as their fishery has declined to only 3% of its historical levels because inadequate measures were taken to protect anadromous fish streams. These states and others are paying the costs now by spending billions in restoration efforts. The experience of these sister states who failed to adequately protect vital fisheries and wildlife habitat should be studied at length before deleting the Habitat enforcement functions of Alaska.

The Union agrees with past Commissioners, such as Frank Rue and Carl Rosier that the Habitat Division remains in the Department of Fish & Game. This department has criminal enforcement authority as well as the statutory mandate to protect all the state's habitat. As pointed out in earlier testimony, the Habitat Division is funded significantly from federal contracts to enforce laws intended to protect fish and game reproductive and spawning sites and foraging areas. Any change in this arrangement could result in loss of millions of dollars of federal funding to the State.

The statutory mission of Fish & Game is to protect these renewable resources. The DNR's mission is to develop resources. Protecting the fish and game resources therefore is incongruous with DNR's statutory scheme and results in an administrative repeal of the law.

The federal Fish and Wildlife Coordination Act, 16 U.S.C. 661-667e, requires the fish and wildlife agencies of the State to research, consult, and comment on licenses issued under any Federal permit or license. Large amounts of funding are made available to the State to accomplish this responsibility through this Act and several other Federal statutes and public trust funds. Since DNR is not the Alaska fish & wildlife agency, who will perform these functions and who will get the millions of dollars available for the research and consultation? Perhaps this will become another state responsibility assumed by the federal government.

ASEA Local 52 urges you to do the right thing: **Disapprove E. O. 107.**

Respectfully submitted,

House State Affairs Committee  
Testimony of ASEA/AFSCME Local 52  
In Opposition To Executive Order 107  
March 11, 2003  
Page 5

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Mike Robbins  
Business Agent

The Honorable Bruce Weyrauch  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

MAR 11 2003

MAR 11 2003

Dear Representative Weyrauch

Our fish and wildlife resources are critical to sport, commercial and subsistence users and supports many businesses based on tourism. Visitors to Alaska arrive with the perception that there will be abundant opportunities to fish and view wildlife. The protection of habitat that supports healthy populations of fish and wildlife is necessary. The Alaska Department of Fish and Game has effectively protected fish and wildlife habitat such as streams that are known salmon spawning and rearing areas. Salmon returns directly affect hundreds of species of wildlife.

In the past people have been confident that the Department of Fish and Game whose mission is to protect fish and wildlife resources would provide the necessary input that would maintain the check and balances during permitting disputes with other agencies and businesses whose mission is resource development. The Governor's executive order that transfers permitting authority and biologists from the Department of Fish and Game to the Department of Natural Resources cripples the effectiveness of the permitting staff by eliminating any Fish and Game input into permitting decisions. All Fish and Game divisions have provided valuable research and input on fish and wildlife issues in the past. This transfer will be costly both in expertise lost from the reduced number of biologists and the loss of shared research. Some sources of funding for the Habitat Division will also be lost because of this move resulting in fewer site inspections and less enforcement.

There is an efficient way of reviewing permits in place within Fish and Game now. An average of 2000 permits are reviewed per year with an average turnaround time of 14-17 days. Only 1% of the permit applications per year are refused with good reasons.

Restoring habitat after it has been destroyed is far more costly and requires much more time than protecting habitat. The move described in the Governor's executive order will result in damaged or lost habitat over the long term.

I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan. Please vote to disapprove this executive order.

Thank you for your time.

Sincerely,

David Albert

MAR 17 2003

My name is Steve Albert. I live in Eagle River, Alaska. I am speaking to you as an independent voter employed by the Alaska Department of Fish & Game.

I fully respect our State Constitution and the ability it affords the Governor to reorganize the Executive Branch. Executive Order 107 is poor public policy and represents a punitive action initiated by a segment of the timber industry and their friends in the administration. However the implications of this reorganization have many far-reaching impacts that extend far beyond just the Habitat & Restoration Division. This order reminds me of DNR's state timber sale program on the Kenai Peninsula in which the cost of bringing a timber sale to bid exceeds the receipts to the General Fund. The costs to governments, public, industry, developers (large and small), and landowners will be huge. Where are the benefits? Who will pay for all the computers, field equipment, extra office space, etc. associated with this reorganization? Presently habitat permits are free and fast. How will development project proponents (small and large) respond to DNR's \$200-500 per permit fees in the future? How will developers respond to absorbing the costs of having to wait even longer for their permits? A little guy putting in a driveway culvert will be paying the same as a timber company for their log stringer bridge permit. Mr. Irwin has often referred to his business approach to managing state government. Any reasonable manager would request completion of a long-term cost/benefit analysis before this reorganization is implemented. Any reasonable manager would identify the standards by which you and the public will measure increased efficiency? Any reasonable manager would compare rates of regulatory enforcement at DNR and ADF&G. The legislature and the public need these elements to make an informed management decision.

Section 45 of EO 107 includes language that states that ADF&G employees with peace officer status delegated before June 23, 1983 will continue to accrue service credit as a peace officer under AS 39.35 after the transfer AS LONG AS employees remain in a position described in this subsection, within the Department of Natural Resources.

Therefore, if I or other colleagues choose to apply for a position within DNR, that presumably could ultimately benefit the State, then I would be forced to endure financial repercussions in terms of my retirement status. The Governor has no right to unilaterally impose financial consequences and force me to stay in one position for the rest of my working life. I cannot apply for another position in DNR nor can I return to Fish and Game in my professional capacity as a biologist without suffering financial consequences. The Executive Order provision of the Constitution was included to allow the Governor to reorganize for more efficient delivery of services but not to punish me, and others like me, for simply doing the job I was asked and expected to do by the public. I would strongly recommend that this committee give serious consideration of this element of the EO.

I want you to know that I have no financial axes to grind as I could have fully retired almost two years ago and don't have to work. I have been a dedicated biologist for the Department of Fish & Game for over 21 years. No matter how bad things were in terms of funding or workload, I got up every morning looking forward to work. I'm just an old beater biologist, along with many others like me, that have risked our lives, radio-tracking and capturing brown bears, or flying a few feet above the waves in the Gulf of Alaska to get to a logging camp to write a field permit for a culvert that failed, or flown through snowstorms to make sure a bridge was installed to protect fish habitat, etc. We, and the public for whom we work, deserve more respect than a death sentence to a position at DNR for the rest of our professional careers.

Last Friday, ADF&G and ADNR held a joint press conference. My Acting Commissioner at ADF&G always likes to say that, "there are two sides to any particular story." Allow me to point out the other side of the story. Throughout this whole transfer exercise, DNR Commissioner Tom Irwin, has heaped tons of praise on how the permitting process for his previous company was handled in the Fairbanks office where Habitat Division was a SEPARATE ENTITY. As an example, he mentioned a water reservoir project for which his company needed an ADF&G permit. He stated that he received his permit in a very timely manner and the environment was protected and even enhanced. As a reminder to this Committee, Habitat Division was a SEPARATE ENTITY and the system worked. The

system as it is right now WORKS!!! It works for the public, to whom we are all responsible, for the fish and wildlife resources they expect to be there for their use and enjoyment, and for all development projects, except for a handful of ill-conceived or incomplete projects, proposed annually.

I am not against development, I live in a house made of wood, I drive a car that requires gasoline, and I heat my house with natural gas. But I appeal to you to recognize that development at any cost over other societal values, without recognizing the concepts of sustainability and multiple use resource management is wrong, is poor public policy, and against the vision of the writers of the Alaska Constitution. I truly believe we can have reasonable development and maintain fish and wildlife values. Balancing the budget and placing public resource values at risk is unacceptable.

I urge you to support the Resolution opposing reorganization or at least have the courage to support a floor vote. Thank you for your time!!!

*Steven W. Albert*

Honora Amesen  
1800 Shore Drive  
Anchorage, AK 99515  
344-7707

MAR 11 2003

March 10, 2003

The Honorable Bruce Weyhrauch  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

RE: Executive Order 107

Dear Representative Weyhrauch:

Our fish and wildlife resources are critical to sport, commercial and subsistence uses, businesses based on tourism, and let us not forget transportation projects, one being the South Extension of the Coastal Trail. Visitors to Alaska arrive with the perception that there will be abundant opportunities to fish and view wildlife. The protection of habitat that supports healthy populations of fish and wildlife is necessary. The Alaska Department of Fish and Game has, by history, demonstrated exemplary performance of protecting fish and wildlife habitat and resources such as streams that are known salmon spawning and rearing areas. Salmon returns directly affect hundreds of species of wildlife.

The Alaskan people remain steadfast and confident that the Department of Fish and Game will continue to provide the necessary input to maintain unbiased balance during permitting disputes with other agencies and businesses, i.e. DNR (Department of Natural Resources) whose mission is resource development. The Governor's executive order that transfers permitting authority and biologists from AK F&G (Department of Fish and Game) to the DNR cripples the effectiveness of the permitting staff by eliminating any Fish and Game input into permitting decisions. All Fish and Game divisions have provided valuable research and input on fish and wildlife issues in the past. This transfer will be costly both in expertise lost from the reduced number of biologists and the loss of shared research. Some sources of funding for the Habitat Division will also be lost because of this move resulting in fewer site inspections and less enforcement.

Within the current AK F&G, there already is an efficient way of reviewing permits. Averages of 2000 permits are reviewed per year with an average turnaround time of 14-17 days. Only 1% of the permit applications per year is refused and all for good reasons.

E6107

Executive Order 107 to Rep. Weyhrauch  
Mar. 10, 2003  
Page 2 of 2

MAR 11 2003

Restoring habitat after it has been destroyed is far more costly and requires much more time than protecting habitat. The move described in the Governor's executive order will have disastrous cumulative effects of damaged or lost habitat.

Please do not sit still on this important issue. I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan.

**Please vote to denounce this executive order.**

Thank you for your attention to my request.

Regards,



Honora Arnesen



EO 107

## ASSOCIATED GENERAL CONTRACTORS of ALASKA

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8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

March 12, 2003

Representative Bruce Weyrauch, Chair  
State Affairs Committee  
House Of Representatives  
State of Alaska  
Juneau, Alaska 99801-1182

Re: Executive Order 107

Dear Representative Weyrauch:

Given the rhetoric concerning the proposed reorganization of the Department of Fish and Game, one might conclude that there is only one way to structure state government. Despite such contentions, reasonable parties must agree that there are many ways to organize the government of the State of Alaska to deal with the needs of its citizens.

Governor Murkowski has chosen an approach to Fish and Game Management that differs from previous administrations. Only time will tell whether this approach yields a better outcome for Alaskans. Unfortunately, it is obvious to all that problems exist with the current structure. Perhaps the time has come to replace a failed model with a new approach.

The Associated General Contractors of Alaska is the largest contractor trade association in Alaska. We encourage you to support the Governor's efforts in this and other endeavors to reorganize State government. We must learn to do more with less. We cannot afford State government as it is now being delivered. We need to find new methods of dealing with the needs of Alaskans while at the same time recognizing the constraints of our fiscal problems.

Once again, we urge you to support the Governor on this issue.

Sincerely,

Richard Cattanach  
Executive Director

FAIRBANKS  
P.O. BOX 6005 • FAIRBANKS, AK 99706  
TELEPHONE (907) 452-1809

SOLDOTNA  
43335 KALIFONSKI BEACH ROAD, STE. 32 • SOLDOTNA, AK 99669  
TELEPHONE (907) 262-8535

Bruce H. Baker

P.O. Box 211384

Auke Bay, AK 99821-1384

Phone: (907) 789-9354

March 11, 2003

Representatives Bruce Weyhrauch, Jim Holm, Nancy Dahlstrom, Bob Lynn, Paul Seaton, Ethan Berkowitz, Max Gruenberg  
House State Affairs Committee, Alaska Legislature  
State Capitol (Mail Stop 3100), Juneau, AK 99801

**Subject: Testimony on E.O. 107 - ADF&G's Habitat Protection Responsibilities**

Honorable Committee Members:

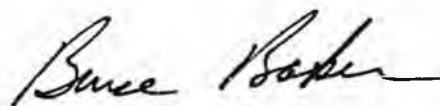
My name is Bruce Baker. I live in Juneau. I urge you to bring to floor vote a resolution to reject Executive Order 107. The executive order would eliminate ADF&G's habitat protection responsibilities under the Anadromous Fish Act, Fish Passage Act, and Forest Practices Act. The state needs to maintain the checks and balances between ADF&G and DNR that have benefited Alaska's economy since statehood. ADF&G's fundamental mission is to protect Alaska's fish and wildlife resources, and DNR's fundamental mission is to develop the state's other natural resources. These two missions balance each other in a way that ensures adequate protection of the state's economically important fish and wildlife habitats while allowing legitimate natural resource development to proceed in a timely manner. By eliminating the permitting authority of one agency, the executive order eliminates these essential checks and balances.

The executive order is a solution looking for a problem. The timeliness of ADF&G's permitting is exemplary. Of 1,926 Title 16 applications ADF&G received last year, over 99% of applicants either received permits or were told that they did not need one. The average processing time was only 14 days. If there is an occasional development project that seems to be high centered over a habitat related authorization, there's a process for department commissioners to quickly resolve the issue consistent with the Governor's policies. In contrast, I'm told that DNR has a current backlog of 700 water rights applications, some apparently 20 years old, and 3,000 miscellaneous applications such as water right transfers, that have yet to be processed.

The Acting ADF&G Commissioner reports that he and the Governor are laying off 22 ADF&G Habitat Division staff and transferring 36 others to DNR. What Alaska needs in order to promote its natural resource development without costly permit delays and lawsuits, is to increase rather than eliminate habitat staffing and to leave it in the department that has the bedrock of fish and wildlife expertise upon which to draw.

The Governor has criticized ADF&G for habitat permits for which he was given incorrect information. For the record, I'm providing your committee with two ADF&G memoranda which provide correct and specific information the Governor did not have available to him when he made his public statements.

In closing, Executive Order 107 is not so much about making state government more efficient as it is a thinly veiled effort to lower the habitat protection bar for permit applicants.



4114 Aspen Ave.  
Juneau, AK 99801  
789-2952

11 March 2003

Representative Bruce Weyhrauch  
Alaska Legislature  
State Capitol, Room 102  
Juneau, AK 99801-1182

Dear Bruce,

I am writing you today to ask your support in opposing Governor Murkowski's executive order (EO 107) to the legislature to transfer the Department of Fish and Game's Habitat Division permitting authority to the Department of Natural Resources.

I have listened to the Governor and read most of the local news reports regarding the pros and cons of making this transfer. I have also worked with the Habitat Division under a yearlong Intergovernmental Personnel Act assignment from my regular duties with the U.S. Forest Service and therefore have a "working knowledge" of (and a resulting respect for) the Division's functions. All things considered, I urge you to side with the carefully considered position the five former Commissioners of Fish and Game took in their *My Turn* letter that appeared in the Juneau Empire in early February (copy enclosed). I still support everything they said and appreciate their well-founded concerns. Speaking as a citizen who greatly values our State's still magnificent fish and wildlife resources, I am not at all persuaded that the lawful protection of their vital habitats could be carried out by the Department of Natural Resources (DNR) nearly as well as it has been carried out by the Department of Fish and Game's Habitat Division. And, given the political pressure the proposed DNR permitting staff would be under to perform according to the Governor's expectations, I fear that many poorly designed development projects will be given the green light before they are actually ready for implementation. Where projects have sometimes been delayed under the permitting review process conducted by the Habitat Division, I have no doubt that it was for good reason. Should the permitting authority be transferred to the DNR, the absence of occasional permitting delays would be a sure sign that the review process has been compromised and that our fish and wildlife will have suffered as a result.

Thank you for considering my concerns about this matter. Your opposition to this transfer order would give me some hope that there is room for meaningful debate within the Republican ranks of our Legislature.

Sincerely,

Ray Behnert

*June Empire 2/2/03*

# Ex-commissioners: Avoid a tragic loss for all Alaskans

**A**s former commissioners of the Alaska Department of Fish and Game (ADF&G), with a combined experience spanning 30 years, we urge Gov. Frank Murkowski to keep the responsibility to protect the habitat of Alaska's salmon, trout, and other fish resources within ADF&G and not transfer this authority to the Department of Natural Resources.

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, 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 roads and highways to open up our vast state. They also recognized that development must be balanced with protection for the fish and wildlife upon which so many Alaskans depend and gave that responsibility to ADF&G.

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

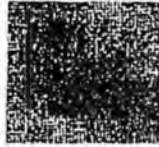
When the first Alaska Legislature passed statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and

wildlife. 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 and the Alaska Fishway Act.

We understand the Murkowski administration's goal of streamlining economic development, but feel the problem he is trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, of the 2,000 Title 16 permits applied for each year, 99 percent are approved in an average of just 15 days.

This prompt response is due to the professional and experienced staff in the Habitat, Commercial, and Sport Fish divisions who work collaboratively to maintain Alaska's fishery resources and their habitat. We do not think it is possible to replicate this capability within another department and doing anything less will erode Alaska's ability 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 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.



Alaskans have long 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 our resources while, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

When regulatory disputes occasionally arise, the commissioner is able to intervene to assure permit decisions are balanced and reasonable.

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.

**Frank Rue, Commissioner ADF&G 1995-2002**

**Carl Reuler, Commissioner ADF&G 1991-95**

**Don Coffinworth, Commissioner ADF&G 1983-91**

**Ron Skoog, Commissioner ADF&G 1977-83**

**Jim Brooks, Commissioner ADF&G 1972-77**

Subject: EO 107

Date: Mon, 10 Mar 2003 13:24:34 -0500

From: Backlagoon@aol.com

To: representative\_bruce\_weyhrauch@legis.state.ak.us

CC: representative\_jim\_holm@legis.state.ak.us,  
representative\_nancy\_dahlstrom@legis.state.ak.us,  
representative\_bob\_lynn@legis.state.ak.us, representative\_paul\_seaton@legis.state.ak.us,  
representative\_ethan\_berkowitz@legis.state.ak.us,  
representative\_max\_gruenberg@legis.state.ak.us

MAR 11 2003

March 10, 2003

Bruce Weyhrauch  
Alaska State Capitol  
Juneau, AK 99801

Dear Chairman Weyhrauch,

As the wife of a commercial fisherman, I ask you to overturn Executive Order 107, moving the Department of Fish and Game Habitat Division to the Department of Natural Resources. The move could effectively limit protections to our salmon habitat by reducing oversight and easing permitting authority. It would become easier to permit development, such as logging and roadbuilding, which has been proven to have consequential impacts to salmon rearing and spawning habitat.

Commercial fishing is Alaska's largest private sector employer. IF SALMON ARE NOT MANAGED FOR LONG TERM SUSTAINABILITY TO BE DETERMINED BY SCIENTIFIC RESEARCH, OUR STATE WILL LOSE A VITAL RESOURCE AND HERITAGE.

Sincerely,

Anissa Berry  
PO Box 8118  
Port Alexander, AK 99836

ERIN  
Benjamin  
907 733 3866  
is for the  
change

MAR 27 2003



March 26, 2003

The Honorable Bruce Weyhrauch  
House State Affairs Committee  
State Capitol, Room 102  
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

Thank you for this opportunity to comment on an important issue. Please protect Alaska's precious fish and wildlife resources by disapproving EO 107, the order to move habitat permitting authority to the ADNR from the ADF&G.

Our fish and wildlife resources are extremely valuable to both the commercial fishing and recreational/tourist industries. They are sustainable if managed and protected properly, bringing wealth to the state indefinitely.

The habitat division of the ADF&G currently works closely, effectively and efficiently with the rest of the department. Isolating habitat permitting in the ADNR (like separating head from heart) will cause, at least, inefficiency and disfunction in the management and protection of wildlife habitat, but more likely contribute to increased destruction of a significant part of Alaska's economic base and heritage.

Representative Weyhrauch, I urge you to whatever action is in your power to hasten a vote disapproving EO 107.

My sincere thanks for your attention to this crucial matter,

A handwritten signature in cursive script that reads 'Barbara Bingham'.

Captain Barbara Bingham  
Alaska resident for 26 years

**Subject: EO 107: Habitat Transfer**

**Date: Tue, 11 Mar 2003 14:31:20 -0900**

**MAR 14 2003**

**From: "Meagan Boltwood" <boltwood-awc@acsalaska.net>**

**To: <Anchorage\_LIO@legis.state.ak.us>**

Good evening,

Thank you for the opportunity to comment on this important issue. My name is Meagan Boltwood, and I work as the Ship Creek Unplugged Director for the Anchorage Waterways Council.

The Anchorage Waterways Council (AWC) is a non-profit organization composed of concerned citizens who believe the waterways and related habitat ecosystems of Anchorage represent a valuable resource that must be preserved, restored, and enhanced for their inherent value as well as the safety, health, and enjoyment of the entire community.

AWC is opposed to EO 107 because it will diminish the protection of valuable fish and wildlife resources and is not in the public's best interest.

AWC frequently works with ADF&G to ensure that Anchorage continues to enjoy clean water and healthy fish runs. In many cases, AWC has worked with the Habitat Division to protect valuable community resources through Title 16 (AS16.05.840-.860 of the Fishways Act and AS16.05.870-900 of the Anadromous Fish Act) and the Alaska Coastal Management Program (ACMP). ADF&G has completed studies of fish passage and culverts on the Kenai Peninsula and worked with organizations and other agencies in Anchorage to increase both fish passage and habitat in our urban streams. The Habitat Division has taken a proactive approach to prevent Alaska from experiencing the same mistakes that have reduced fish populations in the Lower 48.

If the authority to enforce Title 16, the Alaska Coastal Management Plan and the Forest Practices and Resources Act is transferred from ADF&G to DNR, an agency whose mandate is to develop land and water, AWC worries that fish and wildlife will inevitably suffer from an expedited permitting process that fails to fully consider projects' impacts on public resources.

Nowhere in its mission does DNR adequately address fish and wildlife concerns and the protection of the public's use of these resources. The difference between these two agencies is clear: ADF&G supports fish and wildlife, DNR supports development. Both of these agencies serve important roles in the permitting process and both of these agencies should continue to do so. The two-agency approach allows interests to be discussed, debated and resolved in an environment conducive to information gathering and dissemination. This approach is also much more likely to involve the public because the inter-agency technical disputes will have a larger audience and allow for public comments.

AWC does not believe that DNR will be able to carry out the provisions of Title 16 or the Forest Practices Act. According to several agency employees, DNR does not have the capacity to carry out its current mandate. AWC has been urging DNR to adjudicate Ship Creek water rights that were applied for in 1990 with no result. DNR claims that it has neither the staff nor the funding to carry out the tasks written in its mandate. AWC worries that the newly acquired Title 16 permitting functions will fall victim to the same neglect.

The governor argues that the Habitat Division and the public process hold up development projects; but the public has the right to be involved in decisions that affect their resources. If you remove habitat advocates from the permitting process, then fish and wildlife will eventually be removed from Alaska's lands and waters.

The Anchorage Waterways Council urges the legislature to oppose EO No. 107. Your support of public resources will ensure that Alaska remains the shining star of the world's fisheries.

Sincerely,

Pat Wendt  
President

Post Office Box 233547  
Anchorage, AK 99523-3547  
10 March 2003

Honourable Governor Frank Murkowski  
Office of the Governor  
Capitol Office, Mail Stop 0001  
Post Office Box 110001  
Juneau, AK 99811-0001

MAR 14 2003

Dear Honourable Governor Murkowski:

First and foremost, commendations are in order for your willingness to take on the daunting task of governing this wonderful home we proudly call Alaska. Fewer positions are as demanding.

However, some events of late have raised some serious questions in my mind. Specifically, the proposed Executive Order 107 and subsequent recommendation to "reorganize" the Habitat and Restoration Division of the Alaska Department of Fish and Game.

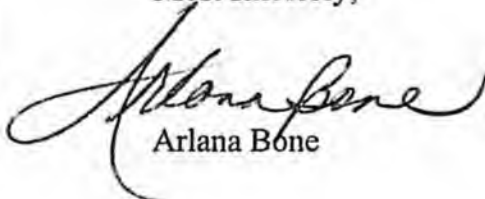
My primary concern is the very real threat to our natural resources. I say this because I've been employed as part of the support staff (database manager) to the Habitat Biologists for over a decade. I've seen first hand how hard their labour tirelessly to protect Alaskan habitat. And I respectfully assert that these very important needs cannot and will not be met per the Executive Order.

If I may use an analogy, performing radical surgery by removing vital "organs" like the heart, liver, kidneys, etc., can only weaken an entity with little or no chance for surviving intact, or surviving, but not being viable.

Another one! Okay, after accusing habitat biologists of sabotaging projects, then putting arrangements in place to rehire/transfer them, but without "teeth" to do their jobs properly, what statement is being made to the general public? Either habitat management is important and we are doing our jobs, or we are not. Any reasonable employer (such as a governor) does not dismiss employees immediately without consultation, with the aim of improving the quality/production, if need be. But jumping from dissatisfaction to dismissal, sans warnings seems awfully drastic and ill-conceived.

Ergo I implore you to seriously reconsider your decision. I'm looking to you in good faith to withdraw your proposal and see more plausible ways to increase and/or generate revenue without sacrificing the quality of our Habitat Protection standards. With commitment, both can, in my opinion, not only co-exist, but work in tandem for the betterment of our beautiful state.

Most sincerely,



Arlana Bone

hab

**Subject: Habitat Division Move**

**Date:** Thu, 13 Mar 2003 08:10:19 -0900

**From:** "Steve-n-Melissa Brockmann" <s-m@worldnet.att.net>

**To:** <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>

Mr. Bruce Weyhrauch

State Affairs Committee

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Dear Bruce,

Thank you for holding hearings to discuss the Governor's Executive Order eliminating ADF&G's Habitat Division, and transferring permit authority to DNR. I believe that this plan is likely to have many unintended and unfortunate consequences. I hope that as a result of your hearings, you and enough others will vote to stop the move, at least until there can be an objective analysis of the program and how to address any perceived shortcomings. Please share my thoughts with others on your committee, and anyone else you believe is interested in this issue.

Giving the program to DNR is clearly a case of putting the fox in charge of the henhouse. (More on that later.) Permitting of in-stream work, however, is only one of several functions currently handled by Habitat Division. I am also concerned about the fate of Habitat Division's other roles. I hope you will not let them disappear.

Habitat Division provides comments and recommendations on a huge variety of development proposals, many of which never touch a fish-bearing stream. Every federal and state timber sale, every public highway plan, every harbor, every Corps permit in coastal areas, hydropower, transmission lines, airports, and on and on – ADF&G Habitat Division reviews all these under the authority of the Alaska Coastal Management Program, the National Environmental Policy Act, the Federal Power Act, the Fish and Wildlife Coordination Act, and other laws. These reviews are done largely outside the arena of Title 16 permitting. Where project modifications would reduce impacts to fish and wildlife, Habitat Division provides recommendations. Where projects are benign, they are silent. It is not typically controversial or high profile (with occasional exceptions), yet it accomplishes a great deal of conservation – the kind of conservation that keeps habitats productive in spite of ever-expanding human development.

In my experience (on hundreds of development proposals), developers and designers do not want to unnecessarily impact fish or wildlife. They like to point to features they've incorporated into their projects that minimize impacts and improve environmental compatibility. Competent, knowledgeable, local biologists with experience in reviewing development proposals can provide insight on how animals use a given area, and how to minimize impacts. Sometimes this increases costs. On rare occasions a project is found inconsistent with the public interest and Habitat Division recommends against the development. This function serves the public well – development of necessary or otherwise desirable infrastructure proceeds, impacts to the public's wildlife and fish are minimized, and the rare project that is clearly not in the public interest is withdrawn. ADF&G has no authority to stop such projects if there is no fish stream permit required. Theirs is an advisory role.

If DNR is given only the permitting functions, and Habitat is otherwise disbanded, the public will lose a voice of knowledge and experience that makes it possible for large numbers of people, both residents and non-residents to see, harvest, and enjoy fish and wildlife across the State, even where human development has occurred. This critical role in reviewing a broad array of projects and providing non-binding recommendations on ways to minimize impacts must be preserved.

Alaska is a great place to live for several reasons (although weather isn't one of them). Most of us choose to live here because of the fish and wildlife, and the hunting and fishing opportunities that those provide. Nowhere else offers the kind of hunting and fishing that we enjoy. Some apparently take this for granted. I do not. Our fishing is good because many people have struggled to keep it that way.

Protection of spawning and rearing habitat has been a critical feature. I agree with the Alaska Legislature who originally put the agency with the most knowledge and expertise in fish issues in charge of overseeing development with proven potential to destroy the resource. The Governor says that Habitat Division has unnecessarily delayed projects, and assures us that DNR will adequately protect fish habitat if they are given the permitting program. But the transfer does not appear to anyone (who cares about this issue) to be about issuing

permits faster. Fish and Game's record on time to issue permits is clear- 14 day turnaround is average. DNR's record is also clear: a huge backlog, and long delays for water rights, land leases, etc.

From an applicant's standpoint, permitting is currently pretty simple. One application is required, it is submitted to Division of Governmental Coordination, and they get all necessary approvals back from DGC. The coordination with various state agencies is largely invisible to the applicant. If there is a problem, ADF&G may ask for additional information, thru DGC. Where projects have potential to impact productivity of salmon streams or other important habitats, information should as complete as possible.

Almost nobody wants to spend money unnecessarily. Requests for additional information that I have seen from Habitat Division have always been supported by rationale justifying the request. You could easily request examples of such information requests from DGC, ADF&G, or from applicants who have complained. Some developers have apparently objected to such requests, and complained to the governor or his associates. We should not let these few, influential developers with friends in high places take away the public's right to protection of their fish and wildlife.

I have no particular problem with development, unless it is done in a sloppy manner that unnecessarily damages productivity of the land and water. Anyone working in a fish-spawning stream should have their plan reviewed by a competent fish biologist with ready access to adequate information, to make sure that impacts are minimized. I expect that any objective review of all such proposals would identify some that would have significant, though perhaps unintended and unnecessary impacts – impacts that could be avoided by modification of the proposal. Of course there have been a handful of proposals that have raised red flags and have been held up in permitting. Honest consideration may take extra time if the issues of a given case are particularly complex. In most or all cases, it has probably been warranted. I do not believe that the State of Alaska should be ashamed of this.

The Governor has made it clear that what he objects to is ADF&G's *advocacy* for the fish and wildlife resources of this state. He has also made it clear that he expects no fish permitting issues to delay development once DNR is in charge. Given the example he has made of ADF&G, I fear he is right. DNR will comply with the governor's wishes. I know and have worked with many DNR employees. They are consistently fine people, but they are clearly under a mandate to *develop* the state's natural resources. Given the vindictiveness with which Frank has presented and promoted his plan, and the public insults he has thrown at ADF&G along the way, I seriously doubt that anyone at DNR will take much of a stand in defense of fish or wildlife. DNR *promotes* development. That's why Frank wants that particular fox to guard this henhouse.

As more lenient permitting decisions allow greater impacts to fish streams, we can expect to see diminished productivity of those streams. Results are likely to be dramatic only at a very local level as individual streams are impacted to greater and lesser degrees. Regionally, the response is likely to be diluted and gradual. By the time it is detectable and demonstrated, much will be lost, and probably beyond repair (witness the salmon situation on the West Coast of the lesser 48).

The governor claims that legitimate (and he stresses that word *legitimate*) projects have been delayed by ADF&G. I submit that *legitimacy* of an individual project is irrelevant to the permitting process. Legitimate projects should be designed to minimize their impacts to other interests, especially public resources of such high value as fish and wildlife. Should we expect only non-legitimate projects to meet this standard? Who should make the call on which are legitimate and which are otherwise? What criteria should they use? Does the governor really believe that a permitting authority (ADF&G or DNR, or whoever is in charge) should decide on the *legitimacy* of a project before deciding which rules apply? Do you? I believe that the rules should be applied uniformly, and not show the favoritism that the governor's remarks suggest he supports.

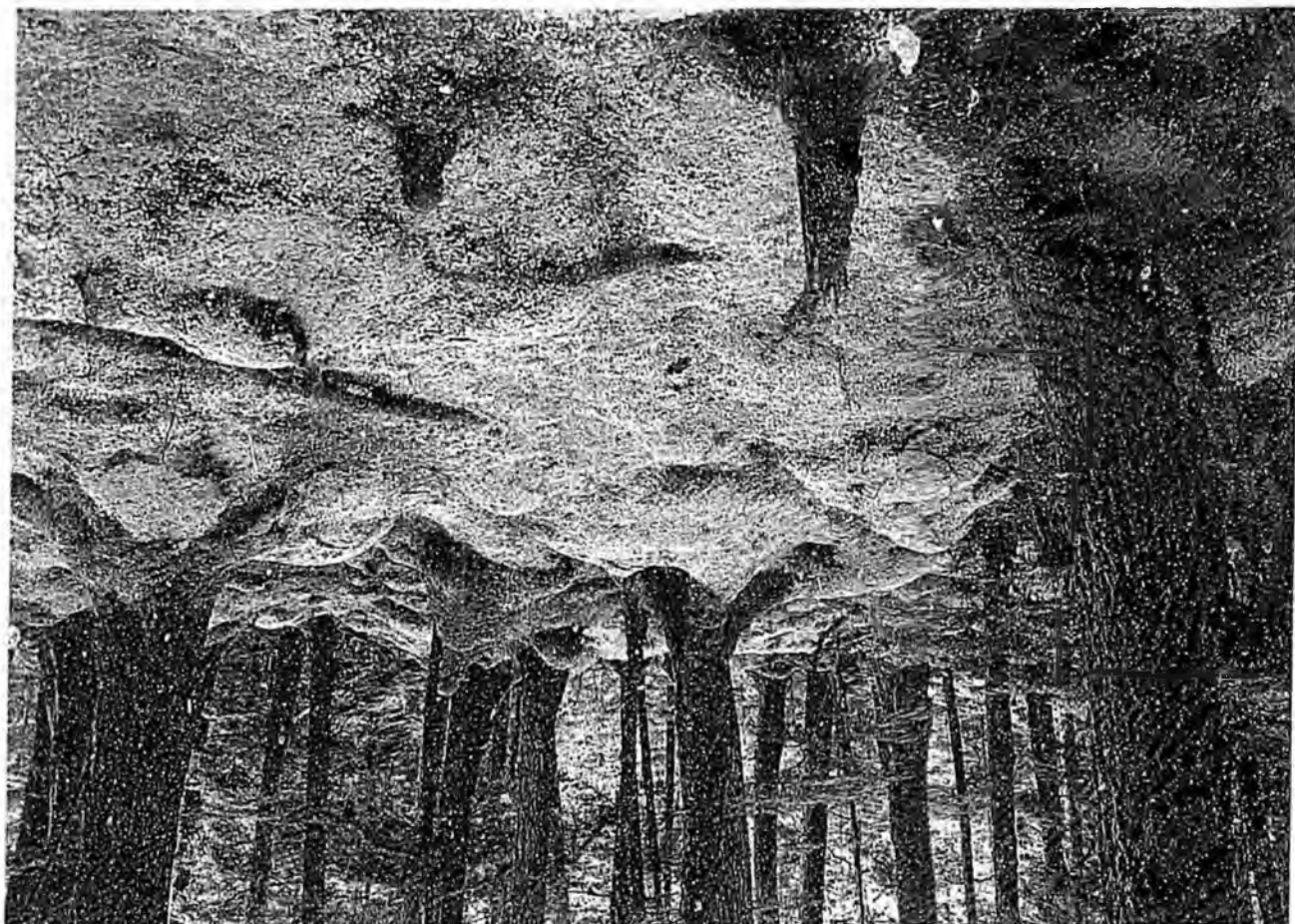
If there truly are chronic problems with permitting delays, an objective review of the program will detect them. A reasoned analysis will suggest solutions. There has been no such analysis. If there really is a problem, perhaps divesting ADF&G of its permitting authority is the best solution. Something less drastic, like mandating through law or regulation that permits must be issued within a given time period, may be more effective. If the governor is confident of his case, he shouldn't object to an impartial analysis.

Please do what you can to inject some reason into this process. It is clearly an attempt to promote development (which is fine) at the expense of environmental quality (which is not fine). The public expects and deserves protection of their unique and irreplaceable fish and wildlife resources. If the Legislature acts promptly, you can protect that interest. If you delay, you will betray our trust.

Sincerely,

Habitat Division Move

- Steve Brockmann, 13960 Glacier Highway, Juneau, Alaska



## TONGASS GAME TRAIL

A game trail winds its way through a moss laden floor in the Tongass National Forest located in southeast Alaska. The Tongass includes some of the last expanses of pristine temperate rain forest in North America. Soaking up more than 100 inches of rain per year, old-growth stands of Sitka spruce, western hemlock, and yellow cedar provide critical habitat for wildlife such as brown and black bear, bald eagles, and Sitka black-tailed deer to name a few. Countless streams running through mist-shrouded valleys are the spawning grounds for millions of wild salmon. Half of the prime old-growth forest of the Tongass has already been clearcut. Groups like the Southeast Alaska Conservation Council (SEACC) are devoted to protecting the remaining old-growth through education, grassroots efforts, and working with resource management agencies. SEACC strives to protect valuable Tongass resources while promoting sustainable economic growth. For more information, contact SEACC at 419 Sixth St., Suite 328, Juneau, AK. 99801, (907)586-6942.

*Photograph © Gary Crandall*



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Gary Crandall Photography  
P.O. Box 326338 S.L.C. UT. 84132  
(800) 473-4488

A portion of the proceeds from sales of this card supports the protection of wildlife and their habitats. Please call or write for information on limited edition prints and posters.

MAR 10 2003

Representative Weyhrauch

March 9, 2003

I am writing to let you know that I am very concerned about EO 107 which transfers the ADF & G Habitat Division to the DNR. I am very appreciative that you are having these hearings to allow the public to express their concerns.

Alaska's fish habitat and streams are critical to the continuation of healthy salmon returns. I fear that these resources will be gravely compromised if this permitting authority is transferred.

This transfer of permitting authority, in my opinion, is a major step in the wrong direction. Productive salmon habitats define what will be available for future generations. Productive salmon habitats provide jobs now and into the future.

Please vote to disapprove this executive order and protect our fish and wild-life resources.

Kind regards, Danielle B. Brown



# Alaska State Legislature

MAR 17 2003

Please enter into the record my testimony to the House State Affairs  
committee name

committee on EO-107, dated March 11, 2003  
bill/subject

Signed: GARVAN BUCARIA *Garvan Bucaria*  
Testifier

Self  
Representing (Optional)

P.O. Box 870298, Wasilla, AK 99687  
Address

(907) 373-4974  
Phone No.

March 11, 2003 1/2

1. The Governor is responsible for the faithful execution of State Laws. Under the State Constitution Article VIII Natural Resources, Sections 1, Statement of Policy, 2. General Authority, 3. Common Use, 4. Sustained yield, and 16. Protection of Rights, the major theme is perpetuation of productive, healthy stocks of fish and wildlife available to the people.

Before now, the Executive Branch delegated responsibility for Fish & Game and their habitat to the Alaska Department of Fish and Game. Now, the Governor's promulgation of EO-107 eliminates the Commissioner of Fish and Game's authority to protect aquatic habitat by deleting the Habitat and Restoration division. Shifting responsibilities to a DNR, Deputy Commissioner/State Forester raises serious questions as to wildlife and Fisheries Habitat oversight.

I believe Governor Murkowski has erred — it is a mistake to implement Executive Order 107. It would convey an impression of subordination of Fish & Wildlife habitat protection for development concessions.

I urge Legislators to exercise their checks and balances role and reject EO-107 on behalf of the people of Alaska.

2. Regarding any legislative vote on implementation of Executive Order Number 107 — recuse legislators who have conflicts of interest concerning pending court cases involving permitting actions through the Alaska Department of Fish & Game Habitat and Restoration Division.

Laura Bucaria

March 10, 2003  
285

1. Reject EO 107 - Don't sacrifice fish & wildlife habitat for short term solutions that may result in long term habitat loss.
2. Don't allow EO 107 to remove Dept of Fish & Game Input from Forest Practices Act involvement. We must retain ADF&G oversight.
3. Don't Accept a substitute position (Deputy Commissioner) with no qualifications or <sup>Job</sup> criteria specified for qualified positions and staff already in Fish & Game
4. Don't threaten the use of Fish & Game License money for use in appropriate projects
5. Don't Limit the use of Federal Fish & Game Funds by shifting Fish & Game Habitat protection & enforcement & improvement out of ADF&G Authority
6. Don't negate the intent of the Anadromous Fish Act through Transfer of Fish & Game authority to DNR. Both DEC / DNR have joined to minimize protection of anadromous fish spawning habitat by recommending mixing zones (mixing outflow) in spawning areas. Only ADF&G have been able to assure protection of such habitat.
8. The suggested changes under EO-107 seem to develop a similar independent decision authority under DNR. This ploy is recognized exactly for what it is - a concerted effort to circumvent critical review of resource development plans.
9. On Friday I had the privilege of speaking with the State forester - off the record. He seems like a fine person and believes he can administer the Governor's EO's etc. However he admits that the EO 107 will have a different perception to The General Public. *Laura Buehler*

March 11, 2003

Dear Chairman Weyhrauch, and Members of the House State Affairs Committee:

I urge you to **OPPOSE** Governor Murkowski's Executive Order 107 to transfer fish and wildlife habitat oversight and permitting authority from the Habitat Division of the Alaska Department of Fish and Game to the Department of Natural Resources. Loss of this protection threatens critical habitat across the state, our fish and wildlife populations, and the interests of all Alaskans.

I am proud that Alaska's State Constitution is considered a model for its foresight in addressing myriad unique issues that confront us here in the Last Frontier. The legislature at the time of statehood realized the need to build checks and balances into the system, to ensure the long-term health and sustainability of both our natural environment and resources. For our entire history as a state, The Alaska Department of Fish and Game has been in charge of fish and wildlife habitat protection. It has always been the Department of Natural Resources' mandate to develop Alaska's natural resources. These missions are often at odds; yet since statehood the two agencies have balance these needs sensibly and efficiently. There is no need to overhaul a system that works! Executive Order 107 is not only unnecessary, ill-conceived, and short-sighted; it gravely endangers one of our greatest renewable resources: our pristine environment. This is not merely an aesthetic concern; it is the foundation for the long-term health of a tremendous economic resource and the continuation of a way of life treasured by most Alaskans, but no longer available to most Americans.

Any resulting damage to our wildlife, or to our commercial, sport, and subsistence fisheries, will directly and negatively impact nearly every resident of the state, and wreak devastating effects on our economy. Not only Alaskans rely on strong fisheries; millions of dollars in sport-fishing based tourism could be in jeopardy as well. Please do not allow Mr. Murkowski's tunnel vision toward streamlining resource development threaten the long-term health of our resources themselves. Oppose Executive Order 107!

Sincerely,

*Allison Butler*

Allison Butler  
(Biology Professor, University of Alaska Anchorage)  
1026 W. 10<sup>th</sup> Avenue  
Anchorage, Alaska 99501  
786-4793

# Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.  
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/liolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please PRINT the information below. This form must be signed by the sender.

|  |            |     |                  |                          |
|--|------------|-----|------------------|--------------------------|
| Mr. / Mrs. / Miss  | First name | Mr. | Last name        | Mr. / Sr. / II           |
|  | Jackie     | L.  | Interbury        |                          |
| Group affiliation (if applicable)                            |            |     |                  | Daytime telephone number |
| Mailing address  |            |     |                  | Zip code                 |
| P.O. 3280, Kotcheka OR 2426 Park Ave                         |            |     |                  | 99901                    |
| Residence (street) address if different from mailing address |            |     |                  | Zip code                 |
| dimplex HS   |            |     |                  |                          |
| Email address  |            |     | Signature        | Date                     |
|  |            |     | Jackie Interbury | 3/11/03                  |

**To:** Put a + in the appropriate box(es).

| Committees                          |                                | House members            |                  |                          | Senate members  |                          |                 |
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| <input type="checkbox"/>            | Community & Regional Affairs   | <input type="checkbox"/> | Berkowitz (ber)  | <input type="checkbox"/> | Kohring (koh)   | <input type="checkbox"/> | Bunde (hun)     |
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**Subject:** Fill out the boxes below OR enter a Subject.

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| HB or SB | Bill number | and check one: | <input checked="" type="checkbox"/> Support | <input type="checkbox"/> Amend | OR | enter a general Subject<br>(LIO staff may modify): |
|          | 107         |                | <input checked="" type="checkbox"/> Oppose  |                                |    |  |

**Message** Your PRINTED message cannot exceed 50 words or contain any vulgar language.

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TO: Ginnay  
RE: Executive Order 107  
FR: Jackie Canterbury  
DA: March 11, 2003

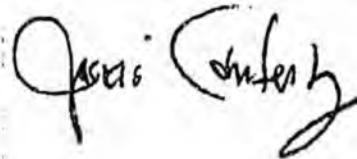
Please vote to disapprove EO 107 to move permitting authority from Fish and Game to Natural Resources.

While the commissioners spoke in about the move to transfer the habitat division, one of the regional supervisors who is also being let go after three decades at Fish and Game said people at the Alaska Department of Fish and Game were "more concerned about the public resources they manage than about losing their jobs." This statement sums up the dedication and commitment of the professionals within the habitat division of the Department of Fish and Game.

The fish and wildlife resources of Alaska are still thriving because ADF&G has consistently demonstrated a strong commitment. They have done so by policy and by the professionalism - in large part because of the habitat division.

The governor's plan WILL sacrifice environmental safeguards. Elimination of the habitat division is NOT in the best interest of the state of Alaska. Transferring the permitting authority of ADF&G and selectively eliminating biologists who enforce those laws is not in anyone's best interest. In fact, it sets a dangerous precedent for a state whose natural resources and innate beauty are its' future.

Thank-you for the opportunity to comment.

A handwritten signature in black ink, appearing to read "Jackie Canterbury". The signature is written in a cursive, flowing style.

MAR 17 2003

Larry Casey and Family  
12428 Winter Park Circle  
Eagle River, AK 99577

House State Affairs Committee

Dear Committee;

I would like to voice my and my family's objection to the proposal to move the habitat permitting and functions from Fish and Game to Natural Resources.

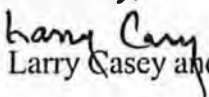
The wildlife resources and abundance of Alaska are the envy of the world. ANY attempt to undermine protections for expediency is foolish not only from a biological perspective but also from future economic perspectives. Permits should be difficult to obtain as economic projects should be well thought out, funded, and environmental considerations SHOULD have been part of the planning of economic projects.

I would as a citizen like to see how many projects that Fish & Game has hindered. I certainly haven't heard convincing evidence of massive economic impacts from the permitting process. My personal feeling is that some poorly planned projects may get approval and fail in any event, leaving not only economic problems but also environmental impacts because of easily obtained "streamlined" permitting.

Protect the wildlife habitat and salmon streams. Make projects adhere to and plan expenditures to mitigate effects on Alaska and keep the habitat division within the Department of Fish & Game.

Thank you for your time and consideration.

Sincerely,

  
Larry Casey and Family

# CASSANDRA ENERGY CORPORATION

P.O. Box 100453  
Anchorage, Alaska 99510-0453

Telephone: Anchorage (907) 344-7188 Kenai (907) 283-3567  
Fax: Anchorage (907) 344-2262 Kenai (907) 283-7065  
E-Mail: [casscon@alaska.net](mailto:casscon@alaska.net) with cc to [casscon1@acsalaska.net](mailto:casscon1@acsalaska.net)

Bill Stevens (907) 240-7040

**03/13/03**

## **Alaska State Legislature**

**Please enter my testimony to the House State Affairs Committee on EO 107, dated 03/11/03.**

**Mr. Chairman,**

**Thank you for the opportunity to testify today.**

**My name is Bill Stevens and I am President of Cassandra Energy Corporation.**

**Cassandra Energy Corporation has been attempting to permit an exploration drilling operation for the past 29 months. The State has been involved in the last 12 months of this effort.**

**I feel that The Habitat Division of Alaska Department of Fish and Game has added approximately 7 months to the permitting ordeal. Specifically, this was done through lack of interest or attention concerning the initial introduction of our project at and following the ADGC Pre-Ap Meeting. Later, the apparent usurping of authority outside of their scope, "turf wars" with other regulating agencies, unreasonable or seemingly baseless demands, and an arrogance demonstrated by their disregard of the rules and regulations that applied to others involved in the DGC process, would help account for or explain the delays.**

**I am attaching a color coded Timeline to this correspondence to help clarify and qualify my statements.**

**I find it rather easy to believe that China and Russia are ahead of Alaska on the list of desirable Geo-political areas to invest.**

**Govenor Murkowski has shown excellent insight and fortitude in EO 107. I urge the committee to help make it law or let it become law.**

**William H. (Bill) Stevens  
Cassandra Energy Corporation  
P.O. Box 100453  
Anchorage, Alaska 99510**

**907-344-7188**

March 22, 2003

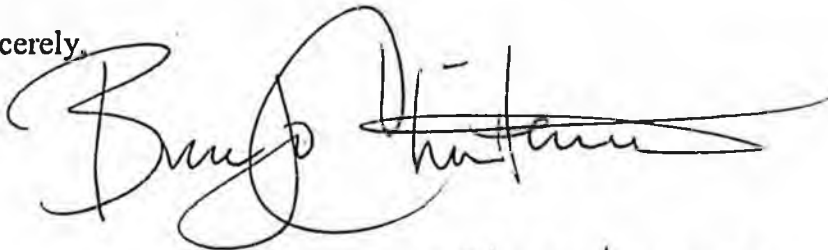
The Honorable \_\_\_\_\_  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Leslie McGuire,

I would like to express my concern about the Governor's Executive Order 107 (EO 107) to transfer permitting authority from the Department of Fish and Game's Habitat Division to the Department of Natural Resources. The missions of these two departments are different and I see a real danger in moving authority for the protection of fish and wildlife habitat to the Department of Natural Resources whose primary mission is the *development* of resources.

I am strongly opposed to EO 107. This EO will take effect April 15, 2003 if it is not disapproved and put our fish resources at risk.

Sincerely,



Billie J. Christensen  
2021 Sturbridge Cr.  
Anch. Ak 99507

February 9, 2003

To All Alaskans:

A recurring national debate is whether we can afford to preserve the environment if it costs jobs in mining, logging or other related industries. People who make this argument often fail to consider all the facts. While the exact numbers are elusive, in many fisheries circles it is estimated that if northwest salmon had not been destroyed by logging and dams, their current dollar value would be more than all the lumber and cheap electric power that was given a higher priority. Based upon this information, it apparently was a poor business decision to destroy salmon habitat. The Pacific Northwest could have a sustainable and prosperous fishing industry, and also still have healthy forests, rivers and streams.

In this same vein, this debate of jobs versus the environment often fails to take into account the business value of sport fishing. Most states estimate sports fishing income, but the numbers are not well-publicized. The National Survey of fishing, Hunting, and Wildlife viewing estimated that US residents spent \$537 million on fishing trips and equipment in Alaska in 2001.

Why are these numbers not considered? The problem seems to be that in the U.S. today, we often ignore the long-term result, and are only interested in the money to be made today. Jobs created by logging and mining are short-lived. Once the logs and minerals are gone, so are the companies and so are the jobs. The timbermen who cut the Pacific Northwest started out in Michigan and Wisconsin. By contrast, jobs created by sport fishing and from other sustainable fish harvest will be there as long as the fishery resource is protected. So the next time someone wants to talk about the fish-benefit ask them to consider the next 30 years, not just their annual bottom line. Likewise, when decision-makers ignore or belittle sports fishing interests, don't forget to tell them that fishing brings local jobs and local income, and if protected will for years to come.

Robin Collman  
Seward, Alaska

*Robin Collman*  
ph 224 3138

# STATE 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

March 13, 2003

MAR 14 2003

Honorable Bruce Weyhrauch  
Chair, House State Affairs Committee  
Alaska House of Representatives  
State Capitol  
Juneau, AK 99801-1182

SENT BY FAX TOTAL 4 PAGES

SUBJECT: Written Comments on Executive Order 107.

Dear Representative Weyhrauch and Committee Members

We wish to thank you for holding a hearing on this important issue and giving us this opportunity to submit our written comments for the record.

If this transfer as ordered in Executive Order 107 is allowed to go into effect, the Cooper Landing Fish and Game Advisory Committee has grave concerns for the long term future sustainability of our public common use fish and wildlife resources. While this transfer might on the surface seem only to immediately effect fisheries and instream permitting, the long term impacts will effect fish and wildlife and all Alaskans who receive value from these resources.

Because there was no public process, we have not received any information on how this transfer will change and impact our committee duties. We have asked but have been left complete in the dark and thus can not provide much depth to our input.

Rather than state the same issues over, attached and made part of this letter are committee letters of February 15 to Governor Murkowski (2 pages) and February 16 to the Alaska Boards of Fisheries and Game (1 page).

We do not believe that this transfer is in the best interest of our fisheries and is certainly not in the best interest of the residents of Cooper Landing. Our quality of life and economic future depend on the habitat that supports our fish and wildlife. Without the authority to protect habitat, the Boards of Fisheries and Game, the State advisory committees, and ADF&G will not be able to successfully regulate and manage our common use fish and wildlife resources for sustained yield.

Sincerely,



Bill Stockwell, Chair

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DOCUMENT(S)  
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COPIES

# STATE OF ALASKA

## Cooper Landing Fish & Game Advisory Committee

Frank H Merkowski, 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

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

# STATE 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 16, 2003

Ed Dersham, Chair  
Alaska Board of Fisheries  
Ben Grussendorf, Chair  
Alaska Board of Game  
ADF&G, Boards Support Section  
P.O. Box 25526  
Juneau, AK 99802-5526

SENT BY FAX 3 PAGES

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

Dear Chairmen and Members of the Boards,

Attached is the Cooper Landing AC 2 page letter to Governor Murkowski the subject. Rather than repeat ourselves, we ask that you consider that letter as part of this.

We understand that the Board of Fisheries will in some manner take up this matter at the February 20 Ketchikan Meeting and we ask the Board of Game to do the same. We hope that through an open public process of Board hearings, advisory committees can find out how Habitat has impacted the Sterling Highway where we live (WHAT, the 30 year ongoing Cooper Landing Bypass??) and other DOT, FERC hydro projects and cherished outdoor recreation so severely that the only solution is elimination.

Our AC is completely in the dark on this issue with only the newspaper and an ADF&G news release for information. Thus we can only guess how this will effect us and our guess is for the worst. How are ACs to function if habitat management is no longer part of ADF&G? Do the Boards stop regulating habitat issues or does DNR habitat now become part of the Board process? How will ACs interact with DNR habitat?

Habitat concerns are always ongoing in Cooper Landing with major projects such as the DOT Sterling Highway Bypass/Rebuild and the FERC Cooper Lake Hydroelectric Re-licensing. Other issues of land and water use that effect the fish and wildlife habitat of our area are continuous. Who will replace the Habitat Division when the Community needs guidance in these issues?

Thanks for the help. We hope there is a solution.



Bill Stockwell, Chair

**LEGISLATIVE INFORMATION OFFICE**

Email: Ketchikan\_LIO@legis.state.ak.us

50 Front St., Suite 203  
Ketchikan, Alaska 99901Phone: (907) 225-9675  
Fax: (907) 225-8546**WRITTEN TESTIMONY**NAME: Richard L. Coose  
ADDRESS: PO BOX 9533  
KETCHIKAN ALASKA  
PHONE: 907-297-9533BILL# or SUBJECT: EO 107COMMITTEE: House State Affairs

I am representing myself and a non-profit group called Concerned  
Alaskans for Resources and Environment. I support the Governor's  
proposed EO 107 to transfer the habitat division ADFEG  
to DNR.

My experience as a professional forest land resource manager  
for 40+ years has shown that by bring all the resource  
disciplines together in one place and the working together  
as a team is the most efficient and effective way to  
provide the best management solutions for the habitat and  
resources. This streamlined permitting process will greatly  
benefit Alaska's people & business while managing Alaska's  
resources for the future. The ADFEG habitat division has seriously  
delayed projects in & near Ketchikan. I ~~am~~ believe  
DNR will act responsibly to protect & manage our  
valuable habitat resources

Please support EO 107Thank you

March 11, 2003

Dear Alaska Legislature,

I am speaking on behalf of the Copper River Watershed Project, a non-profit organization based in Cordova, Alaska that is dedicated to sustaining rural economies and maintaining a healthy fishing industry in the Copper River region. The CRWP opposes Governor Murkowski's Executive Order 107 which would transfer salmon and fish habitat oversight and permitting authority from the ADF&G to the DNR. The executive order represents a substantive policy change, which jeopardizes the checks and balance system upon which Alaska's constitution relies. At statehood, the Alaska Legislature decided to create two separate resource agencies; DNR's mandate is to develop resources and ADF&G's is to manage Alaska's fish and wildlife and protect their habitat. With these distinct roles and responsibilities, Alaskan residents can feel confident balances will be met between the benefits to our economy and the integrity of our natural systems. Transferring the permitting and oversight to DNR eliminates this balance. The executive order will result in further delays because of lack of staff and funding, and a permitting system that lacks the biologic expertise and institutional memory of the ADF&G staff.

We encourage you to oppose Executive Order 107.

Sincerely,



Becky Clausen  
Copper River Watershed Project  
PO Box 1560  
Cordova, Alaska 99574  
907-424-3334

To:  
HOUSE STATE AFFAIRS  
MARCH 11, 2003

P.O. Box 1727  
Petersburg, AK 99833  
(907) 772-4864  
doncorn@mitkof.net

In watching the ongoing debate regarding the effect the ADFG Habitat Division has had on development, one thing is apparent. A lot of people do not understand how the division works. The Habitat Division has become the scapegoat for developers who don't like permitting.

First of all, you need to consider that the reason the Habitat Division was formed was to give ADF&G a voice in reviewing developmental activities which affect fish and wildlife. Without coordinators it was easy for the different divisions to provide conflicting and thus, confusing comments. Professionals who understand the permitting system allowed other fish and wildlife staff to focus on their primary duties while maximizing the quality of the Departments input.

As the division functions today, when habitat biologists receive applications for permits or environmental reviews, they serve as the focal point for input from the entire Department of Fish and Game. Any permit or project is routed around the offices under whose jurisdiction the project falls. Concerns and comments from commercial fisheries, sport fisheries, wildlife conservation and subsistence staff all go into the equation.

Habitat biologists also function as point men for other agencies -- the U.S. Fish and Wildlife Service, National Marine Fisheries Service and EPA -- in responding to Army Corps of Engineers permits and other environmental reviews. This is because of their local knowledge and ready access to input from the other divisions. Some projects that might otherwise be held up by other agencies are cleared without controversy because habitat staff answer and resolve concerns before they become issues. Again this is only because they have local knowledge. Sometimes developers thank ADFG biologists for input because they saved them time and money.

Habitat biologists work under an inflexible time table. If they don't get their permits or comments out in time, then they and the resources are out of luck. Some permit applications needing field review come in the dead of winter when project areas are inaccessible and streams are covered in ice and snow. At such times only knowledge of local conditions

and agreements with industry representatives can be used to minimize impacts to fish habitat. By working out of field offices rather than in centralized locations, Habitat Division permitters develop a rapport with industry and are able to build more flexibility into permits. If habitat (or DNR fish permitting) staff are reduced and centralized, wider generic timing windows and less flexible stipulations will be needed.

Any projects that are held up are delayed for good reasons. They potentially have significant impacts on fish and wildlife resources. Not all proposed development is benign. For every project the Governor claims has been derailed by Habitat Division staff, others should have been held up or even rejected. The political pressure on Habitat Biologists is intense and Alaskans now live with permanent impacts that could have been mitigated or avoided.

While the governor hopes to speed up permitting, moving some functions of the division to DNR and eliminating the rest is likely to have the opposite effect. This action will break the link with ADF&G. No longer will permitters have ready access to biologists from the other divisions. Just communicating with ADF&G will become a logistical barrier.

Other projects requiring Corps of Engineers Permits will be left to Federal agencies to come up with mitigation. State biologists will be left out of the equation. Habitat staff won't be there to "grease the skids" or develop realistic mitigation. This could especially become a problem if there is a regime change in Washington, DC in 2004 and our nations leadership becomes more sensitive to the needs of fish and wildlife.

Portions of US Forest Service Timber sales that significantly impact high-value fish or wildlife habitat will go unreviewed by state biologists.

It seems ironical that in a state with so many commercial, sport and subsistence fishers, hunters and trappers that the very agency that represents their interests will be left out of the development equation.

Alaska has been fortunate to have a dedicated staff of biologists who sacrifice personal time to protect the resources from which all Alaskans benefit. The governor is correct -- they have an agenda. They take their job seriously. With the Governor's current development plans, the Habitat Division should be beefed up, not gutted, in order to assure impacts to fish and wildlife are minimized.

The Legislature needs to recognize this and ensure that the Habitat Division is not made a scapegoat for the entire Department of Fish and Game.

Under separate cover I am also forwarding to you copies of the Habitat Division response to the Governor's charges of an out-of-control government agency -- charges that were unfounded; that the governor refused to allow the accused to defend themselves; and charges that the Governor used as justification for his decision to virtually eliminate the

division. Forgive me if I say it resembles a lynching in the old south, but if you think about it you can see real similarities. Essentially the Governor has chosen to shoot the messenger rather than provide leadership to address the issues

I urge you to overturn the governors executive order to assure that when development projects come up for review, potential impacts to fish and wildlife resources that Alaskans so cherish get full consideration in the decision making process.

Sincerely,

Don Cornelius  
Retired ADFG Habitat Biologist

Brian Davis  
1135 W. 8<sup>th</sup> Ave  
Anchorage, AK 99501

MAR 17 2003

This is in support of Senate and House Special Concurrent Resolution 1 (SSCR 1 and HSCR 1) disapproving Executive Order 107. Please allow the Alaska Department of Fish and Game, Habitat Division, to keep its responsibility for the research and comment on land use permits in Alaska. Habitat biologists are the professionals who are best able to assess the impact of different developments on our precious fish and game resources. The Division should be allowed to continue on its mission.

Thank you very much,  
Brian Davis

A handwritten signature in cursive script that reads "Brian Davis".

[Fwd: Rep. Weyrauch:]

**Subject: [Fwd: Rep. Weyrauch:]**  
**Date: Sun, 23 Mar 2003 13:55:19 -0900**  
**From: Bruce Weyhrauch <Representative\_Bruce\_Weyhrauch@Legis.state.ak.us>**  
**Organization: Alaska State Legislature**  
**To: Terry Harvey <Terry\_Harvey@legis.state.ak.us>**

terry please put this in the habitat file.

bw

MAR 24 2003

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**Subject: Rep. Weyrauch:**  
**Date: Fri, 21 Mar 2003 09:56:03 -0500**  
**From: "Clancy DeSmet" <CDESMET@vermontlaw.edu>**  
**To: <Representative\_Bruce\_Weyhrauch@Legis.state.ak.us>**

Rep. Weyrauch:

I STRONGLY OPPOSE moving the Habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

Please work for strengthening, not diminishing fish and wildlife habitat protection and oversight.

Please vote to disapprove the executive order. We must hold our elected officials accountable to protecting our fish and wildlife.

At present, the Department of Fish & Game has permitting responsibility for projects that may affect fish and wildlife habitat while the Department of Natural Resources has responsibility for resource development. This provides a system of checks and balances and an opportunity for fish and wildlife biologists to work with developers through the permitting process. If the permitting function is transferred to DNR, the balance will be tilted away from habitat protection to the long-term detriment of our fish and wildlife resources.

- \* Alaska's economy and Alaskans depend on our unique fish and wildlife.
  - o Commercial and sport fisherman, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife.

- \* Checks and balances are needed to protect Alaska's fish and wildlife habitat.
  - o The Department of Fish & Game has a mission to protect Alaska's fish and wildlife resources, the Department of Natural Resources mission is to develop the state's resources. These two missions balance each other to manage the state's unique and diverse resources.
  - c By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development.

- \* Governor Murkowski's proposal seems to be a solution in need of a problem.
  - o Of the 1,926 Title 16 permit applications received in 2002, 1,917 or 99.5% of the applications received permits or were told that no permit was required. The average time to process a Title 16 permit application decreased from 17 days in 2001 to 14 day in 2002.
  - o Currently DNR has a backlog of 700 water rights permit applications, 20

years or older, and 3000 miscellaneous applications, such as water rights transfers, that have yet to be processed.

\* The Governor is not telling the whole story

o There are 85 current Habitat division employees who work on permitting projects. It is rumored that a significant number of these employees will be laid-off; of those who remain a number will be transferred to DNR.

o With less staff and less balance, it appears that there will be less accountability and project proposals may well lead to litigation and more delays.

o When difficult decisions have to be made that require weighing the protection of fish and wildlife against economic development interests, would you rather have those decisions made through a process that gives equal weight to the opinions of the commissioners of Fish and Game and Natural Resources, or would you rather have the commissioner of the Department of Natural Resources (the department responsible for resource development) have the sole authority to make those decision?

Sincerely,

Clancy DeSmet

## Discovery ARTS



P.O. BOX 7814  
(907) 225-3188

KEETCHIKAN, ALASKA 99901  
FAX (907) 247-3188

Date 3-11-03

To: House State Affairs Committee  
Re: Executive order 107

MAR 17 2003

This directive is a very poor idea. It will weaken protection of valuable salmon streams and despoil the aesthetics of valuable wilderness with potentially disastrous economic consequences. I've spent 20 years as a commercial fisherman and 20 years in the tour business. Both industries are very dependent on the biological integrity of S.E. Alaska's ecosystems. Streams in S.E. Alaska are an important element in the ecosystems and essential for the economic well being of both industries.

Protecting our salmon streams is essential for the future economic viability of the salmon industry. We are in a period of relative abundance in the salmon industry.

However, the level of abundance we are experiencing is largely the result of cyclic environmental factor affecting ocean currents, weather and temperature that are not well understood. I remember vividly the low levels of salmon returns in the 60's. I am appalled that some of my fellow fishermen are not alarmed by this action by the governor. However, these mostly younger fishermen do not remember the years of poor harvest which prompted major changes in the salmon industry such as limited entry and the private non-profit hatchery system. Mother nature is fickle, and this cycle of abundance could quickly change and salmon returns could dramatically drop once again, placing salmon runs in danger.

The biological integrity of streams is also important for the tourism industry. Streams in uncut old growth timbered valleys are the heart and soul of our ecosystems in S.E. Alaska. As wilderness on earth diminishes and the population increases, the value of these valleys increases exponentially. The value of timber near streams in S.E. Alaska to tourism and the fishing industry far exceeds its value as timber harvested every 100 years.

The governor's proposal would dramatically weaken protection of areas that are essential for the long term economic vitality of the fishing and tourism industries for the short term gain of the timber industry

Respectfully,



Dale Pihlman



## **Dixon Entrance Chapter Southern Southeast Alaska**

MAR 27 2003

March 17, 2003

To: Alaska State Legislators

Subject: EO 107

The Dixon Entrance Chapter of the Society of American Foresters supports EO 107.

The Chapter members support a more efficient regulatory process, and believe implementation of EO 107 will help accomplish this objective.

Please support EO 107.

Richard L. Coose  
Chapter Chair

*Distributed by:  
Senator Scott Ogan  
Senate District H*

March 11, 2003

Members of the House State Affairs Committee:

Thank you very much for the opportunity to submit these comments in regards to Executive Order 107. I appreciate your time in taking these comments into consideration and I also appreciate the time you dedicate to representing your constituents in the state legislature.

I am a resident of Sitka and I have taken the time to submit testimony because I am strongly opposed to Executive Order 107, which would move the Habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

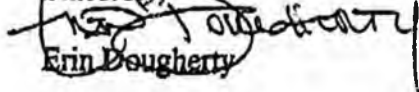
I enjoy fresh water fly fishing, and a good portion of my household's food comes from various hunting and fishing activities in the Tongass forest and surrounding waters. I am deeply concerned with Executive Order 107 as I believe it will dismantle a vital check and balance that has existed and allowed for responsible development and protection of habitat.

I came to Alaska from Newport, Oregon, a small town with the largest fishing fleet on the Oregon coast. I come from a fishing family, and because of the destruction of watersheds up and down the Oregon coast, my family now has to travel hundreds of miles north to fish for salmon in Alaska.

Oregon as a state made little to no concerted effort to protect vital watersheds and salmon streams from development, and now almost all of Oregon's natural salmon runs have vanished. Dozens of fish runs are listed as threatened species and the state spends millions of dollars a year on habitat restoration.

I moved to Alaska in part to live in a community where I could live off of what the land and sea provide. I urge you to work for strengthening, not diminishing fish and wildlife habitat protection and oversight. Please vote in joint session to disapprove of the executive order and do not let the destruction of watersheds that exists in Oregon be replicated in Alaska.

Sincerely,



Erin Dougherty

722 Biorka Street  
Sitka, AK 99835  
907-747-3498

PO Box 15043  
Fritz Creek, AK 99603  
(907) 235-7578  
March 12, 2003

House State Affairs Committee  
Juneau, Alaska

Dear Chairman and Committee Members,

Thank you for holding hearings on EO 107 and considering the impacts this order will have on Alaska's fish and wildlife resources. I had the opportunity to testify via audio link last night, but I wanted to submit written testimony for the record. After waiting at the LIO for three hours and having only two minutes to testify, I felt somewhat rushed. However, I sincerely appreciate the chance to speak, especially since I was denied that right at the Senate Resources Committee during a hearing on March 10.

I hope that your Committee thoroughly deliberates this EO and considers all of the testimony presented to you. This is a genuinely far reaching order that goes well beyond solving the alleged problems with the Habitat Division permitting. By reducing the number of biologists, important information about habitat will be omitted from the permitting process and our fish and wildlife resources will experience gradual, cumulative, long term degradation. If there are problems with efficiency in the Habitat Division or problems with policies carried out by individual biologists, those can be dealt with by the Administration through normal procedural channels.

I believe that this order will precipitate lawsuits from environmental organizations and the permitting process will slow down even more. This order may also increase the oversight by federal agencies and biologists, something we are fighting in the arena of subsistence management. I understand that DNR already has a backlog of permitting and has trouble issuing permits in a timely matter. Adding habitat permitting to their responsibilities will only exacerbate this problem.

Many people will be affected negatively by this order in years down the road. Many people care passionately about this, but are unable to testify before your committee. Scores of people testified last night. For every person who testified, many others showed up wanting to, but had to leave for other commitments and to be with their families and children. For every person who showed up at the LIO at the start of the hearing, scores or hundreds of others know about this and are strongly opposed.

In closing, I urge you to disapprove this order. Changes to Alaska's statutes, especially changes as broad and far reaching as this, need to be carried out by the legislature, through thoughtful deliberation and an open, public process.

Thank you.



Willy Dunhe

**Subject: ADF&G Habitat Division**

**Date:** Thu, 13 Mar 2003 17:35:13 -0900

**From:** "Sandra Baxter Dunn" <sbaxter@ptialaska.net>

**To:** <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>

Bruce: You may remember me as the chairman of Juneau Ducks Unlimited. However, in my work world, I am an environmental consultant, specializing in wetland science and permitting and NEPA documentation. I have worked in that field in Juneau and Southeast since 1984, first with ADOT&PF, and since 1991 as a private consultant. During that time I have had numerous encounters with the habitat division, some good, many not so satisfactory. I have been involved with the Totem Creek golf course proposal since the mid 90's, when I supervised the wetland delineation of approximately 250 acres at the proposed course site. Recently, the TCI board hired me to help modify permits and straighten out their permitting mess. Through this experience, and many others like it, I believe I have a unique perspective on the Habitat Division situation. I will try to condense this discourse to what I feel are the crucial facts and problems with that division ...

1. The statutory authority and regulations implementing the "habitat" function of the division are so broadly written as to be unworkable by both the regulators (habitat biologists) and developers. I am sure you have checked them out. Regulators need guidance as to which wildlife and fish are "important", as well as clear policy regarding comment responsibility. As you know, habitat not only issues T 16 fish habitat permits (which regs are fairly well written), but also comments on numerous permit actions by other agencies under the federal "Fish and Wildlife Coordination Act" and the Alaska Coastal Management Program. These comments are what throw a monkey wrench in the works. As far as I have been able to ascertain, the biologists have no guidance or policy regarding these comments. They can, and routinely do, make comments regarding habitats of fish and wildlife species that are entirely out of the realm of either common sense or good science. When you hear about how many fish habitat permits are issued in a reasonable time, or about the lack of elevation of appeals, this is the reason ... the problem lies outside the T -16 realms of regulation. Here is a good example. On the TCI golf course project, after resolution of fish habitat issues, a habitat biologist wrote a 9 page comment letter to ADEC regarding the possible use of pesticides on the proposed golf course. This letter listed numerous stipulations that ADF&G wanted DEC to impose on TCI regarding the use of pesticides. These stipulations were clearly outside the regulatory responsibility of ADF&G, and as it turns out, were also outside the regulatory authority of DEC. However, because this letter exists in the public realm, the City and Borough of Juneau, along with numerous citizens, expect TCI to respond to each of the requested stipulations as if they are valid. What is an applicant to do? I can provide numerous more examples, but will not take your time with them now.

2. ADF&G knows full well that the regulations (AAC 5) are too broadly written, but has purposefully declined to address the issue because they are afraid of losing some power or authority if the regs ever see the light of day in the public or legislature. In addition, if the issue of regulatory authority is ever broached in permit negotiations (as during the TCI debacle) habitat refuses to entertain the issue. During my years with ADOT, habitat would routinely stonewall projects over such issues as purpose and need (this from a sister state agency!), and question reasonable alternatives (an issue to be resolved by registered civil engineers). Inevitably, if the issue was elevated, resolution came immediately. It was obvious that ADF&G habitat would not let the question of their regulatory authority reach the level of elevation that would subject it to scrutiny.

3. ADF&G habitat biologists state that limiting their numbers will slow legitimate permits and produce an effect contrary to the administration goals. It is my contention that if the habitat biologists had clear guidance on what issues were worthy of comment, and which issues were "non" that not only would the legitimate permit process be expedited, but possibly also with less staff, and more cooperation from development.

As you are no doubt aware, most developers are conservationists ... it is the business leaders in our communities who also lead in establishment of hunting and fishing opportunities. When they complain about a permitting problem, in my experience, it is not the regulation they are complaining about, it is the factor of unknown costs and delays that causes them problems. It is in the interest of both the environmental community and the developers to have clear, precise, and predictable regulations regarding fish and wildlife habitat in our state. I hope that this information will help to reach that end, whatever the means.

please call if you want to discuss this issue. thanks, Art Dunn 463-3243 W 586-6455 H

PS We are planning a DU Sponsor snacks and cocktails event for April 23 in the Hangar Ballroom. Your invite

will arrive soon. Our goal is to encourage some of your like-minded-friends in the legislature to join us as DU sponsors.

March 12, 2003

MAR 17 2003

House State Affairs Committee  
Alaska State Capital  
Juneau, AK 99801-1182

**Reference: March 11-12 Hearings on Executive Order 107**

Dear Committee Members:

**I strongly object** to Governor Murkowski's proposal to move habitat permitting authority from Department of Fish and Game to the Department of Natural Resources. This move, I believe, will weaken our habitat protections and cause substantive environmental impacts on Alaska's wildlife.

As a professional biologist in the regulatory field, **I value the work of Dr. Alvin G. Ott, Regional Supervisor, Habitat and Restoration Division in Fairbanks, and his entire staff.** They are very professional, fair, and provide a valuable service to the citizens and industry of Alaska.

The Division's work with Caribou is of great importance as subsistence users depend on research and data collected by this Division to help determine the health of the herds. Also, the Division works with industry to arrive at methods to safeguard the health of the herd and fisheries while maintaining sustainable development. The caribou and fisheries research that this Division performs is recognized nationwide. I have been to numerous conferences where professional biologists and fisheries experts praise the work and forward thinking of the Northern Habitat Division.

**I implore you to please leave the Habitat Division intact and under the Department of Fish and Game.**

Sincerely,



Joy B. Earp  
18622 Kanaga Loop  
Eagle River, AK 99577

MARCH 11, 2003

To SRES, HSTA, WILSON

FROM WARD ELDRIDGE  
2213 SAWMILL CREEK ROAD  
SITKA, AK 99835  
TEL 907-747-3702

SUBJECT: EO MOVING THE HABITAT DIV. TO DNR

PLEASE PRESERVE THE EFFECTIVENESS OF <sup>HABITAT</sup> DIVISION.  
OUR COMMERCIAL FISHERIES DEPEND ON THEM.  
VOTE TO KEEP IT IN THE DEPARTMENT OF FISH & GAME.

Ward Eldridge

John Erickson  
P.O. Box 251  
Ph: 907-945-3274  
Hoonah, Alaska 99820  
March 8, 2003

MAR 11 2003

Dear Legislator,

I am contacting you about my concern with Governor Murkowski's plan to do away with the Department of Fish and Game Habitat division.

I am a member of the Pioneer's of Alaska, Southeast Alaska's most senior active Master Guide, and a resident of Alaska for over 50 years, so I am well aware of the State habitat value and problems.

Due to the past efforts of the USDA Forest Service and the Native logging, plus the new Forest Service decisions and the attitude of the present State administration, the habitat for Alaska's wildlife is in dire need of all the professional help it can get.

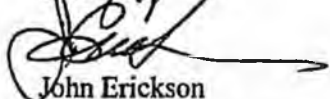
The present Department of Fish and Game Habitat Division should be retained with all their professional experience to oversee any and all matters that affect our State's wildlife.

Will you please strongly oppose moving the Habitat Permitting Authority from Alaska's Department of Fish and Game to the Department of Natural Resources?

Please vote in joint session to disapprove of the executive order on this subject.

Thank you for your help in this matter, and for listening to people who live in Alaska's rural areas and see what is really going on from day to day to the State's wildlife habitat. Let's take care of the things we all love about Alaska.

Sincerely,



John Erickson  
State of Alaska Master Guide #37  
Hoonah, Alaska

MAR 17 2003

Testimony  
EO 107

Dear Legislators,

I am opposed to Executive Order #107 to move habitat permitting authority from the Department of Fish and Game to the Department of Natural Resources.

I can not attend the LIO hearing on Wednesday, March 12th but I can assure you that I have read everything I can find on the Internet and in the ADN. Isn't this a backlash against Habitat for not permitting logging? Isn't this executive order a backlash against preserving fish habitat?

If Governor Murkowski wants to maintain a good relationship with the Legislature, he should use Executive orders and Governor's vetoes only on rare occasions.

Deanna Essert  
6262 W. Dimond Blvd.  
Anchorage, Ak. 99502

March 9, 2003

Dear Representative Weyhrauch

I am writing to express my concern about Governor Murkowski's Executive Order EO 100.

I feel that giving the Department of Natural Resources permitting responsibility for projects that will affect habitat will greatly compromise standards for development resulting in damage to our forests and streams.

Please vote to disapprove the executive order.

Thank you for holding Public Hearings on the Habitat transfer proposal.

Sincerely

William Farrell

MAR 10 2003

faxed 3-11-03

Page 1 of 3

March 11, 2003

MAR 17 2003

P.O. Box 2994

Homer, AK 99663

House State Affairs Committee

Alaska State Legislature

Juneau, AK 99603

Dear Committee Members:

I urge this committee to support Representative Gara's Resolution to disapprove Executive Order 107. Please send this resolution to the floor for a vote by the entire Legislature.

There are many reasons why E.O. 107 is unwise. Those reasons have been carefully detailed by numerous environmental groups, and I support their reasoning. The present system works well. It was carefully set up more than 40 years ago to protect our fisheries and wildlife through a system of checks and balances. The consequence of E.O. 107 will likely be the slow degradation of our fisheries and wildlife.

In 1996, the Kenai Peninsula Borough Assembly passed Resolution 96-010 that demonstrates support on

the Kenai Peninsula for ADF and G and the oversight they provide on development projects.

See attached Resolution 96-010.

Certainly this resolution demonstrates support for the concept of having independent oversight of projects, particularly a separate agency to oversee logging. This independent check on development will be lost under the DNR plan.

Please, consider this issue carefully. Hopefully your decision will err on the side of protecting the checks and balances and you will override this executive order.

Sincerely,

Nina Faust

Introduced by:  
Scalzi  
Date: 2/06/96  
Carried over to: 2/20/96  
Action: Adopted as Amended  
Vote: Unanimous

**KENAI PENINSULA BOROUGH  
RESOLUTION 96-010**

**A RESOLUTION URGING THE GOVERNOR OF THE STATE OF ALASKA TO DESIGNATE THE ALASKA DEPARTMENT OF FISH & GAME THE LEAD AGENCY IN THE MONITORING OF LOGGING OPERATIONS AND PROVIDING THE PROPER FUNDING FOR THE HABITAT DIVISION**

**WHEREAS**, the Alaska Department of Fish & Game has primary responsibility for the fish and wildlife resources of the state, and is mandated to conserve and develop them for the benefit of all; and

**WHEREAS**, the Kenai Peninsula Borough contains some of the most productive fish and wildlife habitat in Alaska; and

**WHEREAS**, these resources are the mainstay of the livelihood of many residents of the Kenai Peninsula Borough; and

**WHEREAS**, the cumulative affects of simultaneous logging of private, public, and public trust held lands can lead to the long term losses in production of fish and wildlife habitat; and

**WHEREAS**, the insufficient oversight of development can contribute to a decline in habitat production of resources in many watersheds of the Borough, including the Kenai River; and

**WHEREAS**, the sustained yield management of resources is dependent on understanding impacts on habitat at all stages of the life cycle;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That adequate funding should be promptly provided to the Alaska Department of Fish & Game as the lead agency for implementation of a program to assess the impacts and monitor logging for compliance with the law, and recommend ways to better protect the fish and wildlife resources.

**SECTION 2.** That this is a priority matter and the Kenai Peninsula Borough Assembly respectfully requests the Governor to direct and assist the resource agencies in implementing policy changes to protect fish and wildlife resources.

**SECTION 3.** That copies of this resolution shall be sent to Governor Knowles, Senators Salo, Torgerson, and Lincoln, Representatives Phillips, Navarre, Davis and Nicholia, Commissioner John Shively, Dept. of Natural Resources, and Commissioner Frank Rue, Dept. of Fish and Game.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20th DAY OF FEBRUARY, 1996.**

Andrew P. Scalzi, Assembly President

ATTEST: Gaye J. Vaughan, Borough Clerk

POB 2074  
HOMER 99603

To: HSTA  
E0107  
3-11-03

faxed 3-11-03

My Name is Regina Fiske

MAR 1 2003

I am opposed to the Governor's executive order to move the Habitat <sup>MAR 17 2003</sup> permitting authority from the Department of Fish and Game to the Department of Natural Resources.

Moving the permitting authority makes no sense. The missions of the respective Departments are completely different. The mission of the Department of Fish and Game is to protect fish and wildlife resources, while the Department of Natural Resources' mission is to develop natural resources, which may impact fish and wildlife resources. Both Departments need independent checks and balances to foster wise development/protection of resources.

I would be equally opposed to moving the permitting for the Department of Natural Resources to the Department of Fish and Game.

There does not appear to be a problem that needs fixing. It is my understanding that the Department of Fish and Game is very diligent and speedy at processing and approving permit applications. Further, it appears from various statements from the Governor's office that he intends to reduce personnel in the permitting division. It sounds like this would create, rather than solve, a problem in that it would weaken the entire permitting process.

Alaska's fish and wildlife resources are important to almost every Alaskan and the health of these resources is paramount to Alaska's overall economic health.

I believe in the development of Alaska's natural resources.

The current system has worked well. We have had strong economic development in Alaska with the cooperation of commercial and sports fishermen, hunters, trappers, professional guides, subsistence users, and our tourism industry. Why make a change now, especially one that has no upside benefit, but lots of downside risk.

Please vote to over-ride the Governor's executive order. Thank you for the opportunity speak on this issue.

MAR 31 2003

ONLY PAGE

MARCH 30, 2003

TO: BRUCE WEYHRAUCH  
 STATE AFFAIRS COMMITTEE  
 FAX: 465-2273

FROM: FRED & DODY FROELICH (28-year Alaska residents)  
 FAX: 345-1125  
 ADDRESS: 5801 BEVERLY DRIVE  
 ANCHORAGE, AK 99516 (No Mail)

RE: HOUSE & SENATE CONCURRENT RESOLUTION NUMBER 1

*ED107*

WE ASK THAT YOU MAKE CERTAIN THAT THIS RESOLUTION PASSES FROM YOUR COMMITTEE.

WE ARE APPALLED AT RECENT ACTIONS BY THIS GOVERNOR! IT IS TIME THAT THE WILL OF THE PEOPLE WAS HONORED, AND ONLY YOU CAN DO THAT.

EVERY THINKING AND CARING INDIVIDUAL KNOWS THAT THE HABITAT PERMITTING AUTHORITY BELONGS WITH FISH & GAME, WHICH IS THE ONLY ENTITY WITH THE BACKGROUND, INTELLIGENCE AND COMPASSION TO DEAL WITH THIS MATTER.

THANK YOU.

*Randy Froelich*      *Fred Froelich*

**Subject: Testimony regarding EO#107**

**Date: Fri, 14 Mar 2003 05:53:44 -0900**

**From: "Lon & Litia Garrison" <fvseal@ptialaska.net>**

**To: <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>**

Dear Sir,

I put forth the written version of the testimony which I provide March 12, 2003 during the State House Affairs Committee hearing on Executive Order #107. I urge your committee to send this EO to the floor for debate and that this EO be prohibited from taking effect. My testimony follows:

### **Testimony 3/12/03 Regarding EO107**

**To: Stat House Affairs Committee, Rep. Bruce Weyhrauch, Chair**

**From: Lon Garrison, 626 Merrill St. Sitka, AK 99835 [fvseal@ptialaska.net](mailto:fvseal@ptialaska.net)**

To the State House Affairs Committee:

I am testifying to strongly urge the legislature of the state of Alaska to resolve to prohibit Executive Order 107 from taking effect. I have been employed as a fishery biologist for the past 15 years in the private non-profit sector working on salmon enhancement. My work has meant that I have dealt with the Alaska Department of Fish and Game on a regular basis and many of the projects I am involved with require Title 16 permits. In my experience, with well over a dozen permits issued, never have I had difficulty in obtaining the necessary permits in a timely manner or been regulated to a degree that seemed excessive. In fact, the system has worked, and worked very well.

I have also had the opportunity to work with habitat biologists on several projects involving potentially large impacts to anadromous salmonid habitat. Two examples of this are the mitigation work conducted when the Haines Airport was improved and expanded and most recently the realignment of the Haines Highway. Without the support and persistence of the habitat biologists in the Haines area, the extensive mitigation work carried out along the Haines Highway from mile-31 to mile-38 may not have taken place and certainly would not have been successful. We could have lost nearly 8 miles of complex and valuable chum and coho salmon spawning habitat with nothing to show for it except a bunch of gravel pits full of water and of no use to any fish in the area.

While I personally work with salmon enhancement issues and projects, fortunately I don't have to focus on rehabilitation as many of my counterparts in the Pacific Northwest do. This is because of Alaska's jealous protection of its fisheries habitat and associated riparian areas; because the Habitat Division has done its job, and done it well. As many of my peers have said previously, its far cheaper, and far simpler to protect fish habitat through a strong, efficient and conscientious permitting process.

Executive Order 107 is an **obvious** "end-around" play by this governor and his administration designed to forfeit the health of some of Alaska's natural resources for the short term, monetary gain of select few beneficiaries. While I agree we must do more to develop our natural resources for the long-term health of our state's economy, this action is a short sighted maneuver clearly aimed at aiding those who helped finance the governor's election to office. This order, removes a necessary set of checks and balances that the founding legislature saw as an important process to ensure the wise use, and development of our

many natural resources and the protection of our fish and wildlife.

At a time when this governor and his administration should be working to legitimately support, protect, and promote the sustainability of Alaska's salmon fisheries, he is cow towing to special interests at the expense of the people of Alaska and their resources. If we cannot trust this governor to uphold his campaign pledges to fully fund education and not impose new taxes, are we to believe his administration will be any more honest than he? Can we trust the new commissioner of DNR to be fully objective in developing and regulating our natural resources wisely? I have serious doubts!

I strongly urge this committee to recommend to the legislature to prohibit this executive order from proceeding.

Respectfully submitted,

Lon D. Garrison.

MAR 13 2003

**Subject:** Habitat Move (EO107)

**Date:** Wed, 12 Mar 2003 17:47:48 -0900

**From:** Harvey Goodell <hegoodell@hotmail.com>

**To:** <representative\_bruce\_veyhrauch@legis.state.ak.us>

House State Affairs Committee  
Chair Bruce Weyhrauch and Committee Members

I urge you to disapprove Executive Order 107, during joint session.

As a fisherman of 23 years I feel the move of the Habitat Division to DNR is wrong!

Look at B.C. Canada, Washington and Oregon. Without adequate oversight by a strong Habitat Division within ADF&G. I can see the nightmare of short term economic

development coming out of DNR. Picking up the pieces and making repairs is to late

and usually very expensive. Send Governor Murkowski the right message now!

Harvey Goodell  
POBox 3108  
Kodiak, AK. 99615

MAR 17 2003

March 12, 2003

It is said that "Alaska is what America was." As a recent addition to Alaska, I can attest to the state's exclusivity in the terms of breadth and diversity of fish and wildlife resources thriving here. And with your wealth of State and National Parks and Preserves, it's obvious Alaskans realize the value of unspoiled habitat in preserving their priceless wildlife. Ultimately, Alaska may succeed in wildlife and fishery conservation efforts where we in the lower 48 have failed. Executive Order 107, however, has the potential to permanently undermine that goal.

There is a fundamental inconsistency in granting habitat permitting authority to The Department of Natural Resources, a department charged with the responsibility to develop resources, not protect them. The Department of Fish and Game has held permit issuing authority since statehood for good reason. They provide an essential system of checks and balances that result in responsible development decisions.

Furthermore, Executive Order 107 is a solution for which Governor Murkowski has failed to identify a legitimate problem. The Department of Fish and Game has proven remarkably efficient at the permitting process in comparison to the Department of Natural Resources. Last year, the average time ADFG took to issue Title 16 permits was only 14 days. The DNR on the other hand, currently has a backlog of 700 water rights applications which are 20 years old or older. Removing permitting authority from the capable hands of The Department of Fish and Game to The Department of Natural Resources is not a viable solution to expedient habitat permits. It's likely to instead to only cause further delays and unforeseeable detriment to critical fish and wildlife habitat.

Executive Order 107 has the potential to make Alaska just another state that rashly sacrificed its priceless natural heritage in rampant efforts to develop. But Alaska's got too much at stake. Heed the precedent set in the lower 48, where we're struggling to reestablish habitat and species we destroyed under irresponsible development policies. I urge you to vote in joint session to disapprove of the executive order switching permitting authority from the Department of Fish and Game to the Department of Natural Resources. Executive Order 107 has the potential to destroy America's last hope for a place that remains as wild as we found it.

Sincerely,

Heather Erin Gott  
521 East 10<sup>th</sup> Street  
Anchorage, Alaska 99501

Owen Graham  
Executive Director  
Alaska Forest Association

I support the Governor's plan to make the DNR the lead agency for all permitting.

I believe that having one agency responsible for insuring we have responsible development will adequately protect the environment and reduce the cost of government.

Also, I want to comment on recent allegations that some 70% of fish culverts on Forest Service land were improperly installed and <sup>now</sup> block fish passage.

The truth is most of the culverts in question were properly installed following the standards that were in-place at that time. <sup>The FS tells me</sup> The old standard was in conformance with an MOU between the State and the Forest Service.

When the current standard was adopted, the FS estimated that some 70% of their existing culverts might need to be upgraded. The FS is currently spending about \$2mm per year

examining and, when necessary,  
upgrading, these older culverts. I think  
it is unfair and dishonest to use  
misinformation to try to block the  
proposed streamlining of state government.  
I encourage you to contact the FS  
if you want to confirm what I have  
told you here.

MAR 27 2003

14710 park Hills Circle  
Anchorage, Alaska 99516

March 23, 2003

The Honorable Bruce Weyhrauch  
Chairman, House State Affairs Committee  
Alaska State Legislature - House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

The Governor's Executive Order 107 (EO 107) proposes to move the permitting authority for fish and wildlife habitats and other authorities from the Department of Fish and Game to the Department of Natural Resources. EO 107 will effectively eliminate the Habitat and Restoration Division at the Department of Fish and Game.

I have some serious concerns about this proposal and am worried it will have a significant impact on the State's ability to manage and protect fish and wildlife resources. These resources are vital to our State's economy, our people's subsistence and our recreation. The framers of our State Constitution and the legislature that framed our governmental structure, consciously decided to create two separate resource agencies; one for development and one for management of fish and wildlife. This system should not be altered without a significant public debate.

While I don't think EO 107 is an appropriate means to change such an important structure of our state government (as it does not allow a thorough public debate on the issue) you must allow the "House and Senate Concurrent Resolution Number 1" to pass through your committee for a floor vote so that a public debate can decide this issue. Allowing the resolution to remain in your committee, effectively allowing EO 107 to become law, is not an acceptable means of implementing the Governor's proposed changes.

Please do not sit idle on this important issue. I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan. Please share my concerns with other committee members and please vote to prevent this executive order from being implemented.

Thank you.

Sincerely,



Laura Greffenius

To: Representative Bruce Weyhrauch

From: Jack Gustafson  
P.O. Box 3280  
Ketchikan, Ak. 99901  
907-225-5225

Date: March 13, 2003

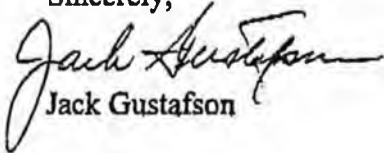
Subject: House State Affairs Committee Hearing of March 12, 2003 regarding EO # 107.

Dear Representative Weyhrauch:

Attached is the information you asked me to transmit to you concerning the direction Habitat Division biologists received regarding press contacts. This can best be summarized by, "We don't answer media questions" and "The Governor's Office will determine how to respond." As I had such a limited time to condense and speak my thoughts last night, I've also attached a more complete copy of the points I intended to address if given more time.

Thank you for the opportunity to speak at your hearing last night.

Sincerely,

  
Jack Gustafson

Attachments (2)

*5 pages*

**From:** Bill Hanson [bill\_hanson@fishgame.state.ak.us]  
**Sent:** Friday, December 20, 2002 7:58 AM  
**To:** Ann M Marble (E-mail); Ben Kirkpatrick (E-mail); Brian J Frenette (E-mail); Catherine A Pohl (E-mail); Christine A Schmale; Clayton R Hawkes III (E-mail); David L Barto (E-mail); David P Gregovich (E-mail); Edlth Bundy (E-mail); G Schrader (E-mail); Jack E Gustafson (E-mail); Jeff Nichols (E-mail); Jim Cariello (E-mail); Linda Speerstra (E-mail); Lyn Aldrighette (E-mail); Mark J Minnillo (E-mail); Moira A Ingle (E-mail); Philip W Mooney (E-mail); Ruth A Carter (E-mail)  
**Subject:** RE: Media Requests: All Issues and Projects  
**Importance:** High

Okay -- one more note on this. We don't answer media questions. We pass media who are answering questions on to Kerry and she passes them to the Gov's Office. \*

-----Original Message-----

**From:** Bill Hanson [mailto:bill\_hanson@fishgame.state.ak.us]  
**Sent:** Thursday, December 19, 2002 4:37 PM  
**To:** Ann M Marble (E-mail); Ben Kirkpatrick (E-mail); Brian J Frenette (E-mail); Catherine A Pohl (E-mail); Christine A Schmale; Clayton R Hawkes III (E-mail); David L Barto (E-mail); David P Gregovich (E-mail); Edlth Bundy (E-mail); G Schrader (E-mail); Jack E Gustafson (E-mail); Jeff Nichols (E-mail); Jim Cariello (E-mail); Linda Speerstra (E-mail); Lyn Aldrighette (E-mail); Mark J Minnillo (E-mail); Moira A Ingle (E-mail); Philip W Mooney (E-mail); Ruth A Carter (E-mail)  
**Cc:** Kerry\_Howard (E-mail)  
**Subject:** Media Requests: All Issues and Projects  
**Importance:** High

In Kerry's note yesterday related to 840, she mentioned a new policy requiring that all contacts with the media (radio, newspapers, etc) go thru her and to the Governor's Office. For the time being, you should apply this to ALL media contacts, no matter how routine. I suspect it may be relaxed a bit for very routine things at some point but for now, treat it as universal. The Governor's Office will determine how to respond. \*

Procedure to be followed in Region I. We are going to run this through the line of authority so that we don't miss anything:

- 1) When contacted by the media, prepare a short email with the date, name of the person, who they represent, the topic they are asking about (not a list of questions-- just a one or two sentence explanation, assuming they tell you), and their telephone number. Should be about the length of this paragraph total.
- 2) Send the email to me and to Moira (and to your supervisor if this is someone else). No other cc's are needed.
- 3) Please call me to let me know you sent the email (or call Moira if you can't reach me).
- 4) Moira and I will ensure that the message is forwarded quicki to Kerry so she can contact the Governor's Office.

Thanks.

BH

Statement of Jack Gustafson  
House State Affairs Committee Hearing  
Executive Order # 107  
March 12, 2003

Mr. Chairman and members of the committee: Thank you for the opportunity to make a statement today.

My name is Jack Gustafson. I am an employee with the Alaska Dept. of Fish and Game, but I am representing myself as an individual at this hearing. I've also worked in construction, the metal trades, and as a commercial fisherman. I am currently the Area Habitat Biologist in Ketchikan and I am here to testify in opposition to Executive Order # 107.

Fish and wildlife are vitally important to Alaska's economy and the lifestyles of people living here. Dedicated professionals within the Habitat Division of ADF&G currently address a wide variety of habitat concerns and issues, not just permitting. If these functions are eliminated or moved to DNR, I believe that fish and wildlife resources within this state will be seriously jeopardized. Some of the reasons I am opposed to Executive Order # 107 are as follows:

1. **It will not significantly reduce costs.** The Habitat Division is mostly federally funded. Why decrease the staff and eliminate the federal funding that currently makes us efficient?
2. **It will not streamline the process.** Most of the work we do with project reviews requires coordination with other employees within the Dept. of Fish and Game, not DNR. Involving DNR in all we do will complicate the process and compromise efficiency. For example, yesterday evening, I heard the CEO of Koncor Forest Products emphasize that the Habitat Division should be put into DNR because of our coordination in DNR's forestry operations. However, the majority of operable non-Forest Service lands in Southeast Alaska have already been clearcut, especially on village corporation properties. Less than 10% of my time is now spent in the type of coordination Mr. Sturgeon has spoken about. In contrast, the Forest Service is only half-way through cutting their first rotation. DNR does not coordinate with the Forest Service regarding logging on federal lands. It is essential, however, that ADF&G work with the Forest Service concerning impacts to the state's fish and wildlife resources on federal lands. This is one example of an important function that will either be lost or greatly complicated by EO 107.
3. **Valuable fish and wildlife habitats will be needlessly damaged.** The impacts to fish and wildlife as a result of this action will be much greater than the average person might imagine. It could take hours to

discuss this in detail, but suffice it to say that with fewer habitat biologists and DNR in charge, important habitats are at risk.

4. **Politicizing fish and wildlife protections will intensify within DNR, and may backfire.** As the state backs out of resource protection, I believe that the federal government will start playing a more authoritative role. We currently work with the federal agencies, like the US Fish and Wildlife Service, the Corps of Engineers, and the Forest Service; everyone benefits from such a cooperative approach. There could be many unintended consequences of eliminating the Habitat Division, such as are now occurring with the federal take-over of subsistence. For example, if the Governor wants to have credibility in the ANWR issue, dismantling the Habitat Division demonstrates a lack of concern that undermines the state's credibility in developing ANWR with minimal impact.
5. **The EO is being implemented through intimidation and misinformation, rather than through fair and balanced dialogue.** Habitat biologists were placed under a gag order in December. When we received calls from the media, we were supposed to tell the reporter we would get back to them regarding the answers to their questions. Then the reporter's questions were sent on up the chain to the Governor's office for a response. The gag order on political appointees has been lifted, but the gag order on habitat biologists is still in effect.
6. **The public has been misled as to why this action is being taken.** For example, in his state-of-the-state address, the Governor claimed this action was necessary because the Habitat Division delayed or opposed certain developmental projects. He then gave three examples. One of these was Ketchikan's southeast Intertie. This was a review that I handled. The Habitat Division did not delay or oppose the intertie project, and the Governor's characterization broadcast across statewide television was erroneous. The major players in the intertie project were the Alaska Energy Authority (AEA) and the Forest Service. The AEA proposed the project and the Forest Service wrote the EIS. I authored the Habitat Division's comments as the review proceeded, and basically agreed with the approach taken by the AEA and the Forest Service. I provided technical information along the way, such as comments regarding the avoidance of streams, the prevention of bird electrocutions, and the minimization of overall fish and wildlife impacts. In the end, I stated that the EIS did a good job of addressing the concerns we identified. The division did not delay or oppose the project, yet those listening to the state-of-the-state address were lead to believe otherwise. To make matters worse, how were we to set the record straight when a gag order prevented us from speaking?
7. **Habitat biologists do not have veto authority.** Most of our reviews are intended to simply provide information for decision-making by others. As with the review of the intertie project mentioned earlier, comments are

primarily advisory. Any decisions I am allowed to make can be easily elevated by any applicant and then overturned by the regional supervisor, the director, or the resource commissioners. Therefore, I am very careful not to make bad decisions or do anything else that would jeopardize my credibility in an elevation.

8. **The action taken by EO # 107 is punitive.** It is not based on common sense or good policy. State government can and should be conducted differently. The governor can currently dictate any policies he desires through the existing structure. We have no choice but to follow any new policies he issues. He doesn't need this EO to implement new policies or change the way we do business.
9. **This EO needlessly damages the careers of many highly trained and dedicated professionals.** In a few short weeks, a unique accumulation of talent and expertise within ADF&G will begin to vanish through lay-offs and attrition. I predict that the morale of the habitat biologists that are not laid-off, but are instead transferred to DNR, will be low. This could lead to high turnover, the lack of qualified people to fill vacant positions, and even less effective protection of fish and wildlife resource values in the state. Due to the defamatory nature of the attacks on the Habitat Division by high-level government officials, even if the Division is not dismantled, much damage has already been done.
10. **Be careful what you wish for.** As a species, humans are programmed to take and use resources. We do this to survive, but we have always had more places to move on to when resources were depleted. Throughout the ages, we never made that much of a dent. Alaska is big, but it and the world are getting smaller all the time. Our nomadic and rapacious instincts still linger. However, now that our abilities, technologies, and populations can so successfully manipulate entire landscapes, are you really sure you want to kill-off the Habitat Division?

In summary, once again, be careful what you wish for. EO # 107 is the product of erroneous thinking. It is only because the "stars are in alignment", so to speak, that this is former day-dream is now on the verge of becoming a reality. Be careful. EO 107 solves none of the problems mentioned. In the end, it only limits the quality of information this governor and all future governors will have available to use in their final decision-making process regarding complex problems. This is a bad government policy. Ultimately, it will lead to serious and unnecessary damages to the fish and wildlife resources of this state. Please rescind this Executive Order. Thank you for listening.

Jack Gustafson  
Ketchikan

Testimony  
EO 107

MAR 17 2003

I am a geologist that has been involved with mom and pop mining activities in Alaska for 25 years. I can say with first hand experience that there would be more small scale mining in this state, if there was more venture capital. Investors with the capital, along with prospectors and miners are willing to take a risk or two; just living in the Bush is risky in itself. The worst risk to nervous investors is in the critical early stage of a business venture when there is still time to back out. Investors, scared of losing their capital, will back out of a possible deal at the first sign of trouble. They look around at the other business ventures, especially the high profile business endeavors in Alaska, and see how long they have been tied up by bureaucratic process. The Habitat Division has the reputation for stalling for years such Bush projects like the renewal of Red Dog Mine reclamation plan. The point is, if ADFG's Habitat Division has the power to setback two high profile large corporations like NANA and Cominco; then what chance does mom and pop have?

The would-be Alaskan venture capitalists realize their money would be better invested in a real estate deal in Arizona. The Alaska economy is the real loser when this happens. We don't even have know how many times this has happened and how many folks are not given good jobs. The investors come just so close, then find a more secure deal somewhere else and they are gone.

I support moving permitting authority to DNR. It will send a clear signal to potential investors that Alaska has made some changes to improve the investment climate and to help minimize the risks of trying to make a living in the Alaska Bush.

Jim Halloran  
Mining Geologist  
halloran@acsalaska.net

**My name is Bruce Harding, Mayor of Wrangell, and I would like to say I support Governor Murkowski's Executive Order No. 107.**

**To me, it makes good sense to have Fish & Game fish habitat, game protection, stream preservation and forest stewardship as part of the Department of Natural Resource, division of forestry.**

**In the future, having these responsibilities in one department will allow for improved planning, more efficient and effective management of our natural and renewable resources.**

**In addition, I support Governor Murkowski's willingness to look at the states issues with fresh eye's and to bring new and creative solutions to our current state of affairs. These solutions will help reenergize the economic engine in our state in general and Southeast Alaska in particular.**

**Wrangell is a resource based community with a very depress resource based economy. I feel there is sufficient opportunity to rebuild our economy using our renewable resources in Southeast Alaska without endangering our environmental habitat.**

**In conclusion, I would like to leave you with this thought,**

**A sound environment is impossible without a sound economy.**

Public Testimony, House State Affairs Committee, March 11, 2003.

MAR 14 2003

Thank you.

My name is Bill Hauser.

First, I want to say that I am in support of our fishery resources, the unique habitats that are required to support them, and their long-term sustainability. I think that this can best be accomplished by retaining the function of habitat protection within a <sup>resource</sup> conservation-based agency.

Second, I must say that I am a retired employee of the Alaska Department of Fish and Game and currently a temporary employee of the Habitat and Restoration Division, but my work status is unaffected by the Executive Order 107 because my tenure will terminate at the end of June even if this order had not been issued.

But, most importantly, I am speaking here as a Fishery Scientist. I hold a BS, a MS in Fish and Wildlife Management and a PhD in Zoology and I have over 30 years of experience in more than six states. I am a past President of the Alaska Chapter of the American Fisheries Society, which includes over 400 fishery scientists in Alaska from academia, private and governmental sectors of our profession. I have been in Alaska for 22 years and my work has included fish and fish habitat enhancement projects in many regions of the state as well as community education about the importance of good quality fish habitat to preserve fisheries.

Fish is the most important natural resource in the State of Alaska and it is important for so many users – recreational, subsistence, commercial and non-consumptive as well. If we care about this resource and if we want a legacy of this resource for future generations, we must protect the production factory for that resource; i.e., good quality fish habitat - habitat that fish need for spawning, rearing, escape, and overwintering; and, open pathways for access and migration among these habitats. In addition, when anadromous fish populations are reduced or destroyed, other resident fish populations, birds, wildlife, and even streambank vegetation is diminished. Historically, the numbers of salmon returning to Alaskan streams have fluctuated greatly in time and space, but they have always rebounded. More specifically, they have only rebounded in areas with healthy, intact habitat. If the habitat is missing, the fish populations cannot recover. Lost habitat sometimes can be repaired. But, the cost of repair is greater than the cost of protection. And, the habitat can never be restored to the original condition. There is always a net loss.

Until now, these important fishery resources have had a measure of protection of equal consideration with development of our other important resources through a system of checks and balances. But, if the function of habitat protection is included within the Department of Natural Resources, whose primary mission is resource development, I can only presume that when decisions must be made, - internally - the system will favor resource development ~~at~~ at the detriment of our aquatic resources. Sometimes, there may be some large-scale losses but small-scale losses will <sup>also</sup> accrue with each project and each year for a long-term loss.

My colleagues <sup>from</sup> in the State of Washington tell me that the system outlined in EO 107 resembles the approach that has been in place in the State of Washington. There, anadromous fish runs have been depleted to about 3% of historic levels – mostly attributable to habitat loss and degradation – in a matter of a few human generations.

Is this the sort of legacy that we want for our children and our grand children?

Please <sup>reject</sup> ~~do not support~~ the transfer of habitat protection to ADNR. Please support the present system of checks and balances for the long-term protection of good quality fish habitat, our most valuable natural resource and other wildlife as well.

Thank you for your consideration, I will be glad to answer questions if you have any.



Dr. William J. Hauser  
3621 Hazen Circle  
Anchorage, AK 99515  
907-349-7175  
karelbill@gci.net

March 12, 2003

To: Rep. Bruce Weyhrauch  
Fax: 465-~~2273~~ 2273

From: Marge Hermans  
Fax: 789-1572 (no receiving fax)

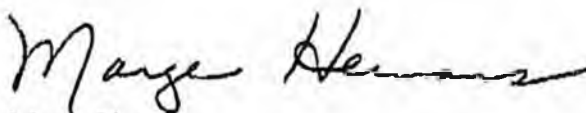
Dear Rep. Weyhrauch,

I urge you and your fellow legislators to reject Governor Murkowski's proposal to transfer responsibilities for Habitat protection from the Department of Fish and Game to the Department of Natural Resources. This is a terrible move that would disrupt the balance called for in our state constitution between development of natural resources and long-term protection of wildlife for all Alaskans.

I believe such a transfer would unduly distance biologists from the scientific findings of their peers in the Department of Fish and Game; weaken balanced review of proposed projects; and favor development of natural resources without the proper oversight and consideration that Alaskans deserve.

Please reject this proposal and demand a more balanced approach to assure wise and thoughtful development of our valuable resources. Thank you.

Sincerely,



Marge Hermans  
9630 Moraine Way  
Juneau. AK 99801

**Re: Fraser Report – Annual Survey of Mining Companies**

A Statement In Opposition To Governor Murkowski's Executive Order 107  
To: Alaska Senate Resource Committee hearings regarding EO 107 – 3/10/03  
To: State Affairs Committee hearings regarding EO 107 – 3/11/03 *DDH*

From: Doug Hill  
Anchorage

MAR 17 2003

I am testifying on behalf of myself.

On numerous occasions (3/7/03 - administrative press conference, 3/10/03 - Senate Resource Committee EO 107 hearing, 3/11/03 - House State Affairs Committee EO 107 hearing) I have listened to Tom Irwin (Commissioner of ADNR) along with Kevin Duffy (Acting Commissioner of ADF&G) cite the **Fraser Report** as a justification for moving fish and fish habitat protection authority from ADF&G to ADNR. I do not agree with agree with Commissioner Irwin. The results of the Fraser Institute's "Annual Survey of Mining Companies" do not warrant dismantling Alaska's ability to protect fish, fish habitat, wildlife and humans supported by fish and fish habitat, near shore and inland subsistence, sport, commercial, and personal use fisheries.

What is the Fraser Report? Since 1997 the Fraser Institute (Vancouver, British Columbia, Canada) has been surveying mining companies annually to assess how mineral potential and governmental policy factors such as taxation, environmental regulations, native issues, protected areas, infrastructure, labor relations, and socioeconomic agreements affect exploration and investment decisions. Survey results represent the opinions of exploration managers in mining companies operating around the world. As the notoriety of the survey has grown, the survey has expanded to include more governments/geographical regions. The Fraser Report currently queries 162 companies for their opinions about the investment attractiveness of 45 jurisdictions around the world. The Fraser Report is essentially a report card that rates governments/geographical regions on their investment attractiveness.

The Fraser Report provides three index rating numbers: a Policy Potential Index, a Mineral Potential Index, and an Investment Attractiveness Index. The Investment Attractiveness Index is a combination of the Policy and Mineral Potential Index. The index rating numbers that a government/geographical region receives are a composite index derived from a compilation of the ratings provided by a subset of the companies that responded. **The index numbers do not mean that a particular jurisdiction was rated, say 50 out of 100 jurisdictions. The index numbers are simply scores; the same as a score that one receives on a math test.**

**Commissioner Irwin wishes us to believe that according to the Fraser Report, Alaska ranks 50 out of 100 governments/geographical regions in attractiveness to mining exploration and investment. Commissioner Irwin has also stated that according to the Fraser Report Alaska has, for the past number of years, decreased in attractiveness to mining investment. Neither statement is true.**

**Alaska actually ranked 15th overall out of 47 jurisdictions rated in the 2002/2003 Fraser Report. The number 50, that Commissioner Irwin claims ranks Alaska 50<sup>th</sup> out of all the countries rated, was the 2002/2003 Policy Potential Index rating and not the overall attractiveness to mining companies. In terms of policy, the 2002/2003 Fraser Report rated Alaska as more attractive for mining investment than China, Ecuador, Kazakhstan, and Russia to name a few. Further, contrary to Commissioner Duffy's statements Alaska has not decreased in mining company investment attractiveness over the past "several" years. In fact, Alaska's attractiveness to mining investment has, according to the Fraser Report's**

501 03  
**Investment Attractiveness Potential Index, increased significantly during the life of the survey. Alaska has decreased a bit in status "only in the past year".**

**According to the Fraser Report and contrary to what Commissioner Duffy would like the legislature and the public to believe, Alaska's attractiveness to mining company investment is not low.**

**Throughout the life of the survey, and as the survey expanded its range in terms of the number of governments/geographical regions, Alaska's overall attractiveness to mining company investment has increased.**

**This increase in attractiveness to mining investment occurred while ADF&G Habitat Division controlled fish and fish habitat protection authority and during the so-called extreme pro-environmental administration of ex-Governor Tony Knowles.**

Commissioner Irwin has been involved in the mining industry in Nevada and Alaska for a number of years. I have a hard time believing that he does not understand the content of the Fraser Report. If it is true that he does not understand the report, what faith can I have in a man that spreads doctrine without knowing what it is that he is promoting. However, considering his potentially deliberate misinterpretation of the report's Alaska rating as a means of justification for transferring Title 16 permitting authority to ADNR, I suspect that he may not have the best interest of fish and fish habitat or the public trust in mind as he persists in supporting and promoting an EO which he clearly does fully understand.

On a number of occasions both ADNR Commissioner Irwin and Acting ADF&G Commissioner Duffy had to publicly defer to Chris Kennedy (Assistant Attorney General) for answers about basic policy procedure questions such as, when there is a contentious issue will the debate rise to commissioner or the deputy commissioner? These are the men that may be implementing EO 107. It does not appear that Commissioner Irwin and Acting Commissioner Duffy have done their EO 107 homework, yet they blindly support and promote EO 107. How can we have faith that fish and fish habitat will be protected when these men do not have clear understanding of what it really is that they are promoting?

EO 107 places supervision of fish and fish habitat protection under the Deputy Commissioner and the State Forester. The Governor appoints neither position. In other words, the board recommends neither position and neither position receives legislative scrutiny and approval. Currently Title 16 is under the ultimate supervision of a Commissioner who must be approved publicly by the legislature. What happened to transparency in government that Governor Murkowski spoke of on numerous occasions?

"Mining Watch", a pan-Canadian group whose aim is to ensure that mineral development practices are consistent with the goals of sustainable communities and environmental health and advocates policies to improve the efficiency and reduce the risks of mineral development, released a critique of the Fraser Report. Mining Watch issued the following statement regarding the Fraser Report, ***"It is clear from the report that a vote for mining friendly policy is a vote against fair taxation, against collective bargaining, against environmental protection, against aboriginal land rights, and against protected areas."*** In light of this statement, remember that Commissioner Duffy cited the Fraser Report as justification for transferring fish and fish habitat authority from ADF&G to the state agency (ADNR) that is responsible for mining, oil, and gas development.

Notwithstanding, if Alaskans looked to a social and economic future that included only mining, the obvious course would be to dismantle environmental regulation in an effort to boost Alaska's Policy Potential Index. I don't believe that Alaskans are that foolish and hope that our legislature

will take heed to the italicized "Mining Watch" quote above. While considering the resounding lack of supportable reasons for EO 107, remember that Governor Murkowski has appointed Tom Irwin as Commissioner of ADNR; a man with significant mining industry background. Then your vision of Murkowski administration and industry intent will be clear.

The relevance of what I have reported is that the administration is using documented misinterpretations and falsehoods to support moving fish and fish habitat protection from ADF&G to ADNR. Despite a lack of logical justifications and the numerous documented false arguments, the Murkowski administration wants us to believe that moving fish and fish habitat protection authority from ADF&G to ADNR will not decrease the level protection provided by ADF&G. I am supposed to believe this when the messengers do not even understand the details of what it is that they are promoting.

EO 107 is neither a cost cutting measure nor an administrative streamlining measure. EO 107 is the Murkowski administration's Hydro-Ax that is idling and ready to clear a right of way for development at the cost of salmon, resident fish, fish habitat, wildlife and humans supported by fish and fish habitat, nearshore and inland subsistence, sport, commercial, and personal use fisheries.

Salmon have benefited Alaskan socially and economically for thousands of years. Look to the future and do not allow salmon, resident species of fish, and wildlife and humans that depend on fish and fish habitat to be trampled in the stampede for the "New Wealth" of Alaska. **I support responsible development, therefore the only choice I have is to Strongly urge the legislature and all Alaskans to DISAPPROVE Governor Murkowski's transfer of fish and fish habitat protection authority from ADF&G to ADNR. Please DISSAPPROVE EO 107.**

Thank you for your time,

Doug Hill  
P.O. Box 220236  
Anchorage, Alaska 99522  
348-8519  
deeryard2001@yahoo.com

*Thank you for being fair and impartial  
during the House State Affairs Hearings  
on EO 107.*

### **Brief Summary of Alaska's Fraser Report Investment Attractiveness (IA) Ratings**

(The higher the IA score the more attractive a government/geographical region is for mining company investment)

In the 1998/99 Fraser Report Alaska received an IA index rating of 46 and ranked the 9<sup>th</sup> most attractive of 31 governments/geographical regions surveyed. Twenty-two out of 31 governments/geographical regions were less attractive for investment than Alaska.

In the 1999/00 Fraser Report Alaska received an IA index rating of 55 and ranked the 8<sup>th</sup> most attractive of 35 governments/geographical regions surveyed. Twenty-seven out of 35 governments/geographical regions were less attractive for investment than Alaska.

In the 2000/01 Fraser Report Alaska received an IA index rating of 74 and ranked the 8<sup>th</sup> most attractive of 35 governments/geographical regions surveyed. Twenty-seven out of 35 governments/geographical regions were less attractive for investment than Alaska.

In the 2001/02 Fraser Report Alaska received an IA index rating of 80 and ranked the 7<sup>th</sup> most attractive of 45 governments/geographical regions surveyed. Thirty-eight out of 45 governments/geographical regions were less attractive for investment than Alaska.

Russia received an IA index rating of 58.

China received an IA index rating of 57.

In the 2002/03 Fraser Report Alaska received an IA index rating of 62 and ranked the 15<sup>th</sup> most attractive of 47 governments/geographical regions surveyed. Thirty-two out of 47 governments/geographical regions were less attractive to investment than Alaska. Russia received a score of 63 and Alaska ranked higher, and therefore more attractive, than Argentina, New Guinea, Kazakhstan, Indonesia, Venezuela and Ecuador to name a few.

### **Percentage Of Companies Who Consider Factor A Deterrent To Investment**

#### **2002/2003 Fraser Report**

The percentage of companies that consider *environmental regulation* as a **deterrent** to exploration investment in Alaska was 41 percent. Ninety-three percent was the highest.

The percentage of companies that consider *regulatory duplication and inconsistencies* as a **deterrent** to exploration investment in Alaska was 25 percent. Seventy-six percent was the highest.

The percentage of companies that consider *uncertainty concerning the administration, and interpretation, and enforcement of environmental regulations* a **deterrent** to exploration investment in Alaska was 26 percent. Eighty-four percent was the highest percentage.

The percentage of companies that consider *taxation* as a **deterrent** to exploration investment in Alaska was eleven percent. Seventy-three percent was the highest.

### **Percentage Of Companies Who Indicate That Factor Encourages Investment**

#### **2002/2003 Fraser Report**

The percentage of companies who consider *mineral potential assuming current regulations/land use policies* **encourages** exploration investment in Alaska was 71 percent. Ninety-four percent was the highest percentage.

My name is Doug Hill

Thank you for allowing this testimony.

I am an Alaska resident.

I am 44 and have been in Alaska since my teens.

I have lived on and off the road system -- most of my life in Alaska has been spent in rural areas.

I am currently an employee of the ADF&G.

I have worked as a building construction carpenter

I have worked for Alaska Packers unloading fish and as a carpenter.

I have been a village maintenance worker for the catholic diocese

I have extensive experience with Alaska's inshore and inland fisheries as a commercial fisherman, a personal use fisherman, a sport fisherman, and a subsistence fisherman.

While living in the Yukon River village of St Marys I spent summers with Yupik friends at their fish camp on Manning Island near the mouth of the Yukon River.

I also have extensive field experience with Alaska's inshore and inland fisheries while working for the Alaska Department of Fish and Game's Habitat, Wildlife, Sportfish and

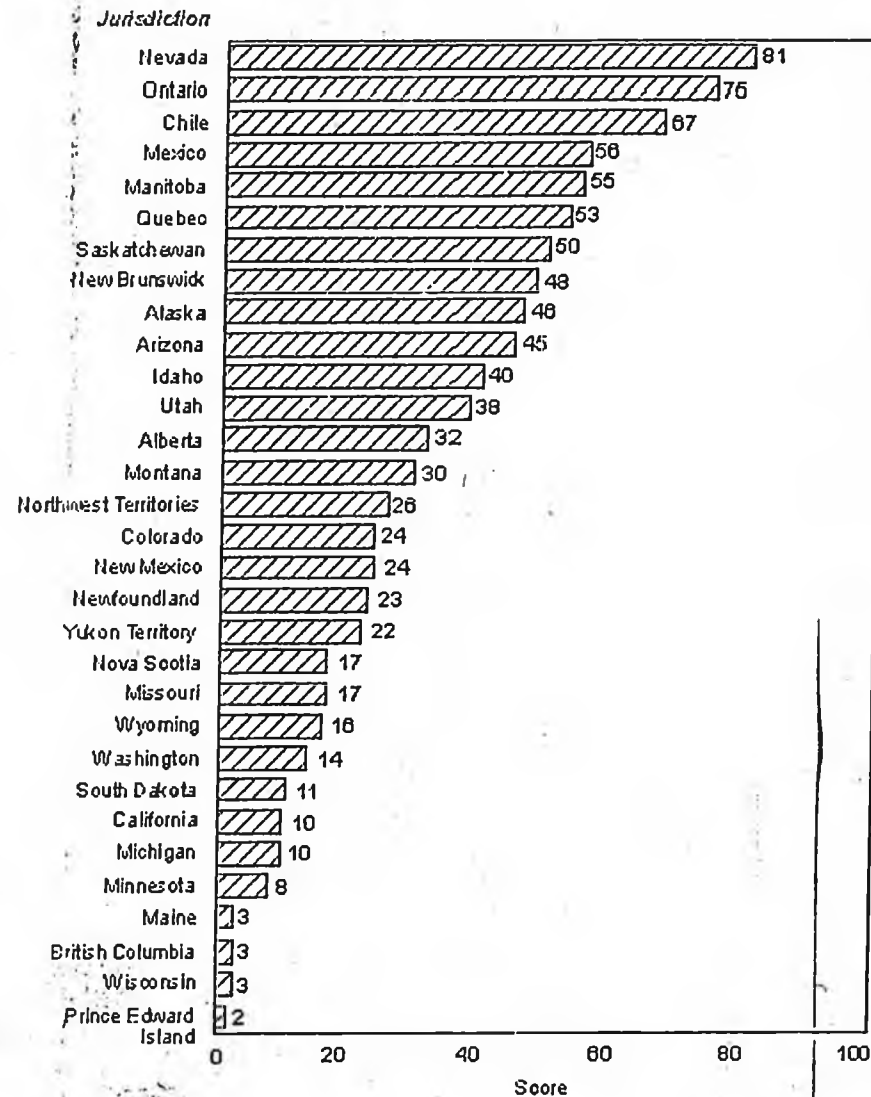
Commercial fisheries Division. I have a degree in biology from UAF and I have approximately 14 years of combined technician and biologist experience with ADF&G.

I spend a lot of personal time fishing, hunting, and paddling on the inshore and inland waterways of Alaska.

I am testifying on behalf of myself.

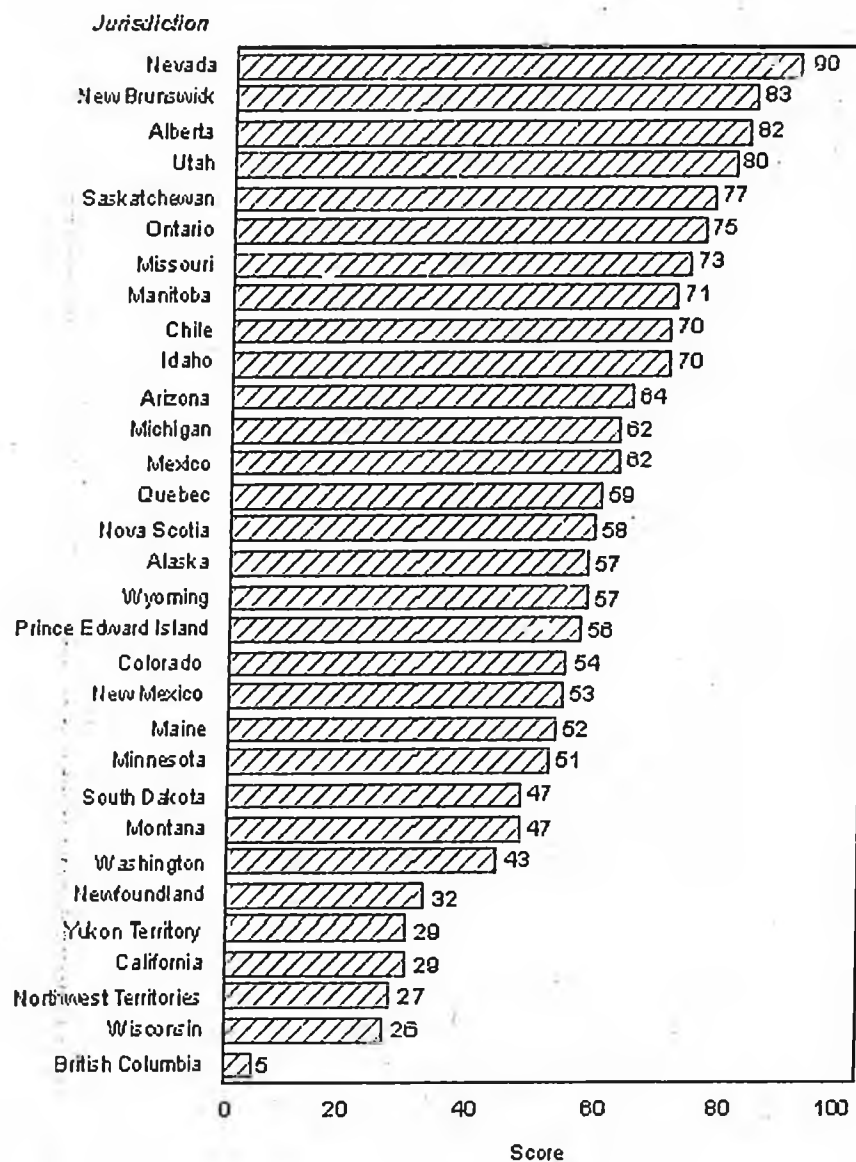
# Fraser Institute Survey of Mining Companies Operating In the USA 1998/1999 Report

Figure 22: Investment Attractiveness Index (North America)



# Fraser Institute Survey of Mining Companies Operating In the USA 1998/1999 Report

Figure 21: Policy Potential Index (North America)

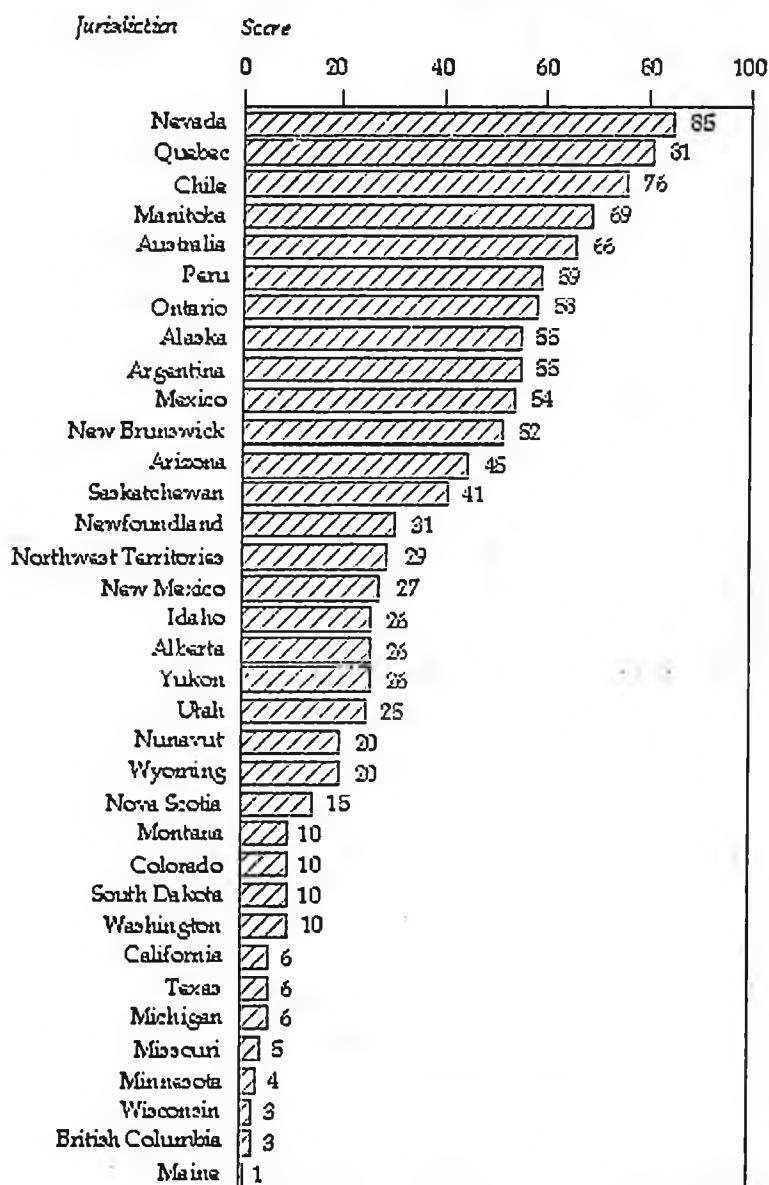


and favourable investment environments.

Also placing in the top ten jurisdictions for overall investment attractiveness are Peru (59), Ontario (58), Argentina and Alaska (tied at 55), and Mexico (54).

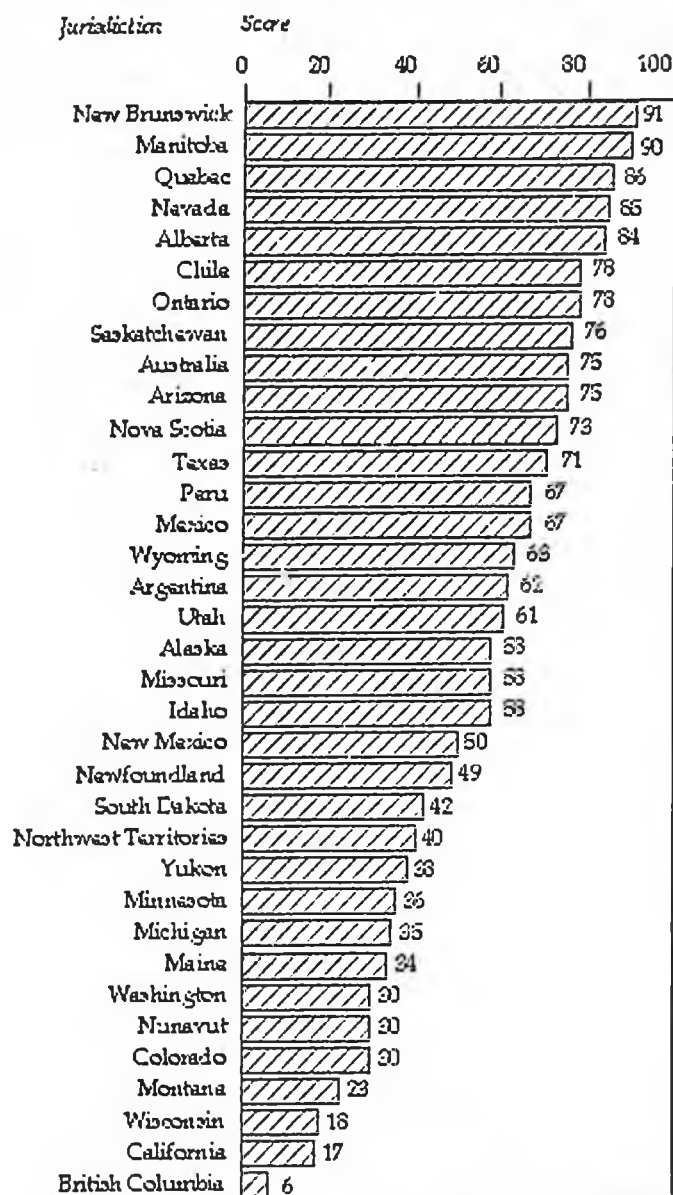
On the other end of the scale, Maine (1), Wisconsin and British Columbia (tied at 3), Minnesota (4), and Missouri (5), were rated the least attractive areas for new mining investment. British Columbia's low rating on the investment attractiveness index is mainly due to its abysmal performance on the policy potential index. Wisconsin's low investment attractiveness score suggests the results of its moratorium on mining and well-publicized anti-mining attitude as well as its low score on the mineral potential index. Maine did poorly because of its bottom rating on the mineral potential index and its mediocre performance on policy. Other low scoring jurisdictions include Michigan, Texas and California (tied at 6).

Figure 3: Investment Attractiveness Index



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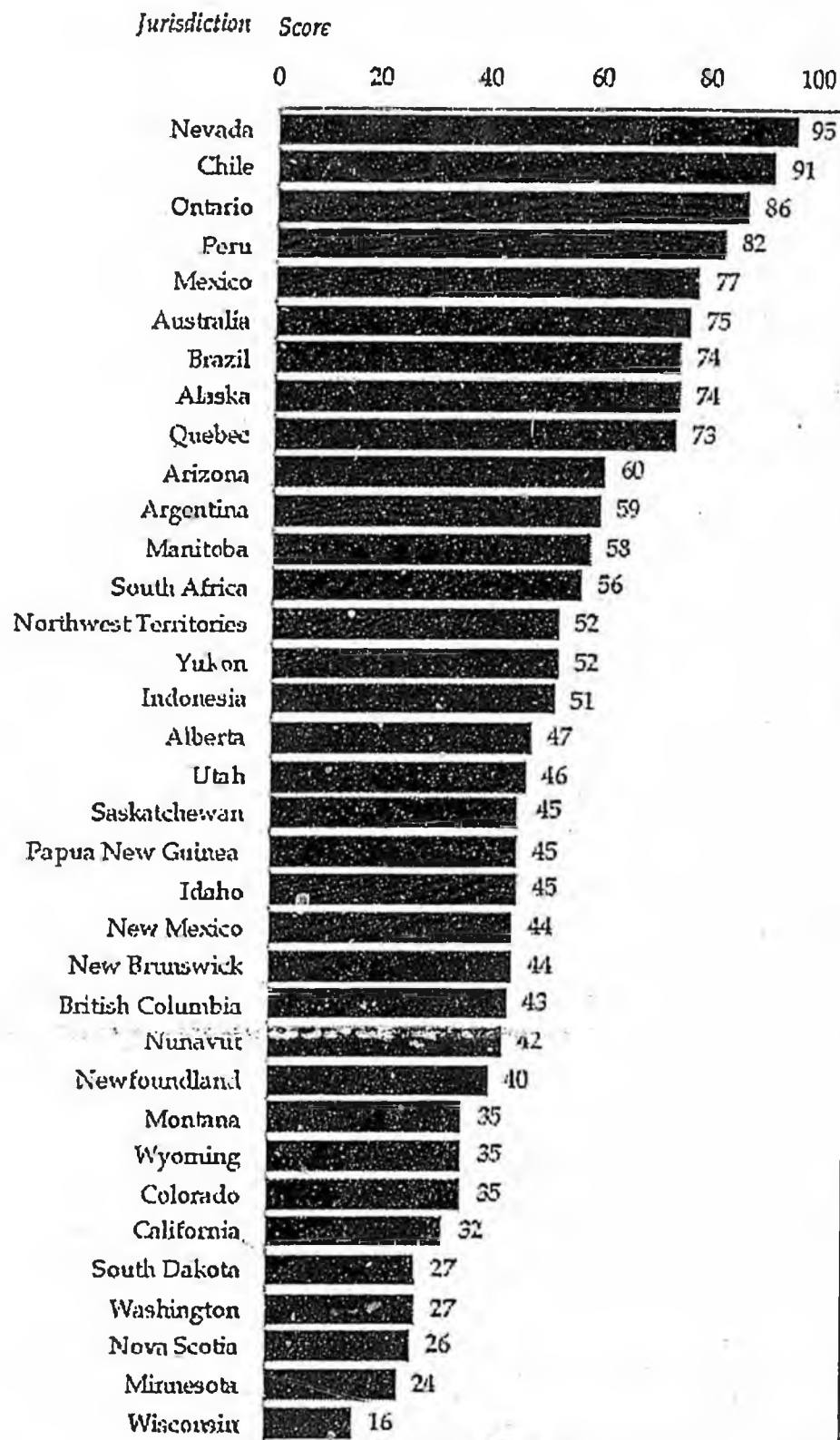
Figure 1: Policy Potential Index



### The Mineral Potential Index

The Mineral Potential Index rates a region's attractiveness based on companies' perceptions of geology. The top-rated regions are Nevada, with a perfect score of 100, Chile (97), Quebec and Alaska (tied at 94), Australia, Peru, and Argentina (tied at 89). The worst-rated regions on this index include Maine (3), Missouri and Texas (tied at 9), Minnesota (11), and Michigan and Wisconsin (tied at 17).

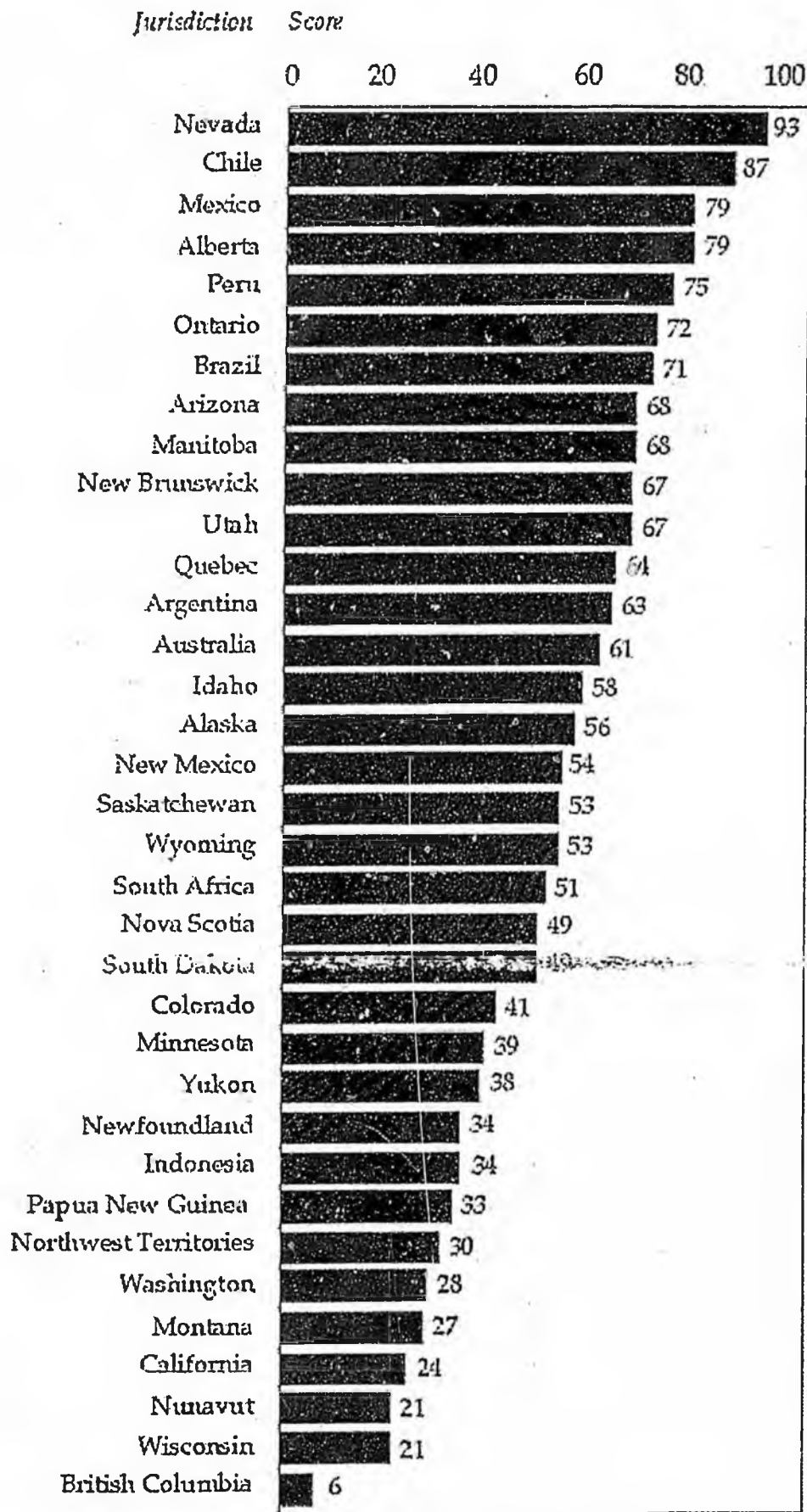
**Figure 3: Investment Attractiveness Index**



**The Investment Attractiveness Index Shows the Best- and Worst-Rated Places to Spend Exploration Dollars**

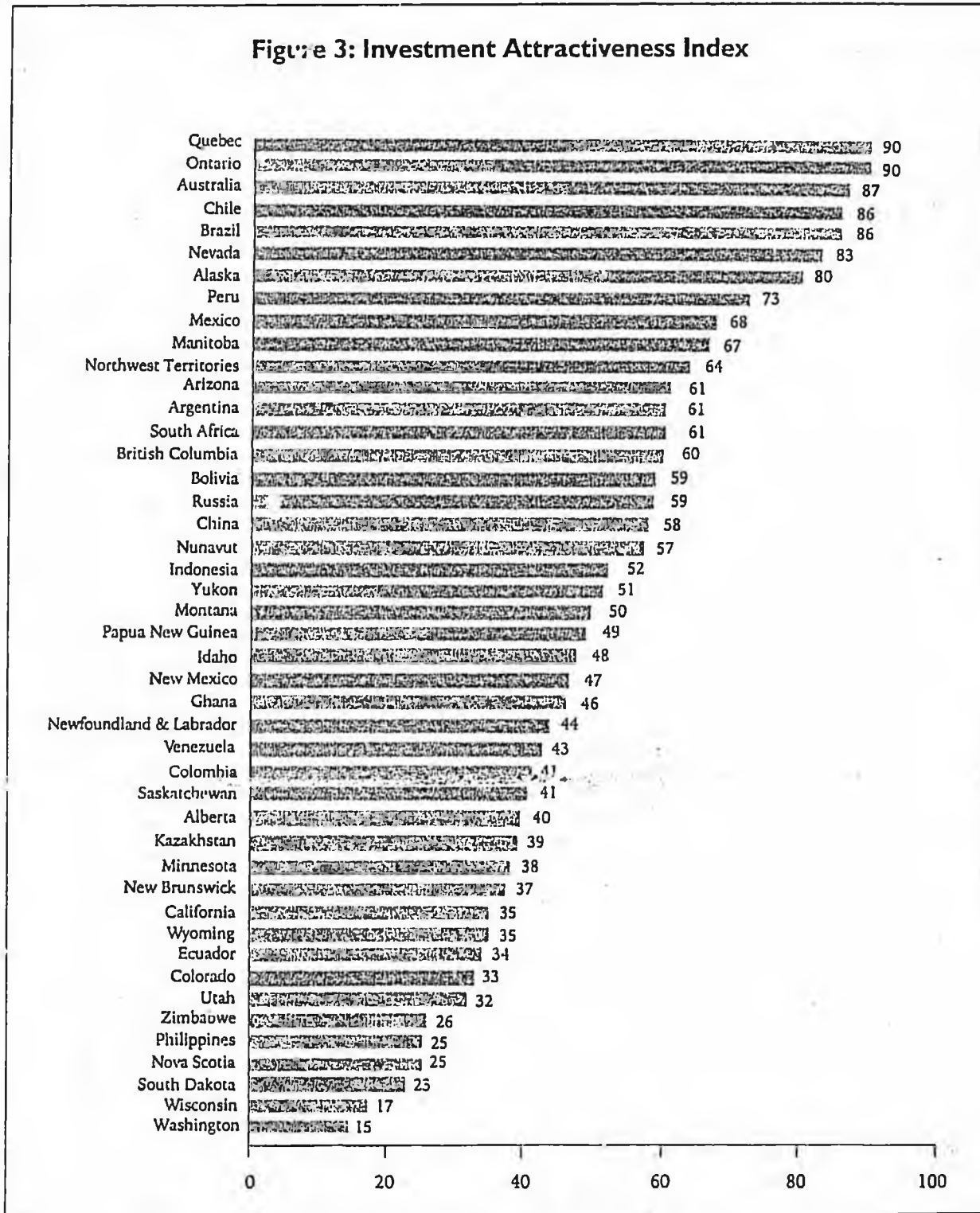
An overall Investment Attractiveness Index is constructed by combining the mineral

Figure 1: Policy Potential Index



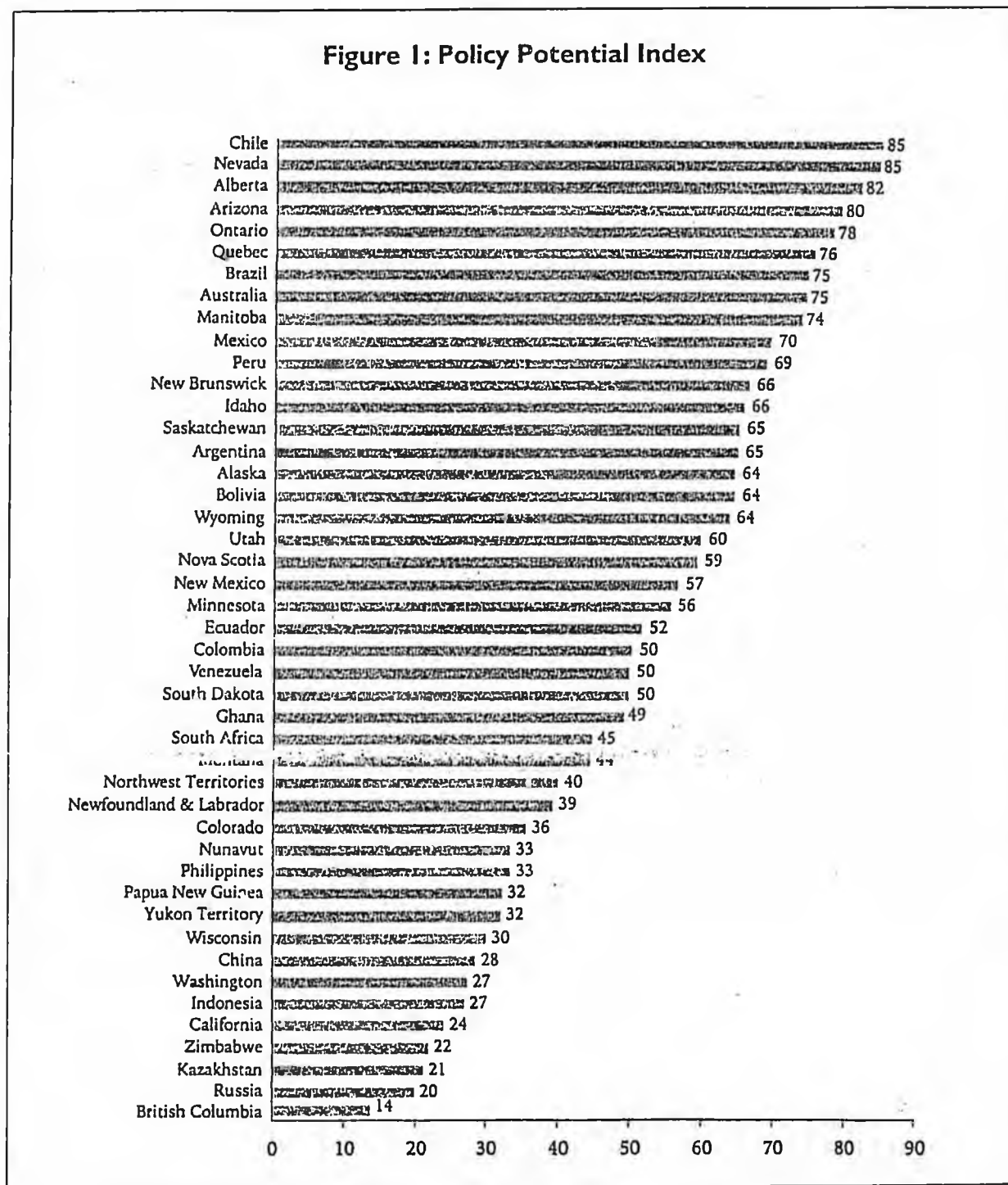
In past years, we have given equal weight to the policy and mineral scores. This year we asked respondents what weights they would put on policy and mineral potential. We used the median result, which puts a 60 percent weight on mineral potential and a 40 percent weight on policy.

**Figure 3: Investment Attractiveness Index**



year's first place, rates a close second with a score of 98. Other top jurisdictions include Australia (96), Brazil (93), Alaska (91), British Columbia (91), Chile (87), Russia (84), Nevada (82) and the Northwest Territories (80). The worst-rated regions on this index include Nova Scotia (2), South Dakota (4), Washington (7), Wisconsin (9), and Alberta (11).

Figure 1: Policy Potential Index



**Figure 3: Investment Attractiveness Index**

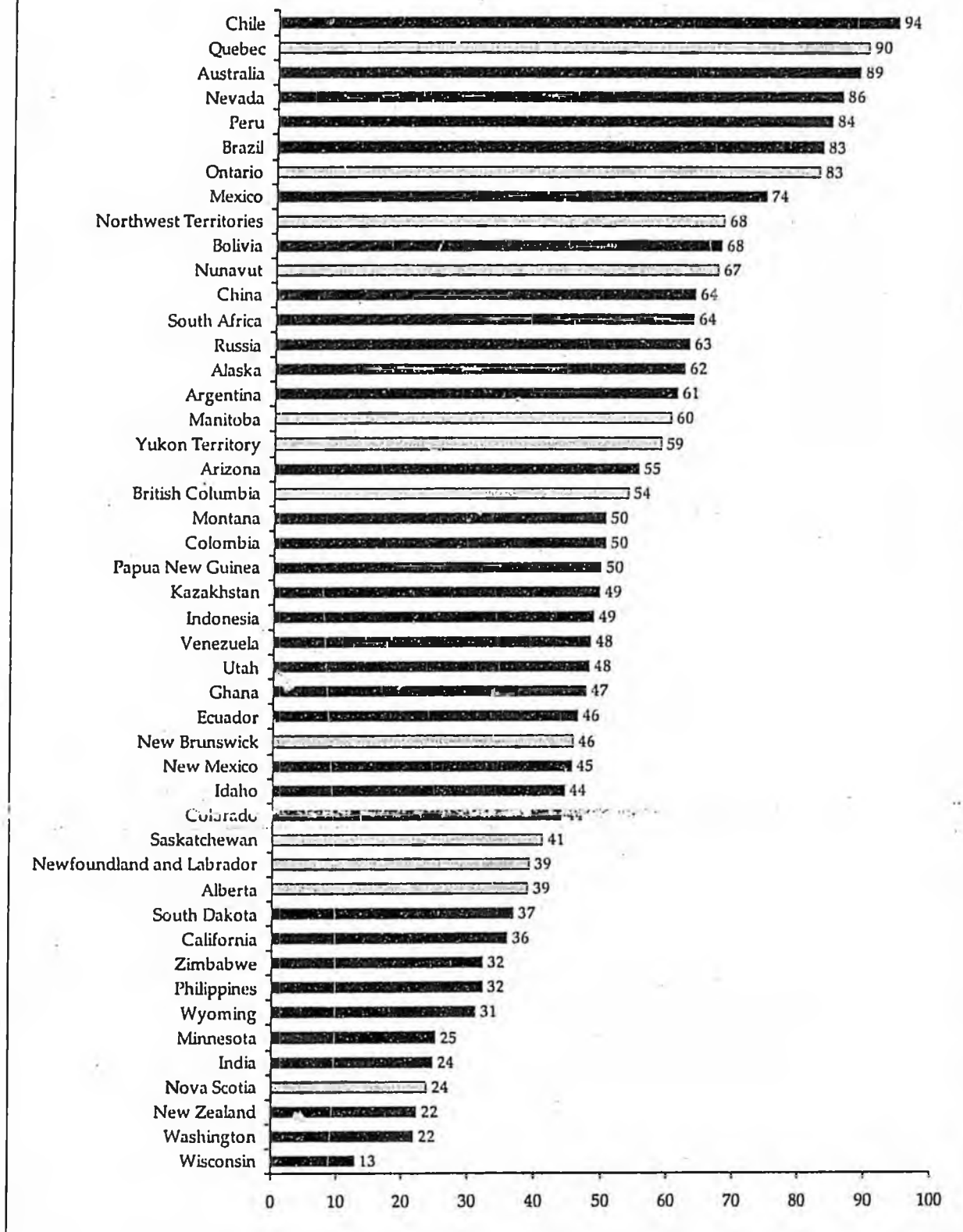
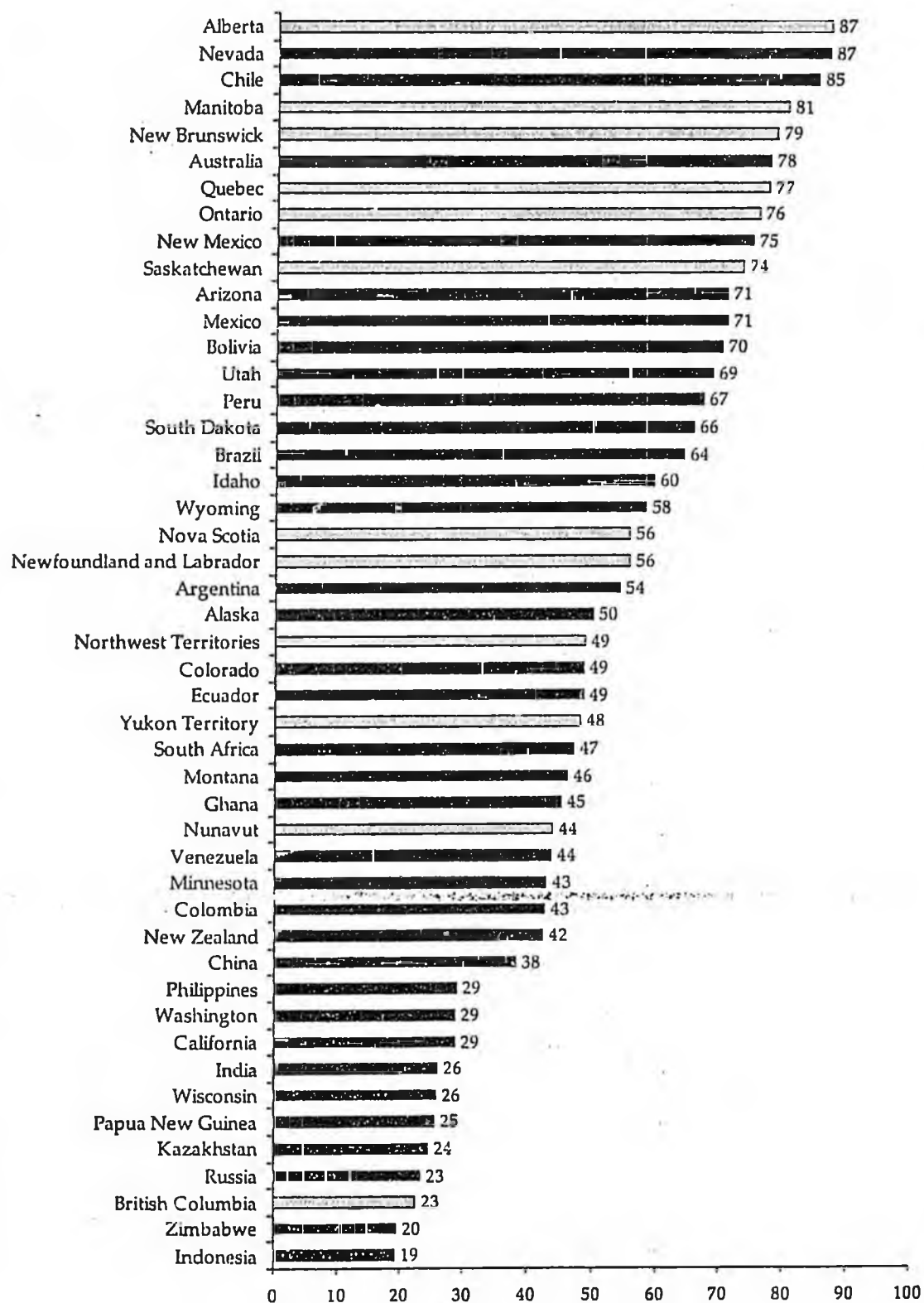
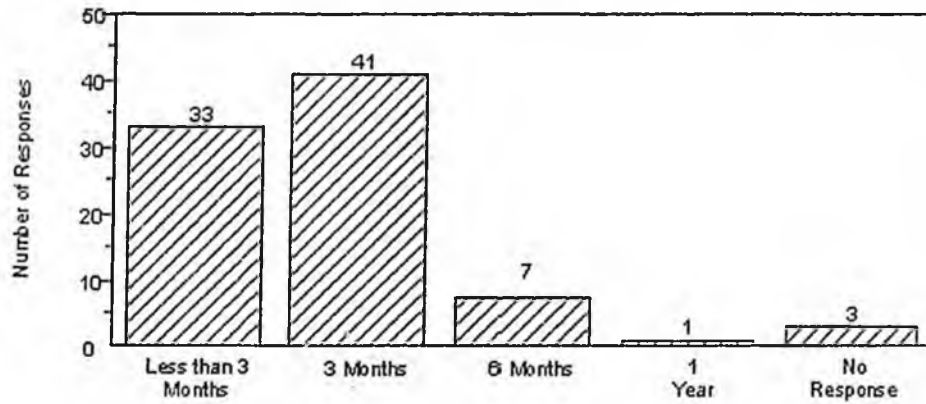


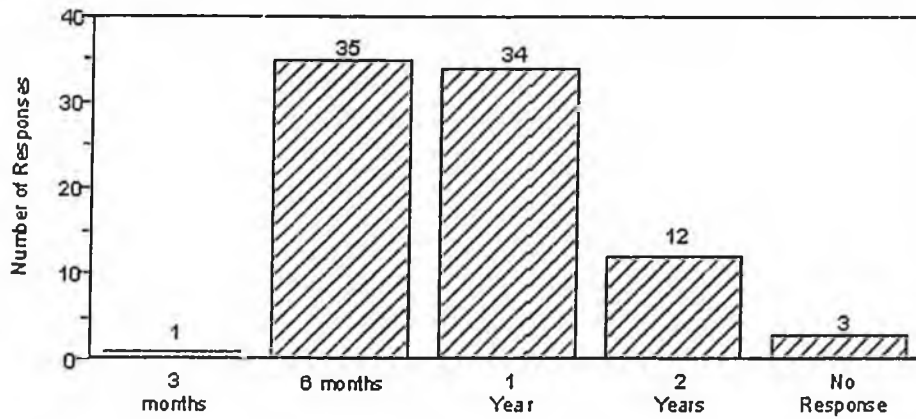
Figure 1: Policy Potential Index



**Figure 29: What do you think would be an acceptable amount of time to receive an exploration permit to drill, trench and build access roads?**



**Figure 30: What do you think would be an acceptable amount of time for approval of an environmental impact/assessment study (in order to start mining)?**





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| Table 4: USA<br>Percentage of Respondents Who Indicate Factors Encourage or Are Neutral to Exploration Investment* |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| State/Factor   | AK  | AZ  | CA  | CO  | ID  | ME  | MI  | MN  | MO  | MT  | NV  | NM  | SD  | UT  | WA  | WV  |     |
| Taxation   | 86% | 75% | 39% | 50% | 61% | 59% | 67% | 55% | 74% | 41% | 91% | 63% | 48% | 75% | 40% | 39% | 70% |
| Environmental Regulation   | 46% | 40% | 7%  | 11% | 22% | 3%  | 18% | 16% | 26% | 12% | 77% | 24% | 8%  | 30% | 9%  | 3%  | 29% |
| Regulatory Duplication and Inconsistencies   | 58% | 50% | 25% | 31% | 30% | 30% | 36% | 39% | 50% | 34% | 73% | 29% | 40% | 44% | 30% | 21% | 38% |
| Land Claims Uncertainty  | 69% | 78% | 71% | 74% | 74% | 70% | 76% | 77% | 76% | 66% | 83% | 59% | 63% | 71% | 60% | 70% | 72% |
| Protected Areas Uncertainty  | 48% | 51% | 23% | 22% | 32% | 37% | 48% | 48% | 38% | 24% | 73% | 42% | 38% | 33% | 21% | 21% | 28% |
| Mineral Potential  | 90% | 73% | 53% | 60% | 67% | 31% | 37% | 37% | 39% | 72% | 93% | 60% | 39% | 61% | 44% | 32% | 43% |
| Labour Regulation  | 80% | 77% | 59% | 79% | 80% | 79% | 77% | 77% | 76% | 76% | 87% | 78% | 80% | 84% | 78% | 77% | 81% |
| Uncertainty Concerning the Administration, Interpretation, and Enforcement of Regulations                          | 75% | 59% | 14% | 15% | 42% | 12% | 16% | 17% | 35% | 17% | 83% | 36% | 18% | 50% | 20% | 6%  | 32% |
| Infrastructure   | 28% | 95% | 88% | 88% | 80% | 86% | 94% | 87% | 87% | 79% | 95% | 88% | 86% | 87% | 84% | 87% | 82% |
| Socio-economic Agreements  | 76% | 87% | 71% | 76% | 84% | 90% | 90% | 90% | 90% | 77% | 93% | 83% | 76% | 89% | 79% | 82% | 88% |

\*This includes both those respondents who claim the factor is a "encourages exploration investment" and those who indicate the factor is "not a deterrent to exploration investment."



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| Table 2: USA<br>Percentage of Respondents Who Consider Factors a Strong Deterrent to Exploration Investment* |     |     |     |     |     |     |     |     |     |     |    |     |     |     |     |     |     |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|----|-----|-----|-----|-----|-----|-----|
| State/Factor   | AK  | AZ  | CA  | CO  | ID  | ME  | MI  | MN  | MO  | MT  | NV | NM  | SD  | UT  | WA  | WV  | WY  |
| Taxation   | 2%  | 11% | 22% | 7%  | 7%  | 24% | 14% | 10% | 11% | 19% | 6% | 7%  | 17% | 7%  | 16% | 36% | 10% |
| Environmental Regulation   | 7%  | 15% | 65% | 48% | 18% | 63% | 28% | 34% | 19% | 46% | 5% | 34% | 43% | 8%  | 57% | 78% | 18% |
| Regulatory Duplication and Inconsistencies   | 3%  | 18% | 42% | 34% | 9%  | 30% | 18% | 22% | 15% | 16% | 6% | 21% | 20% | 15% | 30% | 46% | 21% |
| Land Claims Uncertainty  | 8%  | 8%  | 13% | 3%  | 9%  | 7%  | 7%  | 7%  | 7%  | 5%  | 2% | 15% | 7%  | 6%  | 6%  | 13% | 9%  |
| Protected Areas Uncertainty  | 16% | 10% | 49% | 22% | 16% | 11% | 7%  | 15% | 4%  | 37% | 4% | 14% | 13% | 9%  | 29% | 33% | 16% |
| Mineral Potential  | 3%  | 3%  | 23% | 14% | 4%  | 38% | 29% | 26% | 29% | 10% | 1% | 11% | 17% | 6%  | 17% | 34% | 13% |
| Labour Regulation  | 5%  | 0%  | 2%  | 0%  | 0%  | 0%  | 3%  | 3%  | 0%  | 0%  | 0% | 0%  | 0%  | 0%  | 3%  | 3%  | 0%  |
| Uncertainty Concerning the Administration, Interpretation, and Enforcement of Regulations                    | 4%  | 11% | 49% | 38% | 19% | 44% | 28% | 39% | 20% | 51% | 5% | 31% | 36% | 12% | 46% | 78% | 18% |
| Infrastructure   | 21% | 2%  | 0%  | 0%  | 0%  | 0%  | 0%  | 2%  | 0%  | 2%  | 0% | 0%  | 2%  | 0%  | 0%  | 0%  | 2%  |
| Socio-economic Agreements  | 7%  | 3%  | 12% | 5%  | 0%  | 3%  | 0%  | 0%  | 0%  | 3%  | 0% | 6%  | 9%  | 0%  | 3%  | 12% | 3%  |

\*This includes both those respondents who claim the factor is a "strong deterrent to exploration investment" and those who "would not pursue exploration investment in this region due to this factor."



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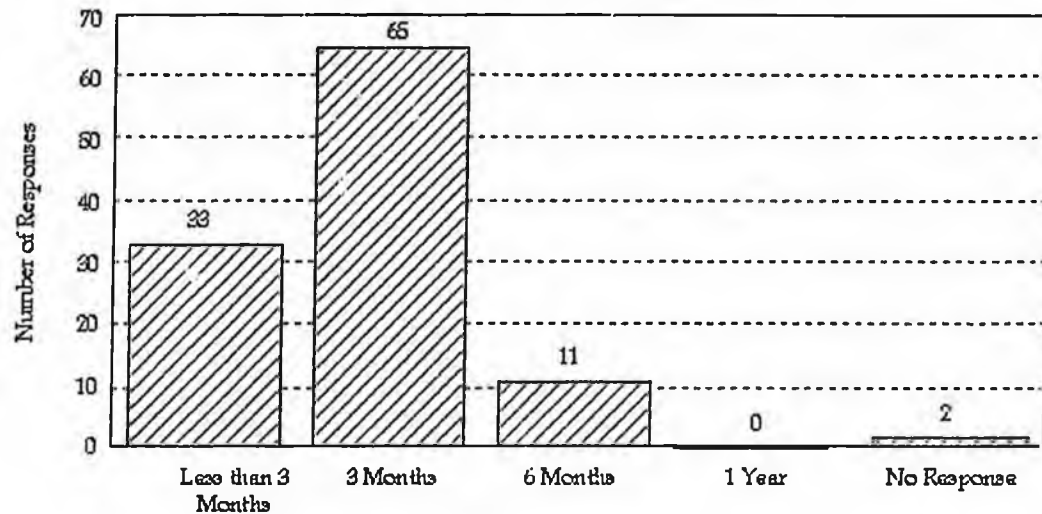
# Annual Survey of Mining Companies 1999/2000:

## Section IV: Regulation

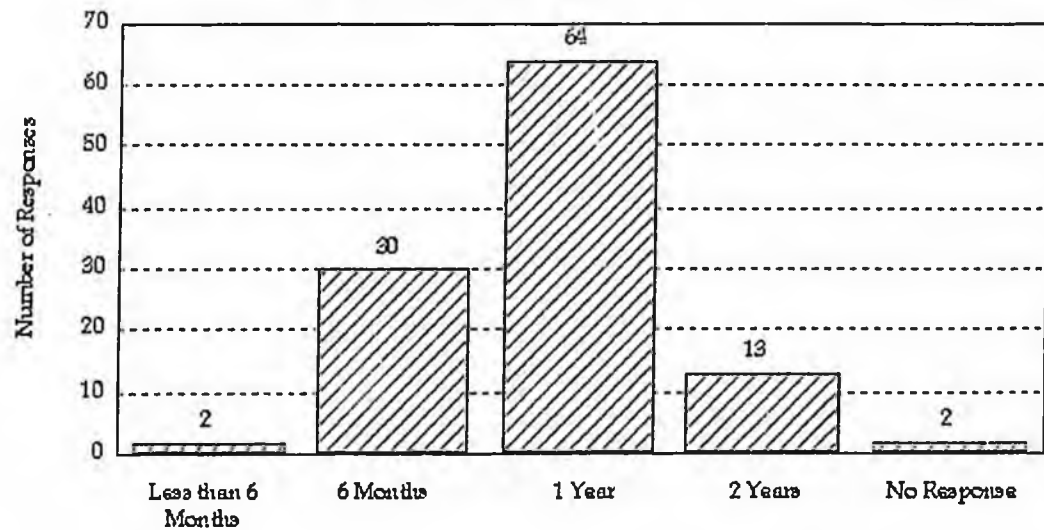
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**Figure 25: What do you think would be an acceptable amount of time to receive an exploration permit to drill, trench, and build access roads?**



**Figure 26: What do you think would be an acceptable amount of time for approval of an environmental impact/assessment study (in order to start mining)**



**Table 5: Number of Companies Indicating a Jurisdiction has the Most/Least Favourable Policies Towards Mining**

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

**Table 4: USA****Percentage of Respondents Who Indicate Factors Encourage or Are Neutral to Exploration Investment\***

| State/Factor  | AK  | AZ  | CA  | CO  | ID  | ME  | MI  | MN  | MO  | MT  | NV   | NM  | SD  | TX  | UT  | WA  | WI  | WY  |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|-----|
| Taxation  | 89% | 73% | 21% | 46% | 56% | 27% | 40% | 36% | 50% | 51% | 93%  | 61% | 33% | 64% | 66% | 43% | 26% | 61% |
| Environmental Regulation  | 51% | 44% | 5%  | 15% | 36% | 12% | 16% | 14% | 19% | 4%  | 80%  | 34% | 13% | 33% | 42% | 5%  | 0%  | 29% |
| Regulatory Duplication and Inconsistencies  | 61% | 43% | 11% | 17% | 34% | 16% | 21% | 24% | 35% | 20% | 73%  | 38% | 25% | 40% | 55% | 18% | 13% | 27% |
| Land Claims Uncertainty   | 73% | 83% | 75% | 78% | 73% | 82% | 84% | 82% | 84% | 84% | 94%  | 69% | 77% | 89% | 87% | 63% | 72% | 77% |
| Protected Areas Uncertainty   | 43% | 53% | 16% | 17% | 30% | 29% | 28% | 33% | 37% | 23% | 76%  | 37% | 33% | 54% | 34% | 20% | 21% | 42% |
| Mineral Potential   | 95% | 81% | 56% | 52% | 66% | 24% | 33% | 32% | 28% | 66% | 100% | 71% | 48% | 28% | 62% | 50% | 33% | 50% |
| Labour Regulation   | 84% | 88% | 56% | 74% | 91% | 89% | 78% | 79% | 83% | 79% | 98%  | 88% | 87% | 96% | 97% | 69% | 71% | 91% |
| Uncertainty Concerning the Administration, Interpretation, and Enforcement of Regs. | 83% | 56% | 14% | 20% | 44% | 21% | 17% | 17% | 27% | 17% | 88%  | 41% | 25% | 59% | 56% | 8%  | 6%  | 42% |
| Infrastructure  | 26% | 92% | 89% | 75% | 83% | 80% | 89% | 84% | 93% | 79% | 93%  | 82% | 86% | 84% | 85% | 82% | 82% | 87% |
| Socio-economic Agreements   | 77% | 83% | 62% | 67% | 77% | 64% | 67% | 64% | 79% | 61% | 93%  | 74% | 73% | 81% | 80% | 65% | 63% | 79% |

**Table 2: USA**  
**Percentage of Respondents Who Consider Factors a Strong Deterrent to Exploration Investment\***

| State/Factor  | AK  | AZ  | CA  | CO  | ID  | ME  | MI  | MN  | MO  | MT  | NV | NM  | SD  | TX  | UT  | WA  | WI  | WY  |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|----|-----|-----|-----|-----|-----|-----|-----|
| Taxation  | 0%  | 2%  | 33% | 14% | 3%  | 18% | 25% | 18% | 9%  | 20% | 0% | 12% | 22% | 8%  | 6%  | 20% | 37% | 11% |
| Environmental Regulation  | 8%  | 19% | 73% | 49% | 24% | 64% | 52% | 45% | 48% | 78% | 5% | 37% | 59% | 24% | 25% | 65% | 87% | 26% |
| Regulatory Duplication and Inconsistencies  | 6%  | 10% | 46% | 32% | 11% | 32% | 26% | 33% | 12% | 46% | 2% | 27% | 33% | 5%  | 14% | 49% | 63% | 12% |
| Land Claims Uncertainty   | 9%  | 5%  | 10% | 8%  | 6%  | 11% | 12% | 11% | 4%  | 8%  | 2% | 8%  | 13% | 4%  | 3%  | 11% | 24% | 10% |
| Protected Areas Uncertainty   | 17% | 9%  | 57% | 48% | 25% | 16% | 14% | 13% | 22% | 50% | 6% | 11% | 23% | 7%  | 20% | 38% | 35% | 14% |
| Mineral Potential   | 0%  | 2%  | 22% | 18% | 7%  | 49% | 41% | 22% | 33% | 17% | 0% | 7%  | 21% | 39% | 8%  | 23% | 41% | 18% |
| Labour Regulation   | 2%  | 0%  | 10% | 5%  | 0%  | 0%  | 4%  | 7%  | 0%  | 3%  | 0% | 3%  | 0%  | 0%  | 0%  | 3%  | 7%  | 0%  |
| Uncertainty Concerning the Administration, Interpretation, and Enforcement of Regs. | 3%  | 10% | 55% | 45% | 21% | 55% | 42% | 40% | 27% | 71% | 3% | 38% | 41% | 14% | 12% | 62% | 83% | 10% |
| Infrastructure  | 20% | 0%  | 5%  | 2%  | 2%  | 5%  | 2%  | 2%  | 2%  | 3%  | 1% | 0%  | 0%  | 0%  | 2%  | 0%  | 2%  | 0%  |
| Socio-economic Agreements   | 2%  | 0%  | 11% | 12% | 3%  | 12% | 4%  | 4%  | 0%  | 15% | 0% | 3%  | 4%  | 0%  | 0%  | 10% | 8%  | 0%  |

\*This includes both those respondents who claim the factor is a "strong deterrent to exploration investment" and those who "would not pursue exploration investment in this region due to this factor."

*it according to the regulations." In "Canada (Federal) [and] British Columbia (Provincial) ... [t]here is no concern or apparent understanding of the mineral industry." They need a "[r]eduction in the capital gains tax and unregulating [sic] some of the excessive restrictions."*

- President of a senior mining company

*"Arizona" has an exemplary policy climate. "Our Industrial Minerals project received final BLM permits less than one year from the beginning of due diligence. The mining operation will commence within 9 months of concluding the original transaction."*

- Vice President Corporate Development of a junior mining company

**Figure 16: Uncertainty Concerning the Administration, Interpretation, and Enforcement of Existing Regulations**

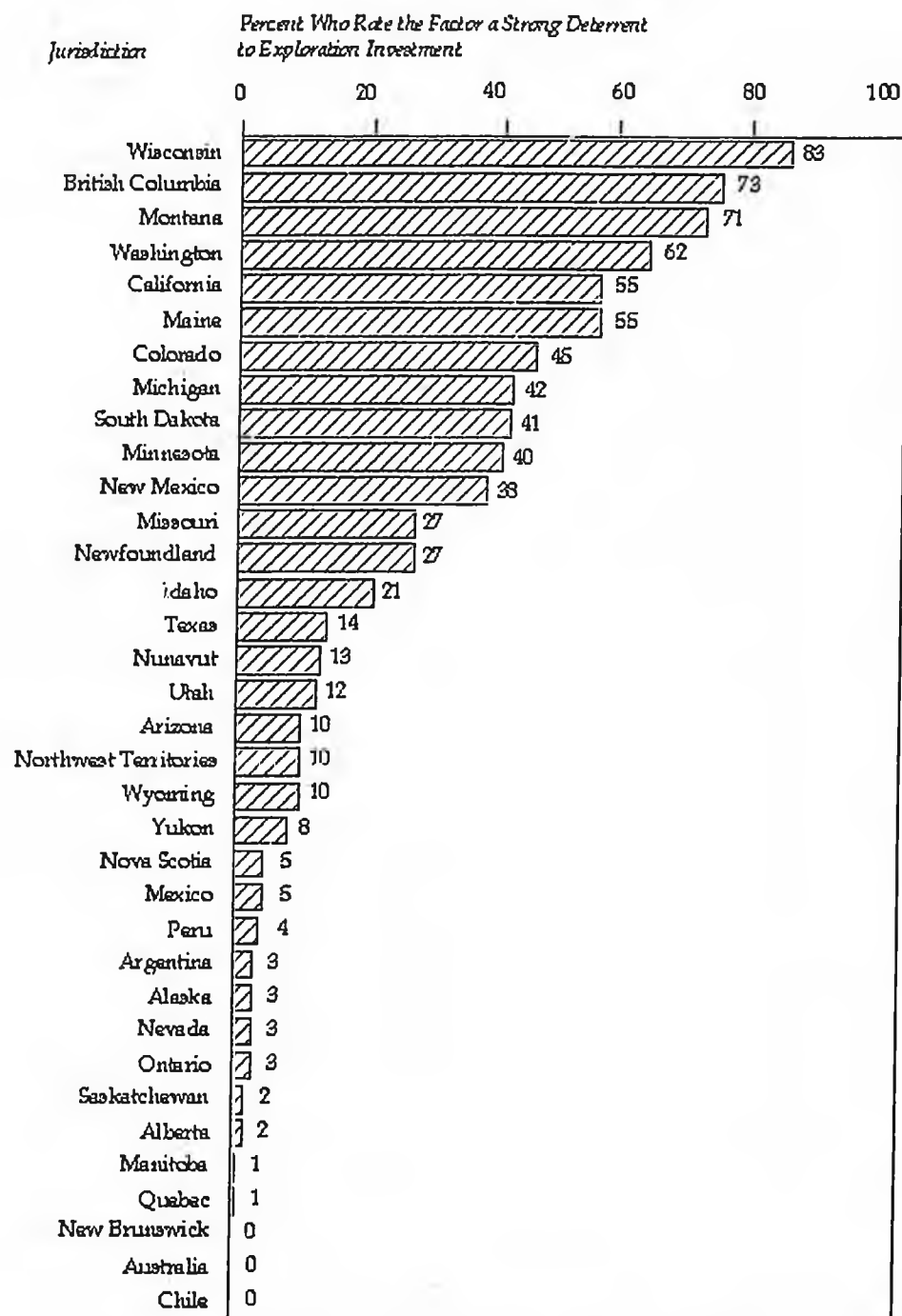
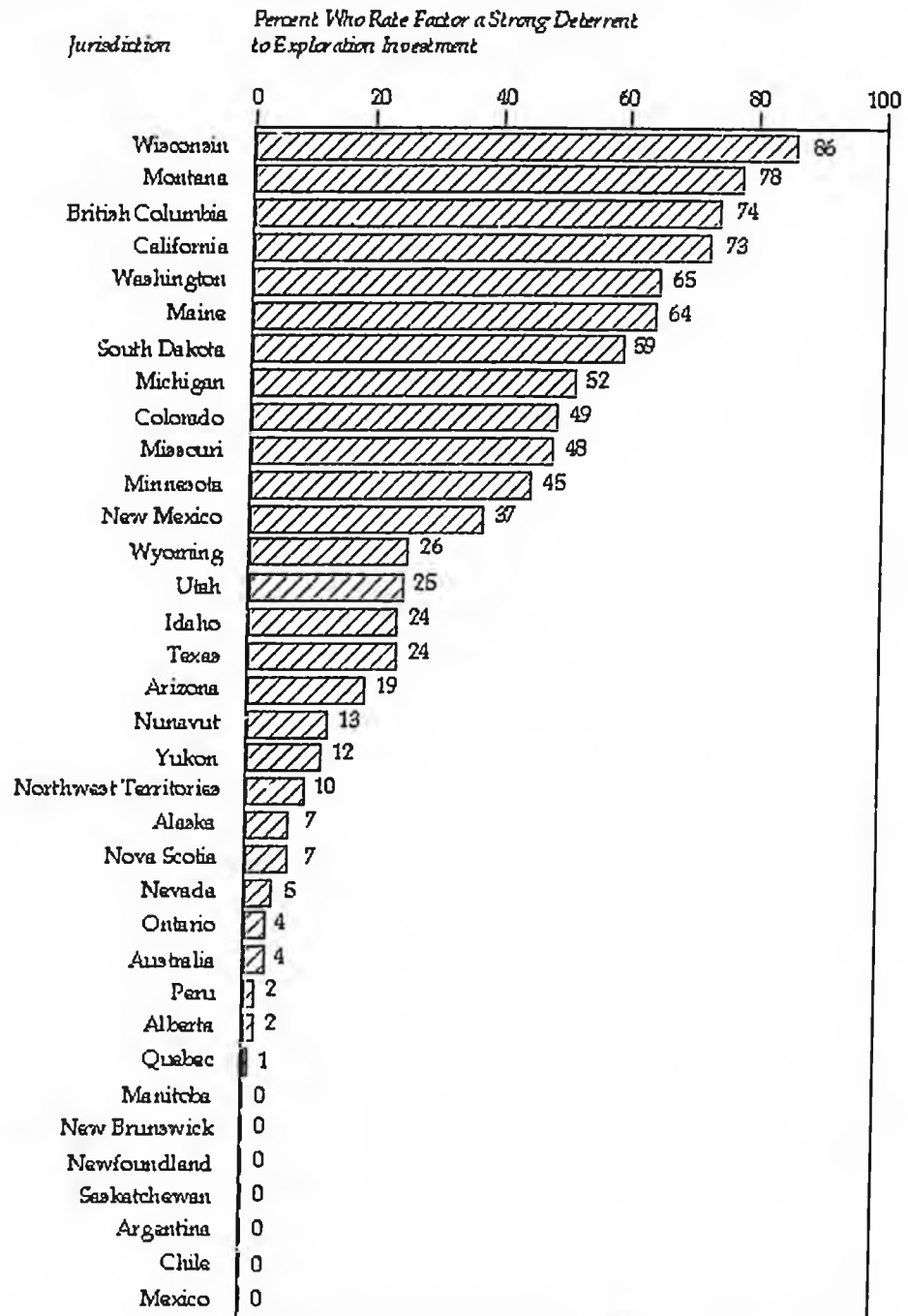


Figure 17: Environmental Regulations



### Regulatory Duplication and Inconsistencies

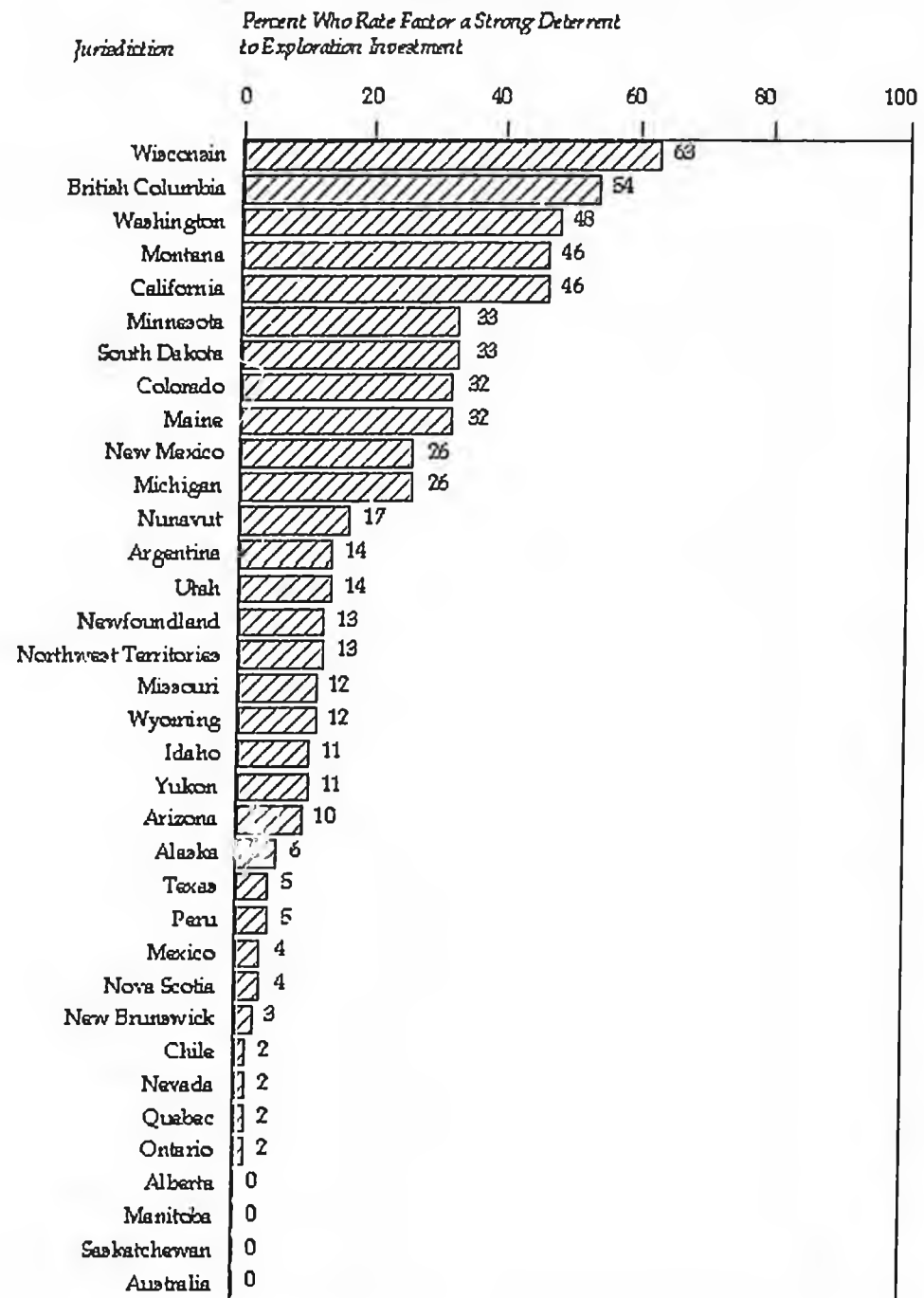
*In "Nunavut I counted 17 panels, committees, boards, and government agencies which were to be notified or consulted with before proceeding with an exploration project."*  
- Senior Geologist of a senior mining company

*"Idaho" has an exemplary policy climate. The "Joint Review Process for permitting mines ... [b]rings all agencies together to avoid foot dragging by individuals or agencies."*  
- President of a junior mining company

*My horror story is "[s]tate environmental departments that have split personalities. The Mining Dept. may be reasonable, but the Surface Water Dept. may be harsh because it lives under EPA oversight."*

- General Manager of a junior mining company

**Figure 18: Regulatory Duplication and Inconsistencies**



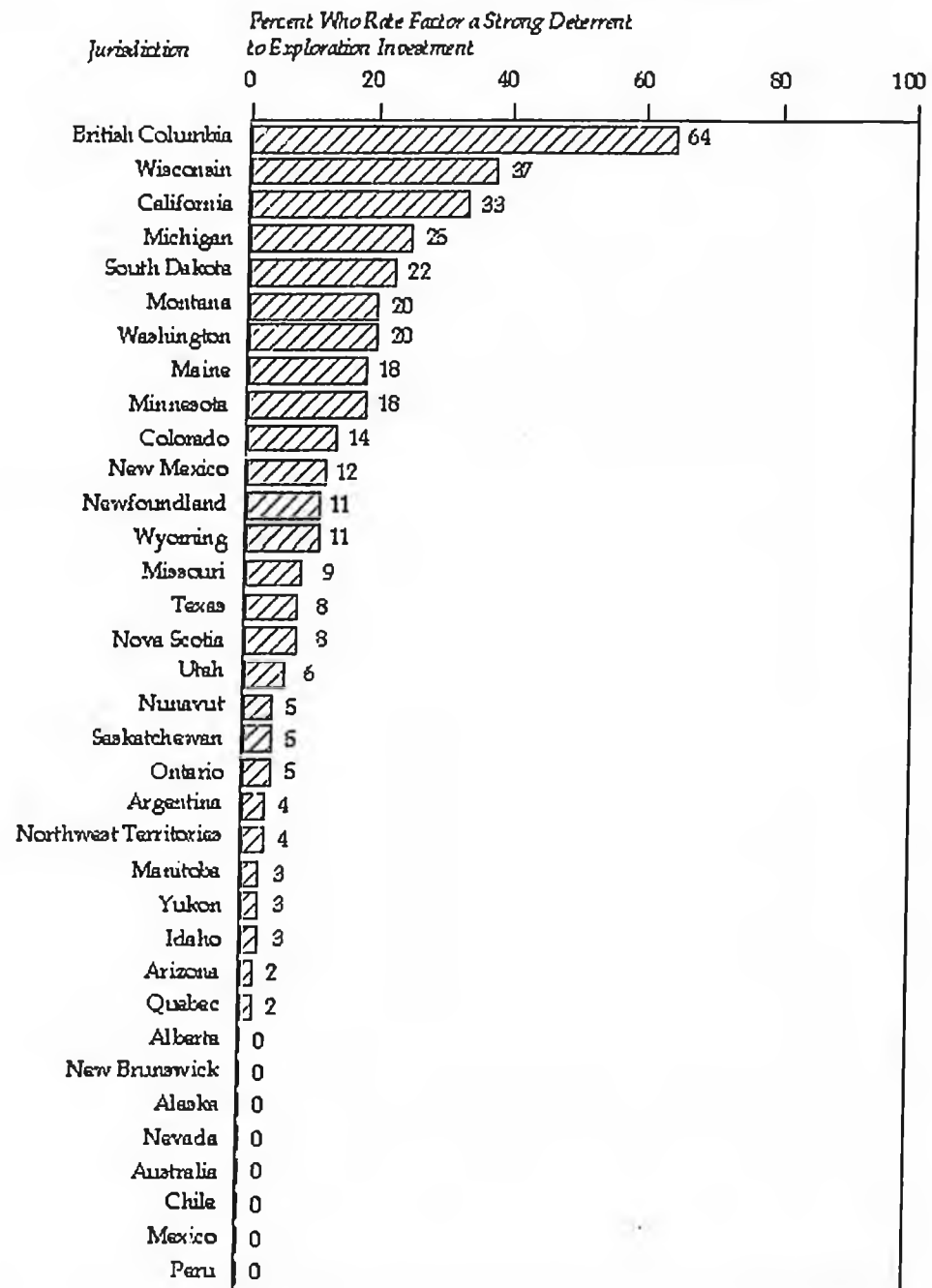
**Uncertainty Concerning What Areas Will be Protected as Wilderness or Parks**

*"BC" is the jurisdiction with the least favourable policies towards mining. "If a resource is found, don't slap a park around it."*

- Exploration Manager of a junior mining company

*"Yukon's Protected Area Strategy has strongly compromised its own outlined process, and has used land claim agreements as a mechanism to secure large amounts of protected land. No cap on percentage of land was ever established, so a strong*

Figure 21: Taxation



### Socio-economic Agreements

*"BC has taken [a] preservationist/anti-mining stance toward further development."*  
- Manager, Exploration—North America of a senior mining company

*"Washington, USA" has a "[v]ery negative public perception towards mining."*  
- Vice President of a senior mining company

*"Manitoba, Saskatchewan, Ontario [and] Quebec" have the most favourable policies towards mining. "These provinces actively support mining and provide incentives, favourable regulations, etc. Most importantly, the government is openly supportive and will back mining through difficult public challenges (i.e., permitting)."*  
- Vice President, Exploration of a junior mining company

**Table 2: USA, Argentina, Brazil, Chile, Mexico, and Peru—Percentage of Respondents Who Consider Factors a Strong Deterrent to Exploration Investment\***

| Province/<br>Factor   | AK  | AZ  | CA  | CO  | ID  | MN  | MT  | NV  | NM  | SD  | UT  | WA  | WI  | WY  | Argentina | Brazil | Chile | Mexico | Peru |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----------|--------|-------|--------|------|
| Taxation  | 4%  | 7%  | 44% | 34% | 18% | 29% | 44% | 0%  | 15% | 19% | 3%  | 41% | 37% | 19% | 21%       | 16%    | 5%    | 12%    | 11%  |
| Environmental Regulation  | 17% | 25% | 79% | 59% | 38% | 48% | 80% | 7%  | 38% | 51% | 25% | 66% | 80% | 32% | 2%        | 4%     | 2%    | 4%     | 2%   |
| Regulatory Duplication  | 18% | 18% | 58% | 44% | 22% | 39% | 52% | 11% | 35% | 31% | 22% | 51% | 51% | 19% | 16%       | 9%     | 4%    | 7%     | 14%  |
| Land Claims Uncertainty   | 8%  | 10% | 10% | 4%  | 4%  | 8%  | 11% | 3%  | 7%  | 13% | 7%  | 11% | 11% | 4%  | 7%        | 4%     | 4%    | 3%     | 8%   |
| Protected Areas Uncertainty   | 25% | 20% | 62% | 43% | 32% | 33% | 58% | 10% | 26% | 27% | 28% | 45% | 42% | 28% | 5%        | 11%    | 4%    | 5%     | 7%   |
| Labour Regulation   | 4%  | 0%  | 12% | 0%  | 0%  | 3%  | 7%  | 0%  | 2%  | 0%  | 0%  | 2%  | 11% | 0%  | 10%       | 2%     | 2%    | 2%     | 0%   |
| Uncertainty in the Administration, Interpretation, and Enforcement of Regs. | 12% | 19% | 73% | 55% | 26% | 45% | 69% | 4%  | 34% | 51% | 17% | 57% | 72% | 28% | 12%       | 12%    | 6%    | 9%     | 20%  |
| Infrastructure  | 22% | 1%  | 1%  | 3%  | 3%  | 3%  | 2%  | 0%  | 2%  | 2%  | 2%  | 7%  | 6%  | 5%  | 16%       | 17%    | 6%    | 5%     | 15%  |
| Socio-economic Agreements   | 9%  | 4%  | 22% | 19% | 2%  | 15% | 18% | 0%  | 4%  | 5%  | 5%  | 18% | 28% | 10% | 2%        | 2%     | 0%    | 3%     | 0%   |
| Mineral Potential With Current Regs.  | 4%  | 10% | 38% | 28% | 15% | 23% | 45% | 2%  | 17% | 27% | 18% | 43% | 49% | 18% | 8%        | 2%     | 1%    | 0%     | 2%   |
| Mineral Potential With No Land Use Restrictions                             | 1%  | 1%  | 6%  | 3%  | 5%  | 12% | 5%  | 0%  | 2%  | 9%  | 7%  | 13% | 13% | 11% | 3%        | 0%     | 0%    | 0%     | 0%   |

\*This includes both those respondents who claim the factor is a "strong deterrent to exploration investment" and those who "would not pursue exploration investment in this region due to this factor."

**Table 4: USA, Argentina, Brazil, Chile, Mexico, and Peru—Percentage of Respondents Who Indicate Factors Encourage/Are Neutral to Exploration Investment\***

| Province/<br>Factor   | AK  | AZ  | CA  | CO  | ID  | MN  | MT  | NV  | NM  | SD  | UT  | WA  | WI  | WY  | Argentina | Brazil | Chile | Mexico | Peru |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----------|--------|-------|--------|------|
| Taxation  | 81% | 68% | 22% | 31% | 55% | 50% | 33% | 97% | 59% | 38% | 57% | 32% | 32% | 62% | 62%       | 64%    | 88%   | 67%    | 66%  |
| Environmental Regulation  | 49% | 27% | 6%  | 10% | 25% | 15% | 5%  | 79% | 23% | 15% | 39% | 8%  | 5%  | 32% | 90%       | 85%    | 94%   | 79%    | 88%  |
| Regulatory Duplication  | 57% | 38% | 19% | 24% | 39% | 34% | 23% | 71% | 39% | 33% | 46% | 26% | 30% | 47% | 56%       | 52%    | 78%   | 61%    | 65%  |
| Land Claims Uncertainty   | 74% | 75% | 63% | 71% | 70% | 70% | 61% | 80% | 62% | 65% | 78% | 60% | 66% | 73% | 84%       | 65%    | 90%   | 75%    | 72%  |
| Protected Areas Uncertainty   | 39% | 35% | 13% | 15% | 23% | 25% | 15% | 68% | 30% | 32% | 28% | 14% | 24% | 35% | 87%       | 70%    | 88%   | 84%    | 80%  |
| Labour Regulation   | 75% | 84% | 57% | 79% | 84% | 77% | 73% | 87% | 79% | 78% | 84% | 74% | 76% | 83% | 69%       | 62%    | 73%   | 54%    | 72%  |
| Uncertainty in the Administration, Interpretation, and Enforcement of Regs. | 72% | 43% | 10% | 15% | 34% | 32% | 12% | 87% | 34% | 15% | 48% | 12% | 13% | 40% | 50%       | 53%    | 78%   | 52%    | 54%  |
| Infrastructure  | 28% | 91% | 87% | 74% | 78% | 89% | 75% | 95% | 76% | 82% | 87% | 77% | 82% | 80% | 29%       | 21%    | 72%   | 53%    | 32%  |
| Socio-economic Agreements   | 78% | 78% | 63% | 64% | 84% | 80% | 70% | 97% | 76% | 76% | 80% | 62% | 67% | 79% | 64%       | 54%    | 72%   | 51%    | 62%  |
| Mineral Potential With Current Regs.  | 71% | 51% | 20% | 28% | 39% | 32% | 29% | 93% | 38% | 25% | 43% | 20% | 22% | 37% | 75%       | 83%    | 96%   | 81%    | 83%  |
| Mineral Potential With No Land Use Restrictions                             | 97% | 84% | 76% | 73% | 73% | 52% | 76% | 99% | 75% | 44% | 66% | 66% | 52% | 58% | 85%       | 95%    | 99%   | 93%    | 97%  |

\*This includes both those respondents who claim the factor is a "encourages exploration investment" and those who indicate the factor is "not a deterrent to exploration investment."

**Table 4: USA, Argentina, Brazil, Chile, Mexico, and Peru—Percentage of Respondents Who Indicate Factors Encourage/Are Neutral to Exploration Investment\***

| Province/<br>Factor   | AK  | AZ  | CA  | CO  | ID  | MN  | MT  | NV  | NM  | SD  | UT  | WA  | WI  | WY  | Argentina | Brazil | Chile | Mexico | Peru |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----------|--------|-------|--------|------|
| Taxation  | 81% | 68% | 22% | 31% | 55% | 50% | 33% | 97% | 59% | 38% | 57% | 32% | 32% | 62% | 62%       | 64%    | 88%   | 67%    | 66%  |
| Environmental Regulation  | 49% | 27% | 6%  | 10% | 25% | 15% | 5%  | 79% | 23% | 15% | 39% | 8%  | 5%  | 32% | 90%       | 85%    | 94%   | 79%    | 88%  |
| Regulatory Duplication  | 57% | 38% | 19% | 24% | 39% | 34% | 23% | 71% | 39% | 33% | 46% | 26% | 30% | 47% | 56%       | 52%    | 78%   | 61%    | 65%  |
| Land Claims Uncertainty   | 74% | 75% | 63% | 71% | 70% | 70% | 61% | 80% | 62% | 65% | 78% | 60% | 66% | 73% | 84%       | 65%    | 90%   | 75%    | 72%  |
| Protected Areas Uncertainty   | 39% | 35% | 13% | 15% | 23% | 25% | 15% | 68% | 30% | 32% | 28% | 14% | 24% | 35% | 87%       | 70%    | 88%   | 84%    | 80%  |
| Labour Regulation   | 75% | 84% | 57% | 79% | 84% | 77% | 73% | 87% | 79% | 78% | 84% | 74% | 76% | 83% | 69%       | 62%    | 73%   | 54%    | 72%  |
| Uncertainty in the Administration, Interpretation, and Enforcement of Regs. | 72% | 43% | 10% | 15% | 34% | 32% | 12% | 87% | 34% | 15% | 48% | 12% | 13% | 40% | 50%       | 53%    | 78%   | 52%    | 54%  |
| Infrastructure  | 28% | 91% | 87% | 74% | 78% | 89% | 75% | 95% | 76% | 82% | 87% | 77% | 82% | 80% | 29%       | 21%    | 72%   | 53%    | 32%  |
| Socio-economic Agreements   | 78% | 78% | 63% | 64% | 84% | 80% | 70% | 97% | 76% | 76% | 80% | 62% | 67% | 79% | 64%       | 54%    | 72%   | 51%    | 62%  |
| Mineral Potential With Current Regs.  | 71% | 51% | 20% | 28% | 39% | 32% | 29% | 93% | 38% | 25% | 43% | 20% | 22% | 37% | 75%       | 83%    | 96%   | 81%    | 83%  |
| Mineral Potential With No Land Use Restrictions                             | 97% | 84% | 76% | 73% | 73% | 52% | 76% | 99% | 75% | 44% | 66% | 66% | 52% | 58% | 85%       | 95%    | 99%   | 93%    | 97%  |

\*This includes both those respondents who claim the factor is a "encourages exploration investment" and those who indicate the factor is "not a deterrent to exploration investment."

**Figure 4: Uncertainty Regarding the Administration/Interpretation of Existing Regulations**

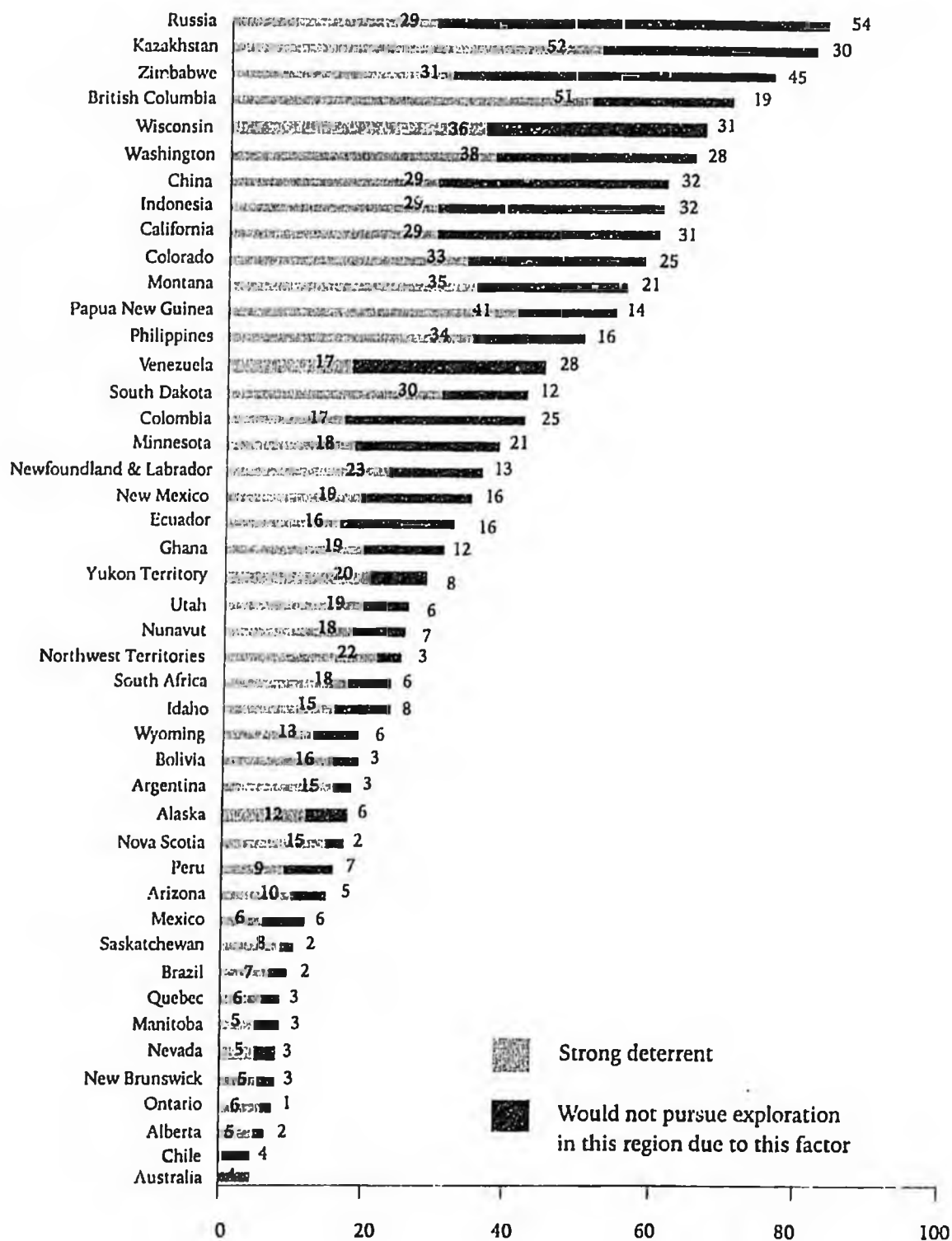


Figure 5: Taxation

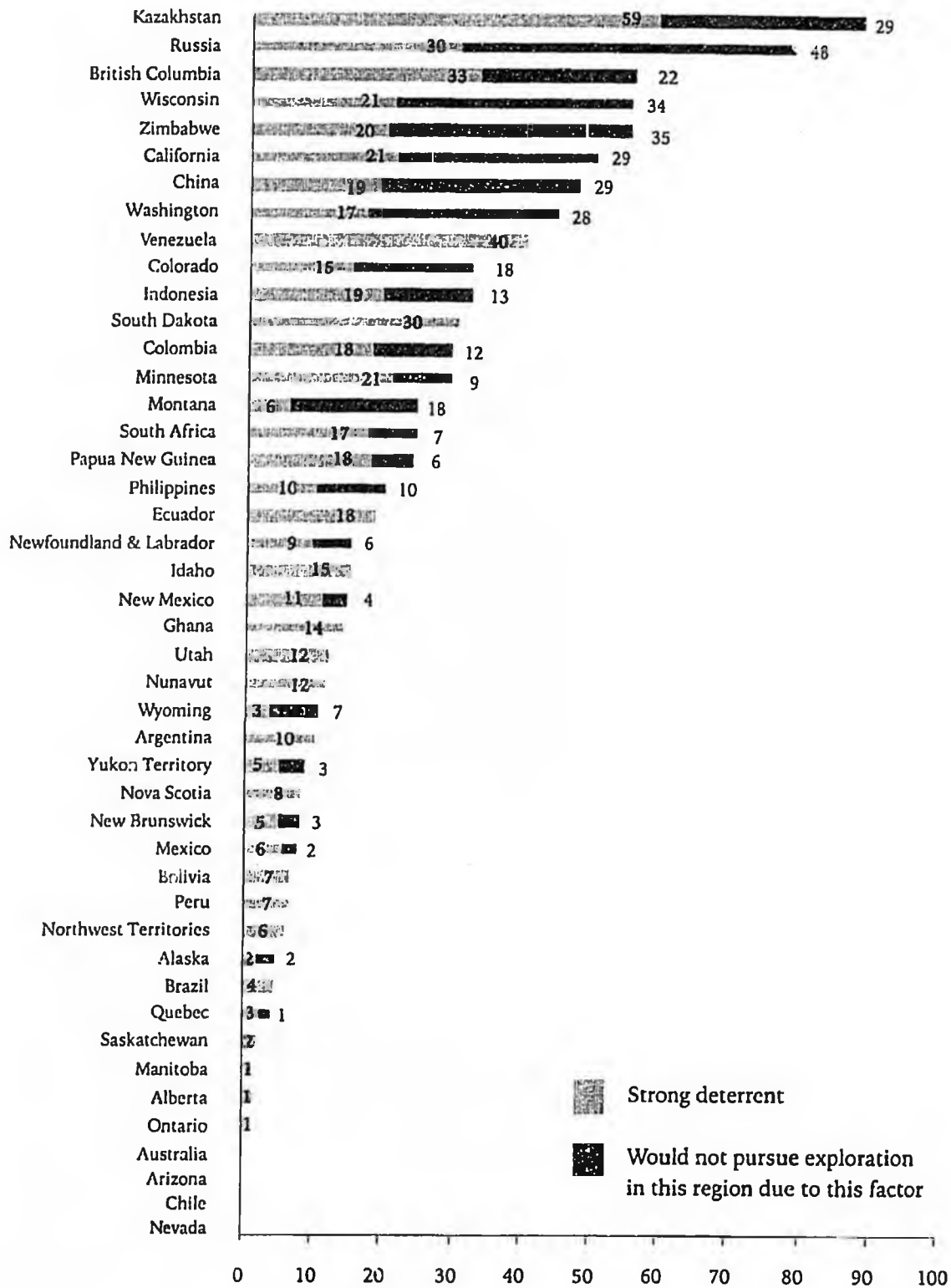
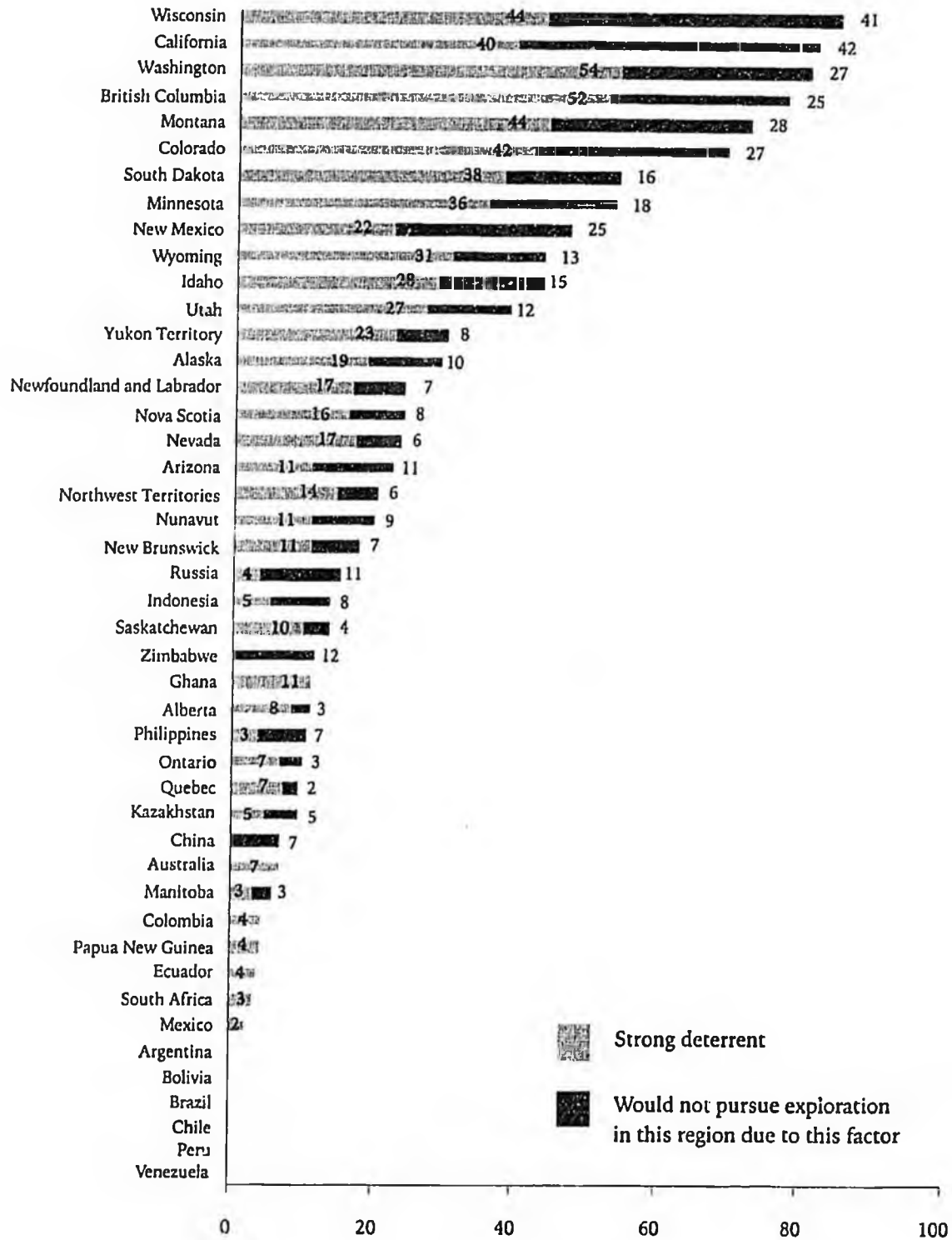
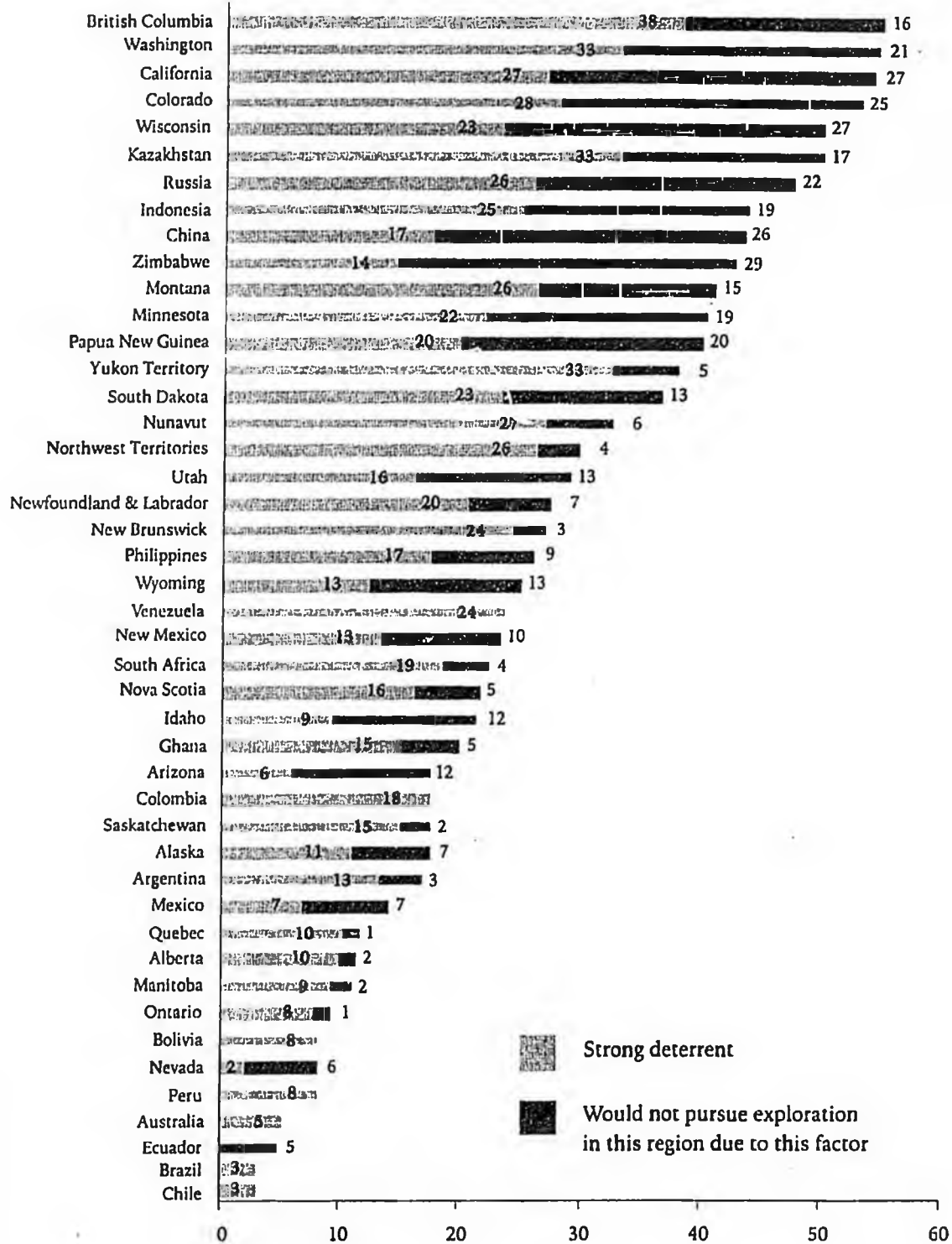


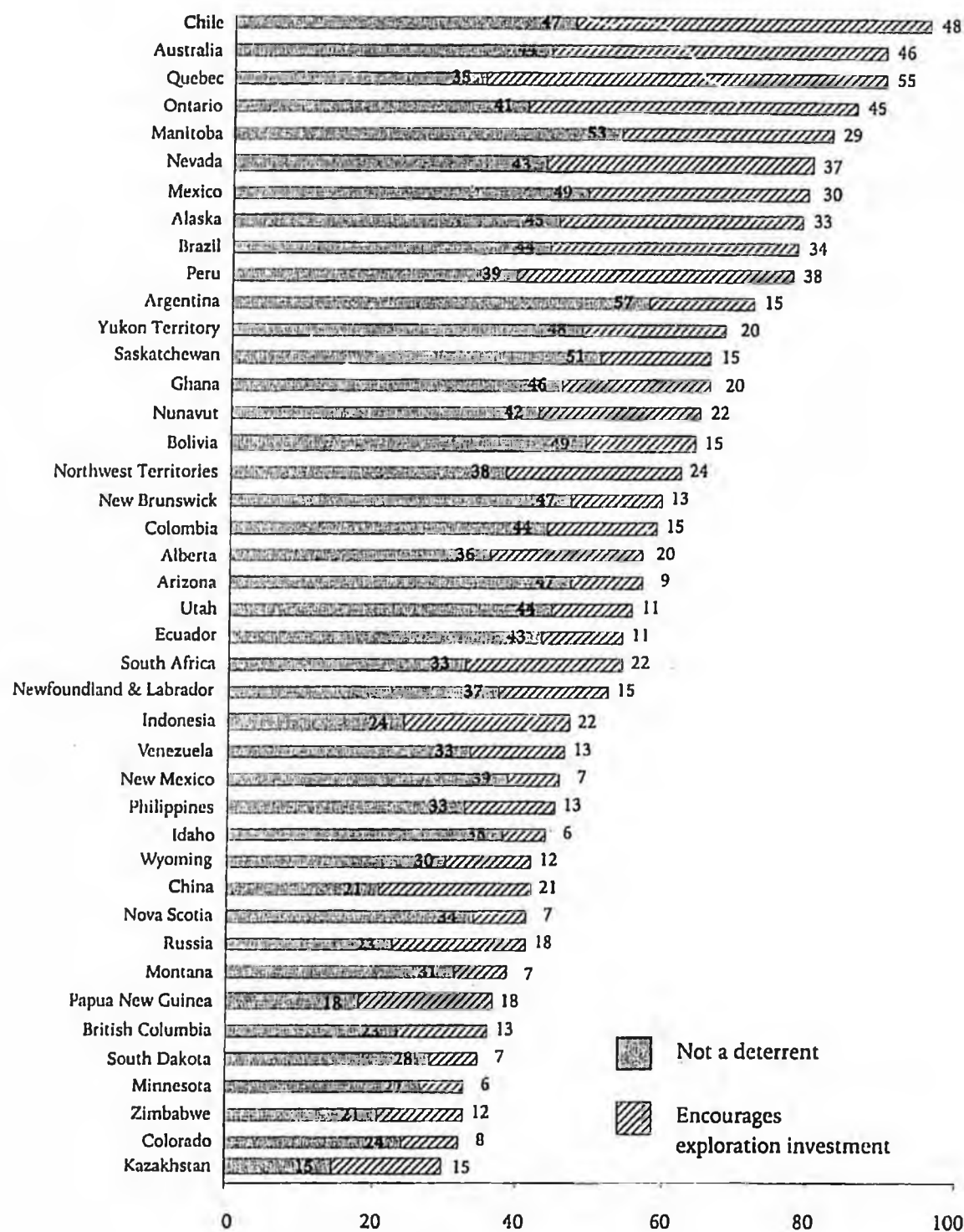
Figure 6: Environmental Regulations



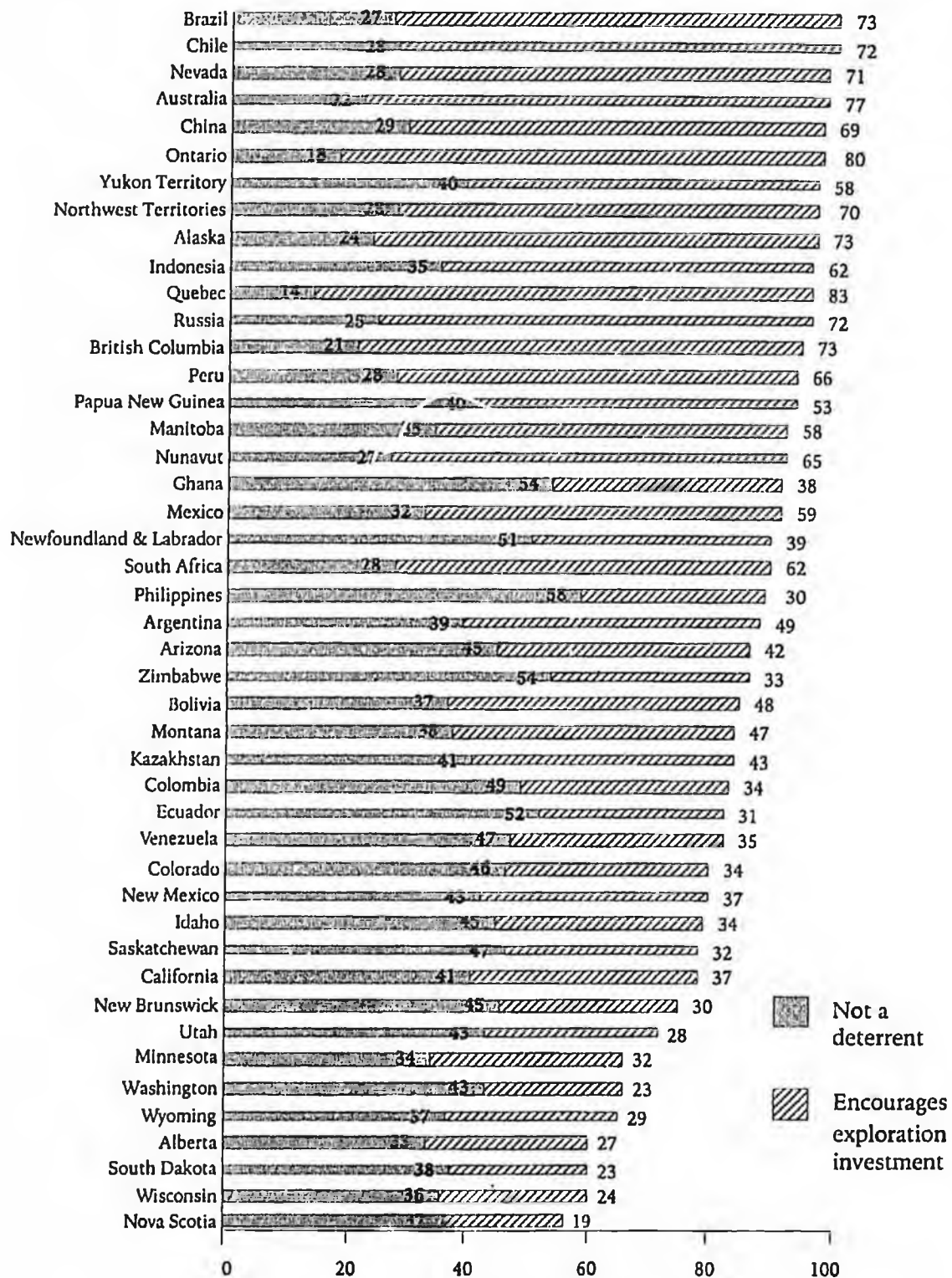
**Figure 7: Regulatory Duplication and Inconsistencies**



**Figure 14: Mineral Potential Assuming Current Regulation**



**Figure 15: Mineral Potential Assuming No Regulation and Further Assuming Industry Best Practices Standards**



**Table 2: United States of America—Percentage of Respondents Who Indicate Factors Encourage/Are Neutral to Exploration Investment\***

| State/Factor  | AK  | AZ  | CA  | CO  | ID  | MN  | MT  | NV  | NM  | SD  | UT  | WA  | WI  | WY  |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Taxation  | 77% | 66% | 24% | 44% | 59% | 44% | 39% | 93% | 61% | 40% | 58% | 33% | 28% | 55% |
| Environmental Regulation  | 36% | 42% | 4%  | 9%  | 30% | 18% | 8%  | 60% | 31% | 16% | 32% | 2%  | 0%  | 28% |
| Regulatory Duplication  | 39% | 35% | 5%  | 6%  | 30% | 16% | 12% | 59% | 17% | 10% | 29% | 6%  | 10% | 28% |
| Land Claims Uncertainty   | 60% | 72% | 67% | 64% | 71% | 70% | 65% | 83% | 64% | 60% | 62% | 66% | 65% | 62% |
| Protected Areas Uncertainty   | 30% | 33% | 18% | 20% | 34% | 25% | 23% | 54% | 29% | 28% | 27% | 23% | 25% | 28% |
| Labour Regulation   | 75% | 84% | 64% | 79% | 82% | 63% | 78% | 88% | 82% | 74% | 85% | 66% | 61% | 74% |
| Uncertainty in the Administration, Interpretation, and Enforcement of Regulations | 52% | 54% | 13% | 17% | 44% | 26% | 12% | 71% | 34% | 27% | 36% | 13% | 11% | 41% |
| Infrastructure  | 38% | 92% | 84% | 90% | 94% | 90% | 90% | 97% | 91% | 87% | 91% | 83% | 85% | 87% |
| Socioeconomic Agreements  | 77% | 90% | 62% | 71% | 86% | 86% | 77% | 94% | 83% | 80% | 89% | 74% | 78% | 86% |
| Political Stability   | 94% | 93% | 75% | 84% | 91% | 83% | 80% | 96% | 82% | 83% | 91% | 82% | 83% | 94% |
| Mineral Potential Assuming Current Regulation                                     | 78% | 57% | 24% | 32% | 44% | 33% | 39% | 80% | 46% | 35% | 56% | 24% | 19% | 42% |
| Mineral Potential Assuming No Land Use Restrictions                               | 97% | 87% | 78% | 80% | 79% | 66% | 85% | 99% | 80% | 60% | 72% | 66% | 60% | 65% |

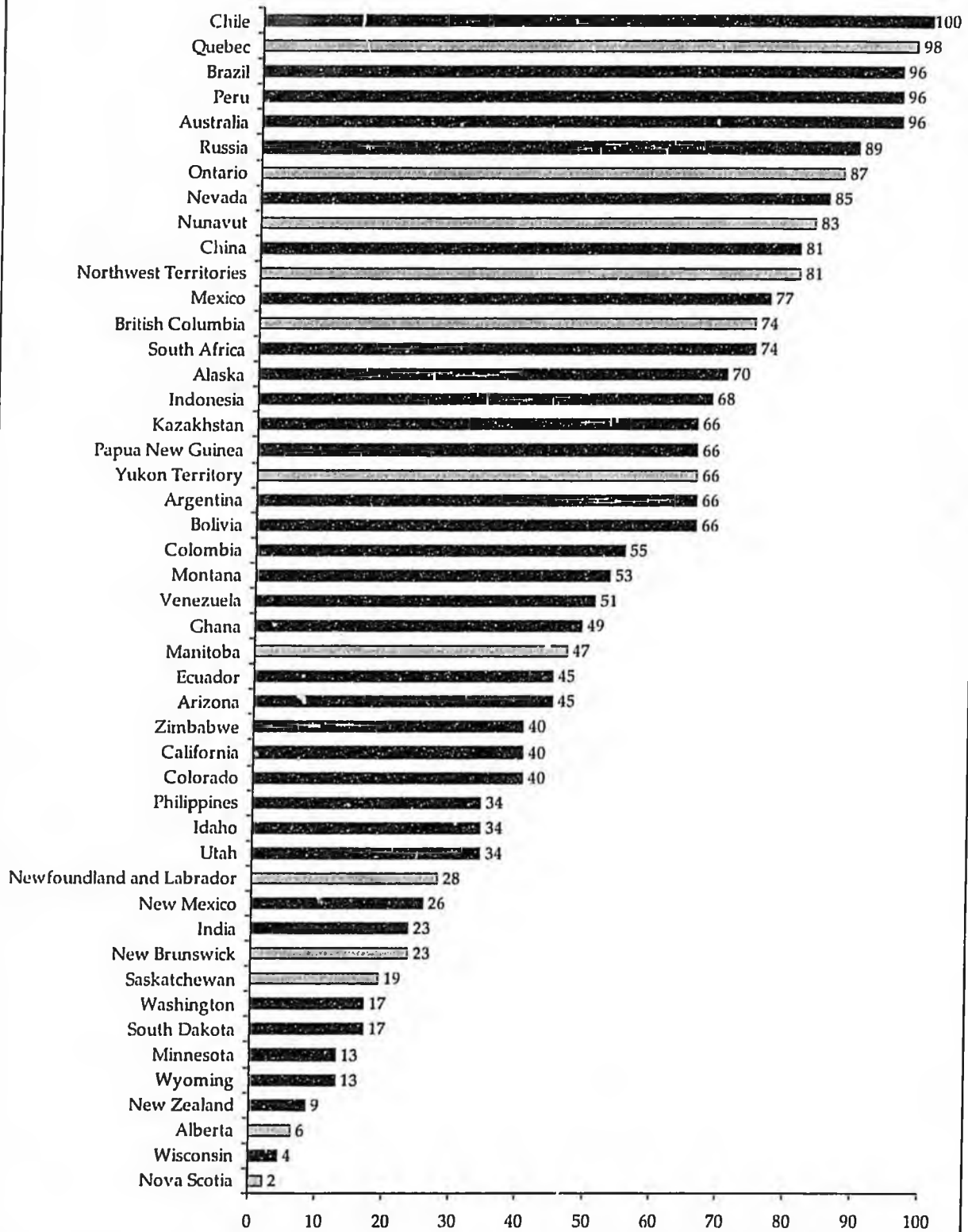
\* This includes both those respondents who claim the factor "encourages exploration investment" and those who indicate the factor is "not a deterrent to exploration investment."

**Table 5: United States of America—Percentage of Respondents Who Consider Factors a Strong Deterrent to Exploration Investment\***

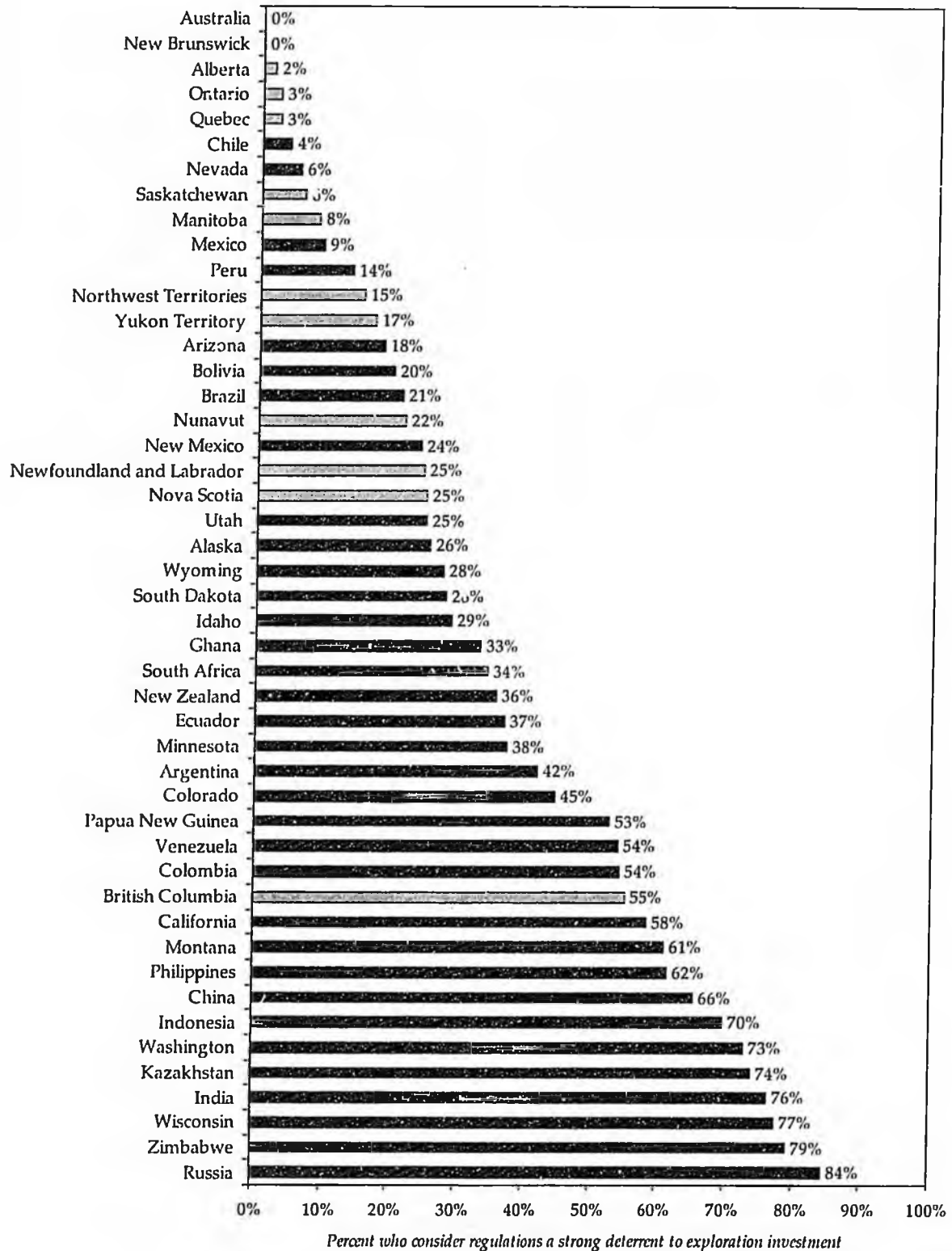
| State/Factor  | AK  | AZ  | CA  | CO  | ID  | MN  | MT  | NV  | NM  | SD  | UT  | WA  | WI  | WY  |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Taxation  | 4%  | 0%  | 50% | 32% | 15% | 29% | 24% | 0%  | 14% | 30% | 12% | 44% | 55% | 10% |
| Environmental Regulation  | 29% | 22% | 81% | 69% | 44% | 53% | 72% | 23% | 47% | 54% | 39% | 81% | 85% | 44% |
| Regulatory Duplication  | 17% | 18% | 54% | 53% | 21% | 41% | 41% | 8%  | 23% | 37% | 29% | 55% | 50% | 25% |
| Land Claims Uncertainty   | 10% | 8%  | 17% | 18% | 9%  | 12% | 14% | 6%  | 12% | 14% | 9%  | 13% | 10% | 9%  |
| Protected Areas Uncertainty   | 28% | 25% | 50% | 46% | 29% | 31% | 31% | 18% | 29% | 36% | 29% | 40% | 38% | 31% |
| Labour Regulation   | 2%  | 0%  | 8%  | 3%  | 0%  | 0%  | 0%  | 0%  | 3%  | 0%  | 0%  | 9%  | 7%  | 0%  |
| Uncertainty in the Administration, Interpretation, and Enforcement of Regulations | 17% | 15% | 60% | 58% | 23% | 39% | 56% | 8%  | 34% | 42% | 26% | 65% | 67% | 19% |
| Infrastructure  | 16% | 0%  | 4%  | 2%  | 0%  | 0%  | 2%  | 0%  | 0%  | 0%  | 2%  | 6%  | 5%  | 2%  |
| Socioeconomic Agreements  | 2%  | 0%  | 19% | 11% | 3%  | 0%  | 6%  | 0%  | 3%  | 6%  | 3%  | 15% | 16% | 3%  |
| Political Stability   | 0%  | 0%  | 10% | 4%  | 2%  | 6%  | 9%  | 0%  | 4%  | 4%  | 2%  | 9%  | 8%  | 0%  |
| Mineral Potential Assuming Current Regulation                                     | 8%  | 19% | 46% | 30% | 26% | 41% | 43% | 10% | 32% | 30% | 27% | 52% | 60% | 33% |
| Mineral Potential Assuming No Land Use Restrictions                               | 0%  | 2%  | 9%  | 5%  | 4%  | 5%  | 3%  | 0%  | 4%  | 11% | 4%  | 7%  | 8%  | 10% |

\* This includes both those respondents who claim the factor is a "strong deterrent to exploration investment" and those who "would not pursue exploration investment in this region due to this factor."

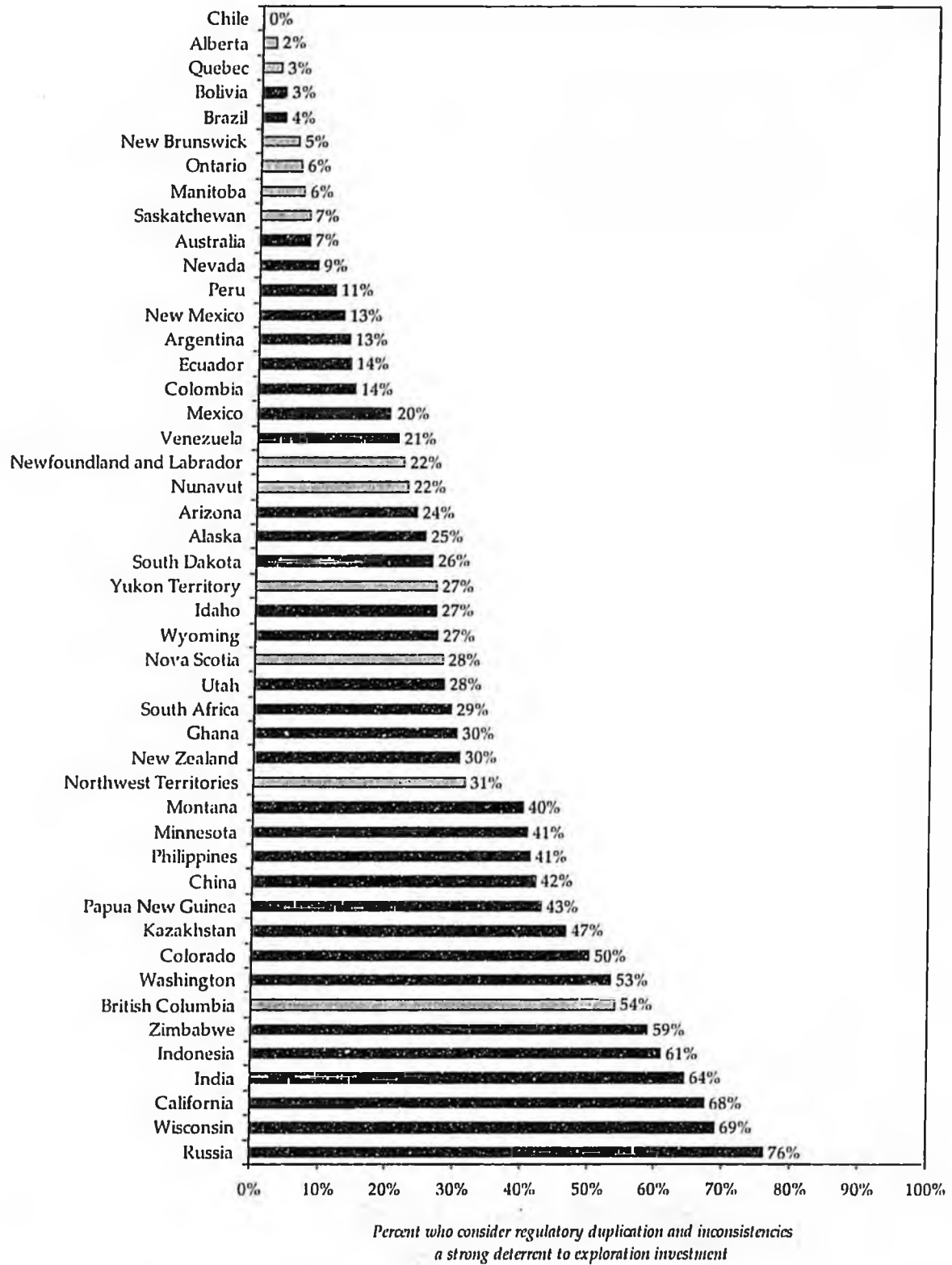
**Figure 2: Mineral Potential Index**



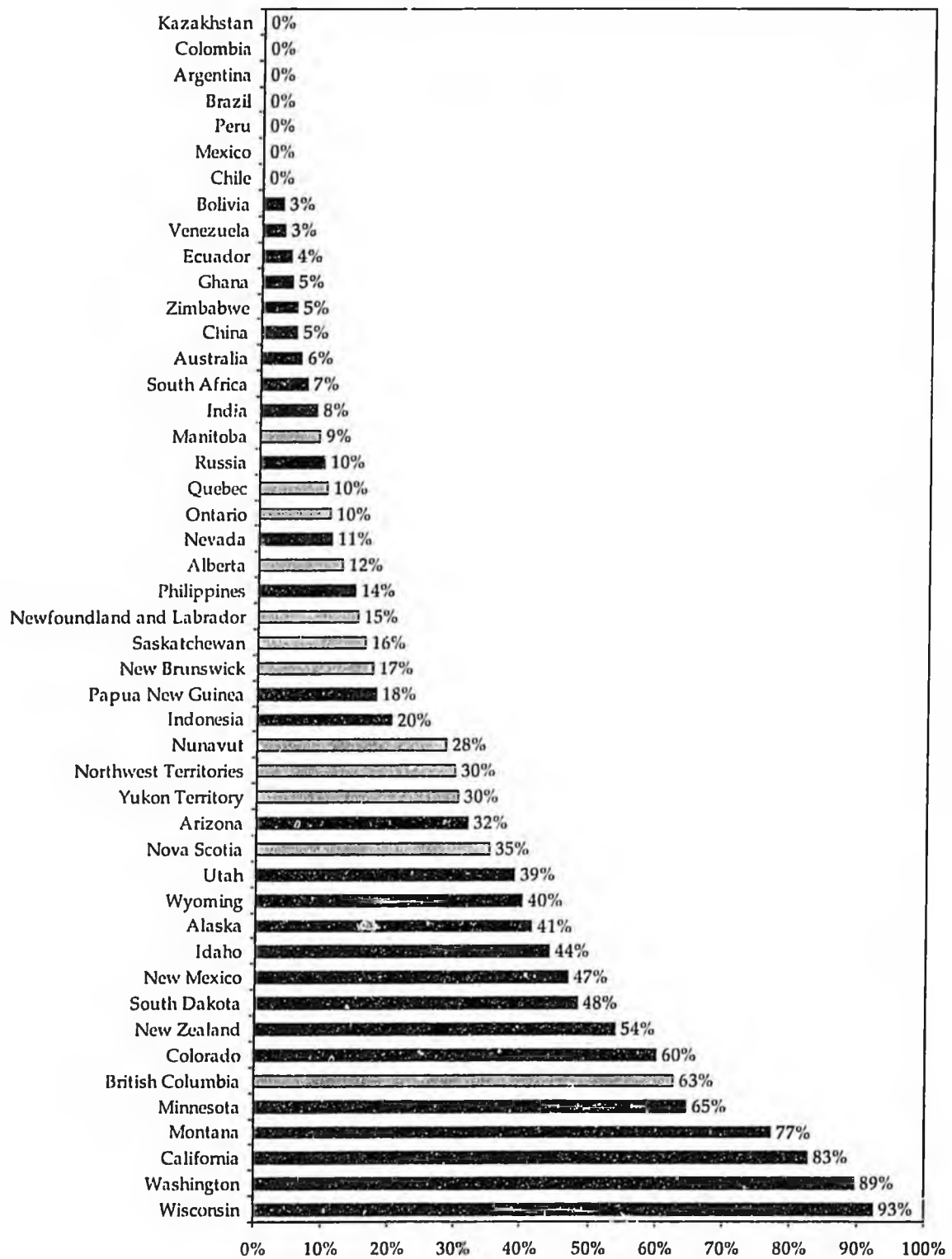
**Figure 4: Uncertainty Concerning the Administration, Interpretation, and Enforcement of Existing Regulations**



**Figure 5: Regulatory Duplication and Inconsistencies**

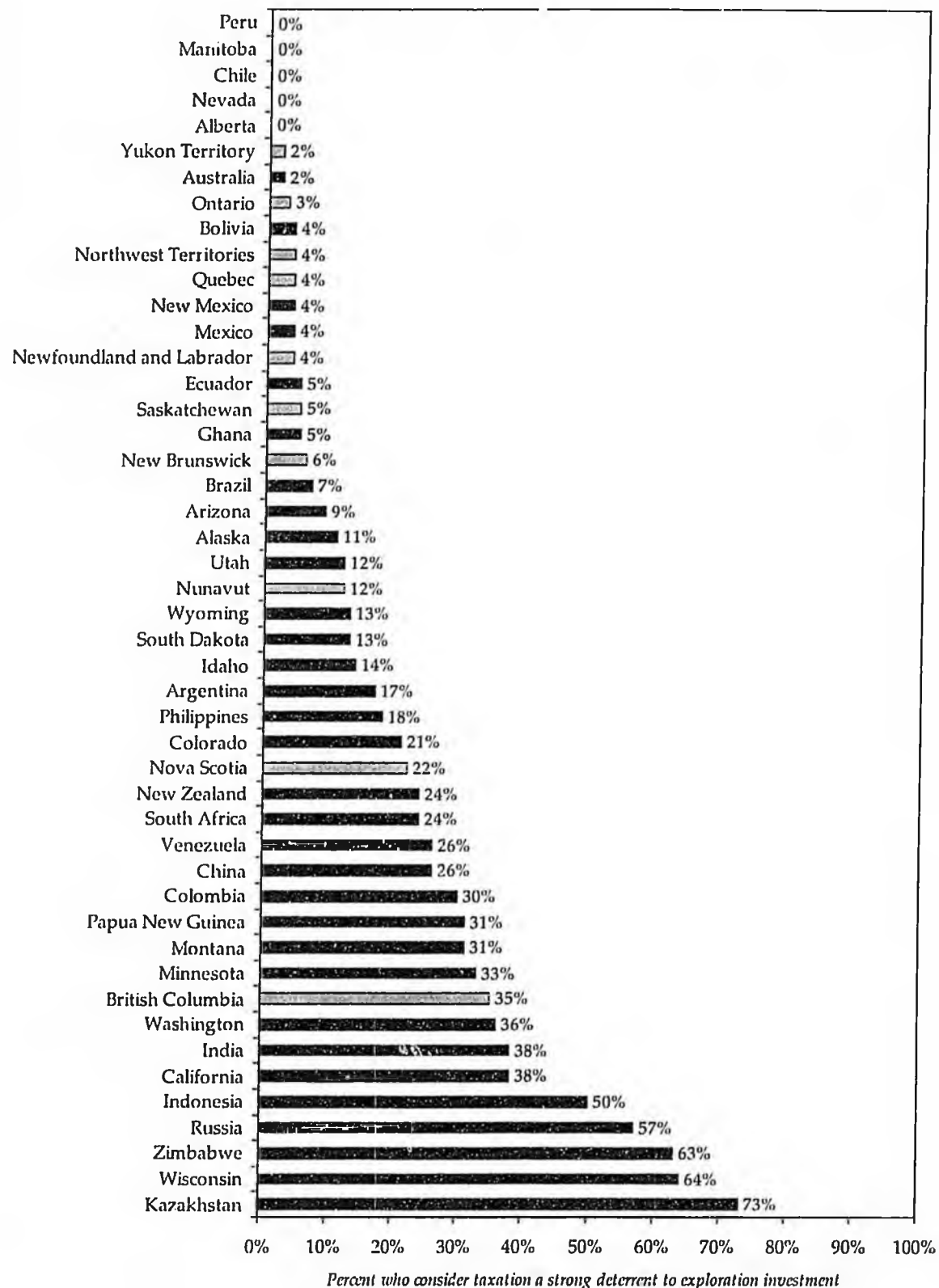


**Figure 6: Environmental Regulations**

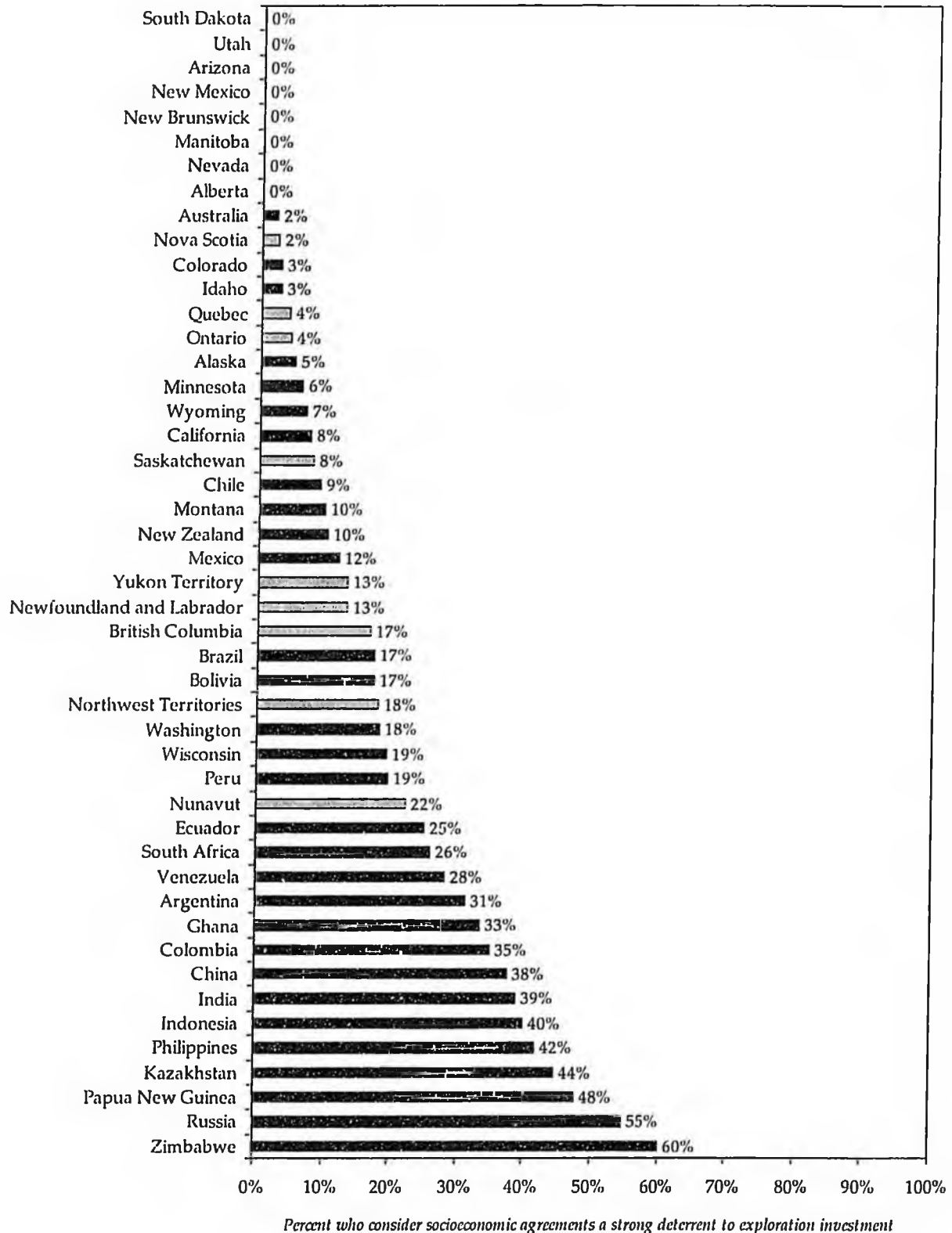


*Percent who consider environmental regulations a strong deterrent to exploration investment*

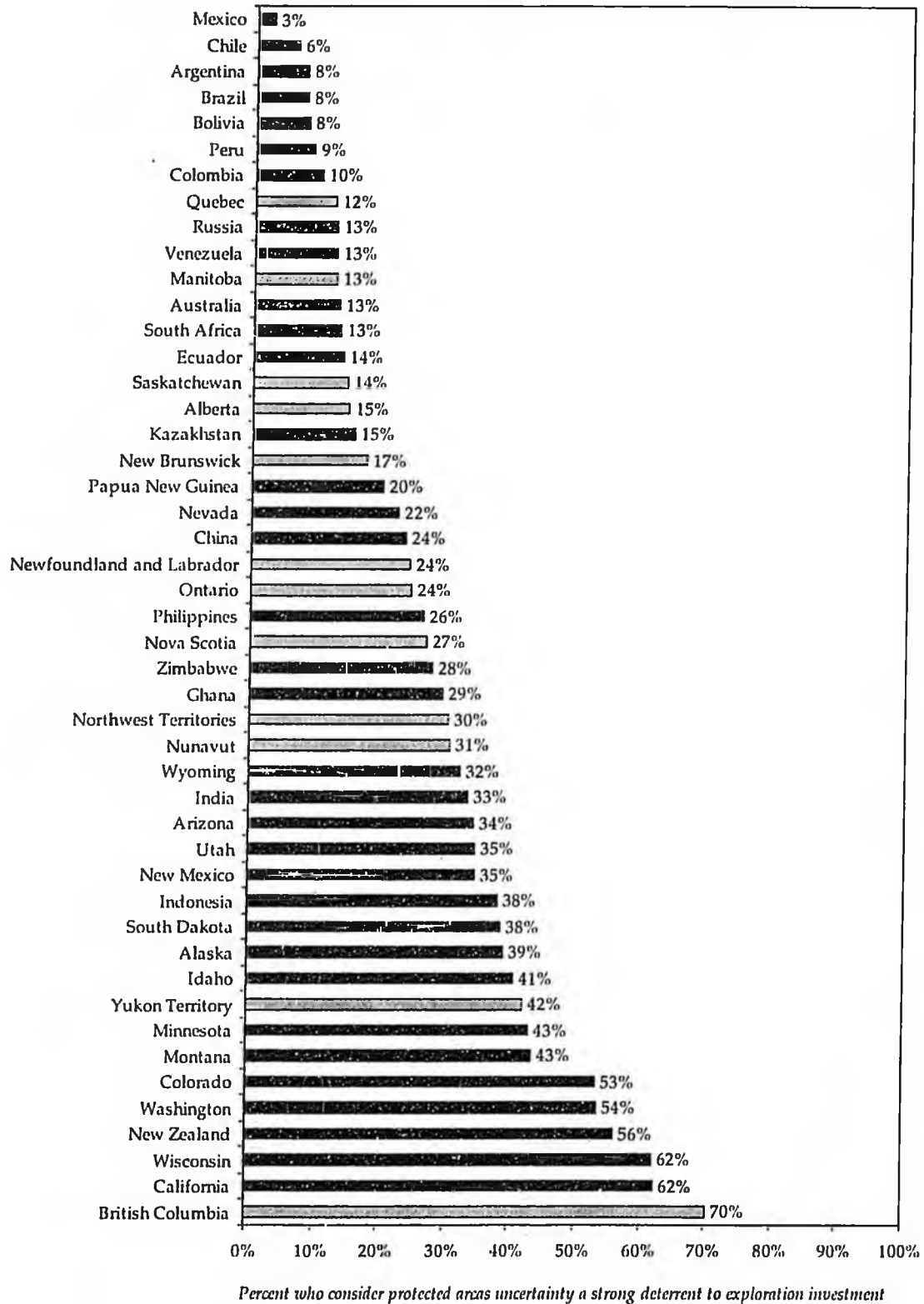
**Figure 9: Taxation Regime**



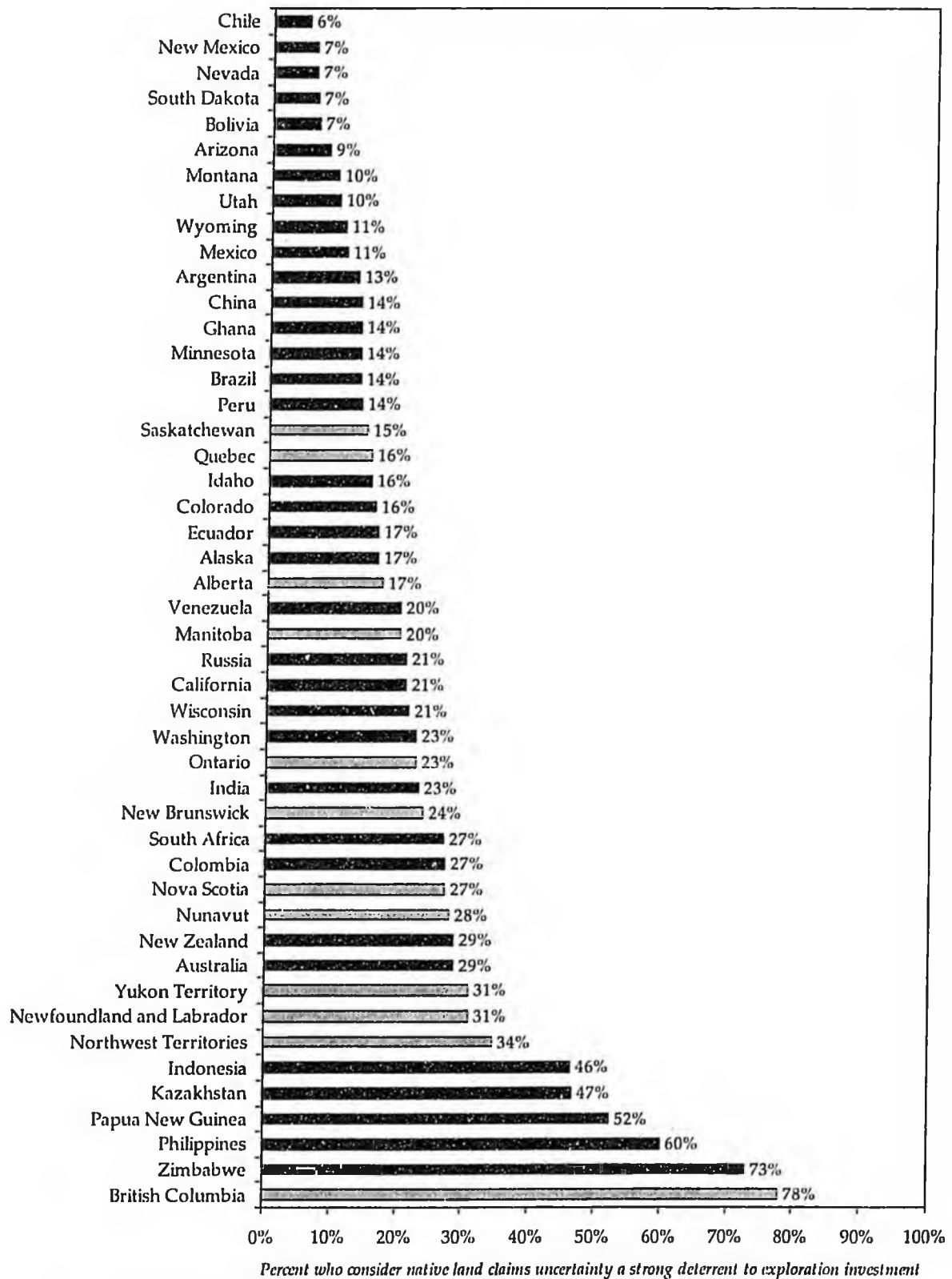
**Figure 13: Socioeconomic Agreements**



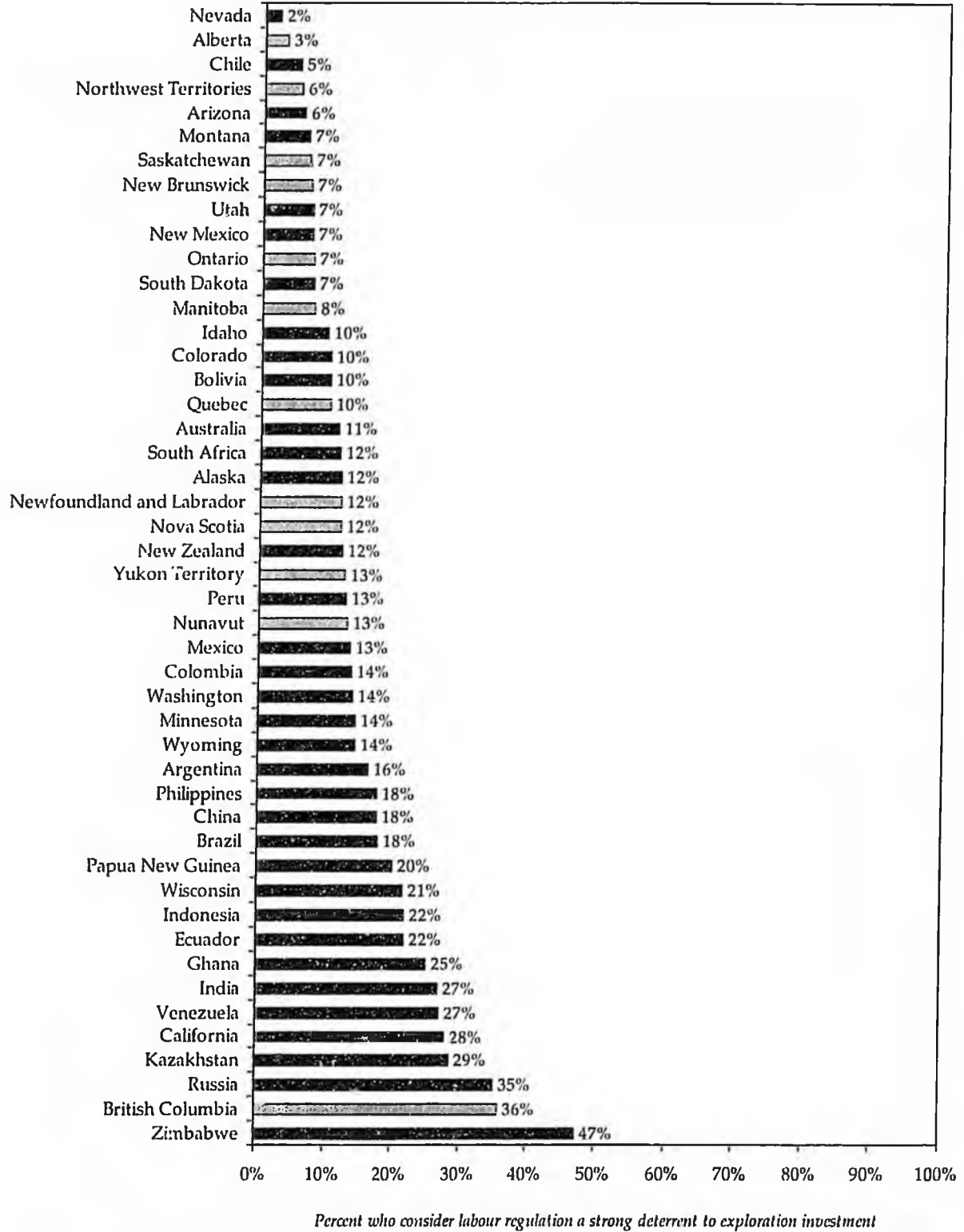
**Figure 7: Uncertainty Concerning which Areas will be Protected as Wilderness or Parks**



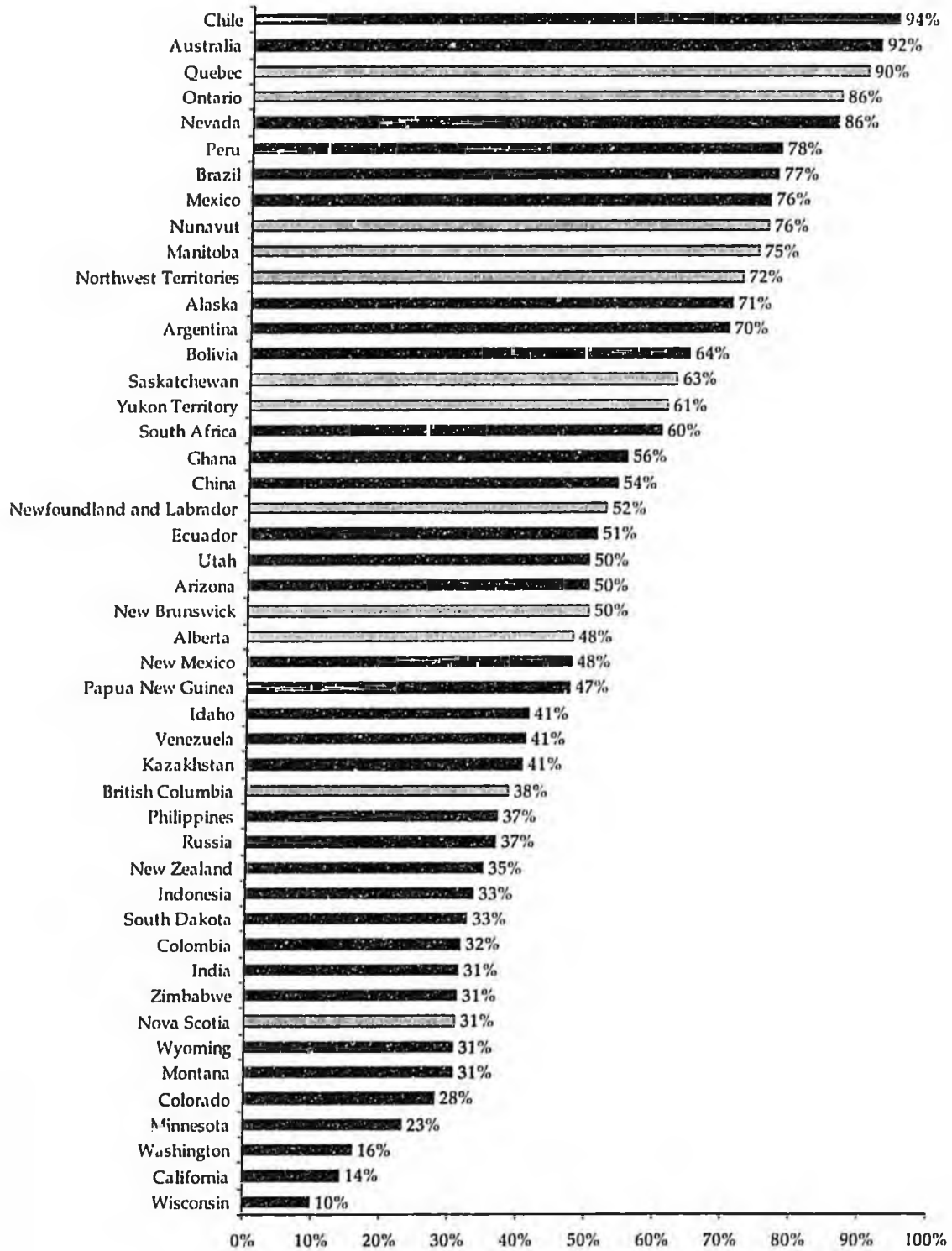
**Figure 8: Native Land Claims Uncertainty**



**Figure 11: Labour Regulation**

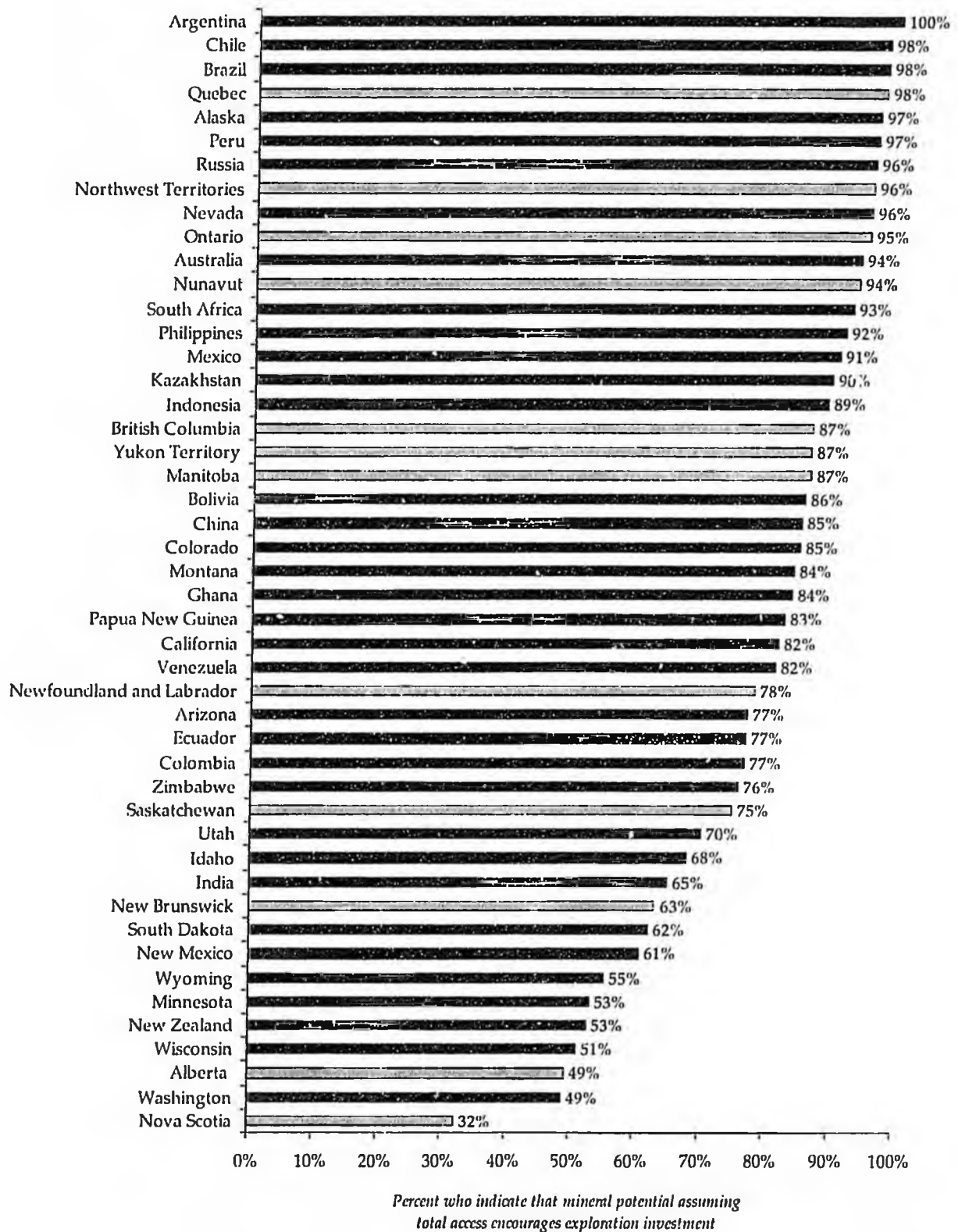


**Figure I4: Mineral Potential Assuming Current Regulation/Land Use Policies**

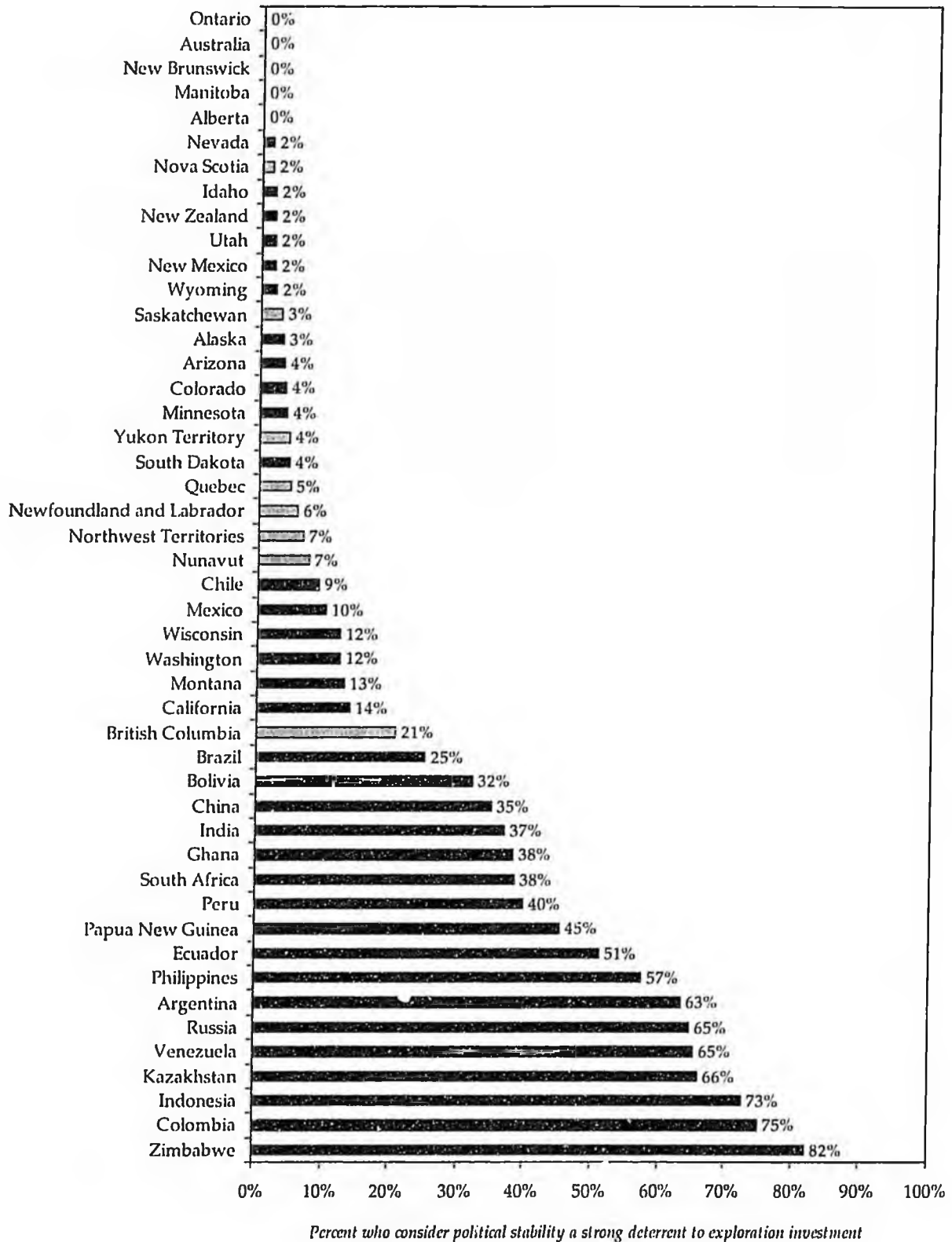


*Percent who indicate that mineral potential assuming current land use policies encourages exploration*

**Figure 15: Mineral Potential Assuming NO Land Use Restrictions in Place, and Further Assuming Industry "Best Practice" Standards**



**Figure 12: Political Stability**



**Table 1a: Percentage of Respondents who Indicate Factors Encourage Exploration Investment\***

| Country/<br>Region | Jurisdiction               | Regula-<br>tory<br>Uncer-<br>tainty | Regula-<br>tory<br>Duplica-<br>tion | Environ-<br>mental<br>Regula-<br>tions | Protected<br>Areas<br>Uncer-<br>tainty | Land<br>Claims<br>Uncer-<br>tainty | Taxation |
|--------------------|----------------------------|-------------------------------------|-------------------------------------|--|--|------------------------------------|----------|
| Canada             | Alberta                    | 80%                                 | 65%                                 | 56%                                    | 53%                                    | 48%                                | 88%      |
|                    | British Columbia           | 11%                                 | 12%                                 | 12%                                    | 5%                                     | 1%                                 | 31%      |
|                    | Manitoba                   | 75%                                 | 74%                                 | 67%                                    | 59%                                    | 44%                                | 81%      |
|                    | New Brunswick              | 77%                                 | 68%                                 | 51%                                    | 57%                                    | 38%                                | 71%      |
|                    | Newfoundland               | 54%                                 | 55%                                 | 56%                                    | 48%                                    | 37%                                | 78%      |
|                    | Northwest Terri-<br>tories | 47%                                 | 37%                                 | 34%                                    | 32%                                    | 20%                                | 61%      |
|                    | Nova Scotia                | 61%                                 | 56%                                 | 42%                                    | 51%                                    | 39%                                | 61%      |
|                    | Nunavut                    | 43%                                 | 42%                                 | 34%                                    | 35%                                    | 39%                                | 65%      |
|                    | Ontario                    | 82%                                 | 64%                                 | 62%                                    | 35%                                    | 40%                                | 75%      |
|                    | Quebec                     | 91%                                 | 73%                                 | 70%                                    | 59%                                    | 58%                                | 88%      |
|                    | Saskatchewan               | 66%                                 | 55%                                 | 50%                                    | 45%                                    | 43%                                | 74%      |
| Yukon Territory    | 55%                        | 44%                                 | 36%                                 | 22%                                    | 23%                                    | 68%                                |          |
| USA                | Alaska                     | 49%                                 | 39%                                 | 24%                                    | 17%                                    | 62%                                | 68%      |
|                    | Arizona                    | 39%                                 | 35%                                 | 29%                                    | 31%                                    | 63%                                | 69%      |
|                    | California                 | 8%                                  | 15%                                 | 4%                                     | 8%                                     | 63%                                | 35%      |
|                    | Colorado                   | 11%                                 | 17%                                 | 8%                                     | 13%                                    | 58%                                | 43%      |
|                    | Idaho                      | 32%                                 | 27%                                 | 27%                                    | 16%                                    | 63%                                | 57%      |
|                    | Minnesota                  | 16%                                 | 7%                                  | 6%                                     | 18%                                    | 59%                                | 38%      |
|                    | Montana                    | 12%                                 | 17%                                 | 9%                                     | 17%                                    | 63%                                | 46%      |
|                    | Nevada                     | 77%                                 | 66%                                 | 64%                                    | 56%                                    | 69%                                | 94%      |
|                    | New Mexico                 | 28%                                 | 38%                                 | 22%                                    | 23%                                    | 53%                                | 71%      |
|                    | South Dakota               | 16%                                 | 22%                                 | 15%                                    | 8%                                     | 59%                                | 61%      |
|                    | Utah                       | 36%                                 | 36%                                 | 35%                                    | 23%                                    | 66%                                | 65%      |
|                    | Washington                 | 5%                                  | 10%                                 | 3%                                     | 7%                                     | 55%                                | 32%      |
|                    | Wisconsin                  | 6%                                  | 7%                                  | 3%                                     | 7%                                     | 46%                                | 28%      |
|                    | Wyoming                    | 28%                                 | 19%                                 | 20%                                    | 18%                                    | 56%                                | 61%      |

**Table 1b: Percentage of Respondents who Indicate Factors Encourage Exploration Investment\***

| Country/<br>Region | Jurisdiction             | Infra-<br>structure | Labour<br>Regu-<br>lation | Political<br>Stability | Socio-<br>economic<br>Agree-<br>ments | Mineral<br>Potential<br>Assuming<br>Current<br>Regula-<br>tion | Mineral<br>Potential<br>Assuming<br>No Land<br>Use Re-<br>strictions |
|--------------------|--------------------------|---------------------|---------------------------|------------------------|---------------------------------------|--|--|
| Canada             | Alberta                  | 97%                 | 78%                       | 99%                    | 84%                                   | 48%  | 49%  |
|                    | British Columbia         | 60%                 | 27%                       | 63%                    | 42%                                   | 38%  | 87%  |
|                    | Manitoba                 | 78%                 | 65%                       | 96%                    | 77%                                   | 75%  | 87%  |
|                    | New Brunswick            | 92%                 | 65%                       | 94%                    | 75%                                   | 50%  | 63%  |
|                    | Newfoundland             | 59%                 | 67%                       | 84%                    | 49%                                   | 52%  | 78%  |
|                    | Northwest<br>Territories | 15%                 | 57%                       | 80%                    | 36%                                   | 72%  | 96%  |
|                    | Nova Scotia              | 87%                 | 64%                       | 90%                    | 67%                                   | 31%  | 32%  |
|                    | Nunavut                  | 14%                 | 48%                       | 79%                    | 28%                                   | 76%  | 94%  |
|                    | Ontario                  | 80%                 | 71%                       | 95%                    | 74%                                   | 86%  | 95%  |
|                    | Quebec                   | 87%                 | 67%                       | 83%                    | 81%                                   | 90%  | 98%  |
|                    | Saskatchewan             | 77%                 | 57%                       | 89%                    | 73%                                   | 63%  | 75%  |
|                    | Yukon Territory          | 22%                 | 58%                       | 76%                    | 45%                                   | 61%  | 87%  |
| USA                | Alaska                   | 26%                 | 47%                       | 81%                    | 60%                                   | 71%  | 97%  |
|                    | Arizona                  | 92%                 | 65%                       | 88%                    | 76%                                   | 50%  | 77%  |
|                    | California               | 88%                 | 44%                       | 72%                    | 60%                                   | 14%  | 82%  |
|                    | Colorado                 | 84%                 | 57%                       | 81%                    | 65%                                   | 28%  | 85%  |
|                    | Idaho                    | 84%                 | 61%                       | 91%                    | 68%                                   | 41%  | 68%  |
|                    | Minnesota                | 83%                 | 50%                       | 84%                    | 64%                                   | 23%  | 53%  |
|                    | Montana                  | 78%                 | 60%                       | 78%                    | 65%                                   | 31%  | 84%  |
|                    | Nevada                   | 97%                 | 82%                       | 95%                    | 83%                                   | 86%  | 96%  |
|                    | New Mexico               | 89%                 | 68%                       | 92%                    | 71%                                   | 48%  | 61%  |
|                    | South Dakota             | 83%                 | 70%                       | 89%                    | 72%                                   | 33%  | 62%  |
|                    | Utah                     | 88%                 | 64%                       | 88%                    | 76%                                   | 50%  | 70%  |
|                    | Washington               | 73%                 | 45%                       | 78%                    | 55%                                   | 16%  | 49%  |
|                    | Wisconsin                | 86%                 | 46%                       | 76%                    | 58%                                   | 10%  | 51%  |
| Wyoming            | 80%                      | 57%                 | 88%                       | 69%                    | 31%                                   | 55%  |  |

**Table 2a: Percentage of Respondents who Consider Factors  
Strong Deterrents to Investment\***

| <b>Country/<br/>Region</b> | <b>Jurisdiction</b>   | <b>Regu-<br/>latory<br/>Uncer-<br/>tainty</b> | <b>Regu-<br/>latory<br/>Duplication</b> | <b>Environ-<br/>mental<br/>Regula-<br/>tions</b> | <b>Protected<br/>Areas<br/>Uncer-<br/>tainty</b> | <b>Land<br/>Claims<br/>Uncer-<br/>tainty</b> |
|----------------------------|-----------------------|---|---|--|--|--|
| Canada                     | Alberta               | 2%  | 2%                                      | 12%  | 15%  | 17%  |
|                            | British Columbia      | 55%   | 54%                                     | 63%  | 70%  | 78%  |
|                            | Manitoba              | 8%  | 6%                                      | 9%   | 13%  | 20%  |
|                            | New Brunswick         | 0%  | 5%                                      | 17%  | 17%  | 24%  |
|                            | Newfoundland          | 25%   | 22%                                     | 15%  | 24%  | 31%  |
|                            | Northwest Territories | 15%   | 31%                                     | 30%  | 30%  | 34%  |
|                            | Nova Scotia           | 25%   | 28%                                     | 35%  | 27%  | 27%  |
|                            | Nunavut               | 22%   | 22%                                     | 28%  | 31%  | 28%  |
|                            | Ontario               | 3%  | 6%                                      | 10%  | 24%  | 23%  |
|                            | Quebec                | 3%  | 3%                                      | 10%  | 12%  | 16%  |
|                            | Saskatchewan          | 6%  | 7%                                      | 16%  | 14%  | 15%  |
| Yukon Territory            | 17%                   | 27%   | 30%                                     | 42%  | 31%  |  |
| USA                        | Alaska                | 26%   | 25%                                     | 41%  | 39%  | 17%  |
|                            | Arizona               | 18%   | 24%                                     | 32%  | 34%  | 9%   |
|                            | California            | 58%   | 68%                                     | 83%  | 62%  | 21%  |
|                            | Colorado              | 45%   | 50%                                     | 60%  | 53%  | 16%  |
|                            | Idaho                 | 29%   | 27%                                     | 44%  | 41%  | 16%  |
|                            | Minnesota             | 38%   | 41%                                     | 65%  | 43%  | 14%  |
|                            | Montana               | 61%   | 40%                                     | 77%  | 43%  | 10%  |
|                            | Nevada                | 6%  | 9%                                      | 11%  | 22%  | 7%   |
|                            | New Mexico            | 24%   | 13%                                     | 47%  | 35%  | 7%   |
|                            | South Dakota          | 28%   | 26%                                     | 48%  | 38%  | 7%   |
|                            | Utah                  | 25%   | 28%                                     | 39%  | 35%  | 10%  |
|                            | Washington            | 73%   | 53%                                     | 89%  | 54%  | 23%  |
|                            | Wisconsin             | 77%   | 69%                                     | 93%  | 62%  | 21%  |
|                            | Wyoming               | 28%   | 27%                                     | 40%  | 32%  | 11%  |

**Table 2b: Percentage of Respondents who Consider Factors  
Strong Deterrents to Investment\***

| <b>Country/<br/>Region</b> | <b>Jurisdiction</b>   | <b>Infra-<br/>structure</b> | <b>Labour<br/>Regu-<br/>lation</b> | <b>Political<br/>Stability</b> | <b>Socio-<br/>economic<br/>Agree-<br/>ments</b> | <b>Mineral<br/>Potential<br/>Assuming<br/>Current<br/>Regulation</b> |
|----------------------------|-----------------------|-----------------------------|------------------------------------|--------------------------------|---|--|
| Canada                     | Alberta               | 0%                          | 3%                                 | 0%                             | 0%  | 15%  |
|                            | British Columbia      | 6%                          | 36%                                | 21%                            | 17%   | 33%  |
|                            | Manitoba              | 5%                          | 8%                                 | 0%                             | 0%  | 6%   |
|                            | New Brunswick         | 0%                          | 7%                                 | 0%                             | 0%  | 16%  |
|                            | Newfoundland          | 7%                          | 12%                                | 6%                             | 13%   | 11%  |
|                            | Northwest Territories | 50%                         | 6%                                 | 7%                             | 18%   | 08%  |
|                            | Nova Scotia           | 4%                          | 12%                                | 2%                             | 2%  | 31%  |
|                            | Nunavut               | 50%                         | 13%                                | 7%                             | 22%   | 10%  |
|                            | Ontario               | 4%                          | 7%                                 | 0%                             | 4%  | 4%   |
|                            | Quebec                | 1%                          | 10%                                | 5%                             | 4%  | 5%   |
|                            | Saskatchewan          | 2%                          | 7%                                 | 3%                             | 8%  | 10%  |
| Yukon Territory            | 37%                   | 13%                         | 4%                                 | 13%                            | 16%   |  |
| USA                        | Alaska                | 36%                         | 12%                                | 3%                             | 5%  | 9%   |
|                            | Arizona               | 0%                          | 6%                                 | 4%                             | 0%  | 20%  |
|                            | California            | 4%                          | 28%                                | 14%                            | 8%  | 51%  |
|                            | Colorado              | 2%                          | 10%                                | 4%                             | 3%  | 34%  |
|                            | Idaho                 | 0%                          | 10%                                | 2%                             | 3%  | 22%  |
|                            | Minnesota             | 7%                          | 14%                                | 4%                             | 6%  | 42%  |
|                            | Montana               | 2%                          | 7%                                 | 13%                            | 10%   | 47%  |
|                            | Nevada                | 0%                          | 2%                                 | 2%                             | 0%  | 8%   |
|                            | New Mexico            | 0%                          | 7%                                 | 2%                             | 0%  | 20%  |
|                            | South Dakota          | 0%                          | 7%                                 | 4%                             | 0%  | 30%  |
|                            | Utah                  | 0%                          | 7%                                 | 2%                             | 0%  | 23%  |
|                            | Washington            | 7%                          | 14%                                | 12%                            | 18%   | 59%  |
|                            | Wisconsin             | 2%                          | 21%                                | 12%                            | 19%   | 68%  |
|                            | Wyoming               | 2%                          | 14%                                | 2%                             | 7%  | 23%  |

## Appendix B: Survey Questions

### A. EXPLORATION INVESTMENT

Note: For the purposes of this survey, exploration investment includes both basic and advanced exploration. This includes all exploration expenditures (financing costs, option payments, finders fees, etc.) incurred in searching for and delineating mineral deposits on properties where no production is taking place.

1. What percentage of your annual exploration budget in 2001 was spent within:

|                      |                      |                    |       |
|----------------------|----------------------|--------------------|-------|
| <b>LATIN AMERICA</b> | <b>NORTH AMERICA</b> | Kazakhstan         | _____ |
| Argentina            | Canada               | New Zealand        | _____ |
| Bolivia              | USA                  | Papua New Guinea   | _____ |
| Brazil               | <b>WORLD</b>         | Philippines        | _____ |
| Chile                | Australia            | Russia             | _____ |
| Colombia             | China                | Ghana              | _____ |
| Mexico               | Ghana                | South Africa       | _____ |
| Peru                 | India                | Zimbabwe           | _____ |
| Venezuela            | Indonesia            | Other (not listed) | _____ |

*Should total 100 percent*

2. Has that percentage changed over the 5 years from 1996-2001? If so, please indicate whether there was a positive (+), or negative (-) change, or no change (0).

|                      |                      |                          |
|----------------------|----------------------|--------------------------|
| <b>LATIN AMERICA</b> | <b>NORTH AMERICA</b> | Kazakhstan _____         |
| Argentina _____      | Canada _____         | New Zealand _____        |
| Bolivia _____        | USA _____            | Papua New Guinea _____   |
| Brazil _____         | <b>WORLD</b>         | Philippines _____        |
| Chile _____          | Australia _____      | Russia _____             |
| Colombia _____       | China _____          | Ghana _____              |
| Mexico _____         | Ghana _____          | South Africa _____       |
| Peru _____           | India _____          | Zimbabwe _____           |
| Venezuela _____      | Indonesia _____      | Other (not listed) _____ |

3. Has your total (worldwide) exploration expenditure increased, decreased, or remained the same over the five years from 1996-2001?

Increased \_\_\_\_\_ Decreased \_\_\_\_\_ Remained the Same \_\_\_\_\_

## B. INVESTMENT FACTORS

The following pages list factors such as mineral potential, taxation, and regulations that influence investment decisions. Please use the scale provided to rate each jurisdiction with respect to the factor listed in bold at the top of each page. You need only rate those regions with which you are familiar. If you are unfamiliar with a jurisdiction, leave the question blank or circle "6," the 'do not know' option.

### Scale:

- 1 = encourages exploration investment
- 2 = not a deterrent to exploration investment
- 3 = mild deterrent to exploration investment
- 4 = strong deterrent to exploration investment
- 5 = would not pursue exploration in this region due to this factor
- 6 = do not know

2. Has that percentage changed over the 5 years from 1996-2001? If so, please indicate whether there was a positive (+), or negative (-) change, or no change (0).

|                      |                      |                          |
|----------------------|----------------------|--------------------------|
| <b>LATIN AMERICA</b> | <b>NORTH AMERICA</b> | Kazakhstan _____         |
| Argentina _____      | Canada _____         | New Zealand _____        |
| Bolivia _____        | USA _____            | Papua New Guinea _____   |
| Brazil _____         | <b>WORLD</b>         | Philippines _____        |
| Chile _____          | Australia _____      | Russia _____             |
| Colombia _____       | China _____          | Ghana _____              |
| Mexico _____         | Ghana _____          | South Africa _____       |
| Peru _____           | India _____          | Zimbabwe _____           |
| Venezuela _____      | Indonesia _____      | Other (not listed) _____ |

3. Has your total (worldwide) exploration expenditure increased, decreased, or remained the same over the five years from 1996-2001?

Increased \_\_\_\_\_ Decreased \_\_\_\_\_ Remained the Same \_\_\_\_\_

## B. INVESTMENT FACTORS

The following pages list factors such as mineral potential, taxation, and regulations that influence investment decisions. Please use the scale provided to rate each jurisdiction with respect to the factor listed in bold at the top of each page. You need only rate those regions with which you are familiar. If you are unfamiliar with a jurisdiction, leave the question blank or circle "6," the 'do not know' option.

### Scale:

- 1 = encourages exploration investment
- 2 = not a deterrent to exploration investment
- 3 = mild deterrent to exploration investment
- 4 = strong deterrent to exploration investment
- 5 = would not pursue exploration in this region due to this factor
- 6 = do not know

## I. TAXATION REGIME\*

Please circle the appropriate rating, according to the scale in the box below, for the following regions' TAXATION REGIME (personal, corporate, payroll, capital taxes and the complexity of tax compliance).

(See above for key to scale)

| CANADA                |   |   |   |   |   |   |
|-----------------------|---|---|---|---|---|---|
| Alberta               | 1 | 2 | 3 | 4 | 5 | 6 |
| British Columbia      | 1 | 2 | 3 | 4 | 5 | 6 |
| Manitoba              | 1 | 2 | 3 | 4 | 5 | 6 |
| New Brunswick         | 1 | 2 | 3 | 4 | 5 | 6 |
| Newfoundland          | 1 | 2 | 3 | 4 | 5 | 6 |
| Northwest Territories | 1 | 2 | 3 | 4 | 5 | 6 |
| Nova Scotia           | 1 | 2 | 3 | 4 | 5 | 6 |
| Nunavut               | 1 | 2 | 3 | 4 | 5 | 6 |
| Ontario               | 1 | 2 | 3 | 4 | 5 | 6 |
| Quebec                | 1 | 2 | 3 | 4 | 5 | 6 |
| Saskatchewan          | 1 | 2 | 3 | 4 | 5 | 6 |
| Yukon                 | 1 | 2 | 3 | 4 | 5 | 6 |
| UNITED STATES         |   |   |   |   |   |   |
| Alaska                | 1 | 2 | 3 | 4 | 5 | 6 |
| Arizona               | 1 | 2 | 3 | 4 | 5 | 6 |
| California            | 1 | 2 | 3 | 4 | 5 | 6 |
| Colorado              | 1 | 2 | 3 | 4 | 5 | 6 |
| Idaho                 | 1 | 2 | 3 | 4 | 5 | 6 |
| Minnesota             | 1 | 2 | 3 | 4 | 5 | 6 |
| Montana               | 1 | 2 | 3 | 4 | 5 | 6 |
| Nevada                | 1 | 2 | 3 | 4 | 5 | 6 |
| New Mexico            | 1 | 2 | 3 | 4 | 5 | 6 |
| South Dakota          | 1 | 2 | 3 | 4 | 5 | 6 |
| Utah                  | 1 | 2 | 3 | 4 | 5 | 6 |
| Washington            | 1 | 2 | 3 | 4 | 5 | 6 |
| Wisconsin             | 1 | 2 | 3 | 4 | 5 | 6 |
| Wyoming               | 1 | 2 | 3 | 4 | 5 | 6 |

| LATIN AMERICA    |   |   |   |   |   |   |
|------------------|---|---|---|---|---|---|
| Argentina        | 1 | 2 | 3 | 4 | 5 | 6 |
| Bolivia          | 1 | 2 | 3 | 4 | 5 | 6 |
| Brazil           | 1 | 2 | 3 | 4 | 5 | 6 |
| Chile            | 1 | 2 | 3 | 4 | 5 | 6 |
| Colombia         | 1 | 2 | 3 | 4 | 5 | 6 |
| Ecuador          | 1 | 2 | 3 | 4 | 5 | 6 |
| Mexico           | 1 | 2 | 3 | 4 | 5 | 6 |
| Peru             | 1 | 2 | 3 | 4 | 5 | 6 |
| Venezuela        | 1 | 2 | 3 | 4 | 5 | 6 |
| OTHER COUNTRIES  |   |   |   |   |   |   |
| Australia        | 1 | 2 | 3 | 4 | 5 | 6 |
| China            | 1 | 2 | 3 | 4 | 5 | 6 |
| Ghana            | 1 | 2 | 3 | 4 | 5 | 6 |
| India            | 1 | 2 | 3 | 4 | 5 | 6 |
| Indonesia        | 1 | 2 | 3 | 4 | 5 | 6 |
| Kazakhstan       | 1 | 2 | 3 | 4 | 5 | 6 |
| New Zealand      | 1 | 2 | 3 | 4 | 5 | 6 |
| Papua New Guinea | 1 | 2 | 3 | 4 | 5 | 6 |
| Philippines      | 1 | 2 | 3 | 4 | 5 | 6 |
| Russia           | 1 | 2 | 3 | 4 | 5 | 6 |
| South Africa     | 1 | 2 | 3 | 4 | 5 | 6 |
| Zimbabwe         | 1 | 2 | 3 | 4 | 5 | 6 |

*\*Repeated for all other factors.*

### C. INVESTMENT CLIMATE

1. How would you weight the importance of mineral potential versus policy factors when considering a new exploration project (assuming some basic mineral potential exists)?

Mineral \_\_\_\_\_ %      Policy \_\_\_\_\_ %      (Total 100%)

2. What country or jurisdiction do you think has the most favourable policies towards mining?

\_\_\_\_\_

Why? \_\_\_\_\_

3. What country or jurisdiction do you think has the least favourable policies towards mining?

\_\_\_\_\_

Why? \_\_\_\_\_

4. If there could be one policy change in this jurisdiction, what should it be?

\_\_\_\_\_

5. If you have an example of either a regulatory "horror story" related to operating in a particular jurisdiction or an example of what you would consider an exemplary policy climate, please describe in the space below. Please attach another sheet if you need more room.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### **D. BACKGROUND INFORMATION**

1. Are you a Junior or Senior mining company?

Junior \_\_\_\_\_ Senior \_\_\_\_\_

2. What is your position with the company? \_\_\_\_\_

3. What commodity is currently assigned the greatest percentage of your exploration budget?

\_\_\_\_\_

4. What jurisdictions, if any, would you like to see added to the survey next year?

\_\_\_\_\_

\_\_\_\_\_

5. What was the value of your 2001 annual exploration expenditures\* (please specify \$US or \$Canadian) within:

|                      |                      |                    |       |
|----------------------|----------------------|--------------------|-------|
| <b>LATIN AMERICA</b> | <b>NORTH AMERICA</b> | Kazakhstan         | _____ |
| Argentina            | Canada               | New Zealand        | _____ |
| Bolivia              | USA                  | Papua New Guinea   | _____ |
| Brazil               | <b>WORLD</b>         | Philippines        | _____ |
| Chile                | Australia            | Russia             | _____ |
| Colombia             | China                | Ghana              | _____ |
| Mexico               | Ghana                | South Africa       | _____ |
| Peru                 | India                | Zimbabwe           | _____ |
| Venezuela            | Indonesia            | Other (not listed) | _____ |

*\*Please note that individual surveys are strictly confidential.*

The information from this question is used to determine the total exploration budgets of all of the companies participating in the survey. If you are uncomfortable giving a specific amount, please give a range.

Thank you for participating in *The Fraser Institute's Annual Survey of Mining Companies*. To ensure that your opinions are included with the results, and to be entered into the thank you draw for Cdn\$1,000, please return your questionnaire with the response card or your business card promptly.

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thank the PDAC for their support and encouragement.

MAR 11 2003

The Honorable Bruce Weyhrauch

March 10, 2003

Alaska House of Representatives

Alaska State Capitol

Juneau, Alaska 99801-1182

Dear Representative Weyhrauch

Our fish and wildlife resources are critical to sport, commercial and subsistence users and supports many businesses based on tourism. Visitors to Alaska arrive with the perception that there will be abundant opportunities to fish and view wildlife. The protection of habitat that supports healthy populations of fish and wildlife is necessary. The Alaska Department of Fish and Game has effectively protected fish and wildlife habitat such as streams that are known salmon spawning and rearing areas. Salmon returns directly affect hundreds of species of wildlife.

In the past people have been confident that the Department of Fish and Game whose mission is to protect fish and wildlife resources would provide the necessary input that would maintain the check and balances during permitting disputes with other agencies and businesses whose mission is resource development. The Governor's executive order that transfers permitting authority and biologists from the Department of Fish and Game to the Department of Natural Resources cripples the effectiveness of the permitting staff by eliminating any Fish and Game input into permitting decisions. All Fish and Game divisions have provided valuable research and input on fish and wildlife issues in the past. This transfer will be costly both in expertise lost from the reduced number of biologists and the loss of shared research. Some sources of funding for the Habitat Division will also be lost because of this move resulting in fewer site inspections and less enforcement.

There is an efficient way of reviewing permits in place within Fish and Game now. An average of 2000 permits are reviewed per year with an average turnaround time of 14-17 days. Only 1% of the permit applications per year are refused with good reasons.

Restoring habitat after it has been destroyed is far more costly and requires much more time than protecting habitat. The move described in the Governor's executive order will result in damaged or lost habitat over the long term.

Please do not sit still on this important issue. I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan. Please vote to disapprove this executive order.

Thank you for your time.

Sincerely,

  
Lisa A. Hoferkamp

MAR 14 2003

I strongly oppose Executive Order 107. As a cartographer and GIS specialist at the Department of Fish and Game for the last 20 years I have seen the dedication and effectiveness of Habitat biologists and I know the value of the coordination and shared information that exists between Habitat Division and the Divisions of Sportfish, Wildlife Conservation, Subsistence and Commercial Fisheries. Governor Murkowski gave "streamlining" as the reason for issuing Executive Order 107 but records show that there is an efficient system for processing permits now at the Department of Fish and Game. ADF&G Habitat biologists handle an average of 2000 permits a year with a turnaround time of about 14 days. Contrary to what I have heard in arguments supporting this executive order there are no "routine" permits. Each permit is unique in its location and associated problems. Over the years these biologists have put in an enormous amount of unpaid time to do their work. They are overworked now. Reducing the permitting staff by 30% will reduce the effectiveness and efficiency of the biologists. Moving permitting authority to ADNR will sever the coordination with other ADF&G divisions that have valuable input in making sound decisions for the protection of fish and wildlife. If this move happens there will be less funding and fewer staff for the site inspections that are important to the permit review process.

Fish and Game's primary mission is the protection of fish and wildlife resources and habitat. ADNR's commitment to fish and wildlife resource protection is secondary to their primary mission of resource development. The language of the Anadromous Fish Act gives wide latitude in the interpretation what is considered important habitat for spawning, rearing and migration of anadromous fish. I map the areas that are important to anadromous fish from data collected in the field by habitat biologists and I find it disturbing that the Commissioner at the agency whose primary mandate is resource development will be deciding what constitutes important fish habitat. If most of the final decisions on disputed habitat issues are made by the Deputy Commissioner and the Commissioner at ADNR I would suspect that these decisions will be weighted toward resource development at the cost of habitat. This executive order removes the checks and balances necessary to protect our fish and wildlife resources that have been in place since statehood.

A letter I received from my state Senator contains the statement that if "critical habitat is adversely affected it is well within the legislature's power to return Habitat to Fish and Game through state statute." I hope that most legislators have researched this issue more thoroughly and do not consider this a wise plan of action. It would be more costly to restore damaged habitat than to protect it and this restoration will take place over a long span of time. The effects to the habitat resulting from this loss of protection may not be obvious for years but by that time it may be too late. With the loss of habitat our wild salmon runs may be greatly diminished like some of those in Oregon and this will have effects on hundreds of species of wildlife. You cannot simply return Habitat Division permitting to Fish and Game after this "experiment" fails. By that time you would have lost valuable people through layoff, the years of expertise they brought to their jobs and the training they would have given to new staff.

I have been living in Alaska for over twenty years and have enjoyed fishing and wildlife viewing through the years. Our fish and wildlife resources attract thousands of tourists to this state annually. These resources are also important to sport and commercial fishermen and subsistence users. We need effective protection of habitat to support healthy populations of fish and wildlife. This executive order weakens this protection. The effects of your decision on the quality of life for Alaskans will exist long after your

term in office. Please support the process of bringing the resolution to overturn Executive Order 107 out of committees to a joint session of the house and senate for discussion and a vote. **Please vote to disapprove Executive Order 107.**

I am representing myself in this statement.

*Francis Inoue*

*Francis Inoue  
6601 Weimer Dr. #F  
Anchorage, Alaska 99502*



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE STATE AFFAIRS  
committee name  
committee on EO 107, dated 3-11-03  
bill/subject

I DO NOT SUPPORT EO 107.

THIS DOES NOT COME FROM THE PUBLIC  
IT DOES NOT COME FROM THE AGENCIES.  
IT DOES NOT COME FROM THE LEGISLATURE.

IT IS AN EXECUTIVE ORDER AND THIS EXECUTIVE IS NO  
FRIEND OF THE ENVIRONMENT. I AM VERY CONCERNED THAT  
THIS SUBSTANTIAL CHANGE WILL BE HARMFUL TO THE CHECKS  
AND BALANCES IN PLACE. IT WILL BE HARMFUL TO ALASKA.  
HERE IN CORDOVA WE HAVE A FINISHED HYDROELECTRIC PROJECT  
THAT WITHOUT FISH + GAME OVERSIGHT IT WOULD NOT BE THE  
FACILITY THAT EVERYONE IS PROUD OF TODAY!

I AM CONCERNED THAT OIL EXPLORATION BEGINNING ON THE  
EAST SIDE OF THE COPPER RIVER DELTA, HOME TO ALASKA'S  
PREMIER WILD SALMON, WILL NOT HAVE THE NEEDED  
OVERSIGHT WITH THIS CHANGE. THANK YOU.

Signed: DPJ DAVID P. JANKA  
Testifier

OWNER/OPERATOR ANKLET CHARTER SERVICES

Representing (Optional)  
PO BOX 1231 CORDOVA AK 99574

Address  
907-424-3428

Phone No.

faxed 3-11-03



# Kachemak Bay Conservation Society

3734 Ben Walters Lane, Suite 202  
Homer, AK 99603  
Phone: (907)235-2062 • Fax: (907)235-4069 • [kbcbs@xvz.net](mailto:kbcbs@xvz.net)

March 10, 2003  
*House State Affairs*  
Senate Resources Committee  
Alaska State Senate  
Juneau, AK

MAR 17 2003

Dear Committee Members:

The Kachemak Bay Conservation Society is a membership organization whose mission is to protect the environment of the Kachemak Bay region and encourage sustainable use and stewardship of resources through advocacy, education/information, and collaboration.

KBCS urges the Senate Resource Committee (House State Affairs on Tuesday) to recommend overriding the Governor's E.O. 107 and keep the Habitat Division within the Department of Fish and Game. Protecting our fish and wildlife is a bi-partisan issue. As the habitat of fish and wildlife goes, so go those resources. This is well evidenced in the Lower 48 where the salmon have been greatly reduced by habitat modifications, to the point of Endangered Species status for some populations. Impacts to salmon habitat, through development, such as dams, culverts, logging, mining, application of pesticides, oil and gas development, subdivisions, road building and more, if not given careful oversight through permitting will eventually deplete our fisheries and other wildlife. Alaska's economic development needs the careful oversight of an independent "watchdog" that will protect the public interest by protecting its resources.

Placing habitat permitting within the Department of Natural Resources makes protection of our fish and wildlife secondary to DNR's mission to conserve and develop state land. ADF&G currently has habitat permitting authority over projects on various types of land ownerships, including private, borough and federal lands. DNR has a very different mandate than ADF&G, a mandate that will certainly change a system that currently ensures a balanced development of our resources. KBCS is further concerned that with DNR's development mandate, the Title 16 requirements regarding fish passage will decrease protection of our fisheries. A good example of DNR's less than adequate protection of fishery streams occurred in 1992 when the Division of Oil and Gas, under DNR, proposed a reduction or elimination of some production rig setbacks from water bodies to protect salmon streams despite protests from ADF&G.

KBCS also has other concerns about the effects of E.O. 107:

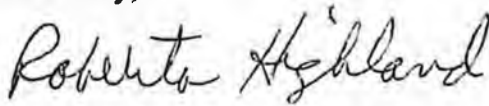
- The State will lose its system of checks and balances in the oversight of fish and wildlife.

- DNR's primary mission to develop lands will take precedence over ADF&G's mission to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska.
- There will be an essential disconnect between the Habitat Division and the rest of the agency that does the long-term scientific research on the species that Habitat seeks to protect. This physical separation will make collaboration and sharing of this essential research more difficult, time-consuming and expensive.
- Reducing the permitting oversight that will definitely occur with the transfer to DNR will cost us in the long run through incremental degradation of our resources, a deterioration that will occur so slowly that its effects will be noted only when it is too late to prevent them.
- KBCS has a special concern that there will not be adequate permitting or enforcement of the management plans for Kachemak Bay and Fox River Flats or the Anchor/River Fritz Creek Critical Habitat areas.
- Adequate oversight will be lost by significant reduction of employees. The permitting section is presently understaffed and will become more so if the Governor's request to eliminate 50 more jobs is implemented. How will permitting, with the necessary site inspections and research, be implemented with these additional job losses?

In 1959 the present system of checks and balances was established by vesting permitting authority with the Department of Fish and Game. The Governor's E.O. 107 takes away this important system in the name of "streamlining" the permitting process. The facts do not show any real inefficiency in the present system with 2000 permits and site visits handled yearly with an average turn-around of 14-17 days and not even 1% denied. There are no clear and convincing reasons to dismantle a permitting system that has worked well for more than 40 years.

Please overturn this Executive Order in the interests of the long-term health and productivity of our fisheries, wildlife and its habitat.

Sincerely,



Roberta Highland, President

**Subject: EO 106 and 107**

**Date: Fri, 07 Mar 2003 11:41:12 -0900**

**From: Bear Creek Outfitters <flyfish@flyfishsoutheast.com>**

**Reply-To: info@flyfishsoutheast.com**

**To: Representative\_Bruce\_Weyhrauch@legis.state.ak.us**

**MAR 11 2003**

Dear Representative Weyhrauch:

I'd like to register my opposition to EO 106 and 107 and urge you to insure that the present habitat permitting systems intact. I own and operate a fly fishing guide service and know the value of healthy wild fish stocks to my both my operation and other businesses that benefit from the presence of my clients (hotels, restaraunts, air services, etc.).

The ADF&G has done a great job of managing our fish stocks, and I believe the record will show they have done so to the detriment of only a few, if any, non-fishing business interests. I believe it is the very "wildness" of our stocks which allow both Alaska's commercial and sport fish industries to continue to compete for world market-share. Detracting from the viability of those stocks with this proposed consolidation would be short-sighted at best.

Please vote against EO 106 and 107.

Sincerely,  
Mark Kaelke

---

Bear Creek Outfitters  
Mark & Michelle Kaelke

9723 Trappers Lane  
Juneau, AK 99801

Email: info@flyfishsoutheast.com  
Web: www.flyfishsoutheast.com

(907) 789-3914 phone/fax

---

February 21, 2003

MAR 14 2003

Editor  
Anchorage Daily News

Dear Sir:

The "busy" season for the Alaska Department of Fish and Game, Habitat & Restoration Division (H&R) is beginning. The general public is calling to start the review process for docks and other construction permits for early spring and summer. The calls are varied and many. You can bet guides for fish and wildlife, lodges, the tourism industry and others who make their living from the blessings of our state's natural beauty and abundant, well-managed resources will also soon increase planning and activity to apply for permits, hire staff, market their services and generally get ready for what they hope will be a lucrative season. The habitat biologists and support staff in 3 offices (85 people total) cover the entire state of Alaska for questions, and permits on everything from beaver dams and docks to recreational mining/dredging and special area (legislatively-designated refuges, critical habitat areas, and sanctuaries) permits.

The executive order (EO107) signed by Governor Murkowski, transferring Title 16 permitting authority currently residing with the Alaska Department of Fish and Game, Habitat and Restoration Division, to the Alaska Department of Natural Resources takes effect April 15, 2003. Unless this EO is brought out of committee onto the legislative floor for a vote before April 11, **it will become law.**

When our state constitution was crafted, those founders thought it wise to separate the responsibility of watch care over our resources, particularly fish and wildlife, from the development and use of other resources such as land and water use, mining and forestry. Transferring the responsibility for even part of fish and game underneath the authority of those who are development-minded is a huge conflict of interest. The people of the State of Alaska need to decide whether they really believe that fish and wildlife habitat will continue to be well cared for – protection and public access carefully balanced – by those habitat biologists with years of education, training, and the experience to do it correctly or whether the dissolution/fragmentation of the habitat and restoration division and the rumored dissolution of the "brown shirts" arm of the State Troopers, Fish and Wildlife Protection, actually means that future protection, enhancement, and care of Alaska's fish and wildlife will take a back seat to development and greed for the first time since Alaska has achieved statehood.

Sincerely,

  
Cathy J. Kane

(P.O. Box 221345  
Anchorage, AK 99522-1345  
PH: wk/267-2112 or hm/336-9011)

(NOTE: THE OPINION EXPRESSED HERE IS MY OWN AS A PRIVATE CITIZEN OF THE STATE OF ALASKA .)

MAR 17 2003

# Wilderness Inspirations™

*Featuring the images of  
Leo and Dorothy Keeler*



P.O. Box 190647  
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<http://www.akwildlife.com>

March 10, 2003

House State Affair Committee Public Hearing  
Testimony Opposing Executive Order 107

My name is Dorothy Keeler. I have lived in Anchorage since 1976. As a professional wildlife photographer, I vigorously oppose Executive Order 107.

Governor Murkowski is trying to give the appearance of providing a sound financial plan to balance the budget. He is desperate... his campaign for Governor promised income of up to \$300,000,000.00 a year from the McCovey oil well, and that well was plugged and abandoned in February. He promised income from resource development would close the fiscal gap and is now willing to sacrifice the long term health of our fish and wildlife so he can look better during his term as governor.

Moving the habitat permitting authority from Fish & Game to the Dept. of Natural Resources is inviting the fox to guard the henhouse. I am appalled, yet not surprised, by the governor's arrogance in continuing to promote the idea when all five of the last Fish and Game Commissioners, who served under three governors, opposed the idea, citing a basic conflict of interest as the underlying reason.

Sure, his plan will save money this year. However, his plan is like using DDT to increase crop yield... both are guaranteed to work for the short term, but the long-term consequences, both planned and unexpected, will not be worth the cost. When a system of checks and balances is eliminated to save money, the State of Alaska will suffer long after Murkowski is no longer governor. Responsible members of the Legislature must not allow this to happen.

We must not allow his desperation and arrogance to forever ruin the state we love. I implore you... vote to oppose Executive Order 107.

Thank you for the opportunity to express my views.

Sincerely,

Dorothy Keeler

A handwritten signature in cursive script that reads "Dorothy Keeler". The signature is written in dark ink and is positioned below the printed name.

MAR 17 2003

# Wilderness Inspirations™

*Featuring the images of  
Leo and Dorothy Keeler*



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<http://www.akwildlife.com>

March 10, 2003

House State Affair Committee Public Hearing  
Testimony Opposing Executive Order 107

I am writing to oppose passage of Governor Murkowski's Executive Order 107 directing that the Habitat Division of Fish and Game be reduced in size and moved into the Department of Natural Resources. I have been in Alaska for over 20 years and, through my federal job dealing with lands, have had numerous opportunities to work with both the Habitat Division of ADF&G and DNR. I have always found DNR extremely difficult to work with and never responsive to problems. The long history of DNR's budget being reduced has only made that problem worse. Recently I have been told if I wanted DNR to act on my request for road access, that I would need to provide the funding to hire someone to do their paperwork.

With their attitude that those that pay get service, only large companies will gain the attention of DNR's staff, and thus the permits they need. This process will prevent diversification of our economy through developing small businesses.

The logging of Native lands throughout Alaska is a prime example of poor environmental oversight by DNR staff. The DNR Forester from Glenallen was responsible for assuring that Eyak Corporations logging near Cordova was done properly. He was able to visit the site twice a year for a few days, not nearly enough time to cover the ground and assure fish streams and wildlife habitat were protected. The results showed the lack of oversight.

My working with ADF&G, though not always pleasant, has always left me with the feeling that they were protecting the resource for future generations. The staff in Habitat often present new ideas to problems I have encountered and are willing to discuss them.

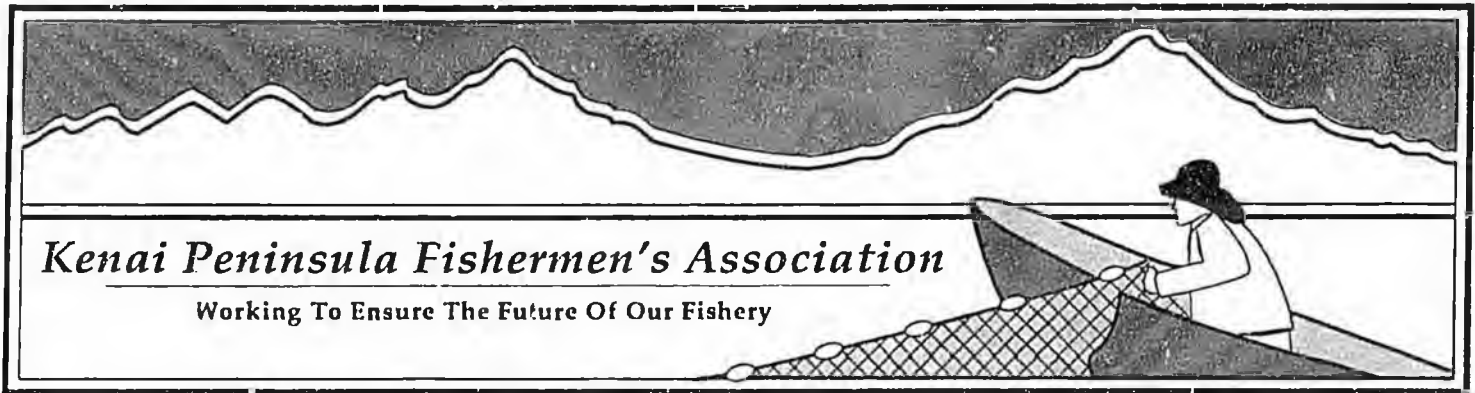
I ask all legislators to require they be presented a thorough analysis of the benefits to be gained before allowing Governor Murkowski to implement this plan. To date, no information has been presented to support moving Habitat into DNR. All that is presented are political statements of support, statements with no facts to support such a position.

The fact that five Fish and Game Commissioners stand against this action should raise many red flags warning of danger. I look at the fact that DNR and DOT Commissioners stand to gain by supporting moving Habitat. I also see Alaska's resources being raped and its people being ran over by big business interests.

Time is not of the essence in this situation and there is no reason to rush into a new management system. Please stop the pending move of Habitat into DNR.

Sincerely,

Leo Keeler



43961 Kalifornsky Beach Road • Suite E • Soldotna, Alaska • 99669  
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

MAR 17 2003

March 11, 2003

Mr. Chair, Members of the House State Affairs Committee,

My name is Paul A. Shadura II, and I reside on the Kenai Peninsula. I am the president of the Kenai Peninsula Fishermen's Association.

I would like to incorporate my remarks from the Senate Resource Committee in this testimony and in addition the survey analysis from ADF&G Sportsfish Division.

Tonight I would like to comment on the document "Reorganization Proposal In Accordance With Executive Order No 107". Under "Functions Moving to Sport Fish" we find Various research and restoration projects... The sport fish division has been extremely controversial in their habitat assessments within the Kenai River watershed. It has been noted by area residents, sportfishers, commercial fishermen and others that the direction the division has taken on use issues on the Kenai River suppresses evaluation caused by boat wakes and other high traffic conditions that destroy habitat for juvenile King Salmon and other species.

Our legislators in our district are well aware of the departments conflict of interests that are apparent in Board of Fish decisions on *In River Guide* activity on the Kenai River.

In "Rates of Participation in Alaska's Recreational Fisheries", department personnel conclude: ..it appears the division is not achieving its goal of increasing sport fishing participation rates. ... the trends in this report pose a serious threat to the Fish and Game Fund. This fund provides direct and matching money for Alaska's sport fisheries. ... we must look to stabilize the contributions to this fund, especially from the sale of resident licenses given potential volatility in non-resident license sales.

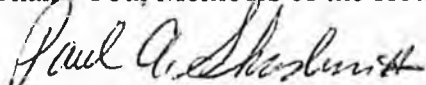
It is apparent that the division of sportfish has a conflict in protecting a habitat that has a potential income stream that funds the department. This is an inherent flaw within the division and could be perceived by the public as conflict of interest. It is the one reason why habitat assessments should be directed by a panel of impartial reviewers. The

division of Habitat has been associated with a non-biased approach to habitat degradation that favors neither commercial or sport divisions or their users.

We do not support the concept of "*the fox watching the hen house*".

Our last suggestion to strengthen the our Governor's EO is that we believe that it is possible to use Article III Section 25 to create a commission within DNR that will incorporate a review process that will allow expertise and *balance* to the regulatory permit process. The commission would have to go through the confirmation and the administration's appointee review process thereby settling issues the public may have with protection and utilization of our resources.

Thank You, Members of the House State Affairs Committee.



Paul A. Shadura II

Management Update

**Rates of Participation in Alaska's Recreational Fisheries  
1993-1998**

MAR 17 2003

*Doug Vincent-Lang  
and  
Bob Walker*

July 2000

Alaska Department of Fish and Game  
Division of Sport Fish  
333 Raspberry Road  
Anchorage, Alaska 99518

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## Introduction

The mission of the Division of Sport Fish is to manage, protect, maintain, and extend Alaska's recreational fishery resources in the interest of the economy, consistent with the sustained yield principle and subject to allocations through the public regulatory process. Under this mission, one of the primary goals of the Division is to provide a diverse mix of recreational fishing opportunities that are of interest to Alaskans and visitors of our state.

Over the past several years, managers of Alaska's sport fisheries have increasingly been hearing that some anglers, both residents and visitors to the state, are dissatisfied with the sport fishing opportunities available to them. Recent data from the statewide harvest survey appear to substantiate this, indicating lower rates of participation in sport fishing throughout Alaska (Howe et. al. 1999). The causes and reasons for the declines and dissatisfaction are not known, but have been the focus of several newspaper articles and editorials.

The decreasing rates of participation and the causes behind the declines are of concern to managers of Alaska's recreational fisheries. To gain further insight into this issue we analyzed information available to the Division from the sale of sport fishing licenses to resident and non-residents through the years 1993 to 1998. The number of licenses sold each year is one index that can be used to track participation rates, and indirectly angler satisfaction with Alaska's sport fishing opportunities. License sales have the added benefit of also providing estimates of revenues to the Fish and Game Fund, a major funding source of the Division of Sport Fish. The historic license database can also be used to examine demographic profiles of license purchasers (e.g., their residency, sex, and age) that can be useful in evaluating trends in sport fishing participation.

This report summarizes information pertaining to license sales and participation rates by residents and non-residents in Alaska's sport fisheries from 1993 through 1999.

## Methods

At the time of license purchase an angler is required to provide their name, address, sex, citizenship, and birth date. These data are annually entered in a computer database. We combined the license file databases for the years 1993 through 1999 and culled the resultant database to track unique individuals purchasing a license. Matching was based on driver's license numbers, social security numbers, dates of birth, addresses, and names. We then used this database to evaluate trends in resident and non-resident angler purchasing licenses over this period. Trends evaluated included the number of resident and non-resident anglers (as indexed by the number of licenses sold), the residency of the anglers, the age and sex of the anglers, and the revenues generated from the license sales.

## Findings

Between 1993 and 1999 the number of people purchasing a sport fishing license increased from just over 370,000 to about 402,000 (Table 1, Figure 1). During 1993 a majority of the people purchasing a sport fishing license were residents (Table 1, Figure 2). However, beginning in 1994 and continuing through 1999, the number of non-residents purchasing a sport fishing license has outnumbered residents purchasing a license. Also noteworthy is the trend that the number of non-residents purchasing a sport fishing license has been generally increasing while the number of residents purchasing sport fishing license has been decreasing (Table 1, Figure 2).

Because of the differing trends between residents and non-residents, results for each group will be reported on separately below.

### *Resident Anglers<sup>1</sup>*

Between 1993 and 1999 the number of resident Alaskans purchasing a sport fishing license has decreased annually (Table 1, Figure 3). In 1993 nearly 191 thousand residents purchased a sport fishing license but by 1999 this number had dropped to just over 176 thousand, a drop of 8%. This occurred despite an increase in population of 25,000 over this period (Williams 1998, 2000). As such, the percent of the population purchasing a sport fishing license decreased over this period from about 33% in 1993 to just over 28% in 1999 (Figure 4).

The number of resident Alaskans purchasing a license decreased in all areas of the state (Figure 5). In southcentral Alaska the number of resident Alaskans purchasing a license decreased by over 10,000 (an 8% decline) between 1993 and 1999. In southeast Alaska decreased by about 3,000 (an 11% decline) and in interior Alaska the number decreased by about 2,000 (a 3% decline).

Males purchasing a sport fishing license outnumber females by about 2:1 (Figure 6). However, both sexes showed decreased purchases between 1993 and 1999 in about equal proportions (Figure 6).

The number of resident Alaskans between the ages of 16-29 and between 30-39 that bought fishing licenses decreased between 1993 and 1999 (Figure 7). In contrast, the number of resident Alaskans between the ages of 40-49 and between 50-60 increased between 1993 and 1999 (Figure 7). Residents under the age of 16 and over 60 do not need to purchase a license.

---

<sup>1</sup> Residents under the age of 16 and over 59 do not need to purchase a resident sport fishing license. Therefore, their participation is not reflected in this analysis.

About 45% of the resident Alaskans who purchased a sport fishing license between 1993 and 1999 bought a license only one of those years (Figure 8). In contrast only 8% purchased a license in all 7 of the years (Figure 8).

As could be predicted based on the above information, revenues to the Fish and Game Fund from the sales of resident sport fishing licenses dropped by about 250,000 dollars between 1993 and 1999 (Figure 9). If revenues had remained at the 1993 levels, this represents a total loss of about \$820,000 of revenue to the Fish and Game Fund over this period.

### *Non-Resident Anglers*

Between 1993 and 1999 the number of non-resident purchasing a sport fishing license increased annually (Table 1, Figure 10). In 1993 over 170,000 non-residents purchased a sport fishing license. By 1999 this number had increased to just less than 230,000, an increase of 33%.

Much of the increase in sales is likely attributable to an increase in tourism to Alaska. The number of tourists visiting Alaska between 1993 and 1999 increased annually, from about 850,000 in 1993 to about 1.2 million in 1999 (Table 2, Figure 11). However, the rate of increase has begun to decrease in recent years, indicating that the number of tourists visiting Alaska may be leveling off (Table 2).

The percent of tourists visiting Alaska that purchased a sport fishing license between 1993 and 1995 increased (Figure 12). However, since 1996 the percent purchasing a license has decreased each year, with just less than 19% purchasing a license in 1999.

Most of the increase in license sales came from non-residents from the other 49 U.S. states. This group made up 93-95% of non-resident anglers. The number of these non-resident visitors who purchased a license increased from about 163,000 in 1993 to over 213,000 in 1999 (Figure 13). Similarly, but to a lesser extent, the sales of sport fishing licenses to non-residents of foreign countries also increased between 1993 and 1999 (Figure 13).

Non-resident males purchasing a sport fishing license outnumber non-resident females by about 4:1 (Figure 14). Both sexes showed increased purchases between 1993 and 1999; however, the number of licenses sold to non-resident females increased faster than did the sales to males (Figure 14).

The number of non-residents purchasing a sport fishing license increased across all age categories except between the ages of 30-39 between 1993 and 1999 (Figure 15). Most non-residents who purchased a sport fishing license were older than 40 years of age (Figure 15).

About 85% of the non-residents who purchased a sport fishing license between 1993 and 1999 bought a license only one of those years (Figure 16).

Revenues to the Fish and Game Fund from the sales of sport fishing licenses to non-residents increased by about \$1.9 million between 1993 and 1999 (Figure 17). Although much of this increase can be attributed to increased sales, a change in the type and cost structure of the licenses also contributed to the increased revenues. The proportion of the total revenues derived from non-residents from license sales increased from 55% in 1993 to about 70% in 1999.

### **Discussion and Recommendations**

One of the primary goals of the Division of Sport Fish is to provide sport fishing opportunity that is of interest to Alaskans and visitors of our state. Although we have this goal identified we have rarely examined our success towards achieving it. This report is a first step at examining participation rates by resident and non-resident anglers in Alaska's sport fisheries.

Much to our concern, resident participation rates are dropping. The declines do not appear to be geographically based given that resident license sales are declining throughout all areas of Alaska. Also, the declines do not appear to be gender based as licenses sales are decreasing for both males and females. Finally, we saw that license sales were decreasing for residents younger than the age of 45. In contrast, licenses sales were increasing for people older than 45.

Also surprising was the fact that few residents purchased a sport fishing license more than twice over a six year period. Only one-half of the residents purchasing a license in one year purchased another license within the next five years. This suggested to us that most Alaskans are not repeat participants in sport fishing or that many opportunistically purchase their licenses.

The trends in resident participation rates noted in this report are troubling. The reasons behind the declines in resident participation rates are unknown and cannot be identified from the data used to identify the trends. However, it can be speculated that sport fishing is not competing favorably with the demands of school, career, and family or other leisure opportunities. It may also be that some residents are not happy with the range of sport fishing opportunities that are available to them.

In contrast, non-resident participation rates have been increasing. This has likely been a result of increasing tourism to Alaska and marketing of sport fishing to these tourists. However, there are signs suggesting that the rate of increase in non-resident participation is beginning to level off as the number of tourists visiting Alaska is beginning to level off. Also, the percent of tourists purchasing a license is beginning to drop, suggesting that tourists visiting Alaska are selecting to not participate in sport fishing

opportunities available to them. This suggests that non-resident participation rates may be beginning to stabilize. If tourism begins to decline due to a downturn in the national economy or tourists selecting another location to vacation in, non-resident participation may actually begin to decline. Factors affecting the perceived availability of sport fishing opportunities, especially for king salmon and halibut, will likely influence non-resident participation rates in the future.

In combination, it appears the Division is not achieving its goal of increasing sport fishing participation rates. In response we are beginning to explore the changing participation trends using a series of surveys aimed at assessing angler satisfaction with their angling opportunities. The Division is currently designing a survey to explore, in more detail, the reasons behind the trends in resident participation rates. Based on the findings of these studies we may wish to change the mix of opportunities available to the angling public or begin to promote the opportunities that are currently available.

Last, the trends noted in these report pose a serious threat to the Fish and Game Fund. This fund provides direct and matching money for management of Alaska's sport fisheries. If we are to continue to our past successes in stock assessment and management we must look to stabilize the contributions to this fund, especially from the sale of resident licenses given potential volatility in non-resident license sales. We must also consider, given the susceptibility of license revenue contributions to this fund, looking at diversifying our income stream.

### **Literature Cited**

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- Williams, G. 1998. Population projections. Alaska Economic Trends, Volume 18, Number 9. pp 3-22.
- Williams, G. 2000. Alaska population overview: 1999 estimates. Alaska Department of Labor and Workforce Development. Juneau, Alaska.

Table 1. Number of residents and non-residents who purchased an Alaskan sport fishing license, 1993-1999.

| Year | Residents | Non-residents | Both    |
|------|-----------|---------------|---------|
| 1993 | 190,748   | 171,345       | 362,093 |
| 1994 | 191,435   | 192,951       | 384,386 |
| 1995 | 184,191   | 205,172       | 389,363 |
| 1996 | 183,407   | 208,693       | 392,100 |
| 1997 | 180,831   | 218,440       | 399,271 |
| 1998 | 177,307   | 216,913       | 394,220 |
| 1999 | 176,167   | 228,398       | 404,565 |

Table 2. Number of tourists visiting Alaska, 1993-1999.

| Year | Number    | Percent change |
|------|-----------|----------------|
| 1993 | 846,200   | +8.2%          |
| 1994 | 931,400   | +10.1%         |
| 1995 | 967,100   | +3.8%          |
| 1996 | 1,064,300 | +10.1%         |
| 1997 | 1,120,600 | +5.3%          |
| 1998 | 1,163,700 | +3.9%          |
| 1999 | 1,199,000 | +3.0%          |

MAR 11 2003



## 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 262-5581  
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

MAR 14 2003

Statement of Dr. Eric Knudsen to  
State Affairs Committee on  
Executive Order 107 to Transfer Habitat Division from ADF&G to ADNR  
March 11, 2003

I am a professional fisheries scientist with over 20 years experience in management and research on Pacific salmon, steelhead, and other fish and wildlife. I have conducted studies both here in Alaska and the Pacific Northwest, much of which have focused on the effects of habitat alterations on the ecology and productivity of salmon and trout. I am a member of the American Fisheries Society and I am the current Past President of the Western Division AFS. A copy of a letter from WDAFS President Don MacDonald to Governor Murkowski on this issue is attached to my testimony for the hearing record. My testimony today represents only my own professional opinions.

I would like to make three primary, scientifically based points that, taken, together, argue for a joint resolution to reject Executive Order 107, which would transfer the permitting functions of the ADF&G Habitat Division to ADNR.

First, there is absolutely no scientific doubt that healthy stream and riparian habitats are fundamental to the amount of salmon, steelhead, and other related fish and wildlife produced in Alaskan watersheds. Both research and experience have shown that where habitats are degraded from upland and streamside effects, or where access to streams are blocked by road culverts or increased landslides and erosion, salmon populations have been diminished. The scientific record on this is extensive.

Second, a combination of solid science in Alaska and elsewhere, together with a long history of experience in the Pacific Northwest, clearly demonstrates that the gradual, incremental, cumulative effects of numerous seemingly minor habitat alterations can lead to the destruction of the habitat base that supports productive salmon populations and the fisheries that depend on those populations. Each development project may not alone have a serious impact but, when added together, the cumulative effects can be devastating.

Third, scientific research in the Pacific Northwest has generally led to the conclusion that it is much more difficult to repair stream and riparian habitats to their fully functional state than it is to simply protect the natural stream functions in the first place. Recent scientific literature on repairing damaged habitats has indicated that the repairs can be relatively ineffective when compared to naturally functioning stream ecosystems. Importantly, the argument that, if the relaxation of habitat protection results in damage, as it may under this transfer of responsibility, subsequent tightening of habitat protection will only prevent further damage. The problem is that habitat damage is insidious and irreversible: once the damage is done it is extremely difficult to repair.

Taken together, these rigorous, scientific conclusions have demonstrated that it is imperative to protect stream and riparian habitats. Experience in the Pacific Northwest is replete with examples of degraded habitats and lost salmon runs. While not all the losses are attributable to habitat effects, it is also clear that, when the effects of heavy fishing or

downturns in natural ocean conditions are relaxed, production will only bounce back if the habitat is intact. Again, this is supported by scientific evidence.

My comments are not intended to judge the merits of natural resource development that have the potential to injure fish habitats, except to recognize that these activities certainly have that potential. It is of utmost importance, however, if we all agree on the tremendous economic, social, and ecological value of our salmon fisheries, that the pursuit of non-fisheries natural resource development not diminish the "investment principal" of habitat infrastructure. Therefore, based on extensive empirical evidence from locales where habitat management was lax, I am concerned that any relaxation of habitat protection will result in the insidious degradation of habitat that is the essential foundation of Alaska's extremely valuable salmon fisheries.

It is impossible to judge how effectively habitat will be protected if the permitting functions are transferred from ADF&G to ADNR but, because the stated purpose is speed development, I can only believe that habitat protection will be less effective. The existing system of checks and balances has served our stream habitats, and the fisheries that benefit from them, very well. Only a few developments have actually been stopped – most were either approved or modified so that the development could proceed without harm to fisheries. Future difficult cases can certainly continue to be negotiable within ADF&G, without transferring the functions to ADNR. Because our salmon resources are so important, and because there is solid, scientific and experiential evidence demonstrating that healthy habitat is key to sustaining the salmon fisheries, I urge the Alaska State Legislature to reject EO 107 and retain habitat-permitting functions within ADF&G.

Eric Knudsen, Ph.D.  
907-345-5213

To: SRES  
ASTA  
Wilson

From: Kathryn Kyle  
2213 Sawmill Creek Rd.  
Sitka 99835  
747-3702

Subject: EO moving Habitat Div. to DNR

Please preserve the effectiveness of Habitat Division.  
Vote to keep it in the Department of Fish & Game.

Kathryn Kyle

March 11, 2003

I am strenuously opposed to HB158 which would eliminate the senior longevity program. I am nearly 80 years of age, born, raised, lived in Alaska all my life. Being on a fixed income, this \$250 a month enables me to remain in my home in Cordova. \$3000 a year may not seem like much to many of you but losing it could be what pushes me over the edge to sell my home and either move into Senior housing, if it is still available, or move to the Lower 48 and hope my son has room for me in his home.

The proposal to cut the Senior property tax exemption is also a serious problem for us Older citizens.

I realize that spending needs to be curtailed but hopefully there are other ways to do it. I would feel that a year round sales tax or an income tax would be a more feasible way to help cover State expenses.

Virginia A Lacy  
P O Box 58  
Cordova, Ak 99574

907.424-3613 email: val2@ctcak.net

Chairman Weyrauch and distinguished members:

Good Evening. My name is Matthew LaCroix. I work for the Alaska Department of Fish and Game, in the Habitat and Restoration Division. I am a permitter, and I was one of the 22 Division employees that received a layoff notice last Friday. I am here to ask the members of this committee to do everything within their power to sponsor and support a joint resolution rejecting Executive Order 107.

I am here to ask the members of this committee to honestly examine an issue that the acting Commissioner of Fish and Game believes to be irrelevant. That is whether or not the proposed transfer of Title 16 permitting authority out of Fish and Game will benefit or harm the state. This is a question that every Alaskan resident should be asking, and a question that I believe the legislature has an obligation to answer before the Executive Order is allowed to take effect.

We know that this transfer is not necessary. If the Governor has concerns about the professionalism of certain Division employees, these concerns could and should be addressed through personnel actions taken against individuals. He has the power to name his own commissioners, who set the tone for the Departments; and much of the permitting authority within Title 16 is exercised at the discretion of the Commissioner. No one can doubt that the Governor has found a staunch ally in Acting Commissioner Duffy, and that "unprofessional" biologists would be weeded out of the Habitat Division during his tenure.

This move is not necessary, nor will it be beneficial. It will not "streamline" the state's permitting process. Some members of the public and of the legislature have been waiting for more details on the reorganization before they took a position on the Executive Order. Well, some of these details are now available, and they all point to this transfer being a permitting and environmental train wreck.

In the business world, a company reduces its workforce only if it decreases production or if advances in technology allow fewer workers to produce the same or more. Apparently things work differently in Alaska, because the new Office of Habitat Management and Permitting at the DNR claims it will be able to process the same number of permits (approximately 2,000 per year) with 22 fewer employees than it currently takes to do the work. Not

only will these permitters somehow be able to issue permits much faster than we currently do now, but they will be able to do it with less administrative and no computer support.

The acting commissioner has stated that there will be at least two phases to the downsizing associated with the reorganization, so more cuts are anticipated. This would be funny if it were not so serious. Let me be very clear about what this reorganization is going to cost the state.

When you reduce permitting staff, you undermine the ability of remaining staff to issue meaningful permits, regardless of what Department they work for. Very few of the permits that I personally wrote last year were "off the shelf" as DNR Commissioner Tom Irwin would have you believe. Just like the Fish Habitat Permits issued to Fort Knox that he has said such positive things about, most of these permits were issued after hours of background research and consultation with applicants and staff from other departments and agencies. Often we need to conduct field visits or collect biological data before a permit can be issued.

Currently, we have the ability to work with applicants to modify projects so that they can be permitted. Due to staff cuts, the ability to provide applicants with this level of attention will disappear after the reorganization.

The amount of time that we can currently spend working with applicants is characterized by the Governor as stalling, but it means that few applications are ever denied. It also means that instead of superficially reviewing an application and either approving or denying it as proposed, we can look for alternatives that benefit both the applicant and the environment.

Take the Glenn-Parks Interchange work that the Governor has cited as one case where the Habitat Division stalled a legitimate project. Nothing could be further from the truth. Habitat Division staff worked with the contractor to modify that project in many significant ways that ended up saving them substantial amounts of money. The amount of highway that they were required to elevate on pilings was reduced, two retaining walls were eliminated because we agreed to an increase in the length of a major culvert, and the amount of temporary fill that was authorized for placement in wetlands was increased. All of these changes were made with our cooperation after the initial U.S. Army Corps of Engineers permit had been issued.

I live in the Valley, and I have been the primary Fish and Game contact on this project since work started last summer. I stop at the project site on my way to or from work, and have been there well into the evening, on weekends, and even during my vacation.

I have written the Fish Habitat Permits required for this project; and they have been issued in an average of five business days. Two of these were issued as Field Permits written on the spot. I am accessible to the applicant to help deal with the things that invariably come up on a project of this size. Do you need to get a permit amendment because you came up with a better way to do something? You can often get it in a matter of hours.

I issued a permit amendment to the Alaska Railroad a couple of weeks ago, driving out to where they were working at the Knik River and getting it to them the same day. We turn around emergency permits for DOT within hours. This is the type of accommodation of applicants that will disappear if this Executive Order is allowed to take effect.

I am not suggesting that no one has ever had to put a project on hold while they wait for their Fish Habitat Permit, but our issuance times are as good or better than any other regulatory agency. The current system could be made more efficient, but not through the actions proposed by the Governor.

Having the ability to get into the field also allows us to identify and address environmental problems before they become serious. This allows everyone involved to avoid enforcement and remediation efforts, which is the definition of a win-win situation.

Lastly, having biologists working in the field and at the job site allows them to develop and build on their expertise. The state, applicants, and the environment are all better served by permitters who have seen culverts or roads installed, and know what works and what doesn't based on first-hand knowledge. There is no way that anyone can be an effective permitter if they don't have the time or budget to get into the field.

In summary, this reorganization will lead to increased permit backlogs, more permit denials, less effective permits with less monitoring and compliance, and permitted projects that will have greater environmental impacts. This transfer of permitting authority places the state's valuable fish and wildlife

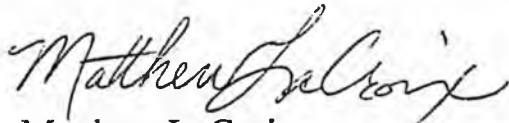
March 11, 2003

Page 4 of 4

resources at risk, and opens the state up to lawsuits while gaining us nothing in exchange.

The Governor has spoken about resources being managed using science, not politics, but it is the Governor himself who is playing politics with our state's fish and wildlife. I believe that an honest review of this Executive Order will show it to not only be fatally flawed, but possibly illegal. The members of this committee have an obligation to act in the best interest of their constituents and the state. In this case, that obligation requires nothing less than the rejection of this Executive Order.

Sincerely,

A handwritten signature in cursive script that reads "Matthew LaCroix".

Matthew LaCroix

**Aurah Landau**  
410 Calhoun #5  
Juneau, AK 99801  
907-586-6114 H

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March 12, 2003

To: Representatives Weyhrauch, Berkowitz, Holm, Dahlstrom, Lynn, Seaton, and Gruenberg  
From: Aurah Landau, Juneau resident

**Subject: Personal Testimony Submitted on March 11, 2003 on Executive Order 107**

Honorable Representatives:

At the March 11, 2003 State Affairs hearing I testified as a private citizen on Executive Order (EO) 107. During the course of my short testimony, I stated that, as I understand, the Executive Order could eliminate review over streams, riparian buffers, and important wildlife habitat on federal land. Since I am certainly not a regulatory expert and the regulatory structure is very complicated, I requested that the State Affairs Committee specifically investigate the effects of EO 107 on review of projects occurring on federal land.

As requested by Chairman Weyhrauch, I am putting my question in writing. For reference, I requested that this inquiry be made, partially because:

- EO 107 has no provision to pick up Alaska Coastal Management Plan (ACMP) review into DNR. ACMP is currently the only non-advisory, mandatory method through which the State reviews federal projects, such as timber sales, for impacts on fish and wildlife.
- Federal statutes require the Forest Service to comply with ACMP standards. Since project review happening outside of ACMP (such as through Fish and Wildlife Coordination Act or NEPA) is only advisory, there appears to be no State authority for review of federal projects, such as timber sales.
- DNR does not coordinate with the Forest Service on federal lands. The Forest Service has insisted that Title 16 does not apply on Forest Service lands. EO 107 does not outline how the State and Federal will delegate direct fish habitat permitting authority.
- Even if ACMP were moved over to DNR, full review of projects on federal land would take a back seat to fish habitat permitting authority.
- The Forest Practices Act, often cited as the method for protecting fish and wildlife in silvicultural projects, has minimal statutory requirements for projects on federal land. All wildlife standards on private lands are voluntary.
- Draft ACMP legislation, proposed last week by the Administration, would wipe out habitat standards and coastal district plans, both of which provide streamside protection. It would also eliminate review for anything but large federal projects. The proposed legislation would change individual permits into general permits, thereby eliminating site-specific review. Therefore, even if DNR did have equal consideration for fish habitat with other resource issues, the standards would fail to adequately protect streams, riparian buffers and important wildlife habitat. EO 107 does not assure that field reviews will continue at the same level as within the Habitat Division.

I stated that the vast majority of Southeast Alaska is in federal ownership and 80% of salmon caught in Southeast Alaska spawn and rear in the Tongass National Forest. Potential lack of oversight of timber sales on National Forest land could severely compromise habitat, and eventually long-term sustainability of the region's fisheries. Even if my understanding of the regulatory process, is incorrect, the value of fisheries on federal lands in Alaska is so high that the Legislature would be prudent to assure that EO would not compromise review, monitoring or enforcement of projects on federal land.

I cited two examples of how a significant long-term loss of fish and wildlife habitat could have international and national implications.

- The Pacific Salmon Treaty assumes sustainable Alaskan salmon runs. If our salmon habitat protection is compromised based on EO 107, than there could be grounds for other countries to attempt to renegotiate the treaty and international fisheries allocation. Few people in Alaska want this to happen, including me.
- Several years ago, the Southeast Alaska Conservation Council worked in Washington DC to argue against measures to cut Alaska's fish allocation when the Administration was considering fishing restrictions on Alaska fishermen in association with Threatened and Endangered Snake and Columbia River Chinook. They pointed to sound, sustainable fisheries management coupled with strong habitat protections as reasons why Alaskan fishermen should not be penalized for the negative effects of dams on the Snake and Columbia Rivers. When questioned about the health of Alaska's fish and wildlife, many people, including the Southeast Alaska Conservation Council, have repeatedly pointed to the Habitat Division's work as an important example of Alaska's wise management of its fisheries resources. Because of Alaska's prominent fish and game-dependant way of life and industries, we as Alaskans must continue to be able to demonstrate wise management of fish and wildlife habitat.

As requested by Representative Berkowitz, I have included the Southeast Alaska Conservation Council's letters to former Vice-President Al Gore and NOAA opposing cutting Alaskan salmon quotas in association with the Endangered Species Act (ESA). As an example of decisions to work to protect habitat instead of requesting ESA listing, I have included SEACC's letter to the US Fish and Wildlife Service about the Queen Charlotte Goshawk and Alexander Archipelago wolf. Additionally, I have included a letter and press release describing legal steps taken to stop inappropriate Lower-48 timber sale appeals, as an example of decisions to support wisely-planned timber sales.

Since I specifically stated that I was not testifying on behalf of Southeast Alaska Conservation Council, please forward questions about SEACC's positions and these documents to Buck Lindekugel at SEACC. He can be reached at (907) 586-6942.

Thank you for your thorough review of how EO 107 will affect fish and wildlife on federal land. If EO 107 will indeed remove authority for protecting fish and wildlife habitat on federal land, I urge you to vote to overturn the EO.



Aurah Landau

RE: EO 107

2/11/03 Statement

Robyn Lauster - Anchorage  
245-1634

(Bukowitz  
dist)

Bad idea - we need checks  
and balances - feels habitat  
and ~~it~~ needs the protection it is  
receiving under the present arrangement.

not under 1 umbrella

need professional to look at  
conservation strategies

Values wildlife - not against  
development - that is  
what we come to Alaska for.

MAR 11 2003

Dear Representatives,

It does not make any sense to transfer the Dept. of Fish & Game's Habitat Division's permitting authority to the Dept. of Natural Resources. The Habitat Division's permitting responsibility oversees projects that affect fish and wildlife habitat, while the Dept. of Natural Resources focuses on resource development. The two are not effective within one office, and the one cannot exist without the other. This is our system of check and balance that Murkowski wishes to eliminate.

We would lose the opportunity for Dept. of Fish and Game biologists to work with developers through a just and effective permitting process to ensure responsible and reasonable development. We would forfeit credible environmental review on proposed projects that effect us in potentially numerous ways. We would have limited field analysis and negligible reviews. We don't want that for any reason. As the old saying goes, "We all live down stream", what we mess up now will need to be repaired later at a greater cost by our kids. Our children all live down stream in the wake of this unreasonable, disrespectful, and reckless proposal of the governor.

This kind of legislative action devalues the integrity of our governing system. Is there n accountability? There is a reason why we have evolved to this point where we have this structure of checks and balances set into place. The procedure itself recognizes the importance of ensuring a balance, of exercising moderation, of investigating and evaluating potentially sensitive areas and projects (for the health and respect of the citizens and for the health and integrity of the environment we Alaskans treasure). This system of checks and balances respects the diversity of human values related. That is why it has worked so well in the past. That is why we have evolved to this point in this modern era where we currently are, and use it.

Are we to throw all of this away? Do these values mean nothing from one legislative session to the next? The people beg to differ.

Just the sheer fact that Murkowski even considers this preposterous proposal of his invention makes me seriously doubt the morality of his governing motives. He is trying to take us back into a more archaic time of "leadership", when the people had less choices and there was no system of checks and balances. The only difference is that we already have these rights and the guarantee of these structures, but Murkowski is trying to manipulate it all out from underneath us.

In a Democratic society there needs to be a system of checks and balances. To even consider eliminating or downsizing in any way the Dept. of Fish and Game's Habitat Division which is part of the system of checks and balances regarding "our" environment how it is designated and exploited, is morally wrong and risky.

This is an example of taking away American rights. Murkowski is not a dictator, though it is apparent through his attempts of "streamlining" his own interests which demonstrate his disregard for the diversity of Alaskan values involved, that he couldn't care less about any interests other than his own. That's the definition of a dictator. Don't let him do it! Somebody's got to put their foot down. Somebody has to be held accountable. Our governor, our legislature, our ruling body has got to be held accountable. This is blatant! in our Alaskan faces, wrong!

I strongly oppose moving the Habitat Division's permitting authority from the Alaska Dept. of Fish & Game to the Dept. of Natural Resources. If anything, the fish and wildlife habitat protection and oversight should be strengthened, not weakened or diminished. I ask you to vote in joint session to disapprove the executive order. Our elected officials must be held accountable to protect our fish and wildlife resources. You are the people's Representative.

Sincerely, Thomas Lee

1204 2nd St., Douglas, AK 99824

March 11, 2003

MAR 11 2003

Marina Lindsey  
3431 Greenwood Ave.  
Juneau, AK 99801

Juneau Legislators  
Alaska State Capital  
Juneau, AK 99801

Dear Senator Kim Elton, Representative Beth Kerttula and Representative Bruce Weyhrauch,

I am writing to ask you to vote against the proposed move of the habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources. As five past commissioners of Fish and Game, several fisheries and hunting interest groups, and even more concerned citizens have said in letters to Governor Murkowski and in Alaskan newspapers, moving the habitat authority from a science-based department to a department with a mandate to promote the state's development is a very dangerous prospect. We need to maintain the check and balance system on which our government is based. We cannot afford to risk the environmental destruction that is ensured by moving the authority to review and consult on development proposals to an agency with development interests. The Department of Fish and Game, Habitat Division does not attempt to halt all development, but to make sure that Alaska's wilderness and ecosystems are conserved if science proves that a development proposal will adversely impact an ecosystem. Frequently, habitat consultations don't result in the rejection of a proposal, they lead to the re-thinking of a proposal, which allows the development to move forward AND the ecosystem to be preserved. We can use our natural resources to build human infrastructure, but we have to carefully make decisions and think creatively to come up with ways to meet both human needs and the needs of the ecosystem - which should not be thought of as two separate entities, because ultimately they are interdependent.

The Department of Fish and Game's Habitat Division has not unnecessarily slowed down development in our state. They have only taken the necessary time to make sure that we don't make irrevocable decisions about the environment we depend on for healthy living and enjoyable recreation. If the permitting authority is moved to the Department of Natural Resources with the intent of speeding up the process, the scientists that review development proposals will be pressured to make decisions that are politically motivated, not science-based.

Thank you for your time and your vote against moving the Department of Fish and Game's habitat authority to the Department of Natural Resources.

Sincerely,

Marina Lindsey

3/12/03

**Testimony for the House State Affairs Committee, March 12, 2003  
Executive Order 107  
"Habitat Transfer Proposal"**

My name is Mim McConnell. I live in Sitka. I've lived in Southeast Alaska for 27 years. I was chairman of the Port Alexander Fish and Game Advisory Committee for 8 years and served on the Federal Southeast Subsistence Regional Advisory Council for 10 years. I am strongly opposed to moving the Habitat permitting authority from ADF&G to DNR for the following reasons:

First, it puts Alaska's fisheries at risk. Fisheries are the 2<sup>nd</sup> largest industry in the state. Alaskans should be proud of how well fisheries have been managed since statehood. The once poorly managed and depleted resources are now healthy and productive because of careful management. Let's keep it careful.

Second, Alaska's fish and wildlife habitat would be at risk because the Deputy Commissioner of DNR is not required to provide the same level of protection to habitat as the Commissioner of Fish and Game.

Lastly, it puts rural communities at risk. Many residents of SE Alaska's rural communities are dependent upon fisheries for their income. If resources become poorly managed from lack of personnel and proper checks and balances, they could become depleted. Depleted resources means closures. Closures mean loss of income. Loss of income in rural communities will be devastating.

Please stop this movement of the ADF&G habitat permitting process to DNR.

Thank you.

*Mim McConnell*

MAR 12 2003

MAR 17 2003

**Subject: Executive Order 107**

**Date: Wed, 12 Mar 2003 17:42:54 -0700**

**To: Fairbanks\_LIO@legis.state.ak.us**

I value fish more than immediate approval of construction projects.  
Lets keep habitat permitting in Fish and Game.  
Therefore stop Executive Order 107.

Sincerely

Douglas McIntosh

P.O. Box 80970  
Fairbanks, AK  
99708

EO 107

March 29, 2003

APR 1 2003  
APR 2 1 2003

Rep. Bruce Weyhrauch  
State Affairs Committee  
Alaska State Legislature - House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

I have worried about our state's fisheries and wildlife protection capability ever since I heard about Murkowski's bizarre scheme to take part of their mandate away from the Department of Fish and Game. Therefore, I am happy to be able to petition you regarding this matter with a specific request:

I don't think Governor's Executive Order 107 is an appropriate means to change such an important structure of our state government (as it does not allow a thorough public debate on the issue), but you must allow the "House and Senate Concurrent Resolution Number 1" to pass through your committee for a floor vote so that a public debate can decide this issue. Allowing the resolution to remain in your committee, effectively allowing EO 107 to become law, is not an acceptable means of implementing the Governor's proposed changes.

Incidentally, I worked at the Department of Natural Resources in a staff position for 12 years and saw first hand the costs and complications of several reorganizations. Whenever there was any reshuffling of staff everyone took the opportunity to dump their deadwood on someone else, revise their job descriptions, change their offices, phone lines and computers, knock down or build up walls and generally throw money around. Meanwhile no work got done.

The current system should not be altered without a significant public debate.

Please do not sit idle on this important issue. I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan. Please share my concerns with other committee members and please vote to prevent this executive order from being implemented.

Thank you.

Sincerely,

*Christine Maack*

Christine Maack  
3522 Alexander Ave.  
Anchorage, AK 99508

Yakutat Fish & Game Advisory Committee

Tom Maloney, Chair

Phone: (907) 784-3323

March 12, 2003

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

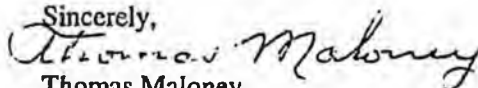
The Yakutat Fish & Game Advisory Committee opposes the proposed move of permitting from the Department of Fish & Game to the Department of Natural Resources.

The Yakutat AC has a history of taking actions to make a positive contribution to managing natural resources for maximum use consistent with the interest of the public. Those actions have included assisting in the recent revision of the Situk/Ahrnkin, and Lost River Chinook Management Plan, which was just approved in Ketchikan by the Board of Fish. Our AC agrees that development of our natural resources including logging and mining is appropriate when it does not jeopardize our fishery resources. Doing away with Habitat Division and shifting the proposed authorities to DNR will undermine the fragile collaborative interagency process underway to manage the Situk River corridor, which currently is the life-blood of this threatened community.

We have specific concerns 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. Similarly, the staff of DNR has minimal presence here in the Yakutat area, so how can stripping Title 16 enforcement capabilities from our local Fish and Game staff guarantee the health of our fish habitat?

Your concerns regarding the effectiveness of the permitting process appear to be issues of individual performance problems rather than system-based problems. We are confident that the concerns raised can be dealt with on a case-by-case basis prior to moving this function to DNR.

I am confident that any problems that may exist regarding permitting can be resolved by improving the existing process. 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 experts with informed members of the public and came up with solutions to problem areas. This approach would prove more effective than expending significant funds for such services as consultants, legal challenges, task forces, that will probably be the end result of the proposed action.

Sincerely,  
  
Thomas Maloney

Chair

**Subject:** RE: Executive Order 107

**Date:** Mon, 10 Mar 2003 07:03:10 GMT

MAR 11 2003

**From:** "Michele Masuda" <Michele.Masuda@noaa.gov>

**To:** Representative\_Bruce\_Weyhrauch@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us,  
Representative\_Nancy\_Dahlstrom@legis.state.ak.us,  
Representative\_Bob\_Lynn@legis.state.ak.us, Representative\_Paul\_Seaton@legis.state.ak.us,  
Representative\_Ethan\_Berkowitz@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

RE: Executive Order 107

I am strongly opposed to the transfer of permitting authority from the Alaska Department of Fish and Game Habitat Division to the Department of Natural Resources. This transfer of permitting authority, a very short-sighted decision, would put Alaska's fish and wildlife habitat at increased risk. Effects will likely be irreversible and more costly in the long run.

I urge the legislature to work towards increasing, not diminishing, protection of fish and wildlife habitat. Also, please vote in joint session to disapprove Executive Order 107. Thank you for your consideration.

Sincerely,  
Michele Masuda  
P.O. Box 210755  
Auke Bay, AK 99821

---

Michele Masuda <Michele.Masuda@noaa.gov>  
Mathematical Statistician  
Alaska Fisheries Science Center  
Auke Bay Laboratory

MAR 17 2003

**Subject: Don't Transfer Permitting to DNR--Habitat Transfer in Executive Order 107**  
**Date:** Tue, 11 Mar 2003 20:09:19 -0900  
**From:** "Julie Obermeyer" <jobermeyer@hotmail.com>  
**Reply-To:** jobermeyer@yahoo.com  
**To:** Anchorage\_LIO@legis.state.ak.us

Dear Legislators:

I don't support the proposal to transfer the Department of Fish and Game Habitat Division permitting authority to the Department of Natural Resources. I understand there are some conflicts between the missions of the Department of Natural Resources and the Department of Fish and Game. This conflict threatens to undermine the effectiveness of habitat protection functions placed within the Department of Natural Resources.

I believe that the transfer of permitting function to the Department of Natural Resources will eliminate an important check and balance between habitat protection and development, and is a major step towards eliminating meaningful environmental review of proposed projects.

I ask that the legislature work for strengthening, not diminishing fish and wildlife habitat protection and oversight. Most importantly, I ask that you please bring the resolution to the Senate and House floors for debate and a VOTE in joint session to disapprove of the executive order.

Sincerely,

Julie L. Obermeyer

3935 San Ernesto Ave. #2

Anchorage, AK 99508

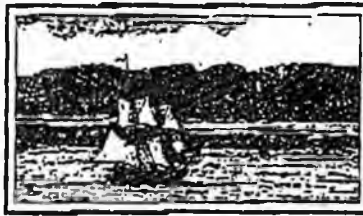
222-5277

[jobermeyer@hotmail.com](mailto:jobermeyer@hotmail.com)

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## Discovery ARTS



P.O. BOX 7814  
(907) 225-3188

KETCHIKAN, ALASKA 99901  
FAX (907) 247-3108

Date 3-11-03

To: House State Affairs Committee  
Re: Executive order 107

MAR 11 2003

This directive is a very poor idea. It will weaken protection of valuable salmon streams and despoil the aesthetics of valuable wilderness with potentially disastrous economic consequences. I've spent 20 years as a commercial fisherman and 20 years in the tour business. Both industries are very dependent on the biological integrity of S.E. Alaska's ecosystems. Streams in S.E. Alaska are an important element in the ecosystems and essential for the economic well being of both industries.

Protecting our salmon streams is essential for the future economic viability of the salmon industry. We are in a period of relative abundance in the salmon industry. However, the level of abundance we are experiencing is largely the result of cyclic environmental factor affecting ocean currents, weather and temperature that are not well understood. I remember vividly the low levels of salmon returns in the 60's. I am appalled that some of my fellow fishermen are not alarmed by this action by the governor. However, these mostly younger fishermen do not remember the years of poor harvest which prompted major changes in the salmon industry such as limited entry and the private non-profit hatchery system. Mother nature is fickle, and this cycle of abundance could quickly change and salmon returns could dramatically drop once again, placing salmon runs in danger.

The biological integrity of streams is also important for the tourism industry. Streams in uncut old growth timbered valleys are the heart and soul of our ecosystems in S.E. Alaska. As wilderness on earth diminishes and the population increases, the value of these valleys increases exponentially. The value of timber near streams in S.E. Alaska to tourism and the fishing industry far exceeds its value as timber harvested every 100 years.

The governor's proposal would dramatically weaken protection of areas that are essential for the long term economic vitality of the fishing and tourism industries for the short term gain of the timber industry

Respectfully,

A handwritten signature in cursive script, appearing to read "Dale Pihlman".

Dale Pihlman

MAR 18 2003

3/11/03—

Thank you, Committee members, for this opportunity to comment on Executive Order 107. I'm a Habitat Biologist with ADF&G—though I'm speaking only for myself, not my agency or colleagues.

By now, you all must realize you've been given bad information about this proposal, both the rationale and consequences. For corrections regarding the rationale, there are project summaries prepared by ADF&G Habitat and Restoration regions I and II. I will also provide my own memo on this to your Committee. I believe few Alaskans want the consequences of EO 107. To understand these consequences, we need to look at how habitat protection happens, and how that will be affected by organizational structure and staff levels.

#### **Loss of accountability**

EO 107 strips ADF&G of its authority for habitat protection, but not its responsibility. ADF&G, and therefore users of fish and wildlife, will no longer have a voice at the table, let alone elevation rights. Under the EO, there is not even a requirement for DNR to consult with ADF&G. Yet by law, ADF&G's overall mandate includes protection of fish and wildlife, while DNR's does not. When authority and responsibility do not line up, things go wrong.

For credible habitat protection, a Commissioner charged with protection and management of fish and wildlife AND THEIR HABITAT, and subject to legislative approval, is needed for accountability. A Deputy Commissioner from DNR would NOT be legislatively approved, and would not be responsible by law for protecting use and enjoyment of fish and wildlife. This sounds like philosophy, but it is very important.

#### **What does this mean to T16 permit review?**

Title 16 fish habitat protection statutes in themselves are open and discretionary, tools for providing protection more than requirements for it. There are no regulations, just policy and statute, so Commissioner-level commitment and accountability are essential. You could see drastic reductions in fish passage and spawning habitat viability, and still strictly meet the "requirements of the statute"--- if the power to protect is not effectively invoked. It appears that this is exactly what the administration has in mind, given the staff cuts and recently drafted legislation. Draft legislation for ACMP that was recently circulated proposes changing General Concurrence projects into General Permits. The majority of T16 permits would then have NO REVIEW, no site-specific conditions. That is a recipe for disaster. Older USFS road crossings would be an example of where this leads—a large proportion of national forest culverts fail to meet fish passage standards.

#### **What does this mean to other habitat protection: ACMP?**

ACMP Habitat Standards, while broadly defined in regulation, are similarly discretionary. These standards provide the state's ONLY authority in reviewing federal actions—from timber sales to tideland fill. (Anything else we do is advisory, through Fish & Wildlife Coordination Act, FERC, etc. ) These habitat standards also guide municipal code through district coastal plans. The standards, and regulations reviewed to consistent with these standards, are the ONLY TOOLS we have for habitat protection outside of the streambed itself. While broadly defined in code, these standards are fairly well defined in the customary fashion they are used, like common law. The standards could perhaps be clarified, but they are VERY useful, and elevations are rare.

ACMP standards allow us to routinely provide riparian buffers and to avoid, minimize or mitigate effects on key fish and wildlife habitat through project review. This includes marine as well as anadromous fish habitat, including nearshore habitat, eelgrass and estuaries. Other than passage, nothing is more important than this. Yet there is no statutory or regulatory requirement to review such projects at all, let alone review them against these standards in a way that protects key habitat. Concurrence is assumed if there is no objection.

There is no indication that ACMP habitat standards will be used in project review at DNR, though it is currently a large part of our workload. I understand that draft ACMP legislation would eliminate the

habitat standards and coastal districts and would restrict review to a few federal projects. The Coastal Policy Council would be abolished and replaced with an industry rather than a community-oriented group. The administration's intention is clear. The intention, despite statements otherwise ("no change in substantive environmental requirements") is to eliminate even the basic, modest, habitat protection now provided for stream buffers, productive tidelands, and important upland habitats. This will cripple our review of projects on federal land as well as urban areas. If habitat protection remains a goal of the state, the legislature will need to assure through its own authority, that habitat protection is placed in the hands of an agency, and a Commissioner, committed to protect fish and wildlife through effective use of regulation.

Here are some more of the details on how project review and permitting will be affected.

#### **Regulatory chaos**

Oddly enough, other agencies will continue look to ADF&G for habitat guidance.

--The city of Juneau must consult with ADF&G for stream setbacks, restoration plans, subdivisions.

--Same for Army Corps wetland fill permits, and various federal and state actions.

The Fish and Wildlife Coordination Act requests consultation by state agencies with expertise in fish and wildlife --- ADF&G not DNR. Loss of ADF&G's role in the FERC process may lead to roadblocks with the federal agencies. Who will fill these roles, or change other agencies' regulations to fix the regulatory chaos?

#### **Inefficiencies: loss of teamwork, logistical and funding challenges**

There will remain a need for close communication with ADF&G bios, but there is no provision for this and it will not be efficient to do this from another agency.

With the demise of area offices, there will be a loss of the efficiency that comes with knowing the ground & the players. It will be impossible to schedule frequent site visits to distant locales, and since we don't know these places, it will be impossible to issue permits with minimal review. This will result in delays.

We may no longer be able to offer significant scoping early in project development, though that would save time and money for the applicant.

There are already considerable losses of funding (+ 1 million) for habitat protection, assessment, and restoration because many of the funding sources available to ADF&G cannot be transferred to DNR. This unnecessarily impoverishes habitat protection, contributing to degradation and delays.

#### **Staff Cuts**

Approximately one third of the state's permitting/project review staff received lay-off notices last week. SE Alaska was hit hardest, 5 of 9—including the most experienced HB's in the region. This represents over 50 years 'on the ground' from Icy Bay to southern SE. If anyone could streamline—it would be these master permitters. They know the country and the operators, and that is what it takes.

One is a federally-funded specialist in hydropower review, so this lay-off can't be for budget-cutting. For that matter, few of the staff cuts could be justified as cost-saving since only a portion of habitat's funding comes from state. A skeleton crew will remain to cover the entire Archipelago and outer coast to Cape Yakataga. What will this look like?

#### **Refuges/Critical Habitat Area Management--**

Area Habitat Ecologists currently look after refuges in their areas, but this is not proposed to continue at DNR. There will be only one refuge manager/permitter for the state--out of Anchorage ADF&G. Among SE Refuges/CHA's, three of four need management plans or updates. Permits are a means to implement refuge plans—but not the only means. Refuges need enforcement presence, public outreach, coordination of research, and resolution of user conflicts as well as site-specific permitting—and this will not be possible when one person serves all the state refuges. With increasing activity adjacent to and within refuges, refuges deserve more, not less, attention.

**Permitting: Delays, Degradation and/or Rubber-stamping**

There will be backlogs in transition and beyond. How can you stream-line with half or 1/3 the staff?

Most T16 fish habitat permits need field review, some before, during and after construction. But in context of the sweeping changes to ACMP which are ALSO being proposed-- changes that would turn T16 permits into "rubber-stamp general permits"--it is clear there is no commitment to field review or site specific permit conditions. This is not OK. In any case, staff reductions will force de facto 'general permits'. We are already stretched to the limit. There is no way we can cover for even one of the permitters lost to layoff. Degradation will go unmitigated, and undocumented. Bad culverts will fail and block passage. Streams will unravel, fish fail to spawn.

Compliance monitoring, and post-project inspections will be a luxury we can't afford—and without monitoring and inspections, there is no accountability. Enforcement is time-consuming and requires upper level staff support. Not likely at DNR. And wide-ranging ADF&G mgmt and research biologists, who DO get in the field and ARE trained, will lose the ability to enforce for Habitat.

**Other project review--**

In addition to permitting, ADF&G has advisory and regulatory roles with federal agencies and municipalities: "project review", as well as scoping and consultation. In southeast AK, ACMP standards are woven into these review roles, providing our sole state habitat protection authority outside of "ordinary high water". Given the staff levels and proposed priorities, we will lose the ability to apply ACMP standards. Given the draft ACMP legislation, we stand to lose the standards themselves.

There is no sign that DNR will pick up ADF&G's review roles in municipal and federal projects (timber sales/wildlife habitat, stream setbacks, estuaries, eelgrass beds). At DNR you will see much-reduced scope of review --- fewer projects reviewed, fewer issues addressed. You will see degradation of urban and forested watersheds, dwindling wildlife, at-risk stocks and impaired streams.

This will result in loss of state credibility—perhaps handicapping over-arching subsistence and development negotiations. Without hydro review, it may be hard for ADF&G to pass the 'red face' test in negotiations with our salmon-challenged neighbors to the south. There may be other effects down the road, including potential liability to ADF&G's expanding wildlife programs related to tourism and recreation. These SWG/'CARA' funds come with an umbrella goal of conservation planning for non-game species. This means looking at habitat.

Perhaps saddest is loss of a generation of Habitat Biologist expertise, crippling the state's ability to train new biologists and setting our habitat protection capability back at least 10 or 15 years --even if the EO decision is reversed within months.

**From my knowledge of habitat permitting and project review, I am confident in saying that EO 107 will NOT result in streamlined permitting. It WILL gut habitat protection and degrade habitat. It will discredit the state, create chaos, inefficiency, and delays—and may endanger emerging and economically important programs.**

One thing I've learned from working as a Habitat Biologist is that most Alaskans care about fish and wildlife. They care a lot... Maybe we find ourselves wondering—legislators, fishermen, citizens--- where is the limit of our loyalty and trust? Does it kick in when we find ourselves fed misinformation, when we watch state employees attacked without cause --- or public resources imperiled for private gain?

Some say EO 107 is a runaway train. But I don't believe that. And I don't want to see this wreck. Not in Alaska. **Please support the resolution to overturn EO 107.**

--catherine pohl, POB 21168, Juneau, AK 99802 907 586-1272 cpohl@hotmail.com

MAR 17 2003

**Subject: Keep the Habitat Division in Fish and Game**

**Date: Wed, 12 Mar 2003 12:53:10 -0800 (PST)**

**From: Mari Reeves <alaskamari@yahoo.com>**

**To: Anchorage\_LIO@legis.state.ak.us**

Dear Alaskan Legislators:

I am a biologist with a masters degree in natural resource management and 8 years of professional experience in the field of environmental contamination and cleanup. As such, I am concerned about the proposed changes to the Habitat Division of the Alaska Department of Fish and Game. I do not support Governor Murkowski's proposal to move the Habitat Division to the Department of Natural Resources. I think that gutting the Department of Fish and Game could have devastating consequences for our fish and wildlife populations, many of which are a resource to Alaska of themselves. This issue is important enough to me that I will not continue to support my legislators who vote in favor of this decision.

It is my job to deal with the more unfortunate consequences of natural resource development. I am steadily employed because improperly supervised development consistently causes damage to resources in a manner that is either extremely expensive to restore or is irreparable. Often, I witness the taxpayers paying pollution clean up bills for companies that profited from resource development then declared bankruptcy. Although it is true that technology around resource development has improved, chemical spills are often caused by human errors; and it is my belief that the capacity for human error has not significantly decreased concurrent with the touted improvements in technology.

Currently, the Habitat division of the Department of Fish and Game has the responsibility for oversight of land development; the onus is on this agency to protect habitat crucial to the survival and health of Alaska's fish and wildlife populations. These fish and wildlife populations are critical to Alaskans, to the cultural heritage of subsistence users, to the economy of communities supported by the fishing and tourist industries, and to all Alaskans who take pride in the wildlife diversity present and intact in our state.

The Habitat Division has the responsibility to keep wildlife diversity as intact as possible; to ensure that development happens in a sound manner. This is a proactive, forward looking, and important job. If people do not adequately supervise development up front, people like me have to pick up the pieces that fall behind. Often the pieces are broken or destroyed and the populations in a poorly-developed area are unable to recover. We can only come behind and tidy up the mess.

The Department of Natural Resources and the Department of Fish and Game have different objectives and roles.

Each agency follows its own mandates to act as a balance for the other. To move the Habitat Division into the Department of Natural Resources will shift this balance, and will do so in a way that is damaging to our resources and our resource-based cultures and economies.

I strongly encourage the legislature to oppose this recent gubernatorial decision, and to keep the Division of Habitat intact and within the Department of Fish and Game. I encourage you to bring the resolution to the Senate and House floors for debate and a VOTE in joint session to disapprove of the executive order.

Sincerely,

Mari Reeves  
14445 Buffalo St.  
Anchorage, AK 99516

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Bruce Weyhrauch  
House District 4

and

MAR 11 2003

Kim Elton  
Senate B

Gentlemen:

I am writing to express my extreme displeasure in Governor Murkowski's executive order to move habitat permitting authority to the Department of Natural Resources. I strongly oppose this move.

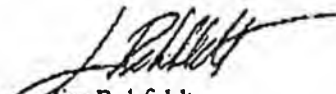
Alaska's economy and Alaskans depend on our unique fish and wildlife. Commercial and sport fisherman, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife. I ask that the legislature work to strengthen fish and wildlife habitat protection and oversight, not diminish it.

Checks and balances are needed to protect Alaska's fish and wildlife habitat. The Department of Fish & Game has a mission to protect Alaska's fish and wildlife resources, the Department of Natural Resources mission is to develop the state's resources. These two missions balance each other to manage the state's unique and diverse resources.

By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development.

I do not feel that Fish and Game oversight has significantly deterred or slowed economic development. Most permits are approved, and many proposed projects do not need them.

In closing, I ask that you listen to the arguments of the five former F&G commissioners who also oppose this move. They are best suited to understand the importance of maintaining habitat under F&G operations.



Jim Rehfeldt  
Juneau

MAR 17 2003

**Subject:** Statement on EO 107

**Date:** Wed, 12 Mar 2003 08:58:44 -0900


**From:** "James B. Reynolds" <ffjbr@uaf.edu>

**To:** fairbanks\_ljo@legis.state.ak.us

My statement is attached as a word file. Thanks.

Dr. James B. Reynolds  
Emeritus Professor of Fisheries  
School of Fisheries and Ocean Sciences  
University of Alaska Fairbanks  
P.O. Box 757220  
Fairbanks, Alaska 99775

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Written Statement to the House State Affairs Committee  
March 12, 2003

Mr. Chairman and committee members, thank you for this opportunity to testify. My name is Jim Reynolds and I am Professor of Fisheries at the University of Alaska Fairbanks. Although I am not here representing the university, I am representing the Alaska Chapter of the American Fisheries Society, an organization of 400+ professional biologists and managers from many fisheries agencies and organizations in Alaska.

Through Executive Order 107, Governor Murkowski has directed that habitat permitting authority, under Title 16 of the Alaska State Statutes, be moved from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR). In doing so, the Governor aims to accomplish two stated objectives: first, "streamline permitting"; and second, do so "without impacting substantive environmental requirements". The Governor is wrong -- neither of his aims will be accomplished -- and I will tell you why.

Governor Murkowski accuses the ADF&G, specifically it's habitat division, of being a major obstacle to development of natural resources. Yet, permitting is already as streamlined as such a complex process can be, if it is to have any meaning to the public interest. For example, in 2002, ADF&G permitters processed about 2000 fish passage permits, at an average rate of two weeks each, with less than one-half of one percent being denied. Most of the permitted projects required only slight, cost-effective revision in order to protect fish resources while allowing development to proceed. Contrast the ADF&G performance with that of the DNR which has a backlog of some 700 water rights applications -- some of them waiting 20 years -- and about 2000 other applications yet to be processed. Furthermore, if a distinct separation of habitat functions is so desired by the DNR, and works so well (using Fort Knox as the example given by Commissioner Irwin in his 3/11/03 testimony to the House State affairs Committee), why are we making changes? We already have this desirable situation with our current, proven structure!

Will EO 107 provide more development without impacting our fish resources and the habitat on which they depend? For the answer, one only need look south to states where the fox was put in charge of the henhouse. In these states, the check-and-balance system was foregone to pursue development with only the appearance of regulation. The result? Large sums are now being paid to repair the damage done. In the state of Washington, for example, the Department of Fish and Wildlife only manages fish and wildlife, and the Washington DNR has total regulatory authority for permitting development of aquatic habitat. Under this arrangement, extensive fish habitats have been lost -- one culvert and one timber cutting unit at a time. Today, thousands of road culverts in Washington state block salmon passage. Only recently have concerted efforts, at substantial taxpayer expense, begun to fix these problems. The price of a little protection

and self-discipline now is paltry, compared to the price of clean up and restoration to be paid by our children and their children, later.

On a personal note, I know many habitat biologists in the ADF&G and not one of them is against development of our natural resources. They believe, as do I, that the check-and-balance system we have, using the sometimes conflicting, but essential missions of both the ADF&G and DNR, is the best way to serve the public interest.

I urge the committee and the entire legislature to disapprove EO 107. If there are isolated administrative problems in the ADF&G, fix them administratively. Our sustained yield system is the envy of the world. Let's keep it intact. Thank you.

James B. Reynolds  
4627 Harvard Circle  
Fairbanks, AK 99709  
Phone 479-5828

**Subject: Recent House State Affairs Committee Hearing on EO 107**

**Date:** Sat, 15 Mar 2003 10:07:11 -0900

**From:** dryland <dbryland@gci.net>

**To:** Representative\_Bruce\_Weyhrauch@legis.state.ak.us

Dear Representative Weyhrauch:

First, I would like to thank you and members of the committee for providing this opportunity to comment on the issue. I am sending my written comments directly to you because I did not get a chance to testify on Tuesday evening and I was not able to return on Wednesday. I sent a copy of my testimony to the LIO in Anchorage via e-mail; however, afterward I realized that the copy of my testimony that was sent to Juneau through the LIO contained typographical errors. I am sending this message with my corrected testimony attached so that it may be entered into the written record in place of the document that contained the errors.

In my testimony, I pointed out what I believe to be a conflict between Executive Order (EO) 107 and existing state statutes. I have not heard of this issue being raised before and I want to bring it to the attention of the committee. I also illustrated the difference in the philosophies of the Alaska Department of Natural Resources (DNR) and Alaska Department of Fish and Game (ADF&G) with respect to the interpretation and application of their respective statutory authority.

Section 2 of EO 107 gives DNR the authority to issue permits to take, possess, transport, sell, offer to sell, purchase, offer to purchase fish, game, or marine aquatic plants or any part thereof or nest or egg of fish or game.

Authority over fish and game was specifically excepted from the purview of DNR in AS 44.37.020(a), which defines the duties of DNR as administering the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, *but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state* (emphasis added). This statute (AS 44.37.020) and others that were crafted to determine and define the functions of Alaska's state government were passed at statehood by many of the same people who were responsible for writing the state constitution.

Finally, I want to commend you and the Honorable committee members on the way the hearing was conducted. Each person that testified was treated with respect and dignity regardless of their views on EO 107.

Thank you for your consideration.

David Ryland

**Subject: Comments on EO 107**

**Date:** Wed, 12 Mar 2003 16:25:39 -0900

**MAR 13 2003**

**From:** "Martin Robards" <asmr5@uaa.alaska.edu>


**Reply-To:** <mro@uaa.alaska.edu>

**To:** <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>

Thank you for the opportunity to provide testimony on EO 107. I attended the Anchorage meeting last night but cannot attend tonight. I am hoping to find someone to provide my testimony verbally, but have attached a written copy to this e-mail. Please let me know if you have further questions.

Sincerely and thank you for your consideration of this important issue.

Martin Robards  
Department of Biology  
University of Alaska, Anchorage,  
3211 Providence Drive  
Anchorage, Alaska 99508  
mro@uaa.alaska.edu

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|  <u>ADF&amp;G_ADNRRobards.doc</u> | <b>Name:</b> ADF&G_ADNRRobards.doc<br><b>Type:</b> WINWORD File (application/msword)<br><b>Encoding:</b> base64<br><b>Download Status:</b> Not downloaded with message |
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# Alaska State Legislature

Please enter into the record my testimony to the HSTA  
committee name  
committee on EO 107, dated 3-11-03

MAR 17 2003

*Dirt of*  
I BELIEVE F & G HAS GOTTEN  
TOO LARGE & POLITICALLY POWERFUL.  
THE HABITAT DIV HAS BEEN OBSTRUC-  
\*  
TIONIST OVER THE YEARS TO DEVELOPMENT  
OF OTHER USES - I.E. AGRICULTURE, ETC.  
I THINK BREAKING F & G IS A GOOD  
IDEA & MOVING THE HABITAT DIV IN  
PARTICULAR SHOULD BE TRIED  
*Pete Roberts*

Signed: \_\_\_\_\_

Testifier  
PETE ROBERTS

Representing (Optional)

Address  
Box 1134 HOMER 99603

Phone No.  
235-4113

MAR 17 2003

**Written Testimony Submitted to the Alaska State Legislature House of Representatives  
State Affairs Committee Regarding Executive Order 107.**

Chairman Weyhrauch and Honorable members of the committee:

First, I would like to thank the Chair and members of the committee for providing this opportunity to comment on the issue before the committee. To begin, I want to point out what I believe to be a conflict between Executive Order (EO) 107 and existing state statutes. I have not heard of this issue being raised before and I want to bring it to the attention of the committee.

Section 2 of EO 107 gives the Alaska Department of Natural Resources (DNR) the authority to issue permits to take, possess, transport, sell, offer to sell, purchase, offer to purchase fish, game, or marine aquatic plants or any part thereof or nest or egg of fish or game.

Authority over fish and game was specifically excepted from the purview of DNR in AS 44.37.020(a), which defines the duties of DNR as administering the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, *but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state* (emphasis added). This statute (AS 44.37.020) and others that were crafted to determine and define the functions of Alaska's state government were passed at statehood by many of the same people who were responsible for writing the state constitution.

The members of Alaska's legislature at this time and the framers of Alaska's constitution understood the importance of a system of checks and balances with regard to resource development and resource protection. This understanding of the importance of having resource protection on the same footing as resource development was in part a result of Alaska having the benefit of hindsight when framing the constitution and drafting natural resource-oriented laws at statehood. The legislators were able to look to California, Oregon, and Washington and the history of resource exploitation in Territorial Alaska as examples of what happens when resource protection is not on the same footing as resource development or when the responsibility for resource protection is located in an agency for which the primary purpose and function is fostering development.

The expertise to protect and manage populations of fish and wildlife lies solely within ADF&G. Neither the framers of the constitution, nor the members of the legislature that crafted and passed the laws related to natural resources or the organization of the government ever intended for DNR to have the authority to permit the taking of fish and wildlife, whether through direct or indirect means.

### **Resource Protection**

The question of resource protection has come up a number of times during the discussion of EO 107. Will protection be the same under the Alaska Department of Natural Resources (DNR) as it is under the Alaska Department of Fish and Game (ADF&G)? I believe the answer is no. These two agencies were created for two very different purposes and thus have very different missions, responsibilities, and philosophies.

### Departmental philosophies

The mission of DNR is to promote development of Alaska's natural resources. This mission and DNR's philosophy with respect to development is evident in the way that DNR interprets laws and regulations. DNR interprets resource development and resource protection statutes liberally with respect to development and developers, including those statutes and regulations that define process and protocol.

As an example of DNR's philosophy, consider the Division of Forestry and their interpretation of the Forest Resources and Practices Act (FRPA) and associated regulations that specify the type and nature of information that must be included in logging plans that are submitted to the division for review. On the surface, this example may seem insignificant; however, the omission of this information often turns out to be the root of many problems that loggers face with respect to compliance with present resource protection statutes and regulations.

In Southcentral Alaska, the Division of Forestry routinely accepts incomplete plans for logging operations. The information most often omitted from detailed plans of operation (DPO) is the location of surface water bodies, the location of stream crossings, and identification of stream crossing structures. This information is required by law to be included in DPO and is critical to agency personnel that review these operational plans; however, Division of Forestry personnel have stated "*there is no specific informational requirement under FRPA to identify the type of road crossing structure that will be used at streams*".

A brief examination of the forest practices regulations clearly shows that the Division of Forestry is wrong. The forest practices regulations state that road building and related activities in riparian areas, bridge construction activities, and material extraction sites located in braided, glacial floodplains must be identified in the detailed plan of operations (11 AAC.95.275(b)). These activities are required to be identified because research and experience show that with respect to logging, resource impacts and regulatory problems are most likely to occur in the riparian zone.

The purpose for the review is to inform agency personnel, the landowner, and the logging contractor (operator) of impacts that are likely to occur as a result of logging activities. Without this information, reviewers have no way of fully assessing impacts to public resources nor can they provide advice to assist the logger with regulatory compliance to ensure that these impacts are minimized or eliminated and to reduce the likelihood that a violation occurs during the logging operation.

In contrast to DNR, the mission of ADF&G is to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska. With respect to the Habitat and Restoration Division, ADF&G's mission, statutes, and regulations are interpreted to allow development of natural resources with causing [permanent, significant, etc.] harm to fish, wildlife, or their habitats. The guiding principle in Habitat and Restoration Division at ADF&G is the Public Trust Doctrine.

The Public Trust Doctrine provides that the public trust lands, waters, and living resources in a State are held by the State in trust for the benefit of the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of recognized public uses. The doctrine also sets limitations on the States, the public, and private

owners, as well as establishing the responsibilities of the States when managing these public trust assets.

The Public Trust Doctrine is applicable whenever navigable waters or the lands beneath are altered, developed, conveyed, or otherwise managed or preserved. It applies whether the trust lands are publicly or privately owned. The doctrine articulates not only the public rights in these lands and waters, it also set limitations on the States, public and private owners, as well as establishing duties and responsibilities of the States when managing these public trust assets.

The Public Trust Doctrine has been described as "*an affirmation of the duty of the State to protect the people's common heritage in streams, lakes, marshlands, and tidelands...*". This duty of protecting public trust resources is central to the Public Trust Doctrine, for as stated by an Oregon court: "*These resources, after all, can only be spent once. Therefore the law has historically and consistently recognized that rivers and estuaries, once destroyed or diminished may never be restored to the public and, accordingly, has required the highest degree of protection from the public trustee.*".—Morse v. Oregon Division of State Lands, 581 P.2d 520 (1978)

#### Functions, Duties, and Responsibilities of the Commissioner

The responsibilities and authorities of DNR are defined in AS 44.37.020(a), which states:

*The Department of Natural Resources shall administer the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state. Emphasis added.*

The duties of DFG are similarly defined by statute in a broad sense (AS 44.39.020) but are further refined under the duties and responsibilities of the Commissioner of Fish and Game.

DNR: EO 107 gives authority to a deputy commissioner in DNR but does not specify any qualifications for this position. Anyone can be appointed to this position regardless of their knowledge of fish or wildlife habitat, biology, or fish and game management. Further, perusing the statutes I could find no specific functions, duties, requirements, or qualifications for the commissioner of DNR. In addition, the deputy commissioner is appointed without public input or legislative oversight.

ADF&G: Statute declares that the commissioner shall be a qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state (AS 16.05.010.). The commissioner of ADF&G is also appointed, however, this appointment is subject to confirmation by the legislature.

The function of the commissioner of ADF&G, as defined in statute, 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 general well being of the state (AS 16.05.020(2)). Without the authority to regulate development and thereby

directly influence how development impacts fish and wildlife resources and their habitats, the commissioner of ADF&G will lose the ability to perform his statutory functions.

In closing, I ask that the committee consider the future of Alaska's resources. Keep habitat protection in the hands of ADF&G by voting to reject EO 107.

Sincerely,

/s/

David Ryland, CF  
Professional Forester  
PO Box 294  
Girdwood, AK 99587  
(907) 337-6756

Page 1

**LEGISLATIVE INFORMATION OFFICE**

Email: Ketchikan\_LIO@legis.state.ak.us

50 Front St., Suite 203  
Ketchikan, Alaska 99901Phone: (907) 225-9675  
Fax: (907) 225-8546**WRITTEN TESTIMONY**

NAME: MIKE SALLEE  
ADDRESS: PO Box 7603  
KETCHIKAN AK 99901  
PHONE: 247-3828  
BILL# or SUBJECT: EO107

COMMITTEE: \_\_\_\_\_

I am Mike Sallee, born in and residing in Ketchikan for most of my 56 years. I began my adult working life as a teenager working on a produce boat and salmon packer that traveled the length and breadth of SE Alaska.

For the last two decades I've seasonally deckhanded on a longline boat for halibut, blackcod and other bottom fish. ALFA, Alaska Longline Fishermen's Association opposes EO107

I've also been harvest diving during this same two decade period. As a permit-holding harvest diver I am a member of SARDF, SE AK Regional Dive Fishermen's Association. I am one of a number of divers in SARDF who've expressed dismay that SARDF's board has come out in favor of EO107

Also for the last two decades I've owned and operated a small sawmill providing lumber for over 100 different clients - mostly my close neighbors but also people in other parts of Alaska and other states.

The governor has surrounded himself with several former timber industry lobbyists, timber industry legal ~~counsel~~ <sup>counsel</sup>,

Page 2

## ALASKA STATE LEGISLATURE

50 Front St. Suite #203  
Ketchikan, Alaska 99901

Phone: 225-9675

Fax: 225-8546

## LEGISLATIVE INFORMATION OFFICE

WRITTEN TESTIMONYNAME: Mike Sallee

ADDRESS: \_\_\_\_\_

PHONE: 247-3828

EMAIL: \_\_\_\_\_

BILL# or SUBJECT: EO 107

COMMITTEE: \_\_\_\_\_

(continued from page 1) a former pulp mill manager, a former regional forester - in short a dream team heavily weighted toward corporate timber interests.

In noting the habitat biologists layed off it appears the Morkowski team did not like the message delivered by those biologists and is responding by disposing of the messengers.

Reducing Habitat Div. personnel as the governor has done in Ketchikan, Sitka, Anchorage and other towns will mean fewer people with expertise in the field and therefore less data upon which to base enforcement.

From my layman's perspective there are two parts to law - the written statute, and equally important, the enforcement part. We can have great statutes, but they're utterly useless if activities in the field are not monitored and enforced.

Over the last several days I've heard and read numerous innuendos and complaints about habitat division. Every complaint that has been specifically identified has been thoroughly explained and rebutted by ADAG personnel involved.

Page 3

# ALASKA STATE LEGISLATURE

50 Front St. Suite #203  
Ketchikan, Alaska 99901



Phone: 223-5515  
Fax: 225-8546

## LEGISLATIVE INFORMATION OFFICE

### WRITTEN TESTIMONY

NAME: Mike Sallee

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

PHONE: 247-3828

EMAIL: mikesallee@hotmail.com

BILL# or SUBJECT: EO 107

COMMITTEE: \_\_\_\_\_

(continued from page 2)

I can only conclude that EO 107 is not about streamlining. It's about rubber stamping.

Please bring to floor vote a resolution to REJECT EO 107

Our fish and wildlife and the habitat it depends upon is too valuable to be making a decision geared primarily toward tending favor from those in political power and repaying political favors.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14-11111111  
Ron Wolfe, Forester  
Sealaska Corp.

**SEALASKA CORPORATION TESTIMONY ON  
EXECUTIVE ORDER 107**

Good evening Chairman Weyhauch and members of the House Committee on State Affairs, my name is Ronald R. Wolfe and I am the Corporate Forester for Sealaska Corporation. I would like to offer my testimony this evening in support of Executive Order 107 that would transfer the habitat permit functions from the Department of Fish and Game to the Department of Natural Resources. My perspective is based on my extensive experience with state resource regulation of Alaska's forest industry through our Forest Resources and Practices Act, which continues to be one of the best in the nation. But, we have experienced disconnects through the years from what otherwise is a remarkably successful consensus based process.

This transfer is an opportunity repair these disconnects by bringing important interlocking affiliations between resource disciplines under one Commissioner to achieve an improved administrative process. In the same way that relationships and communications are improved between operators and agency personnel during field inspections, this transfer will create a closer nexus between the professionals for improved organizational relationships. It is an opportunity to recalibrate agency perspectives through information

exchange, cross training, and to establish a closer physical proximity so a higher degree of efficiency can be achieved at a time when state government must become more efficient.

While these opportunities exist, they must be based upon competent field inspections that include fisheries biologist representation. This process can create a foundation to support and maintain the high public confidence in our resource protection that we in Alaska enjoy, while at the same time create regulatory efficiencies vital to the rebuilding of our industries.

We look forward to our continued relationships with Alaska Department of Fish and Game with the functions that will be retained there for such things as science and research. This transfer will likely improve our relationships for these efforts after the permit functions are transferred to DNR.

Thank you.

**Subject: Testimony heard 3/12/03 re EO 107**

**Date: Sat, 15 Mar 2003 14:22:07 EST**

**From: Nursecate@aol.com**

**To: Representative\_Bruce\_Weyhrauch@legis.state.ak.us**

Thank you again for hearing testimony.

My name is Catherine Senungetuk and I am representing myself. I've lived in Alaska for 27 years and work as an elementary school nurse. I am testifying tonight because I care about this state and its future beyond our current generation.

I would like to thank the State Affairs Committee for taking testimony. I would ask that the resolution to disapprove EO 107 be accepted, and this EO be allowed onto the floor of a joint session for a vote to override. Rather than testify about details of what I believe will be negative impact, I would simply ask that EO 107 is overridden for these following reasons.

1) Why risk? There is a very high risk that loss of Habitat permitting by Alaska Department of Fish & Game (ADF&G) will negatively impact fishing in Alaska, and by this I mean all aspects of fishing - sport, commercial and subsistence fishing.

I would say fish are Alaska's greatest, most sustainable and renewable resource. WHY would the State risk this renewable resource in an act which would undo oversight that has been in place since Statehood and indeed was integral to becoming a State? If the Habitat division of ADF&G is essentially gutted, there are no assurances and no safeguards in place for fish and their habitat. The Department of Natural Resources' (DNR) mission is to develop, not to manage, protect, and maintain.

I have heard promises and assurances from DNR and those who approve of this order. I would like to say that just because someone gives us careful and sincere verbal assurances, once authority is in place, anything can happen. As an illustration, when Governor Murkowski was criticized recently about his proposed \$10.00 tax or "user fee" on each new studded tire purchased, especially when he ran for office on no new taxes, the Governor responded, "Well, you don't have to drive." Are we going to also say, "You don't have to fish"?

2) Loss of fish habitat not only affects fishing but tourism as well, another of Alaska's most "renewable" resources. How many people do you know who come to Alaska or dream of coming to Alaska to fish?

3) Lastly, EO 107 will essentially take away the ability of ADF&G's mission to protect, maintain, and improve fish, game and aquatic plant resources of Alaska. This does not show good stewardship of Alaska's resources. If Alaska ever wants to attempt to resolve the subsistence issue, this is not a good first step, either in regards to the State's example of leadership to the Federal Government, or in the actions of the State towards the Alaska Native Peoples and indeed to anyone who fishes in Alaska.

I again ask that the Resolution to Disapprove EO 107 is accepted, that EO 107 is allowed to come to a vote in a joint session, and I respectfully ask for your vote to override EO 107.

Thank you very much,

Catherine Senungetuk  
7050 Crawford Street  
Anchorage AK 99502  
907/243-6843

Testimony heard 3/12/03 re EO 107

e-mail: Nursecate@aol.com

## SCBOA

**SITKA CHARTER BOAT OPERATION'S ASSOCIATION  
P.O. Box 2422  
SITKA, ALASKA**

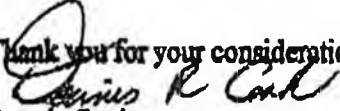
March 12, 2003

Dear Members of the House State Affairs Committee,

I am writing to express our strong reservations about Executive Order 107, concerning the transfer of the Habitat Division from the Department of Fish and Game, to the Department of Natural Resources. We feel this is not in the best interest of fish, wildlife or their habitat.

We strongly support the past performance of the Habitat Division within the Department of Fish and Game, in managing and protecting the natural resources we depend on for our livelihood.

Thank you for your consideration.



Dennis Cook

President

Sitka Charter Boat Operators Association

---



## Sitka Conservation Society

PO Box 6533  
Sitka, Alaska 99835  
(907)747-7509  
(907)747-6705 fax  
home.gcl.net/~sitkawild

### Testimony of the Sitka Conservation Society concerning

### EO 107: Transferring Fish Habitat functions from ADF&G to DNR

The Sitka Conservation Society has worked for the last 30 years to protect the resources of Southeast Alaska. We believe that economic health depends on healthy land and waters. Our members include commercial fishermen, hunters, tour operators, and many others who rely on the bounty of our surroundings for their living and their enjoyment.

We do not believe the transfer of the Habitat Division is in the best economic interest of the state or our members. It removes a necessary Check and Balance from our administrative system. The mission of the Department of Natural Resources is to promote development of our resources. The mission of the Habitat Division is to see that when development occurs, it does not destroy the habitat on which those resources depend.

Furthermore, it is clear that the stated reasons for the transfer are not justified. The Governor's intent is to "streamline the permitting process". In FY2002 ADF&G processed over 3000 permits for one year. F&G currently issues fish habitat permits in an average of 15 to 17 days. DNR has historically been much slower than F&G in processing permits. When F&G delays a permit it is because it is going to cause damage to fish habitat and thus damage our commercial fishing industry, and other fish harvesters. It is not likely that DNR will be able process permits faster and better than ADF&G. Developers take for granted the Title 16 permitting service provided by F&G; the quick response to emergency calls after washouts and other emergencies, field trips at short notice to address complicated situations, field permits issued the same day on the ground, and so on.

Permitting time for T16 permits will increase under the new system, because of significantly fewer staff, reduced field presence and field permit issuance, and greater dependence on applicants to provide information. Instead of going to the field to work things out on the ground, information gathering will most likely be primarily a paper exercise. If inadequate information is provided, then DNR permitters will likely request additional information, or cover the missing info with generic stipulations that may or may not be a good solution for fish habitat or the applicant. Transfer of T16 to DNR may also mean that T16 permits will now be subject to the expense and delay of DNR's 30 day public notice requirement. DNR requires that the public pay fees for permit issuance, so the public may now be required to pay for T16 permits.

Under the current system, the Habitat Division pursues a great deal of grant money. Habitat currently receives about \$2.2 million in state general fund moneys, \$700,000 in project specific federal funds, and a complex pile of dollars from other sources. Untangling these funding sources and meeting contractual commitments will be a major task. DNR is not likely to pursue such diverse funding, and general fund dollars will probably be inadequate to support the proposed DNR division. This may result in additional DNR general fund requests, and likely more layoffs.

This administration, which has pledged to create more jobs, has just moved two full-time employees from Sitka to unemployment, and eliminated other seasonal positions. This does not help our community.

We urge the legislature to reverse this executive order.

Sincerely,

*Page Elac*  
Page Elac, Acting Director

Governor Murkowski  
Office of the Governor  
POB 110001  
Juneau AK 99811-0001

2-10-3

Dear Governor Murkowski,

At the February 5<sup>th</sup> meeting of the Sitka Fish and Game Advisory Committee a motion was made. That motion stated.

**The Sitka Fish & Game Advisory Committee opposes moving the habitat and permitting functions from the Alaska Department of Fish & Game to the Department of Natural Resources.**

This motion was supported unanimously by a vote of 13 to 0.

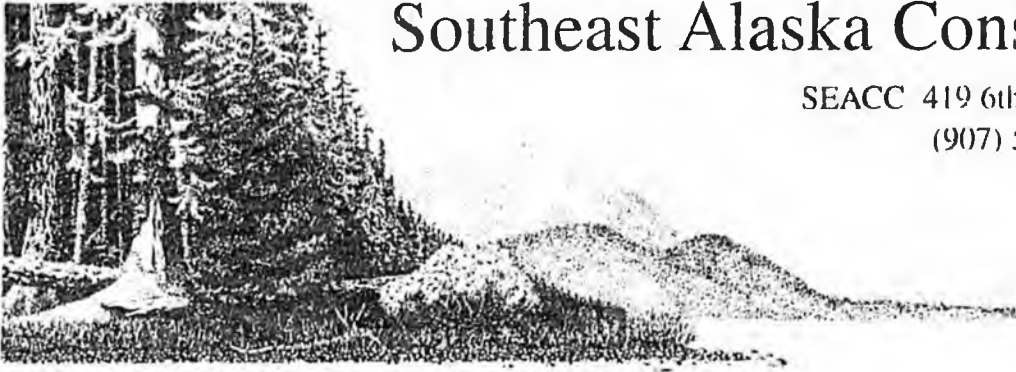
The Sitka Advisory Committee is made up of stakeholders from the following Fishery user groups

- ❖ Seiners
- ❖ Subsistence
- ❖ Gill netters
- ❖ Power Trollers
- ❖ Charter Operators
- ❖ Sports Fishermen
- ❖ Crabbers
- ❖ Conservationists
- ❖ Processors
- ❖ Hunters
- ❖ Hand Trollers
- ❖ Longliners
- ❖ At large members
- ❖ Trappers
- ❖ Guides

Sincerely,



Brian D Massey Chairman  
Sitka Fish & Game Advisory Committee



# Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 200, Juneau, AK 99801  
(907) 586-6942 phone • (907) 463-3312 fax  
www.seacc.org • info@seacc.org

March 12, 2003

House State Affairs Committee—Representatives Weyhrauch, Holm, Dahlstrom, Lynn, Seaton, Berkowitz, and Gruenberg

**Subject: Testimony on Executive Order 107—ADF&G's Habitat Division**

Honorable State Affairs Committee Members:

Thank for you for holding hearings and allowing the public to submit testimony and comments on the proposal to move Habitat to DNR. Executive Order 107 is not a solution to speedy permitting. It eliminates checks and balances, and is a source of new problems for healthy fisheries, big game habitat, jobs, and Southeast Alaska's economy. Please accept this letter as Southeast Alaska Conservation Council's written testimony.

SEACC is a coalition of eighteen volunteer community conservation groups in fourteen communities across Southeast Alaska, from Yakutat to Ketchikan. SEACC's individual members include commercial and sport fishermen, hunters and guides, tourism and recreation business owners, small timber operators, Alaska Natives, and subsistence hunters and gatherers. SEACC is dedicated to safeguarding the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources.

When talking with people from around the region to understand how this would impact communities, time and time again, people told me that the salmon they fish commercially, charters they run, hunts they lead, are all dependant on healthy fish and wildlife habitat. The industries they work in need big game and fish in streams. Our forests and streams are enormous economic engines in small towns around Southeast, putting food on the table and sustaining jobs for families.

In 1953, Alaska was declared a National Disaster area because our fisheries had been hammered by fish traps run by outside companies. Protection of fishery resources was a driving force behind statehood, and those first legislators wisely solved the problem of bad management by assigning fisheries to ADF&G. Ensuring that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and

development of these resources are in the best interest of the economy and well being of the people of the state is a sound approach that balances interests of all Alaskans.

People in Southeast Alaska have shown many times that they want balanced use of the region's resources. They want logging jobs, but they want enforcement of state laws designed to protect Alaska's unique fish and wildlife resources. They also want jobs in other industries like commercial and sport fishing. Many Title 16 (habitat) permits are issued after consultation with development sponsors or private landowners and modifications to the original proposal result in better projects for both the developer and the fish. If the Habitat Division moves to DNR, fish and wildlife resources and the protection of their habitat will no longer be on an equal footing with development interests. Timber industry needs will supersede other resource industries (e.g., commercial or sport fishers) needs.

Without balanced and knowledgeable oversight, many projects will be permitted without modifications that benefit fish habitat; e.g., bigger culvert, avoid rearing habitat. Loss of anadromous fish production causes a loss of resident fish production, diminished health of the riparian areas, and wildlife. Though fish habitat is lost one culvert or project at a time, cumulative effects will have compound impact. Prevention of habitat loss is more economical than habitat restoration. The Pacific Northwest is a good example. Salmon runs are only a fraction of what they once were largely because of habitat losses. Hundreds of millions of dollars are now being spent to restore lost habitat, and those fishing jobs have vanished into thin air.

Sections 18 of the executive order repeals requirement that the State Forester provide detailed plans of operation for logging operations which are supposed to show stream crossings, anadromous and high value resident fish streams, riparian buffers to be retained, and other measure to prevent non point pollution. This kind of information is critical to people who live near a sale area, so that they can know whether or not their drinking water, hunting areas, fishing streams, or other resources will be affected. Removing the source of this kind of public information is irresponsible and ensures conflicts between communities and developers.

Protecting fish and wildlife habitat is a big deal to Alaskans. Decisions about it are serious and must be approached with great caution. There must be better ways to streamline permitting that do not eliminate vital checks and balances, or cause new problems for healthy fisheries, big game habitat, jobs, and Southeast Alaska's economy.

On behalf of our thousands of members in Alaska and our 18 member groups throughout Southeast Alaska, please vote for a resolution opposing Executive Order 107.

Thank you for the opportunity to comment.

Aurah Landau  
Grassroots Organizer



MAR 17 2003

**State House Affairs Committee  
Rejection of EO107**

My name is Jim Stubbs and I am a thirty-two year resident of Alaska and a constituent of Representative Lynn. I have been in construction all thirty-two years in Alaska, and have worked from Prudhoe Bay to Ketchikan. My reason for coming to Alaska in 1972, was its rugged beauty, to hunt and fish, and raise my family under these outstanding conditions. I have lived my dream and fished and hunted all across our great state. The use of our fishing and hunting resources are very important to my family and to all the people of the state of Alaska. With this I would like to state that habitat is the key to the production of Alaska's salmon stocks. If anyone doubts this, that habitat and its protection are ~~the~~ key to our healthy salmon stocks, you only have to look to the South to Washington and Oregon. There, the loss of habitat has taken away their wild fish and replaced them with fish produced in a plastic bucket. Is this what we want for our children and their children to look forward too? Will this be our legacy?

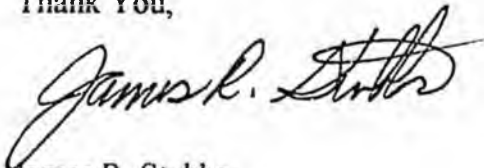
I am a member of the Anchorage Fish and Game Advisory Committee, an advisory committee that represents nearly 50% of the population of Alaska. At our February meeting we voted unanimously against the transfer of habitat division to DNR and sent a letter to the governor voicing our concern. We take this issue very seriously and so do members of the Anchorage community.

In my line of work, as a structural building inspector, I travel around to the various jobsites and housing projects in Anchorage only to hear the hard working construction workers, who I might add, ALL vote, voice their concern and disbelief at the perceived attack on the habitat of the state of Alaska. Most of these people came to Alaska because of a love for the outdoors and have worked hard building our great state. The last thing they want to see is their enjoyment in hunting and fishing diminished. This is one of the hottest topics I have seen since the discussions of the Exxon Valdez fiasco. As you discuss this extremely important issue, please consider the following points:

- 1) Extensive research in the Pacific Northwest has shown that the loss of habitat is disastrous to salmon.
- 2) Habitat is critical to the survival of fish and wildlife, something that is very important not only to Alaskan's, but also to the very important industry called "tourism."
- 3) Consider ~~the~~<sup>the</sup> value of the fish and wildlife to our children and their children. The resources belong to **ALL ALASKAN'S**, not just a chosen few.
- 4) Habitat is critical to the survival of fish and wildlife, let's not fall prey to the same fate that befell the Pacific Northwest.

In closing, in construction if you were building a ten story building with a crew of fifty workers, be they carpenters, plumbers, electricians, labors and others with the time frame of two years to completion, if you reduce my crew by 30% or 40% how in the world could you expect me to not be delayed in completing the building. The answer is, you couldn't! This is my reason for opposing the transfer it simply makes no sense.

Thank You,



James R. Stubbs

3311 Starboard Lane

Anchorage, Alaska

99516

gstubbs@gci.net

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

TONY KNOWLES, GOVERNOR

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 267-2285  
FAX: (907) 267-2464

### MEMORANDUM

TO: Wayne Dolezal  
Project Review Coordinator  
Region II  
*Wayne Dolezal*

FROM: Cevin Gilleland  
Area Habitat Biologist  
Mat-Su/PWS/Copper Basin

DATE: February 7, 2003

SUBJECT: Governor's Press Conference  
Monday, February 5, 2003  
Misinformation *Glenn Parks / Tok Cutoff*

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As you know, I was the primary Department biologist that worked on two projects that Governor Murkowski referenced in his Monday, February 5, 2003, press conference. These were the Alaska Department of Transportation and Public Facilities' Tok Cutoff Highway upgrade and the Glenn-Parks Highway interchange project.

The Governor's statements about the Habitat and Restoration Division's review and permitting of these two projects were completely wrong with respect to the Glenn-Parks Highway Interchange and misleading with respect to the Tok Cutoff.

Glenn-Parks: The Governor claimed that the Coastal Consistency Finding was issued in March 2001 and that Habitat Division did not issue a permit until 2002, 16 months after the deadline, and that some permits were held up until 2003. The facts are that the coastal Consistency Finding was issued on March 19, 2002. It required that specific plans be submitted to the ADF&G for permits at least 30 days prior to beginning activities that require ADF&G approval. As of this date the Department has issued seven permits on the Glenn-Parks Interchange project. The average time from our receipt of plans and specifications to permit issuance has been four (4) days.

Tok Cutoff: The Governor claimed that the ADF&G originally had no objection but later changed our comments and halted the project. Our initial scoping comments on the Tok Cutoff

upgrade were based on information provided by the ADOT&PF. In their scoping document the ADOT&PF did not include the fact that they planned to divert a clear water tributary to the Copper River or that the project would impact approximately 30 acres of wetlands. When the ADF&G learned of the additional potential impacts we requested additional information to clarify ADOT&PF's plan and to provide comments to protect Alaska's fish and wildlife resources.

I have reviewed the files and have provided a complete summary of the Habitat and Restoration Division's involvement in these projects.

cc: L. Trasky

Attachment I: Glenn-Parks Interchange (3 pages)

Attachment II: Tok Cutoff (3 pages)

## Glenn- Parks Interchange

1. The Governor stated that the ACMP consistency review was completed in March 2001, that ADF&G permits were not issued for 16 months, and that the ADF&G delayed the project. These statements are all incorrect.
2. 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).
3. 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, when 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. To date, seven Fish Habitat Permits have been issued for the project with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

### Resource Concerns

4. 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 support 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. In 2002, the Board of Fisheries designated upper Cook Inlet coho salmon a stock of concern.

### Project Information

5. 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 (CH2MHill/Kiewitt Pacific) was selected in June 2002.

### Chronology

6. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
7. 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.
8. 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.
  9. June 24, 2002: Anticipated date of ADOT&PF’s announcement of Notice of Intent to Award the primary contract for the project.
  10. August 2002: Anticipated date of award of primary contract for the project.

#### ADF&G Permits

11. 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 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.**
12. 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.**
13. 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.**
14. 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.**

Glenn – Parks Interchange

15. 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.**
16. 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.**
17. 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.**
18. 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.**
19. On Thursday, January 30, 2003, Thomas Dougherty of DOT transmits an email stating that he has seen no adverse effect to the project due to Title 16 permitting issues (Attachment).
20. On Friday, January 31, 2003, Scott Fowlds, Project Manager for Kiewit Pacific Company, states that Title 16 permitting has not caused any delays on the project.

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

ADOT Tok East 30 Project

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.

During the Governor's press conference on Monday February 3, 2003, he stated:

"On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and litigation measures. Habitat's foot dragging has caused a delay in obtaining the needed permits from the Corps of Engineers."

The Governor's allegations are false. 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 the ADOT&PF request for scoping comments 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.

Scoping comments are provided initially to note resources of concern based on a project concept, not specific details. When the ADF&G subsequently 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 the ADOT&PF's alternatives analysis, their sediment and erosion control plan, and their mitigation plan.

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. 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. (Review time 36 days)
- 2) On July 3, 2000 the ADF&G received a permit application for the Chistochina River and Sinona Creek based on preliminary plans and specifications.
- 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.

- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (Response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. That permit expired on December 31, 2001. (Response time 32 days)
- 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. That permit expired on December 31, 2002. (Response time 81 days)
- 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 30 acres of wetland fill and a stream diversion). (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 were received.
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (Response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (Response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion (response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion.
- 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. (2 burbot; 1 salmonid shocked in stream.)

The Corps of Engineers permit was issued on April 15, 2002. According to Jan Stuart, Corps of Engineers, the ADOT&PF has not signed that permit.

Tok East 30

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

**Subject: Re: EO 107**

**Date:** Wed, 12 Mar 2003 17:41:44 -0800

**MAR 17 2003**

**From:** mms@gci.net

**To:** Anchorage\_LIO@legis.state.ak.us

Dear Committee Members and Citizens,

I wish to voice my opposition to Governor Murkowski's executive order 107. I believe that the Department of Fish & Game has done an admirable job of processing permits with a fair evaluation of land use and protection of Alaska's sensitive fish and wildlife resources. I believe that the Governor Murkowski's plans to consolidate the permitting process overlook the importance of sound management of Fish and Game in our state. The Governor has proposed these plans with the guise that he intends to streamline the permitting process. Instead I believe the Governor is attempting to gain more control over the permitting process by eliminating the professional biologists and resource managers that have consistently acted in responsible, efficient and professional manner.

Sincerely,

Matthew Stichick

2241 Radiant Circle  
Anchorage AK 99501



# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs

Committee on EO 107, dated 031103

I am very concerned about the possibility of the transfer of permitting power from the Department of Fish and Game to the Department of Natural Resources, where fish and wildlife come into the picture. We need to remember that a system of checks and balances is what this country is based on. This system is in place so that ALL aspects of an issue can be perceived from several different points of view. This may seem to get in the way sometimes but ultimately it is a good thing. Just look at the salmon runs in Oregon and Washington. They are all but non-existent. This is because, when these runs were being depleted, there was no organization to balance the system of permitting. Habitats were destroyed and the salmon and wildlife along with them. If you think a permit delay or denial here and there is a burden on our state just imagine what would happen if the salmon and wildlife weren't present in abundance. We would lose millions of dollars in revenue each year. Alaska is an international destination just because of the salmon and wildlife. Do not endanger these resources. Please do not let this transfer take place.

Eben P. Stone  
P.O. Box 580  
Girdwood, AK. 99587

(907)783-0848

### **Testimony of Lance Trasky in opposition to Executive Order 107:**

Mr. Chairman and members of the committee my name is Lance Trasky, and my address is 3941 Truro Drive Anchorage, Alaska 99507. I am a fisheries biologist, and have worked both for the State of Michigan and the State of Alaska. I have 30 years of experience both a fisheries research biologist and a habitat biologist. The views that I present here are my own and not intended to represent the views of my current employer. I am here today to ask you to reject Executive order 107 which would strip the Department of Fish and Game of all its statutory authority and responsibility to protect fisheries habitat and transfer that authority to the Department of Natural Resources. I believe that this change will result in the long-term decline of fish habitat in Alaska, and ultimately the number of fish available to the public. My reasons are:

- 1. EO107 changes the balance between protecting fish habitat and activities that have historically impacted fish habitat. The first Alaskan legislature established the Alaska Department of Fish and Game and gave ADF&G the statutory responsibility to insure that fish passage is maintained on all fish streams, and the productivity of all lakes and streams supporting salmon, steelhead, whitefish and other anadromous fish is preserved for the benefit of the economy and general well being of the state. These laws, the Anadromous Fish Act AS16.05.870-.895 and the Fish Way Act As16.05.840-.860 were designed to provide balance between the non-renewable resource development and the public interest in maintaining the states fisheries resources that support Alaska's sport, commercial and subsistence fisheries. *These laws were enacted and the Department of Fish and Game was created because legislators witnessed the final collapse of the salmon fisheries in the Pacific Northwest, and were well aware of the reasons why fish, fishermen and subsistence users lost every decision.* The legislators made a conscious decision to place the trust to maintain fish habitat in the hands of fisheries professionals in the new ADF&G, rather than in a Department of Natural of Natural Resources where fish habitat protection was just one consideration in a Department with many other competing interests. This was a reasonable decision because Alaska's sport, commercial and subsistence fisheries and the businesses, which support them, were and still are the**

largest non-governmental employers in the State, and a major part of our economy and culture.

I have not seen any evidence that a proper balance between fish and wildlife habitat protection and economic development has not occurred. During in the last 25 years the Department has reviewed about 40,000 to 50,000 application for large and small projects affecting salmon streams, or likely to block fish passage. Permit records show that more than 99% of these permits were issued, and only a fraction of a percent was denied. In 25 years there have been less than 7 appeals of ADF&G Title 16 permit denials or conditions. The fact is that the vast majority of people who have received Title 16 permits from the Habitat and Restoration Division are satisfied that they were treated fairly and their projects permitted efficiently. Contrast that with ADNR where hundreds of decisions has been appealed and litigated in the same time period. Although allegations have been made, I have not seen any evidence that an ADF&G Title 16 permit has halted or significantly delayed any economically viable project.

Currently the Governors resource cabinet resolves those instances where there are unresolved disagreements between ADF&G and another state department or federal agency or a private developer over the appropriate level of fish habitat protection conservation for a project. Because these debates are currently part of the public process, the public or the Coastal District often weighs in. If all of the fish habitat protection authority is transferred to ADNR, any disputes between the ADNR fisheries biologists and the Directors of the Division's of Forestry, Mining, Land and Water, Oil and Gas and Forestry will be settled within ADNR. The Department of Fish and Game will not have any say in the process, and none of these disagreements will be public.

**2. Incremental habitat loss is the primary cause of the dramatic decline in wild freshwater and anadromous fish populations in the United State. By moving ADF&G's fish habitat protection statutes to ADNR, the state is adopting a resource management model, which has historically failed to maintain fish habitat or the fisheries dependent on them. The model where fish habitat protection is just one of many social, economic, and political factors considered by a single state or federal agency charged with developing oil and gas, minerals, logging timber, and building roads has consistently failed to protect fish habitat.**

Many states have a single Department of Natural Resources, which includes a Division of Fish and Game. The best source of empirical data illustrating the inherent flaws in the type of system where all decisions are internalized is the USFS. The USFS is a very large, well-funded agency tasked with developing timber and non-renewable resource and conserving fish resources and habitat on national forests. In addition to foresters, for many years the USFS has employed fish, and wildlife biologists and hydrologists to help decision makers in the USFS to balance competing interests on forestlands. However, a recent report by the Government Accounting Organization found that up to 70% of the entire stream crossings constructed on federally managed lands in the Pacific Northwest over the last 40 years block fish passage. Fish access and production on thousands of miles of former fish habitat has been lost. A similar joint USFS and ADF&G study of Tongass Forest roads in Alaska found that up to 60 percent of the culverts are blocking fish passage!

**3. The Fish Way Act, AS16.05.840-.860, and the Anadromous Fish Act AS16.870 -. 895, by themselves don't protect fish habitat! Because of the way these statutes are written, fish habitat protection is solely at the discretion of the agency and the professionals who implement the statute.** For example, the Fish way Act AS16.05.840 requires, "If the Commissioner *determines it is necessary* every dam or other obstruction on a stream which supports salmon or other fish shall be provided with a durable and efficient fish way". If the Commissioner considers it necessary plans and specifications for fish passage structures be provided to the ADF&G for approval. Similarly AS16.05.870 only requires that the Commissioner of Fish and Game to insure that the projects he permits in salmon streams only provide for the "*proper protection of fish and game.*" There is no definition of *proper protection* of fish and game. There are no standards to measure projects against, only the scientific literature, biologists professional judgment, and experience determine what measures adequately protect habitat. Habitat Biologists are also backed up by a large organization in ADF&G employing many biologists with a broad range of education and experience. The ADF&G fisheries professionals have a statutory responsibility to manage, protect, maintain and where possible extend the fish and wildlife resources of the State in the interest of the economy and general well being of the State. Past ADF&G Commissioners and ADF&G staff have made the determination that providing fish passage is necessary. However, there is no requirement in the statute that the Commissioner of the Department of Natural Resources find that fish passage is necessary or that

plans and specifications for fish ways around dams or obstructions be provided to ADNR for approval. This is a concern

Similarly, the standard in the Anadromous Fish Act "provide for the proper protection of fish and game" provides total discretion to the Commissioner of ADNR on how much protection is provided to anadromous fish habitat. The term proper protection is not defined nor does it limit the amount of damage that could occur to fish habitat or water quality. For example, there would be nothing to prevent a future deputy commissioner of ADNR from rationalizing that establishing mixing zones for industrial wastes and sewage in salmon and high value resident fish spawning areas does provide for the "proper protection of fish and game". This is not hard to envision because in the early 1990's the Alaska Department of Environmental Conservation proposed to change State Water Quality Regulations to allow mixing zones in fish spawning areas.

You are probably asking yourself, why didn't the ADF&G adopt standards to keep this from happening? ADF&G tried to do adopt regulations with standards for the fish habitat protection statutes twice: once during the Sheffield administration and once during the Cowper Administration. Both times the ADF&G was stopped because of opposition by some development interests and the ADNR.

**4. The transfer of all of ADF&G's permitting authority under the Fishway Act, the Anadromous Fish Act and the Forest and Resources and Practices Act to ADNR is being portrayed as simply an efficiency move?** The implication is that ADF&G's permit system delays vital projects because it is inefficient. However, the actual statistics indicate that the ADF&G's Habitat and Restoration Division has the most efficient permitting system in State or Federal Government. The annual ADF&G permit summary indicates that Title 16 fish habitat protection permits were issued within an average of 14 days after the application was received in 2002 ADF&G approvals, and other state and federal permits required under other statutes are issued within an average of 18 days. Many permits for time critical projects have been issued in days or hours. In contrast, it often takes months to obtain an ADNR permit or lease. In a typical year projects reviewed range from very large projects, such as the Bradley Lake Hydro project, to a homeowner who wants to put a culvert for his driveway. In contrast to ADF&G's system, some ADNR programs such as water rights are years behind.

**5. In the Governor's State of the State Speech and in subsequent press conferences the Governor and his staff justified Executive Order 107 by cited 8 projects as examples where Habitat Biologists with personal agendas allegedly obstructed and delayed legitimate projects. Habitat staffs have provided information and documentation refuting these claims for all 8 of these projects. The facts show that habitat biologists didn't obstruct those projects; several were delayed for non-Title 16 related reasons, including OSHA violations and avalanches. There is no evidence in any of these projects that any biologist had any agenda, other than just doing a very difficult and thankless job. ADF&G's Title 16 permit tracking system shows that very few Title 16 permit applications are delayed (summary included). Of the few permits that are delayed the most common reason is that the applicant doesn't submit a complete application or doesn't provide sufficient information to issue a permit. In the Coastal Zone, Title 16 permits are sometimes held up because the Coastal Consistency Determination has not been issued, or the applicant doesn't meet federal permit requirements. However, it is ironic that the very efficient ADF&G permit system is singled out for criticism, when it often takes months or even years to issue other state agency permits! ADOT projects such as the Coastal Trail are delayed because of engineering errors, skyrocketing cost problems with federal statutes and public opposition. However, no similar criticism about efficiency has been leveled at ADOT.**

- 6. The Governor does not have to move ADF&G's permitting authority to implement his policies. He will appoint the AD&G Commissioner, and the Habitat Division Director and can institute any policies favoring development over fish habitat that he wants, during his administration. Moving ADF&G's fish habitat protection statutes to ADNRR permanently tips the balance in the favor of non-renewable resource development over fish in the state of Alaska.**

**In summary, I ask that you take action to reject Executive Order 107 and keep the authority and responsibility to protect fish habitat within the Department of Fish and Game. ADF&G is the most appropriate agency to manage the state's permit system that protects the habitat that produces the fisheries resources that benefit so many Alaskans. ADF&G's**

statutory purpose is to "Manage, protect, maintain and where possible extend the fish and game resources in the interest of the economy and general well being of the state." The value of the states commercial, sport, and subsistence fisheries exceeds the value of all other industries in the state, except for oil. The states fisheries are the biggest private sector employer. Fish habitat loss and migrational blockages are the number one reason that anadromous fish populations have declined to disastrous levels in the United States. Habitat loss is forever, and it is what is keeping salmon fisheries in the Pacific Northwest from recovering even after years of closures and fishing restrictions, and billions of dollars in federal and state expenditures. ADF&G Habitat and Restoration Division has restored several miles of stream bank habitat on the Kenai River and in the Mat-Su Borough, but the cost is high. Habitat protection is relatively inexpensive compared to restoration. Please don't change a system that is efficient and works.

Attachments:

March 10, 2003 Gilleland to Howard memo

November 27, 2002 letter from Frank Rue to John Sturgeon



## Alaska Salmonid Biodiversity Program

MAR 14 2003

March 11, 2003

### Testimony of Jan Konigsberg, Director, Trout Unlimited, Alaska Field Office House State Affairs Committee Hearing on Executive Order No. 107

Trout Unlimited is the nation's largest citizen-based coldwater fish and watershed conservation organization. TU's Alaska program focuses on salmonid biodiversity and fishery management. Alaska has plenty of pristine habitats, which is why it is the world's greatest reservoir of salmon biodiversity and which is why Trout Unlimited opposes the Governor's executive order (No. 107).

The governor drew up his order after hearing unsubstantiated claims by various developers who accuse habitat biologists of abusing and exceeding their authority. The governor has impugned the conduct and motives of Habitat Division staff without ever having independently investigated the veracity of the accusations. The governor's commissioners are on board with this approach. Yesterday, DNR commissioner Irwin testifying to Senate Resources Committee suggested this approach is appropriate since perception is reality and at a press conference last week, acting Commissioner Duffy blithely explained that opinions are facts and facts are opinions.

Habitat Division has/had the responsibility of standing up to those whose business plans regard habitat protection as just another cost to be minimized, if not entirely avoided. It is no wonder that disputes would arise and that developers would protest. Without the habitat biologists ensuring a project has minimal impact, there would be the inexorable incremental, yet cumulative, loss of productive habitat--steadily reducing the sustained yield of fish and wildlife in violation of the constitution and statute. Effective and efficient implementation of The Fishways Act and Anadromous Fish Act depends upon professional knowledge, experience and judgment. Apparently, Habitat Division is being punished for doing its job.

Yet, we're told that getting rid of nearly ½ the positions in the Habitat Division and transferring some to DNR increases "efficiency." So, if there is going to be a whole lot

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more digging, cutting, scraping, drilling, and generally a lot more huffing and puffing going on, we can expect more projects than normal will need permits. The only way less staffing can be more efficient is if permits were to be dispensed like pull-tabs; this makes sense since the transfer means industry has just won the lottery.

If efficiency in government is prized above all else, wouldn't downsizing the legislature by half and consolidating it into a unicameral body be worth considering?

Speaking of efficiency, perhaps someone can also explain why it has taken the Department of Natural Resources more than 6 months to decide what it's going to do about Afognak Native Corp. loggers cutting trees all the way to the fish stream. By the way, Fish and Game biologists not DNR foresters uncovered the violation. (could this have anything to do with why the timber industry is so supportive of having DNR become the permitting agency?)

Do not misunderstand me; I'm not accusing DNR of shirking from its duty nor abusing the public trust by its apparent slowness in resolving this matter. That DNR is not being particularly efficient or eager to enforce the statute is how it may appear. But perception is not reality, no matter what the governor and his commissioner may attest. Undoubtedly it takes time to conduct an investigation into such obvious violations of the law. Various questions come up; information must be gathered and communicated--just like permitting construction projects! Facts may turn out to be just opinions and what have been perceived to be opinions may turn to be the facts.

In fact, while the governor and industry seems to think that it had been Habitat Division's foot-dragging that has delayed various projects, the record clearly shows just the opposite.

At any rate, since when is efficiency supposed to be the most important standard by which to run a government? Efficiency is important, but so is fairness, open access, equal-access, due process, professional integrity, etc. It's ok if corporations put a premium on efficiency, that's their right, but when it comes to government, that's a different story. The only type of government that can claim to makes efficiency the penultimate criterion is fascism. Representative democracy is intrinsically a slower, messier form of government because it is supposed to value thoughtful deliberation.

Bearing this in mind, before accepting a reorganization scheme that flies in the face of a nearly 50-year resource management system, the public and its elected representatives deserve the benefit of a thorough and thoughtful inquiry into whether environmental protection and economic development would be well served by such reorganization. Forgive me, but with all due respect, we just can't take industry's word for it, be it the timber industry or the seafood industry.

**Subject: executive order 107**

**Date: Tue, 11 Mar 2003 11:11:38 -0900**

**From: "Linda Vollertsen" <mirow@acsalaska.net>**

**To: <Anchorage\_LIO@legis.state.ak.us>**

**MAR 14 2003**

Linda C. Vollertsen  
4871 Retriever Circle  
Anchorage, Alaska 99502  
907-243-0535

Dear Sir or Madam,

I am writing concerning the executive order proposed by Governor Murkowski regarding the Department of Fish and Game.

I STRONGLY OPPOSE eliminating the Habitat permitting authority from the Alaska Department of Fish and Game. Since the Department of Natural Resources is responsible for resource development, and the Department of Fish and Game is responsible for projects that affect fish and wildlife habitat we would be losing an important process that provides the checks and balances between the two.

My family has lived in Alaska since 1892. We have raised four generations here and plan to stay for generations to come. We know the importance of the connection between the earth/nature/wildlife and our livelihood. We cannot have the one without the other. The importance of that connection and what it means to our future generations here in Alaska cannot be overlooked.

Please work to STRENGTHEN one of the most important "natural" resources left to our state; the fish and wildlife habitats. Please work to let our past generations as well as our future generations know that creating balance is important to all humanity.

Thank you for your time and I trust that you will look at our history as well as our future in making the right decisions on this matter; balance is the key to a healthy family, community, and society.

Sincerely,

Linda C. Vollertsen

MAR 17 2003

Testimony of Michael Wiedmer, representing himself, before the Alaska State House of  
Representatives, State Affairs Committee  
March 12, 2003

Mr. Chairman, committee members, thank you for the opportunity to provide this testimony. My name is Michael Wiedmer; I am a Habitat Biologist with the Alaska Department of Fish and Game, with whom I have been employed since 1981, including one year in the Gas Pipeline Office. I present this testimony, not as a department spokesman, nor as a biologist, but as an Alaskan who wants state government to work efficiently and effectively, and as a citizen who expects clarity and accountability in the state's decisions and actions.

According to the current proposed organizational chart, I will transfer to the Division of Sport Fish. I have high regard for the individuals in Sport Fish and the professional standards they have created. My life in Sport Fish would certainly be more stable and less stressful than it has been in Habitat Division. The people of Alaska, however, do not employ me so that I can secure a stable and stress-less workplace; they employ me to develop professional and objective decisions in the interests of Alaskans, regardless of personal costs.

During the past two days, many people have testified in opposition to EO 107 with well-chosen words and I will not attempt to restate their cases. I ask you to note my support for the testimonies of commissioners Rosier and Rue and the other biologists and concerned citizens. I would like to quickly draw attention to two concerns that have not had full discussion.

The first concern is the effect of the passage of time on the proposed organizational structure. That is, will the new DNR habitat permitting organization age well?  
The second concern is about the path that took us to this point. How did we get here? What was the process?

Will the new DNR *Office of Habitat Management and Permitting* age well? Will environmental protection remain the same over time, while becoming more efficient? I believe it will not. This belief hinges on the knowledge that while statute language may remain unaltered, statute language alone is meaningless. The training and attitudes of the people implementing the statutory language is what, in the end, counts.

We have heard much of Commissioner Irwin's environmental ethic and the oft-repeated affirmation that Habitat Biologists will move from Fish and Game to DNR to continue their work uninterrupted. I fully expect Commissioner Irwin and the current Habitat permittees will strive hard to make the new system work—it is the people that will follow that concern me. The forecasted success of EO 107 is based on the qualities of the individuals involved, but we know these individuals will not remain with the program indefinitely.

Commissioner Irwin has spoken proudly of the success of the fish enhancement project at the mine he recently led. That the fish enhancement was a success seems not in doubt—I have here the Habitat Division report documenting that success. I find two ironies here, however: the first

is this joint industry-government success story was the product of the very system EO 107 seeks to dismantle, the second is EO 107 will mean miners 10 years from now will not have the opportunity to repeat Commissioner Irwin's recent success story.

Simply put, I believe in Commissioner Irwin's personal commitment to the environment—but that faith is based on him as an individual, not the proposed organizational structure. I cannot have faith that future DNR commissioners and deputies will have similar environmental ethics; I am confident, however, that future Fish and Game leaders will.

Clearly, the Habitat Biologists transferring to DNR are well trained and committed to efficient and effective service. However, a quick review of the proposed transfer list reveals that half the staff are at, or near, retirement. The question then becomes, how successful will DNR be in recruiting competent replacements to maintain the standards of efficiency and effectiveness the public expects. That the state has ever growing difficulty recruiting professional staff is not in doubt; many state administrators have testified to this problem. While Habitat Division is also vulnerable to this increasing problem, we do have the intangible advantage of being a member of the Alaska Department of Fish and Game—which has developed and still maintains a well deserved reputation for high professional standards—it is an agency for which people are proud to work. At least among biologists, DNR does not share that reputation. As such, their ability to recruit competent habitat biologist will be less than that enjoyed by Fish and Game.

Some may believe eliminating trained, experienced biologists will smooth the way for developers, but in my experience, most government delays and frustrations are caused not by experienced professionals, but by inadequately trained novices. DNR will face this problem to a greater degree than would Fish and Game. While Habitat Division has had good fortune in recruiting biologists from sister divisions, it is unlikely DNR will enjoy similar success.

Lastly, as a citizen, I am concerned about how the state reached the decision expressed in EO 107, overturning fundamental agency responsibilities that date to statehood. I fully anticipate and support the public's right to know the processes by which I reach my professional decisions, and I expect no less from the rest of government. The process leading to EO 107 has been completely opaque. It appears that no one in Fish and Game, certainly no one in Habitat Division, was consulted prior to the decision; further, it appears that EO 107 is contrary to the advice given by the transition team. The decision has been publicly justified only by discredited pleas for permitting efficiency, by a short list of geographic place names (Dorothy Lake, Juneau Golf Course), and by an oblique reference to an unsubstantiated six-year old late-night pizza party. To some, EO 107 may demonstrate decisive leadership. To me, EO 107 is an administrative fiat that has no place in an open democracy. Therefore, I ask you to support House Special Concurrent Resolution No. 1 to reject EO 107. Thank you.

MAR 14 2003

**Subject:** Testimony on EO 107

**Date:** Tue, 11 Mar 2003 17:33:57 -0800

**From:** "Wellman, Ted" <tedwellman@DWT.com>

**To:** "Anchorage\_LIO@legis.state.ak.us" <Anchorage\_LIO@legis.state.ak.us>

I would like to take this opportunity to express my opposition to Executive Order 107 which transfers habitat permitting functions to the Department of Natural Resources from the Alaska Department of Fish and Game. I apologize for not having more time to submit a more comprehensive response or to testify in person.

I am a fifty-five year resident of Alaska and my career includes engineer, manager and now attorney. During my eighteen years as a senior engineering manager for Chugach Electric Association, I had frequent opportunities to work with all permitting agencies on new transmission lines including the habitat division of ADF&G and DNR. The habitat division of ADF&G was a pleasure to work with compared to DNR. I never had a project held up waiting for ADF&G. Nor did I have a single permit request denied. I appreciated the professionalism demonstrated by ADF&G Habitat.

Since that time, I have been heavily involved on the Kenai River Special Management Area Advisory Board as Board member and President. In addressing habitat issues I found the senior personnel at ADF&G responsive, helpful and realistic in formulating recommendations.

I am extremely distressed by the proposal to eliminate the protections that the ADF&G provided for all of Alaska's rivers by terminating habitat biologists and turning the functions over to political hacks at DNR. I support reasonable development; however, eviscerating ADF&G and firing the dedicated professionals who have dedicated their careers to protecting the fish habitat is morally wrong, short sighted and ill founded. It will only destroy what we all treasure and have worked so hard to protect in the face of uncontrolled development. This looks like a pointless concession to commercial logging by giving them free rein to destroy salmon streams.

I strongly encourage you to reject this ill-conceived proposal while there is still time. Thanks for the opportunity to offer my opinion.

Ted Wellman  
3500 Twilight Lane  
Anchorage Alaska 99516  
[tedwellman@dwt.com](mailto:tedwellman@dwt.com)  
(907) 257-5326  
Fax (907) 257-5399<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

March 11, 2003

To: House State Affairs Committee

From: Alex Wertheimer  
17200 Andreanoff Drive  
Juneau, AK 99801

Subject: Executive Order 107

My name is Alex Wertheimer. I am a Fishery Research Biologist by profession, and a Past-President of the Alaska Chapter of the American Fisheries Society. Over the past 25 years, I have worked on a variety of issues involving Alaska salmon, and I have been lead author or coauthor of several papers evaluating the current status of Alaska salmon. These papers have documented the remarkable recovery of the resource from depleted levels at the time of Statehood, to the historically high levels of recent years. I am frequently challenged by my colleagues in the lower 48 to explain why in most of Alaska we have record abundances of salmon, in contrast to the decline and endangered species listings of salmon throughout the Pacific Northwest. Are we doing something right in Alaska, or are favorable environmental conditions masking inevitable impacts of development? Certainly Alaska salmon have benefited from favorable environmental conditions in the North Pacific Ocean. In my view, enlightened fisheries and enhancement management policies have also been major factors contributing to the health of the resource. But the most important factor has been the systematic maintenance of habitat quality. Because Alaska has the habitat, management policies and enforcement to ensure escapement have resulted in recovery of spawning populations. Because we have the habitat, recovered populations have had the productive potential to respond to favorable ocean conditions, resulting in record runs. At statehood, the Alaska Legislature recognized the critical importance of maintaining habitat for salmon production, even at a time when salmon were in serious decline. They separated the tasks of resource development and habitat protection between the Department of Natural Resources and the Department of Fish and Game to create a system of checks and balances, and to ensure that both agencies had the expertise and regulatory power to accomplish their tasks. This system has worked remarkably well, as evidenced by the current status of the resource. I am well aware of the legitimate need to develop and utilize Alaska's other natural resources to provide increased economic opportunity in the State. As developmental pressure and scale increase, however, the need for an effective system to ensure that impacts are minimized to the habitat that sustains Alaska's incredible salmon resource also increases. I have served on the Biological Review Team that evaluated the status of chinook salmon in California and the Pacific Northwest for listing under the Endangered Species Act. I can assure you that the perceived burdens of the current system is nothing compared to the regulatory morass and the costs of attempting to restore runs decimated by habitat degradation. Why gamble with one of the crown jewels of Alaska's renewable resources? I urge you not to abandon a system that has been so effective at fulfilling the mandate set by the original Alaska legislature, and to reject Executive Order 107.

MAR 12 2003



Western Division of the American Fisheries Society

20107

March 5, 2003

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



Dear Governor Murkowski :

The Western Division of the American Fisheries Society (WDAFS) represents over 3,700 fisheries scientists and biologists employed in government, academia, and the private sector throughout Western North America. The mission of the American Fisheries Society (AFS) is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries science and by promoting the development of fisheries professionals. AFS is not an advocacy group, but we occasionally bring important issues to the attention of policy leaders and the public. As implied in our mission statement, we only advocate for fisheries conservation and sustainability when our position is firmly founded on quality, peer-reviewed science.

WDAFS has learned of the recent Alaska state Executive Order (EO) No. 107 that you filed on 12 February 2003 to transfer fish habitat protection and permitting authority from the Alaska Department of Fish and Game (ADF&G) Habitat Division to the Alaska Department of Natural Resources (ADNR). WDAFS believes this action should be carefully reviewed and justified to ensure that it will not compromise the long-term health and sustainability of Alaska's fishery resources and the numerous communities that depend on fisheries. WDAFS is concerned that such a transfer may compromise sustainability of fishery resources, especially anadromous fish, and may not be in the public's best interest.

Salmon and other anadromous fish are essential to the people and economy in the State of Alaska. Salmon are also considered "keystone species" because so many other fish, birds, wildlife and even riparian vegetation depend on the flesh or nutrients provided by the eggs and rotting carcasses of spawners. In fact, increasing scientific evidence links the nutrients delivered upstream by carcasses to the future production of subsequent salmon generations. WDAFS is aware that fish and the

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Alaska - Arizona - British Columbia - California - Colorado - Hawaii - Idaho - Mexico - Montana - Nevada - New Mexico - Oregon - Utah - Washington - Wyoming - Western Pacific Islands and Trust Territories - Yukon

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habitat they depend on have had a high measure of protection since Alaskan statehood, but the responsibility for this protection will be transferred to a department where the primary mission is developing other, non-fisheries resources. Our members who have had experience in both Alaska and in the Pacific Northwest suggest that this strategy for fish habitat protection has failed to protect fishery resources in Washington, Oregon, California, Idaho, or British Columbia, Canada and we urge you to not repeat these mistakes.

There is strong scientific evidence that links landscape changes, road building, culvert installations, and water quality impairment (e.g., from logging, urbanization, mining, and agriculture) to many of the dramatically diminished salmon populations in the Pacific Northwest. In the state of Washington for example, the Department of Fish and Wildlife manages the animals within their habitats, while the Department of Natural Resources (WADNR) manages the uplands and has regulatory authority over benthic habitats through an aquatic lands lease permitting process. The WADNR is also the agency responsible for administering the State Forest Practices Act in both state and private forests. Under this arrangement, extensive fish and wildlife habitats were lost—one culvert and cutting unit at a time. Today thousands of road culverts block salmon use on these lands, and only recently have concerted efforts been initiated to fix these problems. Major improvements in the way the state of Washington practices forestry have only come through years of oversight by environmental groups and enforcement of native tribal rights.


Besides extensive fisheries closures, losses of Pacific Northwest keystone anadromous fish runs have had related impacts on resident fish, wildlife, and riparian vegetation; because these resources also depend on the salmon and salmon carcasses for their nutrients. The extremely degraded fish runs have led to numerous legal actions and the listings of some runs under the Endangered Species Act. Alaska is not immune to similar fisheries losses.

Experience has demonstrated that it is extremely difficult and much more costly to restore damaged aquatic habitat than it is to simply protect the habitat from damage in the first place. In recognition of this fact, salmon recovery efforts in the Pacific Northwest are now tiered towards first protecting the viable habitat and runs that remain, before costly expenditures on restoration are exercised. The existing Alaskan system of checks and balances, where development is promoted by ADNR and habitat is protected by ADF&G, has served well. The mostly pristine Alaskan stream corridors and healthy salmon runs are testimony to the effectiveness of the current arrangement. We are concerned that the proposed change will create a conflict of interest within ADNR, leading inevitably to less rigorous protection and gradual loss of habitat integrity, so essential to healthy fisheries.

The WDAFS realizes that long-term sustainability of both fisheries and other natural resources are important to all Alaskans and are guaranteed under The Alaska Constitution. The AFS holds no opinion on the merits of non-fishery natural resource development but, based on existing scientific evidence, it is clear that habitat protection is fundamental to sustainable fisheries. It is uncertain how fisheries habitat, particularly in streams that are clearly essential to healthy salmon populations, will be given the same level of protection under ADNR as it has received under ADF&G. The mandates of the agencies are inherently different and the level of fisheries training of ADNR personnel is likely to be significantly less than personnel from ADF&G. Collectively, these factors suggest that aquatic habitat protection could be relaxed under the proposed policy shift. Any relaxation of aquatic habitat protection has been shown to have incremental, cumulative effects that result in reduced fisheries production. The WDAFS is therefore concerned that this regulatory transfer will likely be detrimental to Alaska's fisheries resources and the aquatic communities and people that depend on them. The impetus for the proposed regulatory transfer remains unclear and does not appear to be founded on sound science.

The expert scientists who are members of WDAFS will be pleased to provide information and testimony in the public process. Please contact me if WDAFS can provide further input.

Sincerely,



Don MacDonald  
President, WDAFS  
24 - 4800 Island Highway North  
Nanaimo, BC Canada V9T 1W6  
Phone: 250-729-9623

cc: House and Senate Legislators

MAR 14 2003

My name is Howard Williamson. I have lived in Alaska 55 years. I have seen many changes during this time. Some have been good for the state and some not. The idea of taking the permitting authority away from Habitat and giving it to DNR is a change I would hate to see.

I know the environment of Alaska needs to be protected. From what I have seen over the years Habitat is doing a good job. It seems to me that doing away with an agency that has proven to do a good job is illogical. To place it under the umbrella of DNR is not a good idea. Government needs checks and balances. Who would be checking on DNR?

I request that you vote against EO 107.

Thank you for your time.

Howard Williamson

607 E 74th  
Anchorage AK 99515

Ph. 522-1734

HJWAK @ yahoo.com

P.S. / Egan thought Habitat was needed &  
he was one smart Alaskan. I hope  
that those representing Alaska will  
shut this noise off.




# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs  
 committee name  
 committee on EO 107, dated 3/11/03  
 bill/subject

I oppose moving Habitat Div. to DNR. In  
 my 33 yrs in Alaska I have never seen anything  
 as stupid.

MAR 17 2003

Signed:  DANIEL B. WINN  
 Testifier  
self  
 Representing (Optional)  
PO Box 1272, Homer, AK 99603  
 Address  
907-235-8712  
 Phone No.

MAR 17 2003



## YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

725 Christensen Drive, Suite 3-B, Anchorage, Alaska 99501  
Tel: 907-272-3141 Toll free: 877-999-8566  
Fax: 907-272-3142 E-mail: joe-yrdfa@alaska.com

Governor Frank Murkowski  
State of Alaska  
Office of the Governor  
PO Box 110001  
Juneau, AK 99811-0001

Dear Governor Murkowski,

The commercial and subsistence fishers who constitute the membership of the Yukon River Drainage Fisheries Association (YRDFa) depend upon good returns of salmon to the Yukon River for their livelihood, life style and traditional culture. We feel that your intent to move the permitting functions of the Alaska Department of Fish and Game's Habitat and Restoration Division into the Alaska Department of Natural Resources threatens to diminish this livelihood, life style and culture. The past several years have seen seriously low salmon returns that threaten these things if they continue into the future. Most recently the primary cause seems to have been poor ocean conditions, but it is survival at all stages of a salmon's life cycle that ultimately determines whether there will be sustainable harvests in the future for us and for our children.

You have announced that you plan to move the permitting elements of the Alaska Dept. of Fish and Game's Habitat and Restoration Division into the Alaska Dept. of Natural Resources. We respectfully ask that you reconsider this move and allow these functions to remain in ADF&G where, we believe, they will provide us with the best ensurance that salmon spawning and rearing habitat will be protected and, thus, the continued healthy returns of salmon sustained.

The missions of the Alaska Dept. of Fish and Game and the Alaska Dept. of Natural Resources are fundamentally different as you can see from their respective Internet web pages. The ADF&G mission statement reads:

The Alaska Department of Fish and Game's mission is to manage, protect, maintain, and improve the fish, game, and aquatic plant resources of Alaska. The primary goals are to ensure that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and development of these resources are in the best interest of the economy

and well-being of the people of the state.  
(<http://www.state.ak.us/adfg/genifo/overview/mission.htm>)

Somewhat different is the mission of ADNR which reads:

To develop, conserve and enhance natural resources for present and future Alaskans.

Certainly there is some overlap between these two guiding statements; conservation rather than complete protectionism is an element of both, but ADF&G's focus is more ensuring the sustainability of fish and wildlife while that of ADNR is developing all natural resources regardless of sustainability as mining (extraction) is not. Fisheries can and should be but are not necessarily sustainable if choices are made that favor other uses of natural resources. We have only to look at the long term decline of salmon in California, Washington and Oregon. It was not just the dams that have caused the loss of salmon runs in those states; it was also the loss of spawning and rearing habitat as ranchers, farmers, and loggers made alterations that favored their intended uses over the salmon's needs.

We are very much concerned that the same can happen in Alaska. Moving Habitat and Restoration's permitting functions into ADNR would pit their primary mission, development against their secondary function, conservation. And it is not at all clear that permitting to allow the extraction of mineral resources would be done with any priority given to maintaining living, renewable resources such as salmon. Conversely, removing the habitat permitting function from Fish and Game would eliminate what is stated as a primary goal of the department to conserve and maintain the habitat of renewable fish. An inability to do that would also severely impact the ability of the department to conserve and maintain the fish themselves. Thus the mission of the Alaska Dept. of Fish and Game becomes somewhat dependent upon the good graces and concern of the Alaska Dept. of Natural Resources which is not directly charged with maintaining fish or their needed habitat.

YRDFA understands that frustrations associated with permitting have been brought to your attention by those who would develop the mineral and other resources of the state and undoubtedly there have been some obstructionist decisions made which perhaps should not have been. All organizations must use people to function and we are all fallible, but there are ways to overcome incorrect decisions individuals within a department make. In general, I think you will find that most applicants for permits required by the Anadromous Fish Act (AS16.05.870) or the Fishway Act (AS16.05.840) were satisfied with the decisions, environmental protection requirements of permits and the speed of action by the Habitat and Restoration Division of ADF&G.

In 2003, 58,385 summer chum salmon were harvested by subsistence fishers from the Alaska portion of the Yukon River drainage. It has been estimated that prior to mining impacts, 45,000 summer chums (a comparable magnitude) may have spawned annually in Bear Creek, a tributary of the Hogatsa River which is within the Yukon drainage.

While lower returns in general probably would not have resulted in this many fish on those spawning grounds this year in the absence of mining, there are other examples of lost spawning and rearing habitat due to mining and logging that cumulatively do significantly impact the numbers of fish available to commercial and subsistence fishers.

The Anadromous Fish Act only protects salmon habitat in those waters listed in the Anadromous Waters Catalog and only to the upstream extent that anadromous fish have been found in that watershed. Listing of waters in the catalog is very incomplete and many streams and rivers that do contain spawning and rearing anadromous fish are not listed. There is no protection given to the essential fish habitat in these streams and thus the fish themselves are at risk. These waters are not in the catalog because Alaska is such a large state that funds required to support the stream surveying needed to put them into the catalog have been insufficient. Those who would not wish to be hindered by modifications to their mining and logging procedures would certainly not wish to see additional streams added to the catalog though, in truth, there are many that should be. ADNR will be much less likely to continue to pursue adding additional legitimate streams to the catalog than ADF&G because it will add requirements to further in-stream development and because it would most likely constitute an unfunded mandate for them. Thus adding streams that should be included and protected may well come to an end, leaving the sustainability of various stocks in question.

Governor Murkowski, it takes a real statesman to reconsider and reverse a publicly stated position on an issue when it appears that original position was in error. Please be that kind of statesman now. When the past five commissioners of ADF&G from both sides of the political aisle tell you this is a mistake, please heed their warning and that of many other people and groups in this state who depend on the living renewable resources of this state. We want those resources to remain renewable, which is not guaranteed by your intended transfer of permitting responsibility. We want them to remain renewable for ourselves, our children and all Alaskans in the future. Thank-you.

Sincerely,

A handwritten signature in cursive script that reads "Jill Klein for J.K.". The signature is written in dark ink and is positioned above the printed name and title.

Jill Klein  
Executive Director

Phone CALLS | 3-10-03

EO 107

7:35 pm Chris Stocker - Anch - against

7:45 pm Debra Eilcrest - 272 3226

"back idea to move habitat to DNR"

7:42 pm Cecil Rich - opposed to EO 107

support joint resolution to stop EO 107

7:47 pm Heather Gatt - Anch - disapprove

habitat move to DNR

7:50 pm Annabel Albicle - thank you for

holding STA Hearings on Habitat

7:50 Elisa MacFlett - disapprove EO 107

support the resolution to disapprove

8:10 Cathy Krause - Anch repub -

against the HABITAT move

8:17 Beverly Stort - Anch - supports

a joint resolution to disapprove habitat move

8:18 Joe Meehan - Anch - 344-4034

does not support EO 107

3-11-03 - Phone calls

2:30 pm

Deb Lassemeire

against the Habitat to  
DNR change

3:00 pm

Anita Getts

concerned about this change,  
worried about fish resources

worried about the morals of Habitat staff