

EO

107

nt 4-14-03



OFFICIAL BUSINESS

Alaska State Legislature

Senate

Office of the Secretary

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February 12, 2003

MEMORANDUM

TO: Senator Ogan, Chair
Resources Committee

FROM: Kirsten Waid *KW*
Secretary of the Senate

RE: Executive Order No. 107

The President has referred Executive Order No. 107 (transferring certain functions relating to the protection of fish habitat from the Department of Fish and Game to the Department of Natural Resources) to your committee.

Section 23, Article III of the Constitution states:

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he consiuers 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.

Executive Orders are treated differently than bills. If you wish to report any recommendations to the body, please do so with a memo or in accordance with Section 23, Article III of the Constitution within the sixty day limit.

Attachment

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
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JUNEAU

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February 10, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order transferring certain functions relating to the protection of fish habitat from the Department of Fish and Game to the Department of Natural Resources (DNR).

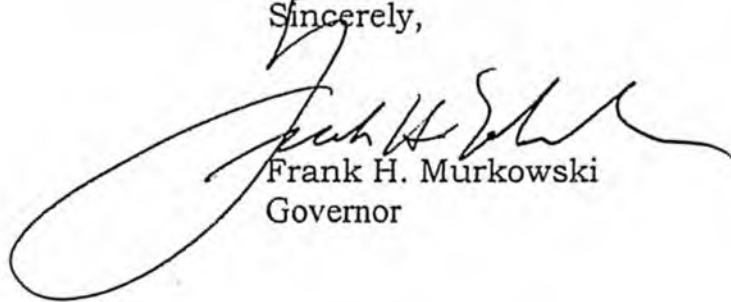
Currently, the division of habitat and restoration in the Department of Fish and Game oversees the requirements of AS 16.05.840, relating to maintaining fish passage whenever a stream frequented by fish is obstructed. The same division oversees the permitting function laid out in AS 16.05.870, which ensures the protection of water bodies important for anadromous fish. To better coordinate these complex and important functions with the management of our state's resources, it makes sense to transfer them to the DNR under the supervision of a deputy commissioner of that department. I envision that the expert staff needed to carry out these functions will join the DNR.

Because this function now will reside in the DNR, the important consultative role of the Department of Fish and Game under the Forest Resources and Practices Act (AS 41.17) (Act) also must be moved to the DNR; the Executive Order assigns that role to the same DNR deputy commissioner. At the same time, the role currently assigned to the commissioner of natural resources in the Act is transferred to the state forester in the division of forestry, preserving the balance between forest stewardship and stream preservation that the legislature envisioned.

The Honorable Gene Therriault
February 10, 2003
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These changes will help us achieve efficient, fair, and balanced review of projects that seek to tap our state's natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is fluid and cursive, with a large loop at the end.

Frank H. Murkowski
Governor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: EO 107
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title Transfer certain Habitat functions from BRU Management & Administration
Fish & Game to Natural Resources Component Office of Habitat Mgt & Permitting
Sponsor _____
Requester Governor Component No. 2682

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Funding for this Executive Order has been included in the FY04 Governor's operating budget request, as a transfer from the Department of Fish & Game to the Department of Natural Resources.

Prepared by: Nico Bus, Admin Svcs Manager Phone 907-465-2406
Division: Support Services Date/Time 3/10/2003
Approved by: Tom Irwin, Commissioner Date 3/10/2003
Agency: Natural Resources

Alaska State Legislature
Senate Resources Committee
Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
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Memorandum

DATE: March 14, 2003

TO: All Senate Resources Committee Members

FROM: Senator Scott Ogan
Chairman, Senate Resources Committee

RE: Executive Order # 107

Attached you will find additional handouts from our Monday, March 10th hearing. This material includes written copies of testimony offered that evening as well as other correspondence that was received following the meeting.

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

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

DATE: February 20, 2003

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

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

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

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

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

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

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

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

Discussion of Specific Projects

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

H&R Region I Response – Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H&R Region I Response - Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project

applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

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

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

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

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

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

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

H&R Region I Response - Summary

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

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

DATE: February 11, 2003

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

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

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

H&R Region II Response - Summary

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

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

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

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

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

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

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

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

H&R Region II Response - Summary

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

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

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

H&R Region II Response - Summary

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

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

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

H&R Region II Response - Summary

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

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

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

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

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

Tok Cut Off Milepost 30-38

Timeline:

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

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

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

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

Glenn Park Highway Interchange

Resource Concerns

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

Project Information

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

Chronology

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

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

ADF&G Permits

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

6. On Thursday, September 19, 2002, the ADF&G received an application for the placement of temporary and permanent fill below the OHW mark of Spring Creek. On Wednesday, September 25, 2002, the contractor notified the ADF&G of their desire to begin placing fill materials the following morning. A Habitat Biologist drove to the project site and a field permit was issued to allow the work. **Time to issuance: 2 hours.**
7. On Thursday September 26, 2002, Fish Habitat Permit FG 02-II-0617 was issued authorizing and addressing all aspects of the placement of temporary and permanent fill below the OHW mark of Spring Creek. **Time to issuance: 4 business days.**
8. On Thursday September 19, 2002, the ADF&G received an application for initial construction activities associated with the replacement of the undersized 4-foot culvert. Work begins before the permit was issued. On Tuesday October 1, 2002, Fish Habitat Permit FG 01-II-0458 was issued. **Time to issuance: 8 business days.**
9. On Monday, September 30, 2002, the ADF&G received an application to place permanent fill below OHW of Spring Creek. On Monday, October 14, 2002, Fish Habitat Permit FG 02-II-0624 was issued. **Time to issuance: 10 business days.**
10. On Tuesday, November 5, 2002: ADF&G receives application for the placement of temporary fill below OHW of Spring Creek. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Monday, November 25, 2002, the Field Permit FG 02-II-0658 was issued (Later changed and recorded as FG 02-II-0692). **Time to issuance: less than 1 business day.**
11. On Thursday, November 7, 2002, the ADF&G received an application for final construction activities associated with replacement of undersized 4-foot culvert. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Wednesday, November 27, 2002, Fish Habitat Permit FG 02-II-0622 issued. **Time to issuance: 3 business days.**

12. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**

13. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**

STERLING HIGHWAY MILE 161.4

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

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

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

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

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

1996 Board of Forestry Report

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

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

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

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

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

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

THE
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March 10, 2003

TO: Senate Resources Committee

FROM: Don Muller, Box 1042, Sitka, Alaska 99835

My name is Don Muller. I have lived in Sitka for nearly 30 years. I have been a business person for almost all of that time.

I am strongly opposed to the Governor's attempt to move the Habitat Division into DNR. The Governor has taken the law into his own hands. He has ignored the experts in order to promote his own short-sighted goals of economic development. He fails to acknowledge that a healthy economy depends on a healthy environment. Where does he think salmon come from? Does he not know that healthy forests and healthy streams are required in order to have a healthy salmon industry? Does he not know that a healthy tourist industry depends on healthy forests and beautiful landscapes and clean water? Has he forgotten that the timber industry is just a tiny, tiny portion of Alaska's economy—and should be even smaller?

Please vote to DISAPPROVE of the governor's executive order moving the Habitat Division into DNR.

Thank you.

Don Muller

March 10, 2003

TO: Senate Resources Committee

FROM: Auriella Hughes 611 Biorka St. Sitka AK 99835

Please vote to **DISAPPROVE** of the governor's executive order moving the Habitat Division into DNR.

I am strongly opposed to the Governor Murkowski's desire to move the Habitat Division into Department of Natural Resources. Habitat Division is concerned with protecting the environment, while DNR wants to develop natural resources at the expense of sound environmental practices. The Governor has ignored the experts and fails to acknowledge the undeniable truth that a healthy economy depends completely on a healthy environment. The Habitat Division should remain within the Department of Fish and Game.

Thank you.

Auriella Hughes



Western Division of the American Fisheries Society

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

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.

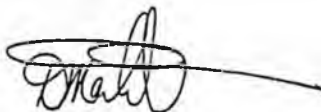
Besides extensive fisheries closures, losses of Pacific Northwest keystone anadromous fish runs have had related impacts on resident fish, wildlife, and riparian vegetation; because these resources also depend on the salmon and salmon carcasses for their nutrients. The extremely degraded fish runs have 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

Subject: Public Testimony Regarding Executive Order 107

Date: Tue, 11 Mar 2003 12:32:06 EST


From: Jeannems7@aol.com

To: Senator_Kim_Elton@legis.state.ak.us

Honorable Senator Elton:

Thank you for your continued support of bringing Executive Order 107 into the open and under review. I appreciate your continued support to disapprove E.O. 107. Unfortunately, you had to leave before my public testimony was heard. Please review and enter this information into the public record. I testified around 7:30 PM and I do not believe it has been recorded. If you have any questions concerning my position on this issue, or if I may provide any information, please feel free to contact me at 907-688-5878.

Sincerely,
Jeanne Walter
19658 Creek Way
Chugiak, AK 99567

 [Public Testimony to the Senate Resources Committee.doc](#)

Name: Public Testimony to the
Senate Resources
Committee.doc

Type: WINWORD File
(application/msword)

Encoding: base64

Download Status: Not downloaded with
message

I would like to thank the State Resources Committee for giving the public an opportunity to comment on Executive Order 107. My name, for the record, is Jeanne Walter. I am speaking as a resident of Alaska and as a registered voter. My background is toxicology and biology, and as such I have worked for the Department of Interior, State of Alaska, Universities and Industry, in particular the paper industry. I am also a Board member for the Pacific Northwest International Erosion Control Association.

I view this transfer as a paramount issue in the compliance of state law for fish and wildlife resources. The original intent of Executive Order 107, as stated, was to streamline permitting. This will not be possible under E.O. 107 for the following reasons:

Alaska Department of Fish & Game (ADF&G) Habitat and Restoration Division staff process 2000 permits per year averaging a 14-day turn around time. Only 0.5% of these permits were denied in 2002. These records are documented and are part of the public record. The turn around time described includes the time from when a complete application is submitted, to when the permit is issued.

Alaska Department of Natural Resources (ADNR) water permits take much longer, with as many as 700 permits backlogged (the backlog is expected to be finished by 2007, at the earliest).

Commissioner Irwin and Acting Commissioner Duffy stated that 22 Habitat Division staff received pink slips (3/7/03) releasing them from state employment as of May 1, 2003. Additionally, 12 currently vacant positions will be eliminated.

Decreasing the staff by 30% will decrease site inspection, monitoring, restoration efforts, and mitigation suggestions and will slow down the permitting process. The only way to speed up the permitting process under these cuts would be to rubber stamp permit acceptance without proper review. Proper review of permits and the biologist's expertise save the applicants money from costly legal fines (both Federal and State). Biologist input in the initial phases of the project often save expensive litigation fees and time delays.

Only 36 Habitat Division employees will be transferred to ADNR.

The remaining 38 Habitat employees will be spread out between three different divisions and the EVOS office.

Dismantling the Habitat and Restoration Division will decrease the ability of biologists to receive consultative information from adjacent ADF&G Divisions and field biologists.

If you do not disapprove E.O. 107, the State of Alaska will lose a dedicated habitat staff including oil and gas experts, erosion control specialists, cartographers, biologists, ichthyologists, fish passage specialists, etc. In fact, the biologists in Region II worked 1½ years of unpaid overtime in 2002. **One and a half years!**

The ANWR development vote is presently very close in our Nation's Capitol. Many members have been swayed to vote in favor of ANWR development due to the success and professional integrity of the ADF&G Habitat and Restoration Division's permitting responsiveness. I believe that with such a drastic change in permitting and the dismantling in the ADF&G Habitat and Restoration Division, Representatives and Senators will vote against opening ANWR to exploration drilling. If Executive Order 107 passes, I will spend all my time educating our Nation's Leaders on the effects of this Executive Order. Is it worth risking ANWR development under a new and questionable permitting section? I will assure you, many people believe it is not, and these people vote. Please note that I am for **responsible development**.

Please bring Executive Order 107 to the floor of a joint session and vote to **disapprove** it. Keep the Habitat and Restoration Division where it belongs, in the Alaska Department of Fish and Game. Thank you for your time and attention to this important issue.

Marlene A. Clarke
PO Box 1020
Wrangell, AK 99929-1020

March 6, 2003

Alaska House of Representatives
Attn: Peggy Wilson
Alaska State Senate
Attn: Robin Taylor

Re: EO107

Dear Madams and Sirs:

Please note that I strongly oppose moving the Habitat Permitting Authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

This legislature should work to strengthen, not diminish, fish and game wildlife habitat protection and oversight.

Please vote NO in joint session to ^{M.C.} approve executive order EO107. You, as elected officials, will be held accountable in protecting our fish and wildlife.

Respectfully submitted,

Marlene A. Clarke
Marlene A. Clarke

*Note correction, last paragraph,
first sentence.*
Marlene Clarke



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

March 10, 2003

Chairman Ogan, Members of the Senate Resource Committee;

My name is Paul A. Shadura II, I am the president of the Kenai Peninsula Fishermen's Association. I reside on the Kenai Peninsula. KPFA has been in existence since 1956 and is the largest set-net representation organization in Cook Inlet.

KPFA respects the right of the Governor and his administration to streamline government and improve the economic well being of the state. Re-structuring administrative services is an efficiency necessary to reduce costs and lessen the burden on the states already beleaguered commercial fishing families.

We believe that EO 107 has merits, but we also believe that there are serious flaws that do not allow a system of reviews necessary to protect the environment from overzealous industrialization.

There are three main points for suggested modifications:

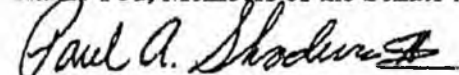
- 1) The Commissioner of Fish and Game should retain a voice in the final permitting process. It is extremely important that aquatic systems are protected to the highest *standards* available. Reviewing the Sustainable Salmon Fisheries Policy regulation, the importance of habitat is the pivotal theme to which all salmon management plans are designed after. The ADF&G are the states specialists who live and breath our states constitution's mandate to sustain and conserve. Commercial fishermen and others have access and a voice through the department to emphasis their concerns. The Commissioner should have authority to: object, veto, vote or call for further analysis and public involvement if he believes a vital habitat will be compromised.
- 2) The new *deputy commissioner's* position created in the DNR should be one that has the assurance of all that they will perform the task with all environmental considerations made. This position has more control and autonomous decision making power than either commissioner of natural resources or fish and game. This position has to be filled with an individual of special talents and the ability to not be influenced by individuals who have only their interests and not the states

best interests in mind. We believe this position should go through the full confirmation and administrative appointment review process. The people of the state should be allowed due process in confirming this highly pivotal position.

- 3) We highly recommend that the functions of the anadromous fish catalogue remain within the dept of fish and game. There is no reason for this mapping of our salmon resources to be delegated to non biological staff. This is the most important log of fisheries management that tells the public what systems are performing and which are showing stress. It is the performance document that spans time, a resource history book. In Cook Inlet, where our fisheries are fully utilized by commercial, sport, subsistence and personal use no fish lost can be acceptable to oversight or mitigation. You cannot buy-out an eco-system that has been developing since the time of man and expect to restore it overnight.

We strongly encourage the governor and his staff to re-consider the adoption of EO107 and to consider the improvements that we have suggested.

Thank You, Members of the Senate Resources Committee.



Paul A. Shadura II

March 10, 2003

Members of the Senate Resources 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

3/13/03 POWMS

Roberta R Sheldon
Po Box 292
Talkeetna AK, 99676-0292

Email:
Constituent
BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: It is a serious mistake to transfer the F&G Habitat Division to DNR. This is a dangerous departure from a sound habitat supervision and will cause serious degradation to our outstanding environmental assets. Please do not support this irrational proposal.

DISTRIBUTION: 1

Gregory W Bell
2048 Esquire Dr
Anchorage AK, 99517-1345

Email:
Constituent
BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I support EO 107 as I've experienced what I believe is a personal environmental agenda with the habitat biologists in my dealings with the current habitat division. I feel this isn't right. I believe we need to put this division over in DNR for better representation. Thank you.

DISTRIBUTION: 7

Subject: Please find attached testimony from 3/10/03

Date: Tue, 11 Mar 2003 12:15:00 EST

From: Jeannems7@aol.com

To: Senator_Scott_Ogan@legis.state.ak.us

Honorable Senator Ogan:

I appreciate your time last night and your continued review of this important issue.

Sincerely,
Jeanne Walter
19658 Creek Way
Chugiak, AK 99567



Public Testimony to the Senate Resources Committee.doc

Name: Public Testimony to the
Senate Resources
Committee.doc

Type: WINWORD File
(application/msword)

Encoding: base64

Download Status: Not downloaded with
message

I would like to thank the State Resources Committee for giving the public an opportunity to comment on Executive Order 107. My name, for the record, is Jeanne Walter. I am speaking as a resident of Alaska and as a registered voter. My background is toxicology and biology, and as such I have worked for the Department of Interior, State of Alaska, Universities and Industry, in particular the paper industry. I am also a Board member for the Pacific Northwest International Erosion Control Association.

I view this transfer as a paramount issue in the compliance of state law for fish and wildlife resources. The original intent of Executive Order 107, as stated, was to streamline permitting. This will not be possible under E.O. 107 for the following reasons:

Alaska Department of Fish & Game (ADF&G) Habitat and Restoration Division staff process 2000 permits per year averaging a 14-day turn around time. Only 0.5% of these permits were denied in 2002. These records are documented and are part of the public record. The turn around time described includes the time from when a complete application is submitted, to when the permit is issued.

Alaska Department of Natural Resources (ADNR) water permits take much longer, with as many as 700 permits backlogged (the backlog is expected to be finished by 2007, at the earliest).

Commissioner Irwin and Acting Commissioner Duffy stated that 22 Habitat Division staff received pink slips (3/7/03) releasing them from state employment as of May 1, 2003. Additionally, 12 currently vacant positions will be eliminated.

Decreasing the staff by 30% will decrease site inspection, monitoring, restoration efforts, and mitigation suggestions and will slow down the permitting process. The only way to speed up the permitting process under these cuts would be to rubber stamp permit acceptance without proper review. Proper review of permits and the biologist's expertise save the applicants money from costly legal fines (both Federal and State). Biologist input in the initial phases of the project often save expensive litigation fees and time delays.

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If you do not disapprove E.O. 107, the State of Alaska will lose a dedicated habitat staff including oil and gas experts, erosion control specialists, cartographers, biologists, ichthyologists, fish passage specialists, etc. In fact, the biologists in Region II worked 1½ years of unpaid overtime in 2002. **One and a half years!**

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Please bring Executive Order 107 to the floor of a joint session and vote to **disapprove** it. Keep the Habitat and Restoration Division where it belongs, in the Alaska Department of Fish and Game. Thank you for your time and attention to this important issue.

Subject:

Date: Tue, 11 Mar 2003 03:25:09 +0000

From: "Pete Smith" <petes_mile@hotmail.com>

To: Senator_Scott_Ogan@Legis.state.ak.us

As a retired commercial fisherman, I noticed that F&G worked just fine before the establishment of the Habitat Division.

Transferring a pared down version to DNR should be a good step in eliminating this redundant agency.

Land use managers should well know by now, after some 28 years, the parameters concerning dangers to habitat and that should lend itself to the use of a fairly cookie-cutter approach.

So do we need a DIVISION for that ???

Gov. Murkowski is right on track.

Add photos to your messages with MSN 8. Get 2 months FREE*.
<http://join.msn.com/?page=features/featuredemail>

Subject: Support EO 107

Date: Tue, 11 Mar 2003 15:39:24 -0900

From: Julie Decker <juliedecker@gci.net>

To: Ogan Scott <Representative_Scott_Ogan@legis.state.ak.us>,
"Seaton, Paul" <representative_paul_seaton@legis.state.ak.us>,
"Weyrauch, Bruce" <Representative_Bruce_Weyrauch@legis.state.ak.us>

To State Affairs Committee, House Fisheries Committee, and Senate Resources Committee:

On behalf of the Southeast Alaska Regional Dive Fisheries Association, SARDFA, I would like to support Executive Order 107.

SARDFA supports resource protection. Without a healthy resource, there is no healthy industry.

However, SARDFA also believes the Department of Natural Resources will be able to uphold the retained Title 16 permitting requirements just as conscientiously as the Department of Fish & Game has in the past, with the added benefit of making government more efficient.

Thank you for your time,

Julie Decker

Executive Director
SARDFA, Southeast Alaska Regional Dive Fisheries Association
P.O. Box 2138, Wrangell, AK 99929
Ph: 907-874-3110
Fax: 907-874-4270
Email: juliedecker@gci.net or info@sardfa.org
Web Site: www.sardfa.org

Decker, Julie <juliedecker@gci.net>

Executive Director
SARDFA



KENAI RIVER
Special Management Area

"Working together...for the river"

ADVISORY BOARD

March 5, 2003

Dear Senator:

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

POM re: F&G transfer to DNR

Roberta R Sheldon
Po Box 292
Talkeetna AK, 99676-0292

Email:

Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: It is a serious mistake to transfer the F&G Habitat Division to DNR. This is a dangerous departure from a sound habitat supervision and will cause serious degradation to our outstanding environmental assets. Please do not support this irrational proposal.

DISTRIBUTION: 1

State of Alaska

Legislative Affairs Agency Division of Public Services

Wrangell Teleconference Center
Fax cover sheet

To: Senate Resource, Committee Phone: _____

From: Sarah Merritt Phone: 874-3013

Instructions: Please include this in your written

testimony for ED 107. Thank you.

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Sent: Date 03-12-03 Time 1:30 pm

By: Wrangell Teleconference Center

Disposal of Original: Throw Away _____

Hold for Pick Up _____

Number of pages 1 (not counting this cover sheet)

permitting

Subject: permitting

Date: Wed, 12 Mar 2003 10:51:20 -0900

From: Dave Atcheson <daveatch@gci.net>

To: Senator_Scott_Ogan@legis.state.ak.us

Dear Mr. Ogan:

I want to state my concern about the Governor's plan to move permitting from Fish and Game's Habitat Division over to DNR. As a commercial fisherman for many years, and as an avid hunter and sports fisherman, I am very concerned about the future of our fisheries and feel moving permitting to another division is an enormous mistake, and will only further risk one of our most valuable resources. I urge you and your fellow state senators to oppose this.

Thank you,

Dave Atcheson

Subject: oppose Habitat Division EO

Date: Tue, 11 Mar 2003 21:50:47 +0000

From: "Thomas Paragi" <tparagi@hotmail.com>

To: Senator_Ralph_Seekins@legis.state.ak.us

CC: Senator_Scott_Ogan@legis.state.ak.us

1271 Lowbush Lane
Fairbanks, AK 99709
11 March 2003

Hon. Ralph Seekins
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

As a hunter, fisherman, and trapper in Alaska for the last 18 years, I would like to request that you oppose Governor Murkowski's Executive Order to dismantle the Habitat and Restoration Division of ADF&G. The founders of our State Constitution had the wisdom to separate the DNR Divisions (largely non-renewable resources) from fish and wildlife resources so that both sectors of our economy and livelihoods can be strong. Habitat Division was created years ago to maintain the strength of our fishing industry by ensuring land-based projects did not harm spawning and rearing areas, particularly in coastal Alaska.

In the Interior, Habitat Division has been an asset to balance mining projects with freshwater fisheries and local water quality. Testimony to the Legislature within the last week cited Habitat Division as an asset to developing a good environmental program at Fort Knox. I have to wonder whether the "increased delay in permitting in recent years" cited by the Governor and other behind-the-scenes interests is the result of poorly-planned developments that indeed should be held under greater scrutiny. We have a bounty of resources in Alaska, but we don't need to repeat the mistakes of the other 49 states in developing them in a sustainable fashion.

The financial wisdom of this EO escapes me after talking with some employees of ADF&G. Habitat Division receives about 15% General Funds, with the rest of their salaries and operations sustained by outside grant support and Federal Aid matching funds. To my knowledge, only the Department with statutory authority over public trust resources (fish and game, hence ADF&G) is eligible for Federal Aid. Thus, transferring the permitting section to DNR will lose their eligibility for 3:1 federal match, along with ownership of equipment that ADF&G has purchased with these funds in past years. Where will the Legislature find the money to re-tool the permitting biologists so they can do their job effectively and in a timely manner?

This blatant attempt to remove the internal check-and-balance system characteristic of our State government will almost assuredly result in increased legal intervention by the Federal government and public interest groups, further delaying development projects and costing the State untold revenue that will be diverted to legal bills. Concurrent attempts by this Administration to further reduce the effectiveness of public interest groups within Alaska will only shorten the trigger for Federal intervention. The Governor has started down a slippery slope that all previous Administrations, of all political stripes, were wise to avoid. I am not confident he will admit a mistake and take corrective action.

There may well be problems with how Habitat Division interacts with the private sector, but the Legislature has the collective wisdom to fairly fix those problems, as previous Administrations have done. As a member of the Senate Resources Committee, perhaps you could introduce the EO as

legislation that could be debated and properly amended for intent without the costly consequences as presently worded.

Sincerely,

Tom Paragi

cc: Hon. Scott Ogan, Chair, Senate Resources Committee

Protect your PC - get McAfee.com VirusScan Online
<http://clinic.mcafee.com/clinic/ibuy/campaign.asp?cid=3963>



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) RESOURCES
 Committee on EO 107 Committee Name
Bill / Subject Dated 3-10-03

I am in support of the Governor's plan to transfer the ADF&G permitting to DNR.

I am for the streamlining of positions as well as streamlining of the permit process. Currently the ADF&G can be slowed down with special interest groups who do not support any Resource development.

I do not expect any compromise of the environment, but would expect permitting to move forth without holdups.

SIGNED:

Testifier Leslie Gustafson
 Representing Self - owner of White Spruce Enterprises
10293 Old Valdez Tr, Salcha
 Address / Phone Number 99714
488 3004

Subject: Fish and Game permitting

Date: Thu, 6 Mar 2003 08:09:29 -0900

From: "Stone_Eben" <Stone_Eben@asdk12.org>

To: <Fairbanks_LIO@legis.state.ak.us>

Greetings

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

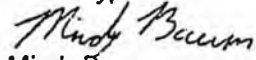
Mindy Baurr.
8515 Cormorant Cove Circle
Anchorage, Ak 99507
907-349-3760(ph)
907-338-0370(fax)

3/10/2003

I am writing in opposition to the Executive Order moving the Habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

The mission of the Department of Natural Resources of developing natural resources has an inherent conflict with the mission of the Alaska Department of Fish and Game of protecting natural resources. As such, the Department of Natural Resources is not the appropriate agency to oversee the permitting process. Such a move only serves to undermine environmental protection of natural resources and to eliminate any meaningful review of development projects.

Sincerely,


Mindy Baum

RE:

Subject: RE:

Date: Thu, 13 Mar 2003 21:16:03 -0900

From: "Bill Stevens" <casscon1@acsalaska.net>

To: "SCOTT OGAN" <Senator_Scott_Ogan@legis.state.ak.us>

CC: <casscon@alaska.net>



8:55 PM
03/13/03

Sir,

As promised, my testimony and permitting time line are attached.

Thank you.

Bill Stevens

 LEGISLATURE LETTER 03 13 03.doc	Name: LEGISLATURE LETTER 03_13_03.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
 Cassandra Permitting Timeline 3-11-03.doc	Name: Cassandra Permitting Timeline 3-11-03.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message

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 with cc to casscon1@acsalaska.net

Bill Stevens (907) 240-7040

03/13/03

Alaska State Legislature

Please enter my testimony to the Senate Resources Committee on EO 107, dated 03/10/03.

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



Alaska State Legislature

Please enter into the record my testimony to the SENATE RESOURCES COMMITTEE
committee name

committee on EO-107, dated MARCH 10, 2003
bill/subject

The following written testimony was faxed to the
Senate Resources Committee on the evening of March 10, 2003
following the Committee's Public Meeting on EO-107.

This is the original copies submitted to the Anchorage LIO.

Edw. Bayn
Anchorage LIO

Signed: _____
Testifier

Representing (Optional)

Address

Phone No.

Chairman Ogan and distinguished members:

Good Afternoon. 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 is concerned 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. Last year I personally wrote 36 Fish Habitat Permits and participated in approximately an equal number of project reviews where no permit was required. Very few of these were "off the shelf" as DNR Commissioner Tom Irwin would have you believe. Just like the 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. That 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

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,


Matthew LaCroix

Mr. Chairman, members of the committee.

My name is Cindy Anderson and I am here today to testify that I oppose the movement of the laws that maintain fish habitat to the department of Natural Resources.

I have spent the past 20 years of my career as a Management Biologist for the Division of Commercial Fisheries. I have managed herring and salmon fisheries from the Kuskokwim area to the North line of Egegik in Bristol Bay. I have spent hundreds of hours in airplanes and helicopters counting fish to ensure that there are more than enough fish to provide for all users and to ensure that there will always be new generations of salmon for the future generations of Alaskans.

During the time period that I worked for Commercial Fisheries, I flew surveys to check on projects in western Alaska streams for Habitat Division. I provided input on streams impacted by mining projects, and rural airport construction projects. This sharing of responsibility for the resources we manage, (the fish, the mammals and birds and their habitat) has been done in concert with each division at Fish and Game. The bear biologist is just as interested in fish runs and spawning success as the commercial fisheries manager or the technician collecting subsistence data.

The movement of the Division of Habitat to the Department of Natural Resources undermines the responsibility of the Department of Fish and Game to protect all of the renewable resources that are now sheltered under one roof. It is counter productive to fragment the Department of Fish and Game and dilute their ability to provide all the resource protection needed for the Fish and Wildlife of the State of Alaska.

. The dedicated staff in the Region II habitat staff work many hours of unpaid, uncompensated hours of time to protect fish habitat. In the past year more than 2,000 hours have been freely given by the Region II staff to meet the standards necessary to review permit requests. Every Alaskan, young or old, Sportfish or Subsistence user, commercial fishermen or tourist who values salmon as a resource needs to know that the Department of Fish and Game Habitat Division belongs at Fish and Game. Every Alaskan needs to be aware that Department of Fish and Game biologists will no longer be able to protect the fish and wildlife habitat when Habitat Division is disbanded. If a considerable number of Habitat Biologists have been laid off, the balance moved to DNR, and the experienced forced to leave, how can we possibly be protecting the Resources for the State of Alaska and all resource users.

Thank you for your consideration.

10 March 2003

Barbara Mahoney
3905 Locarno Drive
Anchorage, Alaska
99508

To: Legislative Affairs

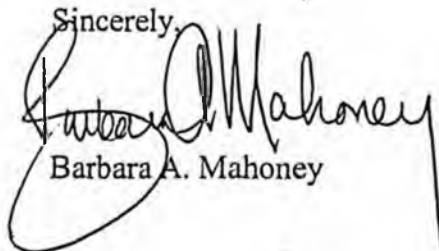
I would like to inform the Legislative Affairs that I am opposed to executive order 107, which transfers the Alaska Department of Fish and Game, Habitat Division (Title 16) to the Alaska Department of Natural Resources.

I request a joint resolution to reject or overturn this executive order.

The protection of salmon habitat in Alaska should be of the utmost importance for a state whose history was created by salmon and the salmon industry. The executive order to get rid of ADFG Habitat Division is a short term view, with short term goals and possible pay outs to a select few. However, the long term loss to the state will be measured in the future with poor salmon returns, lower and more problematic than what is occurring now. A stream or river does not need a dam to destroy its salmon habitat, what will destroy salmon habitat is development along their streams and rivers with minimal review and little time and concern for those impacts to all stages of the salmon's life cycle. Alaska will not be able to avoid the problems of the northwest as related to salmon, and the federal responsibility and severe restrictions of the Endangered Species Act.

Governor Murkowski's executive order 107 will be back to haunt the state of Alaska when the salmon industry suffers, more so than just the cost per pound. The Alaska Legislature should take this opportunity to correct this mistake, before Title 16 and the protection it offers through expert and experience biologists working with the Habitat Division of ADFG, is lost.

Sincerely,



Barbara A. Mahoney

Jeffrey C. Davis
20905 Jayhawk Drive
Chugiak, Alaska 99567

March 10, 2003

Alaska State Senate Resource Committee

Dear Senators:

Subject: Executive order 107

I am asking that you submit a joint house and senate resolution to rescind the Governor's executive order 107. Implementation of the executive order will increase permitting review time the majority of projects requiring fish and game authorization, have no affect on the efficiency of regulatory reviews of large projects, result in the long-term loss of State resources. Identifying regulatory issues and finding solutions that adequately address all concerned should be accomplished through the legislature, not by executive order.

Regulatory permit efficiency would decrease if E.O 107 is implemented. Of all of the State regulatory permit agencies DNR probably has the worst record. DNR is encumbered with extensive public notice and review processes due to a number of lawsuits associated with the regulation of State land and waters. There is no distinction between large and small process. Therefore, permits currently issued within days for small-scale projects with minor impacts that can easily be mitigated will require length reviews with mandatory public notice and review deadlines. Permits currently issued within days will take months and impose a greater cost to the State.

Large projects generally require multiple State and federal permits. The review timeline and process generally is due to federal regulations. Incorporating habitat permitting into DNR will have no effect on this process.

Resource protection likely will decrease and permit conditions become more cumbersome to developers. In order to reduce permit review times, permits will need to be issued without adequate environmental review or permits issued for project that should not be authorized. One way to issue permits faster is to incorporate generic permit conditions. Generic permit conditions do not protect the resource because site-specific or species-specific information is not incorporated into the review. Generic conditions often require applicants to conduct monitoring or implement project modifications that do not fit the given situation. This results in more of a burden to developers that spending additional up-front project review time. This also causes further frustration for those wishing to conduct activities within the State.

All of us currently reviewing projects recognize that the State regulatory review process could be made more efficient; however, there are literally hundreds of different issues to consider when evaluating how this could be accomplished. It makes much more sense for the Governor or legislature to set up a regulatory review committee that would take into account all of the

different permitting requirements within all State resource agencies. Recommendations from this committee could lead to appropriate legislation with appropriate legislative review. However, for real and appropriate changes to the regulatory progress to occur, this executive order must be rescinded.

Sincerely;

A handwritten signature in cursive script, appearing to read "Jeffrey C. Davis".

Jeffrey C. Davis

Testimony before the Senate Resources Committee – March 10, 2003

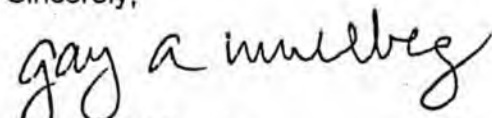
Dear Chairman Ogan, Vice-Chairman Wagoner and Members of the Senate Resources Committee:

I would like to express my concern about the Governor's executive order to transfer permitting authority from the Department of Fish and Game's Habitat Division to the Department of Natural Resources. I am aware that the missions of these two departments are different and I see a real danger in moving enforcement authority for the protection of fish and wildlife resources/habitat to the Department of Natural Resources whose primary mission is the development of resources. The permitting authority was established at Fish and Game in 1959 so that checks and balances would be maintained on issues and decisions related to the protection of fish and wildlife resources. This executive order eliminates those checks and balances.

The main reason the governor gave for issuing this executive order was "streamlining" the permit process though there doesn't seem to be much evidence of inefficiency. The permit process at Fish and Game handles an average of 2000 permits per year. Many projects are inspected and monitored in the field. Permits are issued in an average of 15 days by an experienced staff of habitat biologists who coordinate with the Sport Fish, Commercial Fish, Wildlife and Subsistence Divisions within ADF&G. Less than 1% of these permit applications are denied for legitimate reasons. The Governor's executive order reduces the number of staff to handle this work and eliminates input and coordination with other Fish and Game Divisions. This move will be costly and counterproductive and will have the opposite effect of slowing down the permit review process. The Governor has not provided a convincing argument for moving the ADF&G permitting staff. There needs to be discussion on alternatives that will support both development and protect the fish and wildlife resources.

I am asking you to pass a joint resolution rescinding Executive Order 107. Thank you for your time.

Sincerely,



Gay A. Muhlberg

20905 Jayhawk Drive

Chugiak, AK 99567

Testimony before the Senate Resources Committee Monday March 10, 2003

*I am not testifying
on behalf
of the
ADF&G*

My name is Cevin Gilleland. I am the area habitat biologist for the Mat-Su Borough, Prince William Sound, and the Copper River Basin. I've been involved in three of the projects that have been used to demonstrate why the Department of Fish and Game's responsibility to protect fish and wildlife should be moved to DNR; and make no mistake about it, moving the Department's permitting responsibility and authority to DNR will eliminate most of the Department of Fish and Game's ability to project fish and game.

The three projects I want to talk about are real projects but the information presented to the press and the public is not. The projects are the Tok Cutoff Highway upgrade, The Glenn Parks Interchange, and the Power Creek hydroelectric project in Cordova.

On the Tok Cutoff it was alleged that Fish and Game at first had no objection, then changed our comments, resulting in project delays. Let me explain what happened.

The DOT&PF requested scoping comments on the highway upgrade, their plans said that the bridges across the Chistochina River and Sinona Creek would be replaced. There was no mention of stream diversions or wetland impacts. The ADF&G sent a letter stating that the Department had no objection, that permits would be required for the bridges, and that they would be issued upon receipt of plans and specifications. The plans and specifications came and the permits were issued. Approximately 6 months later we received a letter from the Corps of Engineers, indicating that the project would fill approximately 24 acres of wetlands adjacent to the Copper River, and that a clear water tributary to the Copper River would be diverted. Because of the very high fishery values of the Copper River, this new information, provided by the Corps of Engineers, not DOT&PF, raised additional questions.

So we contacted the DOT&PF and the Corps of Engineers, and asked for plans for the permanent diversion channel (which required an ADF&G permit), and an evaluation of the wetland impacts. If you are charged with protecting fish and game, that seems to be the prudent thing to do!

To date, we have re-issued the bridge permits twice – they have now expired. I contacted the DOT Northern Region in January to see if they wanted to renew the bridge permits and was told by Melissa Parker that the ADOT&PF was developing new plans for the project and that the new plans would be available this spring. The ADF&G did not delay this project. The DOT&PF project changed significantly from what was presented during scoping, and the ADF&G responded appropriately. To do otherwise would have been irresponsible.

The second project was the Glenn Parks Interchange. The Governor said that the ACMP Consistency finding was issued in March of 2001, and that the ADF&G didn't issue permits for 16 months. His statement was simply incorrect. The first discussions of the Glenn Park Interchange project didn't take place until June 2001. The ACMP Consistency review and final finding was based on the project concept (not the actual plans), because it was a design build project - that is, the contractor both designs and builds the project. The consistency finding was issued on March 27, 2002 (not 2001); and it required that plans and specifications be submitted by the contractor at least 30 days before construction. In other words the ADF&G could not issue any permits until the actual plans were submitted.

The design build contractor Kiewitt Pacific and CH2M Hill were selected in the summer of 2002. They worked with us to develop an alternative to the DOT&PF concept plan that eliminated one of the bridges over Spring Creek. We worked with the federal resource agencies (EPA, NMFS, and the USFWS) and the Corps of Engineers to get the additional wetland fill approved quickly, saving the contractor a significant amount of time and money.

We also worked with the contractor to save time and money on a large culvert that is part of the project. The culvert was originally supposed to be 385 feet long with a huge concrete wall. We helped the contractor modify the plan, extend the length of the culvert to about 410 feet, and replace the concrete wall with a much smaller headwall around the culvert ends, again saving the contractor time and money, while protecting important fish and wildlife resources.

The final Project I'm going to talk about is the **Power Creek Hydroelectric Project in Cordova.** On at least two occasions a photograph of the contractor washing a huge boulder has been shown to reporters, implying

that the ADF&G required the contractor to wash rock. This is simply not the case. Washing the rock was Jack Snyder's idea. Mr. Snyder was a contract employee with Cordova Electric.

The permits issued by the Department of Fish and Game, for the construction of the diversion, dam, and intake, where the rock washing took place, did not require that the contractor wash rock, or even that the contractor use clean rock. The permits required that the diversion be constructed to carry the flow and not pollute the downstream anadromous fish spawning areas.

I have copies of those permits attached to my comments. And some photographs of what happened when Power Creek was first diverted into the diversion channel. Hundreds of tons of sediment washed into Power Creek, Hatchery Creek, and Eyak Lake, just after sockeye salmon had begun spawning.

It took the contractor 16 days to re-divert Power Creek back into its natural channel. After Power Creek was back in its natural channel both the ADF&G and the Federal Energy Regulatory Commission asked Cordova Electric to redesign the diversion channel.

We helped. I contacted Paul Janke, the ADOT&PF south-central regional hydraulic engineer and requested his assistance in order to expedite the project. Mr. Janke provided a standard design that I forwarded to CEC and Whitewater Engineering.

On August 30, 2000, the ADF&G received CEC's revised stream diversion plans, incorporating the minimum design criteria provided by the ADOT&PF, and stating that CEC's contractor would wash the rock. After the Federal Energy Regulatory Commission approved the plan on September 13, the ADF&G wrote a memorandum to the Division of Governmental Coordination asking that the diversion of Power Creek into the bypass channel not be required to undergo an Alaska Coastal Management Program Consistency Review (Attachment 4), again, in order to expedite the project. On September 29, the ADF&G issued Fish Habitat Permit for the temporary diversion of Power Creek into the diversion channel and the re-diversion of Power Creek back into its natural channel once construction of the dam was completed.

The ADF&G did not cause delays at the Power Creek Project, but expedited completion of the project by providing plans from the ADOT&PF, and by requesting that the project not undergo further ACMP consistency review.

The ADF&G had a substantial involvement in these three projects. In every case the applicant's benefited and so have fish and wildlife resources.

ADF&G's permitting is the primary mechanism used by the department to protect fish and wildlife. Transferring that responsibility to DNR will not benefit fish and wildlife, will not benefit Alaskans, is poor public policy, and a bad message to send to the rest of the country, especially when we're lobbying for support for ANWR and NPRA.

I urge you to reject Executive Order 107.

ATTACHMENT 1

Photographs of original diversion channel and its failure, resulting in downstream pollution of sockeye and coho salmon spawning habitat.

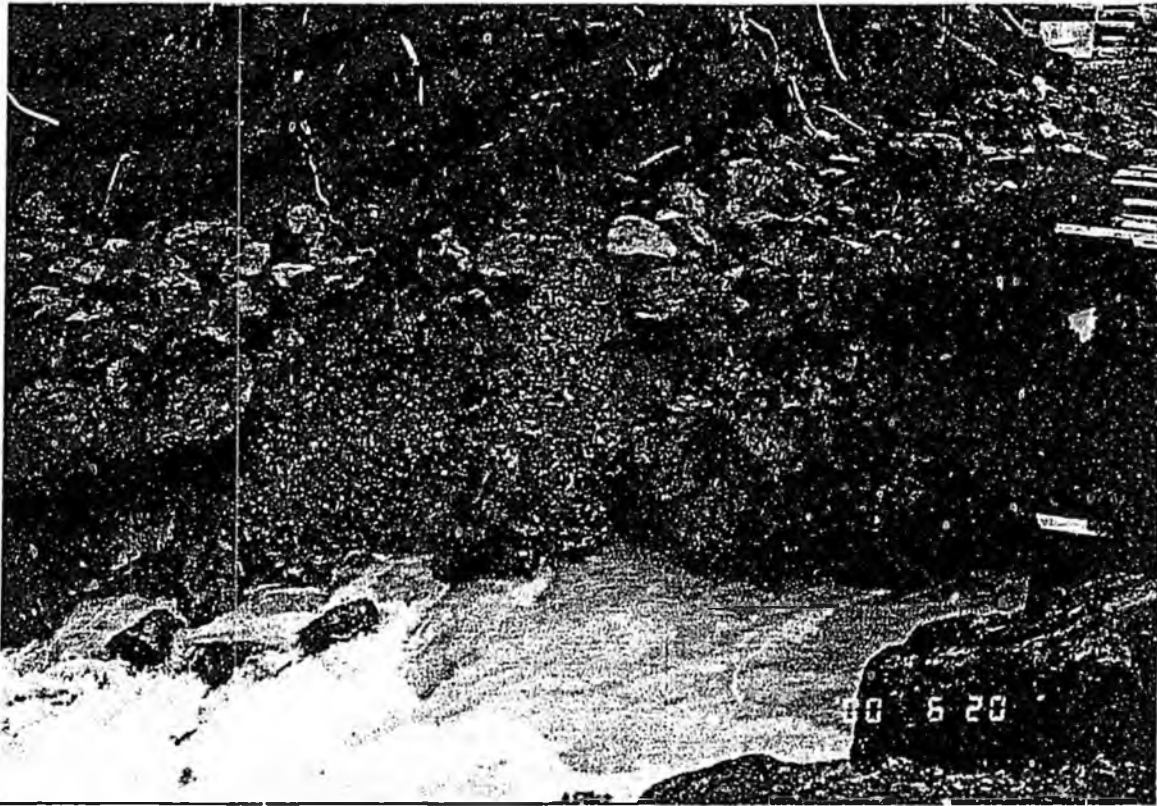


Figure 1. Photo shows diversion channel construction. Note fine material covered with a single layer of large rock. This photo shows one of the areas in the diversion channel where the rock armor failed. It is approximately 30 feet long and 12 feet high. It is important to note the soil that was exposed when the riprap collapsed into the channel – the channel armor consisted of large rock placed directly on the native soil matrix, which is not the accepted or appropriate method of placing riprap in an erodable channel.

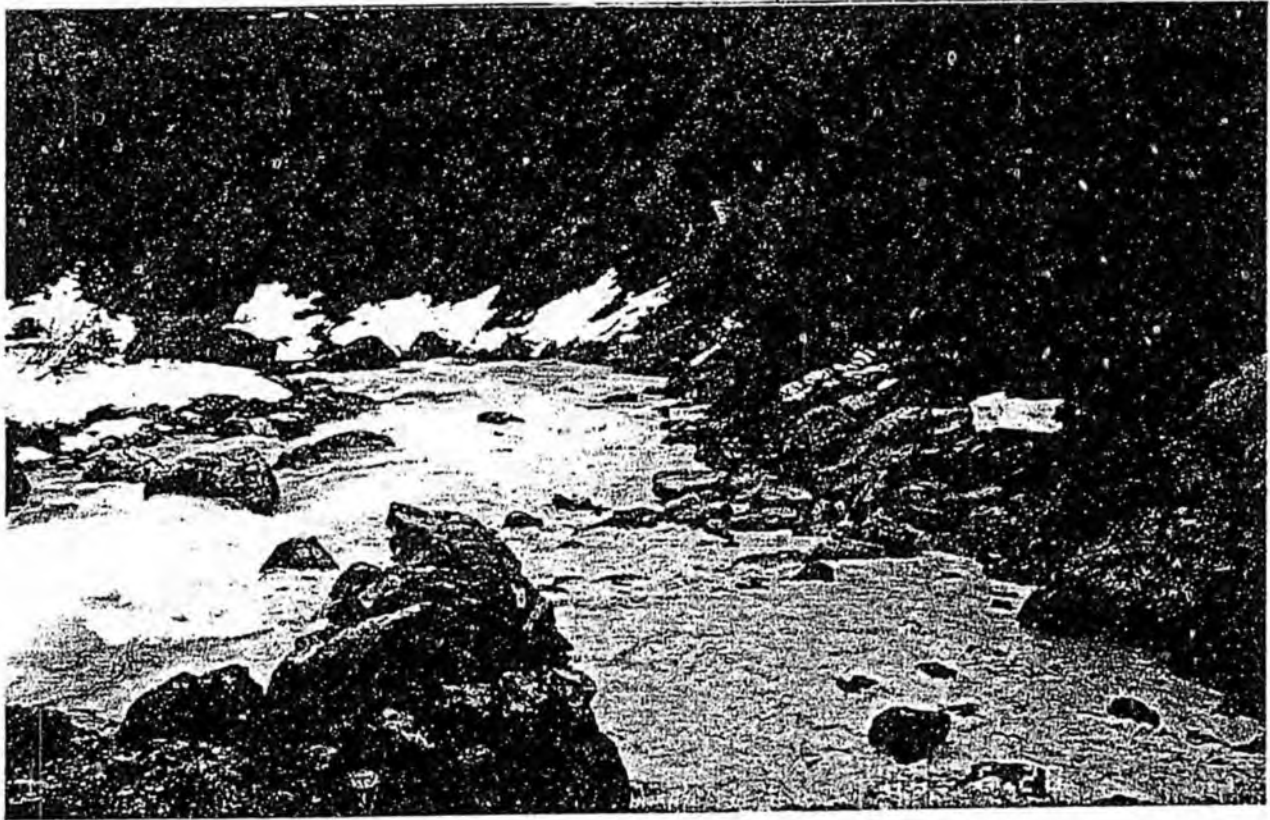


Figure 2. Sediment laden water from diversion channel entering clear water of Power Creek at the diversion channel outlet. The density of the sediment plume indicates a large amount of soil and fine material being eroded from the channel and released into Power Creek.

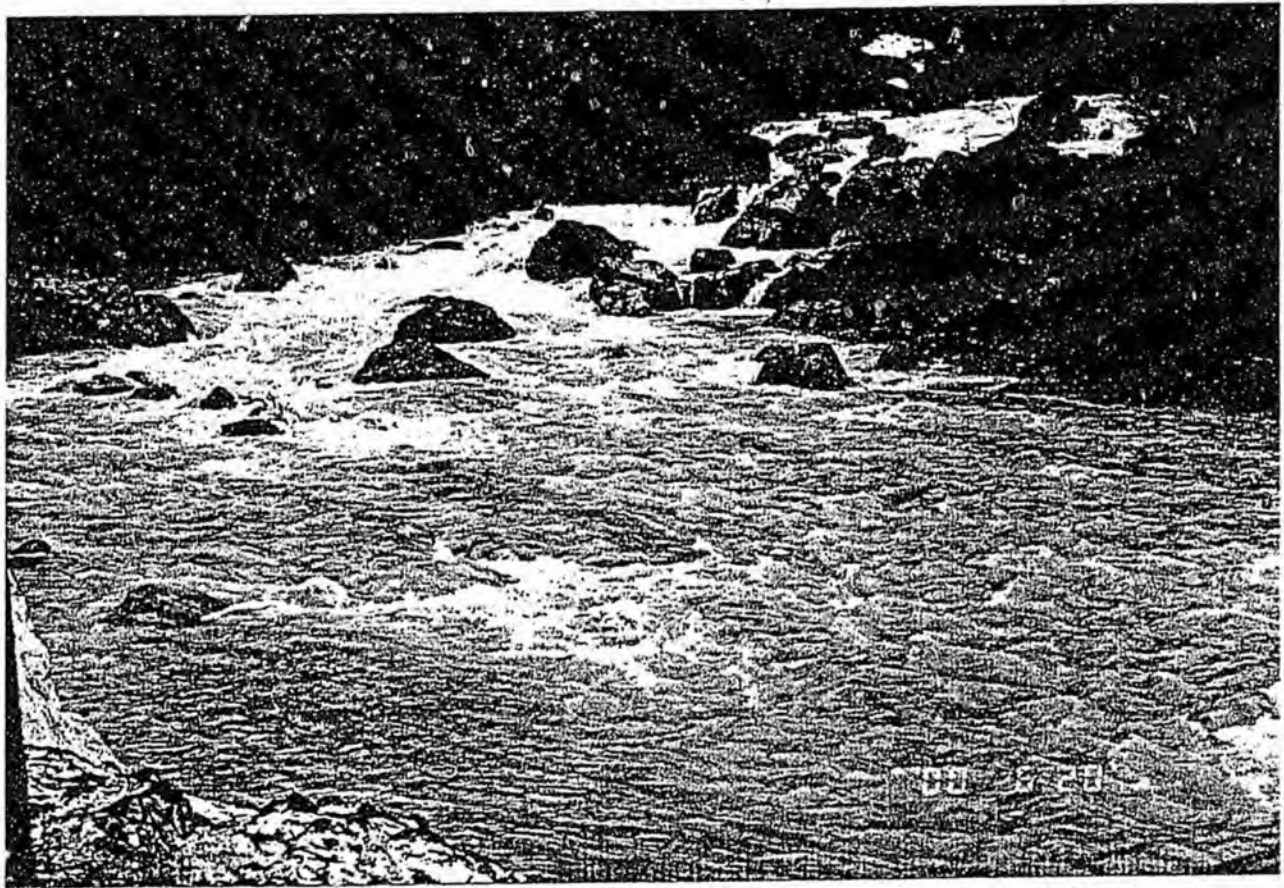


Figure 3. Sediment laden water in Power Creek approximately 0.5 miles downstream at lower portal, approximately 16 minutes after the initial plume entered Power Creek at the end of the diversion channel.

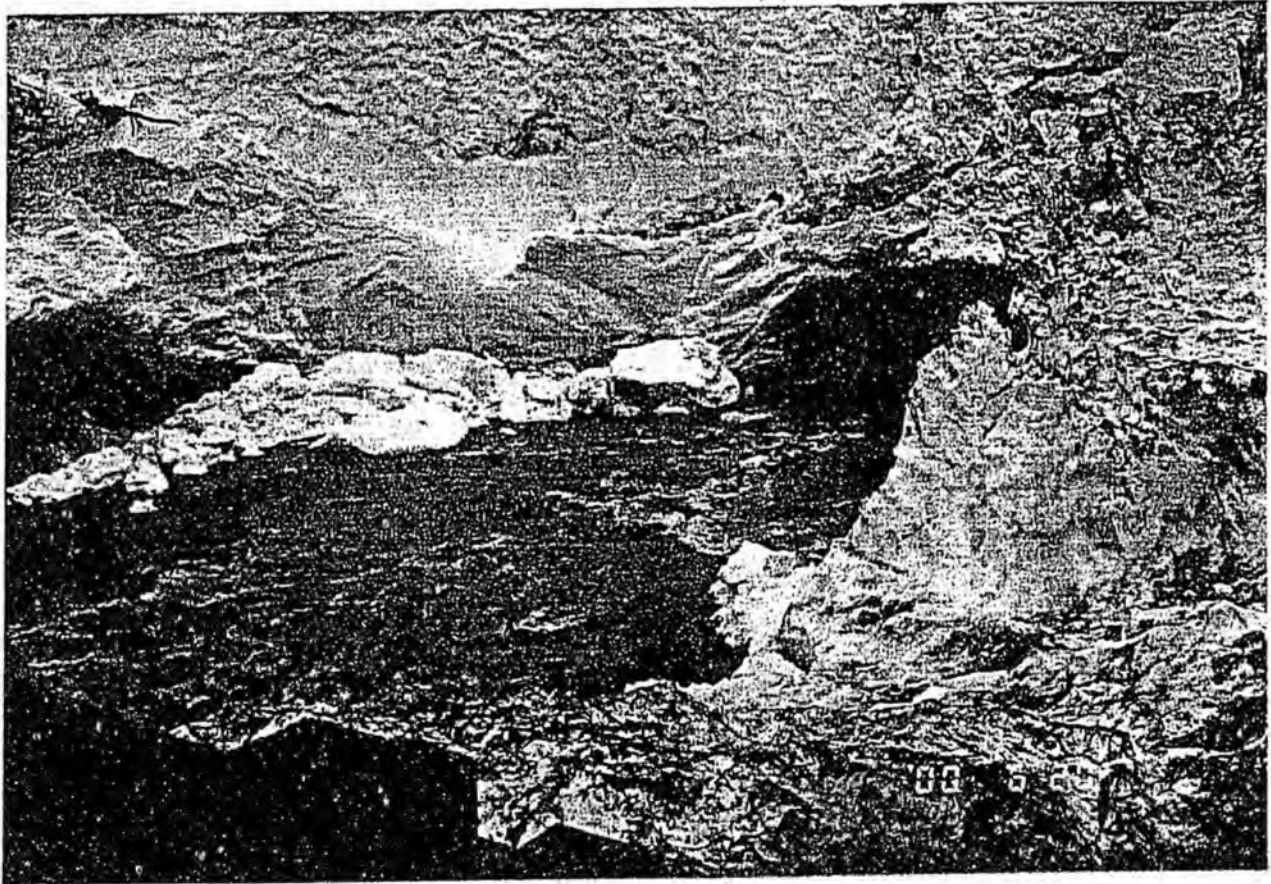


Figure 4. Sediment plume in Power Creek approximately 0.5 miles downstream from the diversion, approximately 90 minutes after the sediment plume first entered Power Creek at the downstream end of the diversion channel.

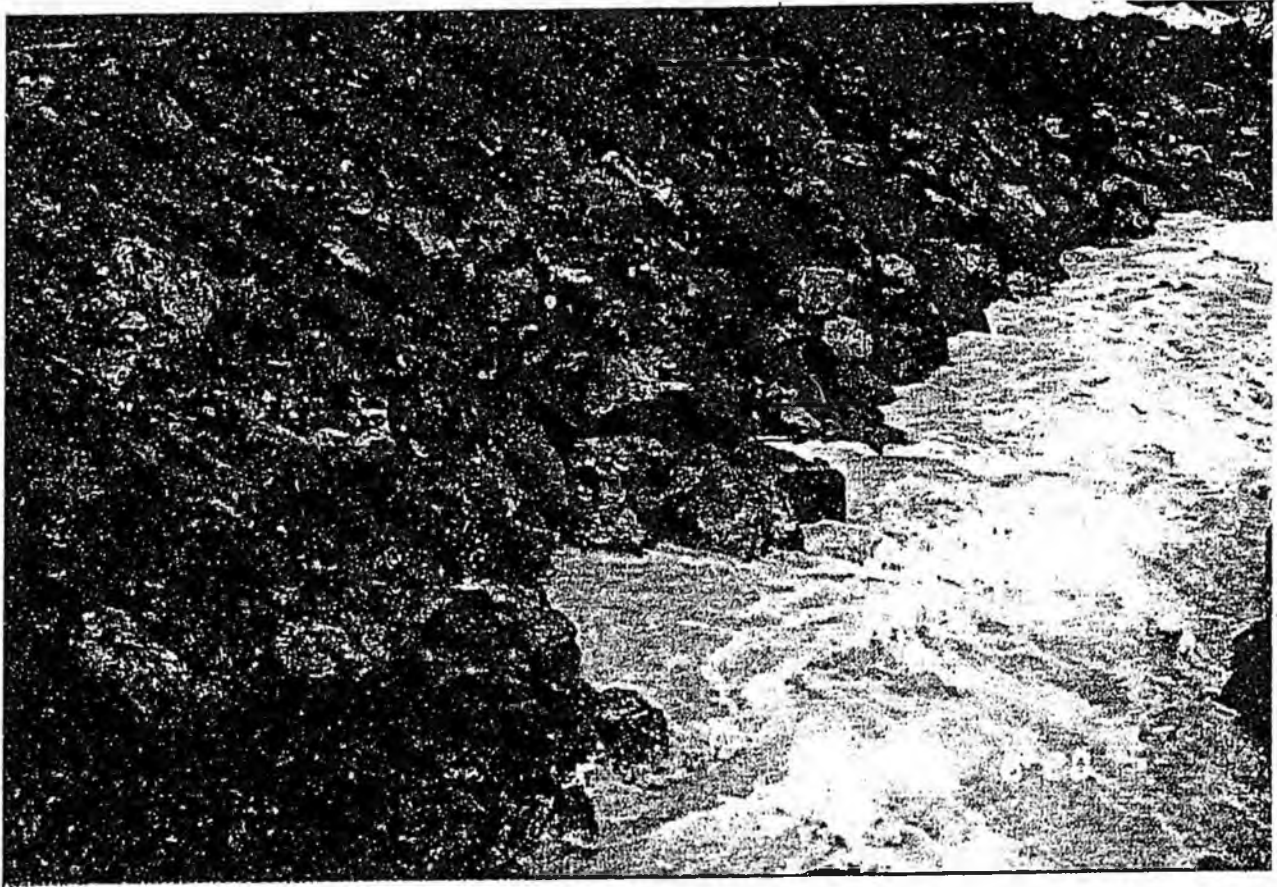


Figure 5. Continuing failure of diversion channel



Figure 6. Sediment laden water at Hatchery Creek. Note small amount of clear water and sockeye salmon at lower right.

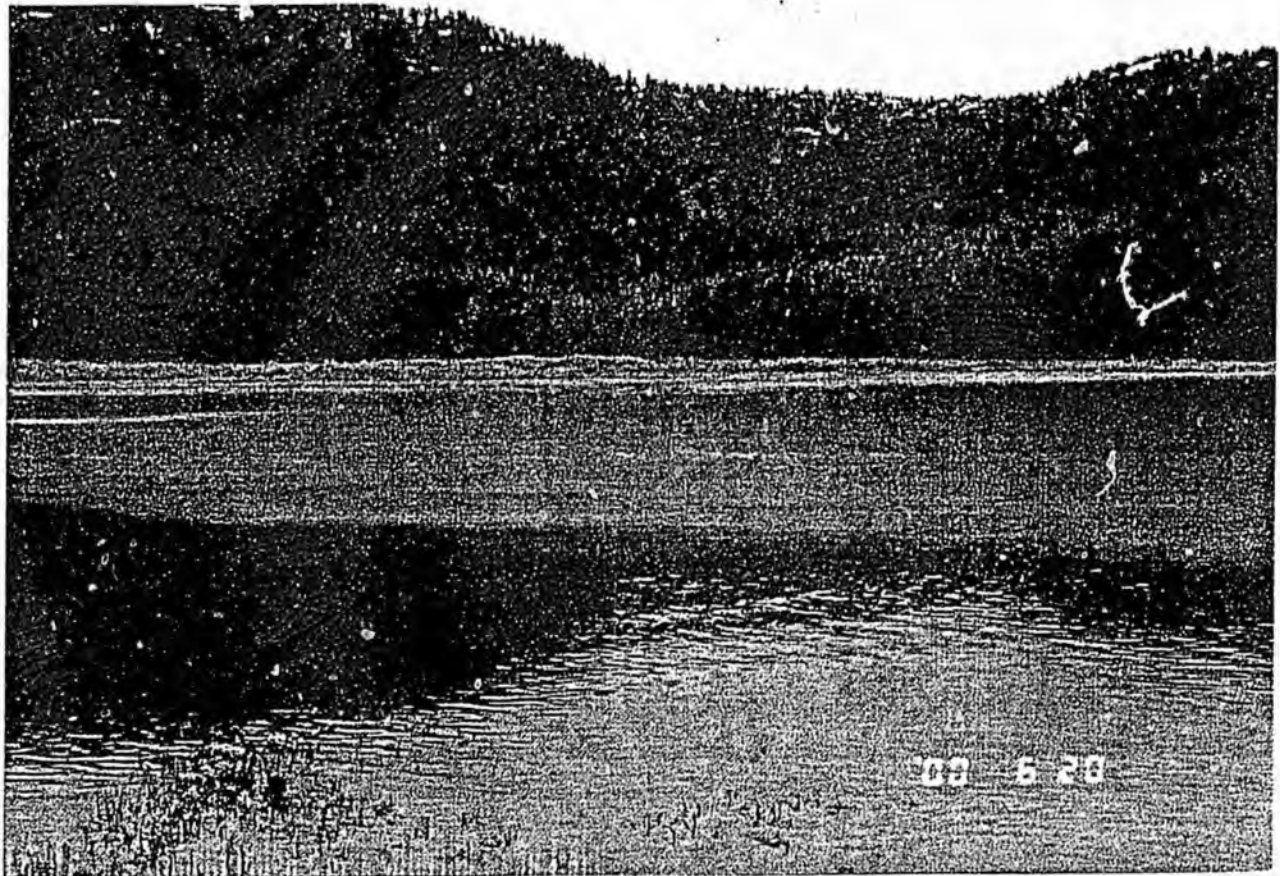


Figure 7. Sediment laden water entering Eyak Lake



Figure 8. Sediment laden water extends 0.6 miles into Eyak Lake approximately 2 hours after the initial sediment plume entered Power Creek at the downstream end of the diversion channel.

ATTACHMENT 2

Fish Habitat Permit FG 97-II-0741

DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION333 RASPBERRY ROAD ^{MB}
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 97-II-0741

ISSUED: August 14, 1998
EXPIRES: December 31, 1999

Whitewater Engineering Corporation
Attention: Mr. Thom Fischer
1050 Larrabee Avenue, Suite 104
Bellingham, WA 98225

Dear Mr. Fischer:

Re: Power Creek Hydroelectric Project - Stream Diversion
Power Creek - Stream No. 212-10-10050-2240
SID AK 9709-08AA; COE No. 4-970547
Section 4, T. 15 S., R. 2 W., C.R.M
FERC No. 1243-001-AK

Pursuant to AS 16.05.840, the Alaska Department of Fish and Game (ADF&G) has reviewed your plans to construct a dam and temporary diversion channel on Power Creek at the referenced location. Both the dam and diversion channel will be constructed above (upstream of) Ohman Falls, the upper limit of documented anadromous fish use on Power Creek. Separate authorizations will be issued for those activities that directly affect the specified anadromous reach of Power Creek--downstream of Ohman Falls.

The 300-foot long diversion channel will approximate the width and depth of the original channel. The channel will be lined with clean rock or fabric sufficient to prevent the downstream pollution of Power Creek when flow is diverted into the temporary diversion channel and for the duration of the use of the temporary diversion channel. The coffer dam at the upstream end of the natural channel will be constructed out of clean material (clean rock, plastics, or commercially available cofferdams). Once the diversion is complete, construction of the dam will take place in the de-watered natural channel. Water seeping into the work area will be pumped through a "dirt bag", other suitable product, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. The pollution of Power Creek, downstream from Ohman Falls is prohibited and will subject the permittee, its contractors, and participants to substantial penalties pursuant to AS 16.05.870 and AS 16.05.880.

Once the construction of the dam has been completed the water will be re-diverted back into the natural channel and the temporary diversion channel will be returned to pre-project conditions.

Please be advised that the Power Creek Road is currently closed. Power Creek has changed its course in the delta area and is now flowing across and down the road in several places. The new channels, including those crossing, and flowing down the roadway, are now a part of Power

Creek. Operating wheeled or tracked vehicles, or changing the bed, bank, or flow of Power Creek (again including those sections now crossing and flowing down the road) requires the prior written approval of the ADF&G pursuant to AS 16.05.870. Until the road is moved to a new location or until adequate plans and specifications to fix the road, including plans for the proper protection of the anadromous fish resources and habitats currently using and present in the area have been approved by the ADF&G, the road will remain closed.

Power Creek supports resident species of fish above Ohman falls in the area of your proposed activity and anadromous fish downstream from the falls.

In accordance with AS 16.05.840, project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cfs (cubic feet per minute) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation the diversion channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends.
3. The bed and banks of the temporary diversion channel must be constructed of material that will not erode at expected flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying anticipated stream flow at all times.
4. The diversion channel must provide a durable and efficient fishway. It shall be supplied with a quantity of water sufficient to pass fish at all times, and it shall be constructed and maintained at a grade and velocity approximating that of the original stream to provide for both upstream and downstream movement of fish.
5. Prior to diverting the flow into the temporary diversion channel and prior to re-diverting the flow into the natural channel, diversion structures shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division.
6. Diversion of flow into the temporary diversion channel shall be accomplished by first removing the downstream plug, then the upstream plug. The natural stream channel shall be de-watered by closing the upstream end, followed by the downstream end. Fish that become stranded in de-watered channel shall be captured and returned to the active stream channel without further harm.
7. Once the dam is complete the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The temporary diversion channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm.

August 14, 1998

8. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G, Habitat and Restoration Division, and obtain written approval in the form of a permit amendment before beginning the activity. Any action taken by the permittee or an agent of the permittee that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of ADF&G, Habitat and Restoration Division. Therefore, it is recommended that ADF&G, Habitat and Restoration Division, be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.840. This permit must be retained on site during the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits, state, federal, or local.

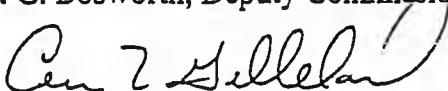
This permit provides reasonable notice from the commissioner that failure to meet its terms and conditions constitutes violation of AS 16.05.860; no separate notice under AS 16.05.860 is required before citation for violation of AS 16.05.840 can occur.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The department reserves the right to require mitigation measures to correct disruption to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

By: 
Cevin L. Gilleland
Habitat Biologist
Region II
(907) 267-2294

August 14, 1998

cc: R. Thompson, DNR/DL
J. Davis, OMB/DGC
A. Rappoport, USFWS
D. Vos, NMFS
M. Henry, FERC
J. Miriashi, FERC
J. Roberts, CEC
C. Estes, ADF&G
C. Hawks, ADF&G
A. Hoffmann, ADF&G
S. Morstad, ADF&G
J. Babcock, FWP

ATTACHMENT 3

Fish Habitat Permit FG 99-II-0612

DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 267-2100
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 99-II-0612

ISSUED: June 13, 2000
EXPIRES: December 31, 2000

Mr. Kenneth Gates, General Manager
Cordova Electric Cooperative
P.O. Box 20
Cordova, AK 99574

Dear Mr. Gates:

Re: Power Creek Hydroelectric Project - Stream Diversion/Dam
Power Creek - Stream No. 212-10-10050-2240
Section 4, T. 15 S., R. 2 W., C.R.M.
SID AK 9709-08AA; CE No. 4-970547
FERC No. 1243-001-AK

Pursuant to AS 16.05.840, the Alaska Department of Fish and Game (ADF&G) has reviewed your revised plans to construct the dam, intake structure, and temporary diversion channel on Power Creek at the referenced location. Both the dam and diversion channel will be constructed upstream of Ohman Falls which marks the upper limit of documented anadromous fish use on Power Creek. Resident fish do, however, use this section of Power Creek. This permit is being reissued under a new permit number due to the transfer of the Federal Energy Regulatory Commission (FERC) license from Whitewater Engineering Corporation (WEC) to Cordova Electric Cooperative (CEC).

Construction of the diversion dam and intake structure and the placement of the penstock will require de-watering the natural channel of Power Creek. In order to prevent the pollution of Power Creek, the contractor (WEC) will employ commercially produced filter bags or other suitable approved products and two sediment ponds to control water that infiltrates the work area. Water removed from the work area by pumping will be discharged through a filter bag, other approved suitable products, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. Sediment Pond Number 1 will be constructed and stabilized prior to any on-site de-watering operations. Material excavated from the bed and banks of Power Creek during construction will be stored and stabilized so that none of this material enters the waters of Power Creek. No excavated material will be stored in the area between the temporary diversion channel and the natural channel of Power Creek as shown on the drawings submitted to the ADF&G on June 7, 2000. Upon completion of the project, the natural channel (bed and banks) of Power Creek will be restored to pre-project contours and revegetated using approved techniques from the book: *Streambank Revegetation and Protection - A Guide for Alaska* (ADF&G Technical Report No. 98-3, Enclosure 1).

The initial diversion of Power Creek will be accomplished through the use of clean 1 cubic yard (yd³) sandbags. The sandbags will be arranged to divert the flow of Power Creek away from the plug in the upstream end of the diversion channel while the plug is being removed. Following the removal of the plug, the 1 yd³ sandbags will be repositioned across Power Creek to form a barrier behind which the upstream

cofferdam will be constructed. A similar barrier of 1 yd³ sandbags will be constructed across the natural channel of Power Creek to isolate the downstream cofferdam from the waters of Power Creek prior to construction. Both cofferdams will be constructed and removed in no-flow conditions. If such conditions do not occur during the construction timeframe convenient for the permittee or contractor, the diversion will remain in place and the cofferdams will be removed when approved conditions once again occur at the site. NOTE: See Stipulations 6 & 7 below, for specific instructions on the approved diversion sequence.

The cofferdams will be constructed of material excavated from the diversion channel. The faces of the cofferdams that contact Power Creek will be covered with an impermeable membrane. This membrane will extend under the cofferdams for a distance of 10 feet and will be secured to the face by clean gravel and riprap.

Although the ADF&G is herein approving construction and maintenance of the cofferdam and diversion channel, we are not fully convinced that the project design can avoid pollution of Power Creek or carry high flows that typically occur in Power Creek in the summer and fall. We have made numerous suggestions in attempts to work with WEC and CEC to ensure protection of Power Creek and have been assured by your contractor that the current design will carry the flows and will not pollute the creek. Based on an informal consultation with a hydrologist, however, the ADF&G remains concerned that the channel may not carry typical high flows during the period of use. To this end, you are hereby advised and notified that the pollution of Power Creek, downstream from Ohman Falls is prohibited. Any pollution of Power Creek downstream from Ohman Falls will subject the permittee, its contractors, and participants to substantial penalties pursuant to AS 16.05.870, AS 16.05.880, and AS 16.05.895. Because of previous construction delays, calculation errors, and other factors beyond the control of the permittee and its contractors, the ADF&G suggests that the diversion channel design and construction be checked by a hydrologist or hydraulic engineer to ensure it is sufficient to carry flows that may occur during its use (including fall, in case of delays that require its use until next winter).

Once the construction of the dam has been completed and the natural channel restored, the water will be re-diverted back into the natural channel and the temporary diversion channel will be returned to pre-project conditions.

Power Creek supports resident species of fish above Ohman falls in the area of your proposed activity and anadromous fish downstream from the falls.

In accordance with AS 16.05.840, project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cubic feet per second (cfs) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation and at all times prior to diverting the water, the diversion channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends. The permittee and its contractors are responsible for maintaining the plug under all flow conditions until the diversion is approved.
3. The bed and banks of the temporary diversion channel shall be constructed of material that will not erode at expected high flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying all predictable stream flows at all times it may be necessary for its use.

4. The diversion channel must provide a durable and efficient fishway. It shall be supplied with a quantity of water sufficient to pass fish at all times, and it shall be constructed and maintained at a grade and velocity approximating that of the original stream to provide for both upstream and downstream movement of fish.
5. Prior to diverting the flow into the temporary diversion channel and prior to re-diverting the flow into the natural channel, diversion structures shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division. This approval will not relieve the applicant or contractor of their engineering responsibility, of responsibility for compliance with this or other permits, or for other responsibilities and liabilities associated with this project.
6. Diversion of flow into the temporary diversion channel shall be accomplished by first removing the downstream plug in the diversion channel, then the upstream plug. The natural stream channel shall be de-watered by closing the upstream end, followed by the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
7. Once construction in the natural channel of Power Creek is complete, the streambed and banks shall be stabilized and revegetated to prevent erosion and sedimentation of Power Creek. Once stabilization is approved, the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The temporary diversion channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
8. Prior to diverting the flow back into the natural channel of Power Creek, the natural channel shall be restored to natural contours and the bed and banks shall be stabilized to prevent erosion and sedimentation.
9. After the flow has been diverted back into the natural channel of Power Creek, the upstream bed of the diversion channel and the natural bed of Power Creek disturbed during construction shall be stabilized and revegetated to prevent erosion and sedimentation and to ensure permanent closure of the diversion channel.
10. The ADF&G shall be notified in writing (Fax No. (907) 267-2464, Enclosure 2) five days prior to diverting the flow (both the initial diversion and the return to the natural channel) so that staff can be present to monitor potential impacts. The notification shall include the time and date the diversion will take place and the name and phone number of the on-site supervisor. The diversion of Power Creek (both the initial diversion and its return to the natural channel) is prohibited unless the project Environmental Compliance Monitor (ECM) is on site during the permitted activity.
11. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish. The permittee is hereby notified that at the present time the contractor has not submitted a plan to comply with this stipulation.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G and obtain written approval in the form of a permit amendment before

ATTACHMENT 4

Memorandum from ADF&G to DGC

Requesting no further ACMP Consistency Review

FG00-11-0538 cy

STATE OF ALASKA

TONY KNOWLES, 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

amc

TO: Maureen McCrea
Senior Project Review Coordinator
Office of Management and Budget
Division of Governmental Coordination

FROM: ⁴⁰ Cevin Gilleland
Habitat Biologist
Region II

DATE: September 27, 2000

SUBJECT: Power Creek Hydroelectric Project
Diversion Channel Permit Amendment
No ACMP Review

The Alaska Department of Fish and Game (ADF&G) is in receipt of revised plans and specifications for the temporary diversion of Power Creek for construction of the dam and intake structures. As you requested, the ADF&G has conducted a preliminary review of the plans and has prepared this explanation of why we believe no further Alaska Coastal Management Program public review is required.

The Power Creek hydroelectric project, including the temporary diversion, dam, and intake were previously reviewed for consistency with the ACMP. Permits were issued by the ADF&G, the Department of Natural Resources, Division of Water, the U.S. Army Corps of Engineers, and the Department of Environmental Conservation. The permit issued by the ADF&G prohibited the pollution of Power Creek, required that fish passage be maintained, and required that the intake be designed and maintained to exclude fish. The original channel was not constructed according to the plans submitted to the agencies for review nor was it constructed as required by the ADF&G permit. Nevertheless, the ADF&G was assured by the engineers at Whitewater Engineering that the channel, as constructed, would carry expected flows and would not pollute Power Creek. Shortly after the permittee's contractor began the diversion, it began to fail resulting in a channel that did not pass fish and polluted Power Creek and other waters. As a result of the pollution, the ADF&G required the permittee to restore Power Creek to its natural

channel and submit revised plans and specifications that would meet the requirements of the original permit.

At the present time the Cordova Electric Cooperative has provided plans, signed by a professional engineer, with a channel designed and protected with filter fabric and riprap that should, according to their calculations, withstand flows up to a 5-year flood event. The channel has been designed to contain the fines and avoid downstream pollution. It will not pass fish upstream. Nevertheless, since the channel is temporary, the ADF&G has agreed to allow the temporary fish blockage. The only other change in the ADF&G's permit is that we will issue a Fish Habitat Permit pursuant to AS 16.05.870 rather than AS 16.05.840, because of the downstream pollution of specified anadromous fish-bearing waters that previously occurred at this site. No other changes to the original permits will be required. Furthermore, after substantial review, the Corps of Engineers has indicated that a modification of the existing Corps permit is not required, and the Coastal Project Questionnaire submitted by the applicant does not indicate that other permits or permit amendments are needed.

As the result of this analysis the ADF&G has concluded that the changes are minor, that no additional stipulations are necessary solely for consistency with the Alaska or Cordova Coastal Management Programs, and that the proposed changes will not result in additional adverse impacts to coastal habitats or resources.

Please notify the ADF&G of your concurrence or non-concurrence at your earliest convenience so that this permit can be issued. Although it has taken nearly 12 weeks for the applicant to prepare a revised plan, stamped by a professional engineer, the ADF&G does not believe the state should delay the project if all the necessary information has been provided and procedures followed.

Please call me if you have any questions.

cc: R.J. Kopchak, City of Cordova
R. Thompson, DNR

ATTACHMENT 5

Fish Habitat Permit FG 00-II-0538

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 00-II-0538

ISSUED: September 29, 2000
EXPIRES: March 31, 2001

Mr. Kenneth Gates, General Manager
Cordova Electric Cooperative
Post Office Box 20
Cordova, AK 99574

Dear Mr. Gates:

Re: Power Creek Hydroelectric Project—Stream Diversion/Dam
Power Creek: Stream Number 212-10-10050-2240
SID AK 9709-08.AA; COE No. 4-970547
Section 4, T. 15 S., R. 2 W., C.R.M.
FERC No. 11243-001-AK

Pursuant to AS 16.05.870(b) the Alaska Department of Fish and Game (ADF&G) has reviewed your proposal, submitted September 22, 2000, to construct a diversion dam, intake structure, and temporary bypass channel on Power Creek at the referenced location. Both the dam and bypass channel will be constructed upstream of Ohman Falls, which marks the upper limit of documented anadromous fish use on Power Creek; however, a resident population of fish has been confirmed in this reach. In addition, the waters downstream of the project have been specified as important for the spawning, rearing, or migration of anadromous fish pursuant to AS 16.05.870(a). Coho, sockeye, chum, and pink salmon use these waterbodies for spawning, migration, and/or rearing.

Construction of the diversion dam and intake structure and the placement of the penstock will require dewatering the natural channel of Power Creek. Dewatering will be accomplished by diverting Power Creek around the work area by means of a bypass channel. According to the plans and specifications submitted for review, the bypass channel will be lined with clean rock or a combination of clean rock and geotextile fabric sufficient to contain fine soil particles, prevent erosion, and the subsequent pollution of Power Creek when flow is diverted into the channel and for the duration of its use. In addition, the contractor will employ commercially produced filter bags or other suitable approved products and two sediment ponds to control water that infiltrates the work area. Water removed from the work area by pumping will be discharged through a filter bag, other approved suitable products, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. Sediment Pond Number 1 will be constructed and stabilized prior to any on-site dewatering operations.

Material excavated from the bed and banks of Power Creek during construction will be stored and stabilized so that none of this material, including sediment, enters the waters of Power

Creek. No excavated material will be stored in the area between the temporary bypass channel and the natural channel of Power Creek. Upon completion of the project, the natural channel (bed and banks) of Power Creek will be restored to pre-project contours and revegetated using approved techniques from the book: Streambank Revegetation and Protection - A Guide for Alaska (ADF&G Technical Report No. 98-3). A copy of this book has been furnished to the contractor.

The upstream end of the bypass channel is plugged by a combination of boulders, 1 cubic yard (yd³) sandbags, and 3-inch cobble material. Following the removal of the plug, the 1-yd³ sandbags will be repositioned across Power Creek to form a barrier behind which the upstream cofferdam will be constructed. A similar barrier of 1-yd³ sandbags will be constructed across the natural channel to isolate the downstream cofferdam from the waters of Power Creek prior to construction. Both cofferdams will be constructed and removed in no-flow conditions. If such conditions do not occur during the construction timeframe convenient for the permittee or contractor, the diversion will remain in place and the cofferdams will be removed when approved conditions once again occur at the site. NOTE: See Stipulations 5 & 7 below, for specific instructions on the approved diversion sequence.

The cofferdams will be constructed of material excavated from the bypass channel. The faces of the cofferdams that will contact the waters of Power Creek will be covered with an impermeable membrane. The membrane will extend under the cofferdams for a distance of 10 feet. It will be secured to the face of the cofferdams as shown in the drawings submitted to the ADF&G on September 22, 2000.

In accordance with AS 16.05.870(d), project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cubic feet per second (cfs) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation and at all times prior to diverting the water, the bypass channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends. The permittee and its contractors are responsible for maintaining the plug under all flow conditions until the diversion is approved.
3. The bed and banks of the bypass channel shall be constructed of material that will not erode at expected high flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying all predictable stream flows at all times it may be in use.
4. Prior to rediverting the flow into the natural channel, the channel shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division. This approval will not relieve the applicant or contractor of their engineering responsibility, of responsibility for compliance with this or other permits, or for other responsibilities and liabilities associated with this project.

5. Diversion of flow into the bypass channel shall be accomplished by first removing the downstream plug in the diversion channel, then the upstream plug. The natural stream channel shall be dewatered by closing the upstream end, followed by the downstream end. Fish that become stranded in the dewatered channel shall be captured and returned to the active stream channel without further harm.
6. All bank cuts, slopes, fills, and other exposed earthwork attributable to this project shall be stabilized and revegetated to prevent sedimentation and erosion that may occur both during and after construction. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
7. Once construction in the natural channel of Power Creek is complete, the streambed and banks shall be restored to natural contours and stabilized and revegetated to prevent erosion and sedimentation prior to diverting the flow back into the natural channel. Once stabilization is approved, the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The bypass channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the dewatered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
8. After the flow has been diverted back into the natural channel of Power Creek, the upstream banks of Power Creek disturbed during construction shall be stabilized and revegetated to prevent erosion and sedimentation and to ensure permanent closure of the diversion channel.
9. The ADF&G shall be notified in writing (Fax No. (907) 267-2464; Enclosure) prior to diverting the flow (both the initial diversion and the return to the natural channel) so that staff can be present to monitor potential impacts. The notification shall include the time and date the diversion will take place and the name and phone number of the on-site supervisor. The diversion of Power Creek (both the initial diversion and its return to the natural channel) is prohibited unless the project Environmental Compliance Monitor (ECM) is on site during the permitted activity.
10. A restoration plan shall be submitted to the ADF&G for review and approval within 30 days of the initial diversion of Power Creek. The plan shall include specific details with plan view and cross sectional drawings, the species, spacing, and number of plants, timetable for completion of restoration, and a plan for monitoring and ensuring the success of plantings.
11. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish. The permittee is hereby notified that as of the date of issue of this permit the contractor has not submitted a plan to comply with this stipulation.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G, Habitat and Restoration Division, and obtain written approval in the form of a permit amendment before beginning the activity. Any action taken by the permittee or an agent of the permittee that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of the ADF&G, Habitat and Restoration Division. Therefore, it is recommended that the ADF&G, Habitat and Restoration Division, be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.870. This permit must be retained on site during the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits: state, federal, or local.

Pursuant to 6 AAC 80.010(b), the conditions of this permit are consistent with the Standards of the Alaska Coastal Management Program and the Cordova Coastal District Plan.


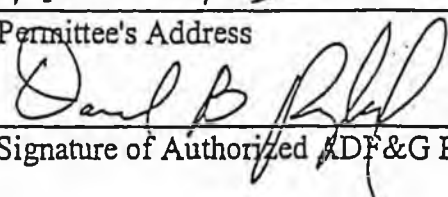
In addition to penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The ADF&G reserves the right to require mitigation measures to correct disruptions to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

I have read and understand all of the foregoing and attached stipulations. By signing this permit, I agree to conduct the authorized activity in accordance with the terms and conditions of this permit.

		<u>10-9-00</u>	
Signature of Permittee or Authorized Representative		Date	
<u>P.O. Box 20</u>	<u>Cordova</u>	<u>AK</u>	<u>99574</u>
Permittee's Address	City	State	Zip
		<u>HABITAT BIOLOGIST</u>	<u>10/11/00</u>
Signature of Authorized ADF&G Representative		Title	Date

cc: R. Thompson, DNR
G. Prokosh, DNR
M. Jen, EPA
S. Magee, OMB/DGC
A. Rappoport, USFWS
D. Vos, NMFS
M. Henry, FERC
J. Miyashiro, FERC
T. Fischer, WEC
C. Estes, ADF&G
C. Hawkes, ADF&G
B. Stratton, ADF&G
D. Sharp, ADF&G

ATTACHMENT 6

Letter From Jack Snyder to Ken Gatas

Design and Construction Deficiencies

April 21, 2000

Thom Fischer, President
Whitewater Engineering Corp.
1050 Larrabee Ave, Suite 104-707
Bellingham, WA 98225

**Subject: Power Creek Hydroelectric Project
Review of Final Bridge Design Calculations**

Dear Thom:

DE&S has reviewed the latest set of penstock bridge calculations, dated March 30, 2000 which were provided to us on April 5, 2000. The calculations provided show us the thinking behind the current design; however, we have significant concerns about the final design as noted below.

The traffic bridge design itself is acceptable as a maintenance bridge that will be used only infrequently for tunnel access after the project is up and running. As noted, the wooden decking should be removed and stored on the south side of the bridge after project construction is complete, and should always be removed during the avalanche season.

The penstock bridge design, in our estimation, is inadequate and must be re-designed. We believe that with the current design, and based on your corrected calculations, the design avalanche side load may overstress the pipe wall and cause it to fail at the ring girder locations. Our specific comments to this effect are as follows:

1. The avalanche side load was reduced 60% in the calculations for the pipe resistance to the side loads. Is this because pipe is round? We don't believe it is appropriate to reduce the load and the full side load should be used without reduction.
2. Page 17 B of the calculations-radius of ring girder is 48" not 42". Effective section should be at the most equal to C' (see figure 7.3 page 72, AWWA M11). Using this value for C' will increase the stress significantly. Should the area of the ring girder include the pipe wall? We do not recommend the pipe wall be included as the pipe is already experiencing stress due to internal pressure and other sources of stress.
3. Check calculations of f_3 on page 17C. There appear to be math errors.
4. On page 17D, stresses in pipe shell do not account for the avalanche load ("w" should be equal to 23 +700). This appears to have been inadvertently left off. Rim bending calculation should be corrected for pipe internal pressure of 91 psi.

5. Based on the calculations, the wall thickness of the pipe should be reevaluated. Thicker pipe, thicker ring girders and/or more closely spaced girders may be required to avoid overstressing the pipe.
6. No earthquake or thermal loads were evaluated for the bridge or penstock. The penstock ring girders in particular should be checked for earthquake. We believe their design may be marginal for earthquake resistance.
7. We recommend that the final calculations, when complete, should be signed, checked and stamped with an Alaska PE stamp as required by Alaska statute.

The ring girder should not rely on the pipe wall. We recommend the girder be reevaluated and a strap around the pipe be added to the design to reduce high localized stresses. The thickness of the ring may also need to be thicker

That concludes our review comments. Please contact us if there are questions or if you would like to discuss any of these items. We would be glad to sit down with Stephen or your other designers and discuss our concerns in detail. That may be the most effective way to work through this concern in a timely way. Please give us a call and we can schedule a meeting or conference call at your convenience. Thanks.

Sincerely,
DUKE ENGINEERING & SERVICES

John J. "Jack" Snyder, P.E.
General Manager

cc: File (Power Creek) 2.2, Don Hammelman (Summit), Ken Gates (CEC), G. Keeney (CEC), Steve Beers, P. Carson, S. Mahnken

Testimony to the Senate Resources Committee, March 10, 2003

Chairman Ogan, members of the committee:

My name is Ellen Simpson and I am here today representing myself. I have lived in Alaska for over 20 years and I work at ADF&G. I came here from Washington State to work as a fish biologist. I wanted spend my career with wild salmon not fish raised in a hatchery because the habitat they needed was gone. Now it looks like the same thing will happen here if Governor Murkowski's executive order is allowed to become law. Fish habitat is lost one project at a time. Without productive habitat salmon returns can never be sustainable - no matter how good your management policies are.

I believe that if EO 107 is allowed to take effect salmon, trout and other fresh water fish populations will be put at risk. Superficially, one of the things this executive order does is to move a couple of statutes, the Anadromous Fish Act and the Fishway Act, from ADF&G authority to DNR authority. But this is more than just a simple reorganization of the executive branch. It is a major policy change for the state of Alaska that strips ADF&G of any permitting authority over freshwater fish habitat. The ADF&G commissioner was given this responsibility and the tools to accomplish it at statehood and to give this authority to the agency primarily responsible for development activities is a major policy change. No standards are contained in either statute. Effective implementation relies on the expertise and commitment of the responsible agency. This expertise is at ADF&G. Not DNR. Protection of fish and game is not and never has been a DNR core value. Habitat protection needs to be on an equal footing with development interests.

I am especially concerned because the administration has not adequately justified such a major change in how we do business. I've been listening to the Governor, his press secretary, and the commissioners of DNR and ADF&G discuss this issue now for almost two months. The Governor says his goal is to streamline permitting and make it more efficient along the lines of the "the large mine projects". He believes that moving habitat permitting to DNR will accomplish that. The new Commissioner of DNR, Tom Irwin, has experience in the large project concept. He worked for Fort Knox Gold mine before he came to DNR. In both his overview to the House resources committee on Feb 20 and in a press conference last Friday he explained the large mine project concept. He said that Fort Knox and the habitat biologists at ADF&G worked together to modify the project to both benefit the company and fish habitat. That they got together and each brought to the table what they wanted and what they could and couldn't do. He had nothing but praise for the way the process worked. This sounds like an endorsement for the current process not a justification for changing it.

Of the 2000 permits ADF&G issues each year only a few are for large projects. Over 80% require only consultation within the divisions of ADF&G. These permits are very important to the land owners and developers who depend on ADF&G expertise to help them construct projects that are fish friendly and still get the job done. But now Acting Commissioner Duffy and Commissioner Irwin need to craft a memorandum of

understanding to detail how biologists at DNR will communicate and work with ADF&G biologists that were once were just down the hall. This doesn't sound like streamlining to me – it sounds like taking a process that is working and increasing the chances that it won't.

It may be that permitting could be more efficient. But I don't believe this is the way to make it happen. There are alternatives. The large project concept could be used more often and regulations to standardize habitat protection measures could be adopted.

Productive fish habitat is worth protecting. Habitat losses will take years to become apparent. Billions and billions of dollars are being spent in the Pacific Northwest to restore salmon runs and the habitat that is essential to their survival. They are finding out that no matter how much money they throw at the problem they can't fix it. We don't have to do that here – we don't have to take the risk. EO 107 should be disapproved.

If you have any questions or more information I would be happy to talk to you more about this issue. Thank you for your time.

Ellen Simpson
2900 Porcupine Trail Road
Anchorage, Alaska 99516
907-345-4306

Good afternoon Chairman Ogan and members of the committee. My name is Daniel Sharp. I am a 30 year resident of Alaska and have been employed as a biologist with the Alaska Department of Fish and Game since 1982. Since September of 2002, I have been employed as a Habitat Biologist III. Under the Governor's planned reorganization, my current position and duties with Habitat Division are slated to remain within the Department of Fish and Game.

The organizational structure employed by the Department of Fish and Game has long relied on the concept of relying upon Area Biologists; these are individuals who's experience and tenure in an area allow them to speak knowledgably about the fishery or wildlife resources for which they hold responsibility. As a 12-year resident of Cordova, I had the unique pleasure of serving as the Commercial Fisheries Area Management Biologist for Prince William Sound from 1995 to 1998 and as the Copper River Area Management Biologist from 1999 to 2001.

The Power Creek hydroelectric project in Cordova is one that has been repeatedly cited as an example of Habitat Division's interfering with a legitimate development project. Anyone who has seen Ohman Falls on Power Creek can attest to the hydraulic energy released there. For a town heavily reliant on diesel generated power, the option of a less expensive, cleaner, and stable source of hydroelectric power was widely supported by both industry and local residents, myself included.

Habitat biologists connected with this project were recently described as "refusing to be reasonable" on a project that was said to be "way up in the hills where there are no fish". I'd like to clarify that description just a bit. In actuality, just a few hundred yards downstream from Ohman Falls which is the natural barrier to upstream salmon migration, thousands of sockeye salmon, silver salmon and pink salmon spawn each year. Brown bear, black bear, trumpeter swans and other waterfowl live in the area year round. Power Creek drains into nearby Eyak Lake which supports a significant return of tens of thousands of early timed sockeye salmon. These are the same early fish that Copper River commercial fishermen receive their highest price per pound for each season.

Sockeye salmon returning to this drainage have paid substantial dividends to the residents of Cordova for over a hundred years and have likely sustained generations of native Eyak people for thousands of years. If any area deserved due diligence from a habitat protection standpoint, the Power Creek project and Eyak Lake certainly qualified.

I cannot attest directly as to whether unreasonable "due diligence" was exercised by the habitat biologists assigned to this project. However, I can attest that, as the local area biologist and a resident of Cordova at the time, I received numerous phone calls, in person complaints, and even occasional anonymous tips about unreported small and large fuel spills, unchecked erosion into spawning streams, and repeated illegal stream crossings with heavy equipment at the work site. It quickly became evident by the contractors behavior that any permit stipulations or timing restrictions designed to protect spawning salmon and wildlife were only to be followed if the habitat biologist was on site to enforce it.

I believe the laws and regulations designed to protect our common property resources deserve a great deal more respect than they were given during the construction phase of this project. I find it most unfortunate that this particular project has been heralded by the administration as a prime example of showing unreasonable interference by habitat biologists working for ADF&G. My experience, however ancillary, was that this project needed almost constant department oversight if one was to receive any cooperation from the contractor. I feel badly that the governor's office has been so ill served by those seeming to pass on misinformation about the significant importance of Power Creek to the people of Cordova, the conduct of the contractor, and about the work that Habitat Division has performed in attempting to provide a minimal amount of protection this area deserved.

Thank you Chairman Ogan and committee members for your service. I urge your thorough exploration of the issues regarding this proposed transfer. My belief is that the long term interests of the people and resources of this state will be best served by maintaining the current separation of authorities between resource protection and resource development agencies. I believe the bureaucratic efficiencies planned for will be realized at the expense of the fish and wildlife resources of this state. Please co-sponsor and support a joint resolution to rescind E.O. 107.

Daniel Sharp
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Anchorage, AK 99516
907-345-3424

Public Testimony, Senate Resources Committee, March 10, 2003.

Thank you.

My name is William J. Hauser.

First, I want to say that I am in support of our fishery resources and the unique habitats that are required to support them.

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.

Third, and most importantly, I am speaking here as a Fishery Scientist. With a BS, a MS, and a PhD, each from different educational institutions and I have had experience living, working and recreating in six or more states. I am 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 lived, worked, recreated, and raised a family in Alaska for 22 years. My work has included fish biology, ecology, research, management, and fishery and habitat enhancement 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. Good quality fish habitat. Habitat that fish need for spawning, rearing, hiding, 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.

Until now, our fishery resources have had a measure of protection with equal consideration with development of our other resources that included a system of checks and balances to minimize the impacts of those developments. With the function of habitat protection included within Alaska Department of Natural Resources, the system will not be in balance, but will favor development of resources at the detriment of our aquatic resources.

Until now, when developers proposed a project, habitat biologists, with close support of other fish and wildlife biologists, would provide consultation to improve the "fish-friendliness" and reduce the impact. With habitat protection and fewer habitat biologists in the Alaska Department of Natural Resources, I do not understand how that will continue to happen. There may be some large-scale losses but small-scale losses will accrue with each project and each year.

My colleagues 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 because of habitat loss and degradation – in a matter of a few human generations.

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

This is not what I want and I don't think that you want that either. Please do not support the transfer of habitat protection to ADNR. Please support the present system of checks and balances and protection of good quality fish habitat.

Dr. William J. Hauser
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When losses occur, they are expensive to repair and the original conditions cannot be restored.

If there is a problem with some aspect of permitting, fix the problem. A sore toe is not a reason for major surgery.

Thank you for your consideration.

I will gladly answer questions if you have any.

Bill Hauser



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Senate Resources Committee - Public Comments on Executive Order 107, March 10, 2003

Dear Committee members:

Senator Scott Ogan
Senator Thomas Wagoner
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

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 project 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

Statement of Dr. Eric Knudsen to
Senate Resources Committee on
Executive Order 107 to Transfer habitat Division from ADF&G to ADNR
March 10, 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. My testimony today represents only my own professional opinions.

Today 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.

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 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.

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FOR IMMEDIATE RELEASE

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Alaska State Chamber of Commerce Stands with Governor in His Call for Change

(JUNEAU, AK, February 12, 2003) – In a move to support the Governor's political courage to press for positive change the Alaska State Chamber of Commerce today announced its strong support of Governor Murkowski's leadership in making the Department of Natural Resources the lead agency for all State permitting. His bold move will also incorporate the permitting function of the Habitat Division of Fish & Game into DNR in order to consolidate permitting authority.

"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," said Pamela LaBolle, President of the Alaska State Chamber of Commerce.

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.

The Alaska State Chamber of Commerce represents approximately 700 business members and Alaska's local chambers of commerce in promoting the planned, orderly growth and development of Alaska through strong, private sector business leadership that influences statewide economics and politics.

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Bruce H. Baker

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Auke Bay, AK 99821-1384

Phone: (907) 789-9354

March 10, 2003

Senators Scott Ogan, Thomas Wagoner, Ralph Seekins, Ben Stevens, Kim Elton, and Georgianna Lincoln

Senate Resources Committee, Alaska Legislature
State Capitol (Mail Stop 3100), Juneau, AK 99801

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

Honorable Resources 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.

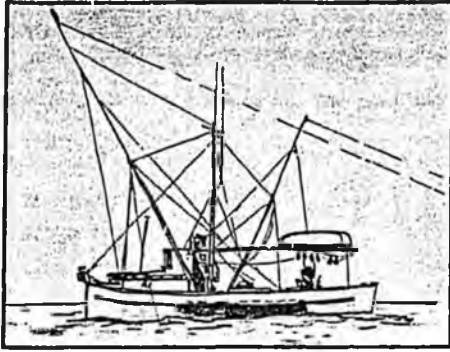
The executive order is a solution looking for a problem. The timeliness of ADF&G's permitting is exemplary. Of 1,926 Title 16 applications ADF&G received last year, over 99% of applicants either received permits or were told that they did not need one. The average processing time was only 14 days. If 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.

Saturday's Anchorage Daily News reports that the Governor is laying off 22 ADF&G Habitat Division staff and transferring 36 others to DNR. What Alaska needs in order to boost 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.





Alaska Trollers Association

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(907) 586-9400
(907) 586-4473 Fax

March 10, 2003

Senator Scott Ogan, Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99811

Dear Senator Ogan:

The Alaska Trollers Association (ATA) appreciates the opportunity to submit comments on Executive Order 107. ATA opposes EO 107 as it is currently written and has questions with respect to EO 106 and the elimination of DGC. While we appreciate you holding a hearing on the matter, we note that Executive Orders don't really give the public enough time to fully understand the issues and ramifications of either the Administration's preferred option, or any alternatives that might be available to address the wide variety of problems the EO's seek to remedy. **ATA requests that the legislature work with the Governor to more fully engage the affected public in a review of the situation and discussion of alternatives prior to implementing the EO's.**

ATA appreciates the Administration's stated intent of streamlining government and reducing state spending, but we are concerned about removing Title 16 and due deference authorities of the Commissioner of Fish and Game, which effectively eliminates the Commissioner's responsibility for safeguarding habitat. As the primary guardian of fish and wildlife, the Commissioner of ADFG should have a significant role in key habitat determinations and the legal standing to debate the merits of various habitat issues with other Commissioner's and the Governor. According to Legal Service's analysis, the Executive Orders eliminate the ADFG Commissioner's authority altogether. DNR states that they will "consult with" the Commissioner of ADFG, but consultation is far different than authority and in some cases has made all the difference in protecting important habitat values.

Our members are highly reliant on sustainable salmon runs, which depend on an abundance of near pristine habitat. Alaska is the world's leader in the maintenance of healthy habitat. Our successes are directly related to the checks and balances built into our resource management program. Removing the voice and responsibility of cabinet level officials could be a big mistake down the road.

Unique concerns have been expressed by some developers about the existing permitting process within ADFG. Others seem quite satisfied. There appear to be common concerns raised by all affected sectors, like with regard to the permit appeals process. The problematic areas that we have so far identified do not seem to be structural in nature. Many issues appear to be related to management, a lack of process, or processes in need of repair. So it is difficult to understand

why a new Administration chooses to completely remove Fish and Game's authority. I remember when Governor Hickel considered this, but decided it wasn't in the state's best interest. What has changed?

Since the Executive Orders have been filed, a number of issues have been raised. For instance, permit delays by ADFG. I am submitting for the record the summary of a draft chart from Marathon Oil, which rated ADFG among the lowest in average turn around time for both state and federal agencies that permit their projects. This seems particularly impressive when considering the level of difficulty for the various permits - say, doing paperwork to verify a bond versus getting staff into the field to evaluate a watershed. ADFG has approved 99% of the roughly 2000 permit applications it receives each year, with an average turn around of 15-17 days. My guess is that somewhere in the other 1% there had to be problematic permits. And, of those approved permits that took a bit more time, there were likely some good reasons. If there were also some problems, it seems fair to analyze what they were and address them accordingly. If problems are identified which stem from the policies of the last administration, penalizing staff now seems pointless, since the rules are likely to be different under the new Governor. And, has anyone questioned why staff is already receiving pink slips when the EO's have not yet worked their way through the system? Regardless where habitat division ultimately resides, our hope is that there are enough professionals to do the job, whether in the field or in the office.

Many details of these Executive Orders are worthy of deep discussion. ATA will be submitting additional comments as the legislative hearings progress. Our hope is that through these hearings the issues will be identified and perhaps a compromise reached with the Administration with respect to the terms of the Orders. More efficient government is a good and positive thing, particularly in this time of economic decline for the state. However, let's not forget that solid habitat protection, brought about by a beefy system of balanced authorities, has created tremendous wealth for our state and communities. Working together, I'm sure we can find ways to both improve our permitting process and continue to secure the state's important values.

Respectfully,



Dale Kelley
Executive Director

Summary of Marathon Oil Chart for Cook Inlet Gas Permitting Dated 2-24-03

Days for Permit Approval	Type of Permit	State Agency	Federal Agency
2	NPDES: pollution discharge/prevention		USEPA
2	Special Use: refuge lands		USFWS
5	Sundry request/follow up: wells	AOGCC	BLM
5	ESA Review: eagle nests		USFWS
5	Bond to drill in AK	AOGCC	
5	Well completion/recompletion		BLM
5	Financial Responsibility Bond	AOGCC	
5	Well completion/recompletion	AOGCC	
7	Waste Discharge		FAA
7	Permit to drill	City of Kenai	
10	Letters of objection		ANCSA Native Corp
14	NEPA EA: Right of Way		Federal Land Mgr
15	Approval to work in or cross lakes, streams, rivers.	ADFG	
15	Wetlands Jurisdictional Determination		USACE
15	Designation of Operator	AOGCC	
30	Beneficial Re-Use: solid waste	ADEC	
30	Oil Discharge Prevention/Contingency	ADEC/AOGCC	
30	Wastewater disposal	ADEC	
30	Waste Disposal: drill cuttings	AOGCC	
30	Temp Water Use Permit: Industrial well	DNR	
30	Plan of Operation: Cook Inlet Mitigation	DNR	
30	Driveway Permit	DOT/PF	
30	Conditional Use Permit in Kenai city limits	City of Kenai	
30	Land Use Permit	Kenai Peninsula Borough	
45	Drilling Unit Spacing Exception	AOGCC	
50	State Land Use Permit	DNR	
0-53	CAMA Consistency Determination	DGC	
60	Use of timber or soils		USFS/USFWS
60	Voluntary Reclamation Plan	DNR	
70	Section 404 Wetlands Fill		USACE
30-90	Drilling Unit	AOGCC	
90	Right of Way Access: Construction in Federal Lands		BLM
90	NEPA EIS: Right of Way; Fill; FERC		Federal Land Mgr
90	Right of Way Access: Construction in Forest Lands		USFS/USFWS
90	Air Quality Control	ADEC	
100	Right of Way: State Lands	DNR	
30-110	APD Permit to Drill Well: Federal	BLM	
30-110	Permit to Drill Well: State	AOGCC	
30-180	Water Right of Way		USCG

Citizen's Proposal to the Governor and Legislature
RE: Habitat Permitting

Issue

Governor Murkowski's stated intent to move, by executive order, habitat permit authority and Coastal Management Program to DNR; and, elimination of Division of Governmental Coordination (DGC).

Proposed Concept

To engage the Administration in discussions with a broad coalition of interest groups, agency staff and legislators to develop alternatives to an executive order, which will accomplish the Governor's goals of streamlining government, reducing costs, and protecting the environment, while leaving in place the important checks and balances that have resulted in healthy fish, wildlife, and habitat.

Who Supports?

A growing coalition of individuals and organizations engaged in commercial, sport and subsistence fishing and hunting, tourism interests, past Commissioner's of ADFG, Advisory Committees, environmental organizations, and others.

Questions & Concerns

General

What are the most effective means of securing strong habitat values while reducing the permitting burden on developers and state agencies? Can the current system be improved?

ADFG Authority

Under the Governor's Executive Order, will ADFG Commissioner still have ultimate permit authority to negotiate with other agencies and decide what's best for fish and wildlife if DNR becomes the permitting agency?

Is it necessary or desirable to remove permit authority from the Commissioner of Fish and Game, whose primary mission is to conserve fish and wildlife, and grant that authority to an agency whose primary mission is development? How will these commissioners interact and resolve problems if differences of opinions arise with regard to development projects?

Could changes in management, personnel and policy address some of the issues of concern that have been raised with respect to ADFG conduct?

If ADFG habitat division is moved to DNR, will adequate staff be retained to provide thorough field support and timely analysis for permit processing? If some staff is left at ADFG, how will the two agencies communicate and integrate their efforts?

Division of Governmental Coordination (DGC)

Who will work with the agencies to coordinate complete and consistent multi-agency comments, broker agreements between agencies in disagreement, and provide expertise and perform other duties as presently assigned to DGC? Will this loss of service hamper the state's ability to effectively present its position to the public and federal government?

Without DGC, where will commissioners go to resolve conflicts between the agencies on important matters of public policy?

What do we envision an alternative could include?

Legislative package (possibly fast-tracked), with associated regulatory changes, administrative reviews and reorganizational plans.

Crucial elements:

- Maintains Title 16 authority and due deference provisions for ADFG Commissioner.
- Provides improved permitting and appeals process for developers and agencies.
- Ensures adequate participation by the affected public.

We suggest a facilitated forum of affected agencies and interest groups to help craft a set of recommended statutes and regulations to achieve the Governor's goals, while securing the health and vitality of critical habitat and dependent wildlife. This group might consider options such as:

- **Title 16 Implementing Regulations**
 1. General permit provisions for certain stream classifications (catalogued?) – perhaps an "either/or" option to allow opportunity for greater flexibility for those willing to undergo more detailed review and negotiation with the agencies (same as now?).
 2. More rigorous permit provisions (same as now?) for certain stream classifications (uncatalogued?).
- **Improve Alaska's Coastal Management Program**
 1. Some common, over-arching policies, which govern all Coastal Resource Districts.
 2. Maintain local area management planning process, financial assistance for communities, and other positive features of current program.
 3. Review and revise the appeals process to make it fair and meaningful for all affected parties.

- **Division of Governmental Coordination**

Maintain functions of DGC separate from other agencies.

- **Reorganization of Habitat Division**

Allow thorough review by ADFG and DNR of their respective and combined agency roles in the permitting process. Allow commissioners to bring forward a joint plan detailing a streamlined, cost-effective, and productive structure to accomplish the Governor's goals while maintaining existing authorities of both Commissioners.

Contact Information

Dale Kelley, Alaska Trollers Association, 586-9400

Carl Rosier, Alaska Outdoor Council / Former ADFG Commissioner, 789-9117

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 criteria specified for ~~that~~ ^{Job} ~~positions~~ ^{qualified} 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 ~~the~~ 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.

March 10, 2003

Senate Natural Resources Committee

Re: Hearings on Executive Order 107

Dear Committee Members,

I was born in Alaska, and fished commercially for salmon and halibut for over 30 years. Most of that time was spent purse seining with my parents, Moses and Amy Johnson, on their boat throughout SE Alaska. I was taught from an early age that protecting salmon and wildlife habitat was necessary if we wished to continue our livelihood and enjoy a subsistence lifestyle.

I have always considered the Fish Game Habitat division to be most responsible for ensuring that our valuable fish and wildlife resources are protected. I strongly oppose Executive Order 107 ~~and~~ which would severely diminish Habitat's division ability to ensure that development does not damage our natural resources.

If Executive Order 107 is implemented, it will hurt Alaska's credibility as a state that values its wild salmon runs. I don't think that moving the Habitat division to DNR, which has a massive backlog of ^{permitting} permits, will accomplish the stated goal of speeding up the permit process. The only thing that will speed up will be the decline of the wild salmon runs that make Alaska's fishing industry unique in the world.

I think all Alaska representatives and senators should be held accountable for the future of the salmon industry and the habitat it depends on. I urge you to vote in a joint session against Executive Order 107.

Clarice Johnson
506 O'Connell St
Sitka, AK

johnson@pti.alaska.net



Sitka Conservation Society

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Sitka, Alaska 99835

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(907)747-6105 fax

home.gci.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 permittees 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 Else
Page Else, Acting Director



Kachemak Bay Conservation Society

3734 Ben Walters Lane, Suite 202

Homer, AK 99603

Phone: (907)235-2062 • Fax: (907)235-4069 • kbcsc@xyz.net

March 10, 2003

Senate Resources Committee
Alaska State Senate
Juneau, AK

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:

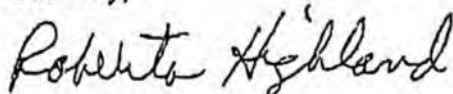
- The State will lose its system of checks and balances in the oversight of fish and wildlife.

- 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



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 10, 2003

Senate Resources Committee—Senators Scott Ogan, Thomas Wagoner, Ralph Seeking, Ben Stevens, Kim Elton, and Georgianna Lincoln.

Subject: Testimony on Executive Order 107—ADF&G's Habitat Division

Honorable Resources Committee Members:

My name is Aurah Landau and I'm testifying on behalf of Southeast Alaska Conservation Council. Thank for you for holding this hearing and allowing the public to speak 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.

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, I urge you to move Senator Elton, Davis, and Lincoln's resolution out of committee for full consideration by the entire Senate, and to vote to support it.

Thank you for hearing public testimony.



Senator Ogen, Chair
Senate Resources

Following is a letter
for your committee meeting
of this afternoon.

Please share with
committee members.

Thank you.

Milli Martin

March 10, 2003

Senate Resources Committee
Senator Ogan, Chair
Senator Wagoner, Vice-Chair
Senators Dyson, Seekins, Stevens, Elton and Lincoln, Members

Re: EO 107 Shifting of Fish & Game Habitat Division to DNR

Dear Senators,

This is to advise that I strongly object to the Governor's recommendation in EO 107, and request that this issue come to a vote in joint session to disapprove of the executive order.

As an Assembly representative for Kenai Peninsula Borough District 9 that encompasses from Anchor Point to the head of Kachemak Bay and the communities across the bay, I have received several calls and requests to speak out on this issue. My constituents are very, very concerned that this action will undermine the good work of this division.

It is a known fact that the Fish & Game Habitat Division is a very efficient department, that rarely requires more than 14 days to complete permit requests. For my district in particular there is much concern for the continued oversight of precious salmon streams and wildlife habitat.

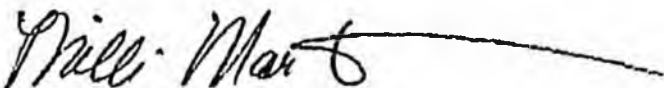
In 1996 the Kenai Peninsula Borough Assembly passed Resolution 96-010 urging the Governor to designate the Alaska Department of Fish and Game the lead agency in the monitoring of logging operations and providing the proper funding for the habitat division. This was done in a concern for the intensive logging that would be taking place, but it included any activity that could impact our precious natural resources.

It does not make sense to remove and destroy a very efficient department and place it in a department that is not related to fish, game and wildlife issues. I believe it needs to remain where it is and properly funded.

Therefore, I urge a vote to disapprove of executive order 107.

Thank you,

Sincerely,



Milli Martin
P.O. Box 2652
Homer, Alaska 99603

3/10/03

TESTIMONY TO SENATE RESOURCES COMMITTEE
AND HOUSE STATE AFFAIRS COMMITTEE
HEARINGS ON EXECUTIVE ORDER 107

As a longtime SE Alaska resident who spent 30 yrs Commercial fishing I was deeply disturbed to read of executive order 107.

During those years I came to realize how vital protection of our fish and wildlife habitat was — not just to protect future fish runs but to insure the subsistence and recreational needs of our residents. Fish, wildlife and their habitats are part of what makes SE Alaska so special. Any possibility that protections may be modified in the interest of short term gains is scary.

In the past when local development plans have had issues with the habitat division there has always been resolution through dialogue and compromise — please preserve a state agency which has demonstrated a willingness to take a long term view in the protection of our fish and wildlife.

Sincerely

Amy Johnson

Amy JOHNSON

423 Verstopia

SITKA AK 99835

747-8133

SENATE RESOURCES COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE HEARING
EXECUTIVE ORDER 107

KAREN L. JOHNSON
617 KATLIAN E33
SITKA, AK 99835
(907) 747-6762

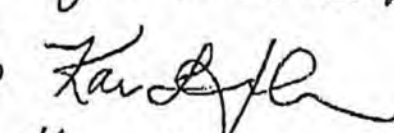
MARCH 10, 2003

AS A LIFELONG SITKA RESIDENT AND COMMERCIAL FISHERMAN I AM WRITING TO EXPRESS MY OPPOSITION TO EXECUTIVE ORDER 107 WHICH WOULD TRANSFER THE DEPARTMENT OF FISH AND GAME HABITAT DIVISION PERMITTING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES.

I BELIEVE THIS CHANGE WILL ONLY CAUSE HARM TO OUR RESOURCES. THE ADF&G HABITAT DIVISION HAS DONE A GREAT JOB KEEPING THE BALANCE BETWEEN DEVELOPMENT AND HABITAT PROTECTION. AS A FISHERMAN & SUBSISTENCE USER I RELY ON THEM TO PROTECT HABITAT CRUCIAL TO MY FUTURE AND THAT OF MY FAMILY'S. PLEASE KEEP THE ADF&G HABITAT DIVISION IN CHARGE, DO NOT TRANSFER THEIR PERMITTING AUTHORITY.

THE ADF&G HAS THE KNOWLEDGE TO KEEP CHECKS & BALANCES ON COMMERCIAL FISHING, GRANTED WE MAY NOT AGREE WITH IT ALL THE TIME BUT WE KNOW IT'S NECESSARY ~~TO~~ TO ENSURE OUR ABILITY TO FISH IN THE FUTURE. WHY DENY THEM (ADF&G) THE ABILITY TO PROTECT HABITAT IN THE SAME MANNER?

Thank you for your consideration

Sincerely, 
Karen Johnson

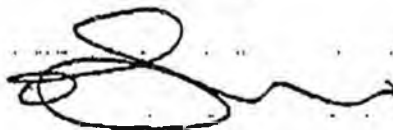
3/10/2003

ERIC B. STROMME

I AM NOT IN SUPPORT OF TRANSFERRING
ADF&G'S FISH HABITAT FUNCTIONS TO
DNR AS I BELIEVE THIS TRANSFER
WILL ADVERSELY AFFECT FISH HABITAT,
COMMERCIAL FISHERIES AND TOURISM
BASED ON SPORT FISHING.

I AM ALSO OPPOSED TO TRANSFERRING
AK COASTAL POLICY COUNCIL AND OFFICE
OF COASTAL MANAGEMENT TO DNR.

THANK YOU FOR THE OPPORTUNITY TO
COMMENT.



ERIC STROMME SITKA RESIDENT
MEMBER, AWRTA



Alaska Salmonid Biodiversity Program

March 10, 2003

**Senate Resources Committee
Testimony of Trout Unlimited on
E.O. No. 106 & E.O. No. 107**

My name is Jan Konigsberg and I am the director of Trout Unlimited's Alaska field office, based in Anchorage. Thank you for opportunity to comment on Executive Orders 106 & 107.

The Murkowski administration has stated that its executive orders consolidating environmental permitting and oversight functions in the Alaska Department of Resources are good for economic development and for environmental protection. As I understand it, the administration says that the State of Oregon's consolidated permitting and environmental review process was the inspiration for the executive orders and is a role model for economic growth and habitat protection.

The last time I checked, Oregon's unemployment was 7%, the state had a short fall of around \$2 billion, and the school year in many districts had to be shortened by three to five weeks.

And what about Oregon's environment? Could it be that the reason Oregon's economy is no longer a natural resource-based economy has something to do with the fact that Oregon has lost much of its productive habitat? Only about 10% of Oregon's old-growth forest remains. With nearly 700 dams, few free flowing rivers, and more than 13,000 culverts on state highways and forest roads block fish passage, no wonder Oregon's wild salmon abundance has fallen by 90%. With nearly three quarters of salmon stocks in the Columbia River Basin extirpated or are at some level of risk, why on earth would we want to follow in Oregon's endangered-species footsteps?

By choosing to ride down the Oregon Trail, we're going to be eating canned, pink salmon when we could be eating fresh sockeye. Those who don't countenance how they do it Outside, now tell us we better do it like they do Outside! This misguided approach makes one wonder if anyone's done the homework to produce a sensible plan for economic development. The administration believes that consolidating permitting and

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environmental oversight in DNR will remedy what it perceives to be the undue influence of environmentalists and professional biologists and then economic development apparently will take care of itself. If subtracting citizen participation, science and public policy analysis from the equation is the solution, we can look forward to more projects like the Ketchikan veneer plant or the Great Alaska Seafood Plant in Anchorage – no doubt a money maker for a few select individuals, but a net loss for the state.

Let's be honest, the Southeast timber industry, which depended mainly on federal dollars anyway, didn't tank because of environmentalists and habitat biologists, it tanked because world demand for dissolving pulp collapsed. The salmon industry, which depended mainly on Japanese demand, has shriveled not because of habitat biologists, but because of the huge supply of farmed salmon and the inability of Alaska salmon to compete effectively. Of course if the salmon industry is ever to regain market share, then in we are going to have to maintain high-quality salmon habitat.

When it comes to developing a meaningful plan to grow the economy, one starting point ought to be Alaska's comparative advantages. Many resource development projects cannot compete successfully because of their distance from markets and the high cost of production. On the flip-side, the state's natural advantage is that it is still natural. Undisturbed habitat is becoming increasingly scarce and prized by the multi-billion dollar recreational fishing, eco-tourism, and cruise ship tourism industries. Obviously, undisturbed habitat alone doesn't constitute an economic development plan, but no economic development plan can afford to ignore its intrinsic value. Moreover, any plan to bolster the economy that is not premised on ensuring minimum impact from developing the common-property resources of fish, wildlife, water, minerals and land would sacrifice public wealth for private gain.

If we are serious about stepping up the pace of economic development, we need more, not fewer habitat biologists. We need stricter, not laxer habitat protection standards. We need to be just as concerned about depleted habitat as we are about depleted oil reserves. In other words, we need to make sure we don't do it like they do Outside. Otherwise, like Oregon, we'll end up with a lot of roads along pock-marked forest land and along impounded rivers full of salmon spawned in hatchery buckets.

I would urge the Senate Resources Committee to oppose the executive orders. Further, before accepting a reorganization scheme that flies in the face of a 50-year old resource management system, the public deserves the benefit of a thorough inquiry into whether environmental protection and economic development would be well served by such reorganization.

Thank you.

Department of Fish and Game

Division of Habitat and Restoration

**Reorganization Proposal
In Accordance With Executive Order No. 107**

Effective Date: April 15, 2003

Functions Moving to DNR (36 positions)

- Title 16 fish passage and anadromous fish stream permitting
- Anadromous Waters Catalog (regulatory function)
- Project-related research and monitoring
- Consistency reviews, ACMP plan review, review of 6217 documents, coastal boundaries atlas
- Forest Resources and Practices Act permitting

Functions Moving to Sport Fish (18.5 positions)

- Fish stream surveys and database
- Various research and restoration projects (e.g., stream bank restoration manuals and assistance, ATV study and mapping)
- Oil spill contingency plan reviews
- ACMP support to DFG Commissioner

Functions Moving to Wildlife Conservation (5.5 positions)

- Special Areas Permitting
- Access Defense
- CARA/SWG
- North Slope Grizzly Project

Functions Moving to Comm Fish (2 positions)

- LTF Dive Survey
- Mariculture Leases

EVOS (1 position)

- ARLIS Librarian

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting

Job Class		HB IV	HB III	HB II	HB I	Admin Mgr	Admin Asst	Admin Clk	Exec	Totals
Range		20	18	16	14	17	13	10	26/24	
AREA OFFICES	Anch Area	1 ^s	6	2	1		1	1		12
	Mat-Su		1 ^s	1				0.5		2.5
	Kenai		1 ^s					1		2
	Fairbanks	1 ^s	4	2			1			8
	POW		1 ^s					0.5		1.5
	Petersburg		1 ^s							1
	Juneau	1 ^s	1	2			1			5
	JPO	1								1
	HQ					1			2	3
Totals		4	15	7	1	1	3	3	2	36

s = lead biologist/supervisor

DEPARTMENT OF FISH & GAME
Sport Fish Habitat Component inc. SSF

Job Class		HB IV	HB III	HB II	HB I	Cart II	Admin Mgr	AP II-IV	Totals	
Range		20	18	16	14	15	15	16-20		
	Anchorage	1 ^s	4	2		1	1	1	10	
	Fairbanks		1						1	
	Juneau		1						1	
	SSF		2	1	1.5			2	6.5	
Totals		1	8	3	1.5	1	1	3	0	18.5

Kachemak Bay Research Reserve

Job Class		HB IV	HB III	HB II	HB I	Educ Spec	Res Analys	Acct Clrk I	Adm Clk III	Totals
Range		FB IV	FB III	16	14	19	16	9	10	
	Homer	2 ^s	1	1.5	2	1	1	1	1	10.5

Wildlife Component

Job Class		HB III	HB II	HB 1	Cart II	FWT III			
Range		18	16	14	15	11			Totals
Anchorage		2		1	1	0.5			4.5
Fairbanks		1							1
Totals	0	3	0	1	1	0.5	0	0	5.5

Comm Fish, EVOS Component

Job Class		HB III	Libr II						
Range		18	17						Totals
Anchorage		1	1						2
Juneau		1							1
Totals	0	2	1	0	0	0	0	0	3

Habitat Division Layoffs and Position Deletions

ANTICIPATED LAYOFFS

Anchorage
 11-6029 Regional Supervisor
 11-6054 Habitat Biologist II
 11-6149 Cartographer I
 11-6053 Administrative Clerk
 11-6066 Administrative Clerk
 Non-Perm Administrative Clerk
 Non-Perm F&W Technician II
 Non-Perm Fisheries Biologist III
 Non-Perm Natural Resource Mgr I

Fairbanks
 11-6010 Regional Supervisor

Juneau
 11-6011 Deputy Director
 11-6003 Regional Supervisor
 11-7711 Assistant Director
 11-6047 Habitat Biologist III
 11-6043 Administrative Assistant
 11-7714 Accounting Technician
 Non-Perm College Intern

Sitka
 11-6135 Habitat Biologist III
 11-1702 Habitat Biologist I
 11-6058 Administrative Clerk

Ketchikan
 11-6069 Habitat Biologist III

Craig
 11-6083 Habitat Biologist II

VACANT POSITIONS TO BE DELETED

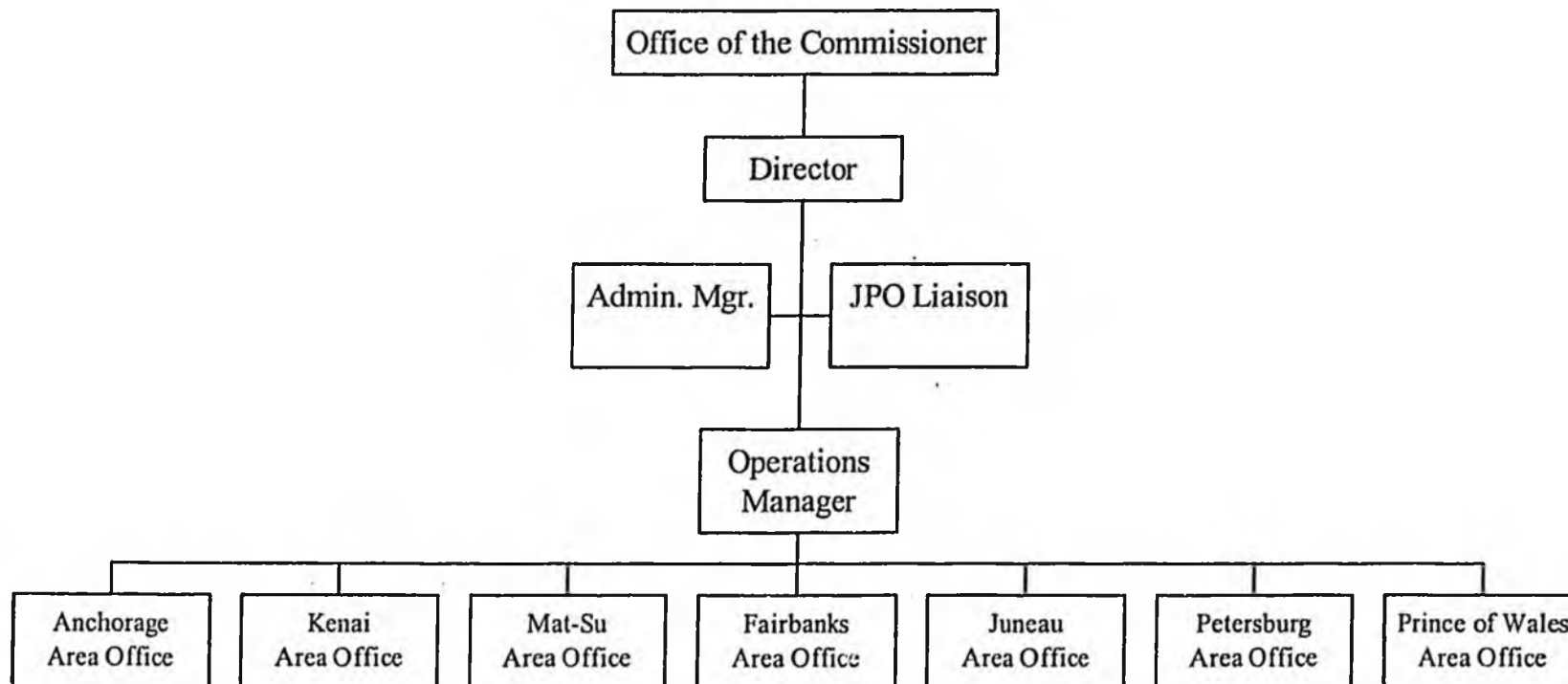
Anchorage
 11-135X Pipeline Liaison
 11-6146 Habitat Biologist III
 11-7716 Habitat Biologist III
 11-7717 Habitat Biologist III
 11-7600 Habitat Biologist I
 11-7090 F&W Technician III

Fairbanks
 11-6061 Habitat Biologist I

Juneau
 11-6018 Habitat Biologist I
 11-7097 Habitat Biologist I
 11-7713 F&W Technician III
 11-7108 Accounting Technician II
 11-6012 Administrative Clerk

Layoff notices issued March 7, 2003 with an effective date of May 1, 2003.

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting



Director Sport Fish

Anchorage	Juneau	Fairbanks	Southeast Sustainable Salmon Fund	Kachemak Bay Research
Habitat Biologist IV - 1 Habitat Biologist III - 4 Habitat Biologist II - 2 Cartographer II - 1 Administrative Manager - 1 Analyst Programmer - 1	Habitat Biologist III - 1	Habitat Biologist III - 1	Habitat Biologist III - 2 - Juneau Habitat Biologist II - 1 - Juneau Habitat Biologist I - 1.5 - Juneau Analyst Programmer - 2 Anchorage	Habitat Biologist IV - 1 Fishery Biologist IV - 1 Fishery Biologist III - 1 Habitat Biologist II - 1.5 Habitat Biologist I - 1 Fishery Biologist I - 1 Education Specialist - 1 Research Analyst II - 1 Accounting Clerk I - 1 Administrative Clerk III - 1



**Alaska Department of
Fish and Game**

Kevin Duffy, Acting Commissioner
PO Box 25526
Juneau, AK 99802-5526



**Alaska Department of
Natural Resources**

Tom Irwin, Commissioner
400 Willoughby Ave Ste 500
Juneau, AK 99801

Contacts: Nancy Long, ADF&G - 465-6166 or Wyn Menefee, DNR - 269-8412

News For Immediate Release

March 7, 2003

**ADF&G Working with DNR on Transition of
Title 16 Permitting Responsibilities**

The plan transferring Title 16 habitat permitting functions from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR) is designed to streamline permitting without sacrificing Alaska's environmental safeguards. Specific permitting functions will move to DNR, while certain habitat related functions will remain within ADF&G divisions.

"In order to facilitate this process change, Commissioner Irwin and I will be developing a detailed memorandum of understanding to ensure close coordination between the agencies," said Kevin Duffy, Acting Commissioner of ADF&G. "I'm looking forward to the new relationship between our agencies and will work hard to make this a positive transition."

DNR is creating the Office of Habitat Management and Permitting to administer the agency's new responsibilities. The new DNR office will include:

- Title 16 fish passage and anadromous fish stream permitting
- Anadromous Waters Catalog (regulatory function)
- Project-related research and compliance monitoring
- Consistency review, land use plan review
- Forest Resources and Practices Act permitting, monitoring and compliance

"I welcome this transition which will allow habitat biologists to work closely with the other permitting functions within DNR," said DNR Commissioner Tom Irwin. "I am impressed with the dedicated and professional staff that has been working on this reorganization." While protecting valuable fish and wildlife habitats, the new office will work to reduce permit issuance times and lower permitting costs through close coordination.

-More-

Habitat-related activities that will be maintained within other ADF&G divisions include:

- Special area permitting
- Fish stream surveys and database
- Various research and restoration projects
- Oil spill contingency plan reviews
- Land use support
- Wildlife-related projects
- Mariculture leases
- Log Transfer Facility Dive surveys

"An outstanding group of experienced and professional staff dedicated to resource conservation will be transferring to DNR," Duffy said. "In addition, I am very pleased that many of our staff will remain within the department."

The plan anticipates transferring 36 ADF&G Habitat positions to DNR with a remainder of 38 positions moving to other ADF&G divisions. The streamlining effort will layoff 22 currently filled positions from ADF&G's Habitat Division and eliminates 12 currently vacant positions.

The Executive Order directing the transition will become effective April 15, 2003.

###



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
 committee name
 committee on EO 107, dated March 10, 2003.
 bill/subject

MAR 18 2003

J. PAGES

Signed: GARVAN BUCARIA
 Testifier

SELF / RESOURCES
 Representing (Optional)

PO Box 870298
 Address

Wasilla AK 99687 907-373-4974
 Phone No.

1. Reject EO 107 - Don't sacrifice fish & wildlife habitat for short term solutions that may result in long term habitat loss.

MAR 18 2003
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 ^{Job} criteria specified for ~~staff~~ ^{qualified} positions and staff already in Fish & Game.

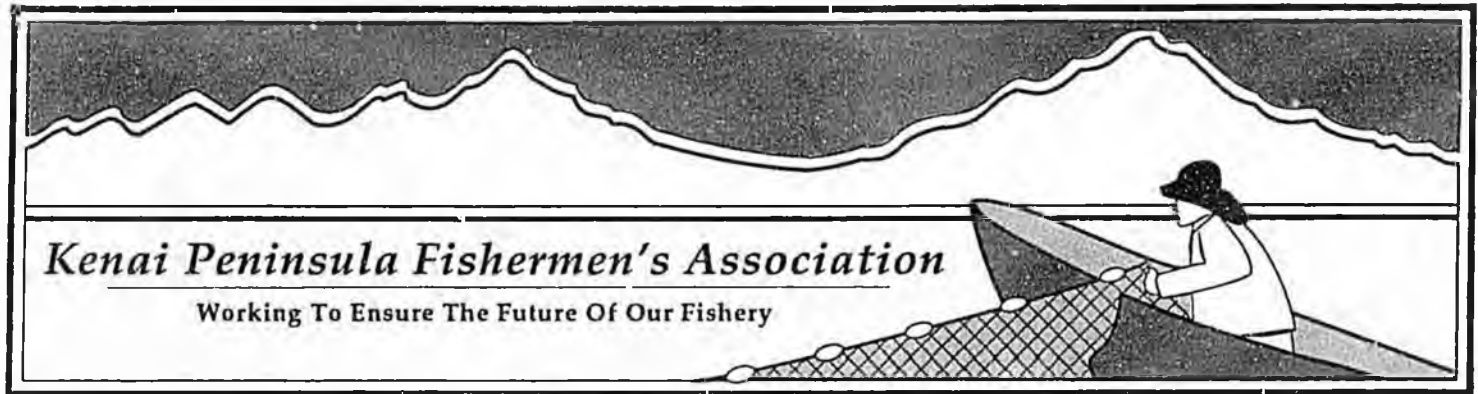
4. Don't threaten the use of Fish & Game License money for use in appropriate projects.

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 ~~the~~ 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.



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

March 10, 2003

MAR 17 2003

Chairman Ogan, Members of the Senate Resource Committee;

My name is Paul A. Shadura II, I am the president of the Kenai Peninsula Fishermen's Association. I reside on the Kenai Peninsula. KPFA has been in existence since 1956 and is the largest set-net representation organization in Cook Inlet.

KPFA respects the right of the Governor and his administration to streamline government and improve the economic well being of the state. Re-structuring administrative services is an efficiency necessary to reduce costs and lessen the burden on the states already beleaguered commercial fishing families.

We believe that EO 107 has merits, but we also believe that there are serious flaws that do not allow a system of reviews necessary to protect the environment from overzealous industrialization.

There are three main points for suggested modifications:

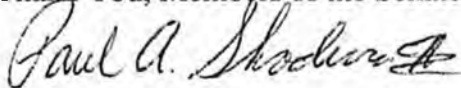
- 1) The Commissioner of Fish and Game should retain a voice in the final permitting process. It is extremely important that aquatic systems are protected to the highest *standards* available. Reviewing the Sustainable Salmon Fisheries Policy regulation, the importance of habitat is the pivotal theme to which all salmon management plans are designed after. The ADF&G are the states specialists who live and breath our states constitution's mandate to sustain and conserve. Commercial fishermen and others have access and a voice through the department to emphasis their concerns. The Commissioner should have authority to: object, veto, vote or call for further analysis and public involvement if he believes a vital habitat will be compromised.
- 2) The new *deputy commissioner's* position created in the DNR should be one that has the assurance of all that they will perform the task with all environmental considerations made. This position has more control and autonomous decision making power than either commissioner of natural resources or fish and game. This position has to be filled with an individual of special talents and the ability to not be influenced by individuals who have only their interests and not the states

best interests in mind. We believe this position should go through the full confirmation and administrative appointment review process. The people of the state should be allowed due process in confirming this highly pivotal position.

- 3) We highly recommend that the functions of the anadromous fish catalogue remain within the dept of fish and game. There is no reason for this mapping of our salmon resources to be delegated to non biological staff. This is the most important log of fisheries management that tells the public what systems are performing and which are showing stress. It is the performance document that spans time, a resource history book. In Cook Inlet, where our fisheries are fully utilized by commercial, sport, subsistence and personal use no fish lost can be acceptable to oversight or mitigation. You cannot buy-out an eco-system that has been developing since the time of man and expect to restore it overnight.

We strongly encourage the governor and his staff to re-consider the adoption of EO107 and to consider the improvements that we have suggested.

Thank You, Members of the Senate Resources Committee.



Paul A. Shadura II



State Of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
907-283-2030

MAR 17 2003

Date: 3-11-03

Please accept the enclosed original(s) of written testimony for
the SRES teleconference hearing that was
scheduled on 3-10-03.

A copy of this testimony was transmitted to your committee via
fax on 3-11-03.

Thank you,

M. B. Byrne

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

MAR 17 2003

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 18th,
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 *BY* *MEAM*

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

Subject: EO 107 Testimony

Date: Mon, 17 Mar 2003 14:59:07 -0800

From: "WILLIAM DENNERLEIN" <cdennerlein@msn.com>

To: <Scott_Ogan@legis.state.ak.us>, <Kim_Elton@legis.state.ak.us>

Dear Chairman Ogan:

Thank you for the opportunity to testify before Senate Resources on this important issue. I also appreciate your invitation to provide more thorough written testimony. Attached please find an analysis of EO 107 that I have prepared for your consideration.

There are many complex and significant issues associated with the EO. I have tried to address the most important. Even so, these require some background and the attached comments are not short. I have provided sub-headings and highlighted major points. I hope this is helpful to you, your colleagues and staff.

Thank you.

Chip Dennerlein



EO 107 Chips Testimony.doc

Name: EO 107 Chips Testimony.doc

Type: WINWORD File (application/msword)

Encoding: base64

Download Status: Not downloaded with message

Chip Dennerlein

1627 W. 14th Ave., Anchorage, AK 99501

907-278-3420. cdennerlein@msn.com

PREFACE

The following represents my analysis and observations regarding Executive Order 107, issue by Governor Murkowski. EO 107 would transfer the current permitting authority of the Alaska Department of Fish and Game (ADF&G) Habitat Division to the Department of Natural Resources (DNR). Under state law, the Governor can initiate the transfer by EO, but the Legislature has 60 days to review, approve, amend or reject the Governor's order before it permanently takes effect. Legislative action must occur in the form of a Joint Resolution in joint session.

First and foremost, I want to acknowledge and thank the members of the Legislature - both Democrats and Republicans, from the House and Senate - who have recognized the significance of the Governor's action, and who are now taking the time and effort to give EO 107 the serious scrutiny it deserves. From the moment the Governor Murkowski announced his intent to issue EO 107 in his first State of the State speech, the move triggered debate within sport, commercial and subsistence fishing groups, uncertainty within some key industry sectors, public opposition from every past Alaska Fish and Game commissioner, and a series of media reports. No one should be surprised. Natural resources - from oil and timber, to fish and wildlife - are at the very core of our lives, livelihoods and quality of life as Alaskans.

I particularly want to thank the members of the several legislative committees that have held (or plan to hold) hearings for giving Alaskans across the state an opportunity to present their concerns and views. I have testified before Senate Resources and House State Affairs, and will participate in additional hearings over the next week. I understand that the tremendous public response to the hearings made it necessary to limit verbal testimony to only a few minutes. I appreciate the invitation to submit more comprehensive comments in writing. While I know that reviewing the following comments (and those of many others who will likely submit written testimony) will require substantial time and effort, I urge you give them careful attention. The issues raised by EO 107 are serious and complex, with tremendous potential ramifications for both Alaska's environment and our future economy. A few minutes of verbal testimony can provide valuable information and raise important issues, but it does not allow time to explain or explore the issues. The Legislature is to be commended for holding hearings. They are a crucial first step. I hope that Legislators will now follow-through, review the issues in detail, and provide a forum and time for thoughtful discussion and debate.

INTRODUCTION

During 2002, I served as Director of the Division of Habitat and Restoration in ADF&G. My recent experience in that position has obviously gives me special knowledge of, and a specific management perspective on, the division and EO 107. I am familiar with the division's staff (in the three regional offices and field offices),

budget and funding sources, and daily operations. I was directly involved in a number of the major projects (e.g. Juneau Golf Course; Parks-Glenn Highway Interchange; Falls Creek Hydro) that the Governor has used as examples to justify EO 107. **Naturally, I draw on that knowledge in these comments. However, I do not offer these comments simply as a former Habitat director, or former ADF&G colleague of the individuals whose professional careers and personal lives are affected by EO 107.**

I present these comments primarily as a 30-year Alaskan resident, who has spent nearly 25 years working in the field of natural resources management and conservation. I have worked for the State of Alaska twice during my career, the great majority of that time as a special assistant and director in the Alaska Department of Natural Resources. I have spent more of my career outside of government than inside. Over the years I have dealt with ADF&G Habitat division as: a municipal executive during the period of greatest growth and construction (including road construction) in Anchorage's history; a resource consultant and project permitter for an oil and gas production company; and the manager of a commercial fishing company. My comments also reflect these experiences and perspectives. **From all of these perspectives, I urge the Legislature to reject EO 107. It is bad public policy – and it is bad business.**

EO 107 constitutes a dramatic, fundamental change to Alaska's current system of resource management. Governor Murkowski continues to promote EO 107 by accusing habitat biologists of holding up legitimate economic developments based on personal agendas, while assuring Alaskans that moving ADF&G personnel and authority to DNR will not reduce protection of Alaska's fish and wildlife resources. He points to projects that, he asserts, are examples of many projects where ADF&G Habitat division has been the only agency blocking approval. He says the move will reduce bureaucracy and improve efficiency. And he claims the transfer will mean better use of "good science" in decision-making. In addition to the Governor's assertions, ADF&G acting-commissioner Kevin Duffy recently assured southeast fishermen that ADF&G will still retain authority to protect fish habitat. If these statements were true, the Governor's plan would be a good deal. The problem is, none of these statements are true.

I was initially astounded – and am appalled – at extent to which misleading statements and outright falsehoods have been (and are still being) put forth to justify EO 107. As a result, many Alaskans are (understandably) confused about what EO 107 actually is and does. As a prime example, the current president of United Fishermen of Alaska recently wrote a newspaper opinion column supporting the Governor action on EO 107. It was heartfelt. It was also about as far off the mark as one could get. There is no question that Alaska's fishermen are facing many pressures. But *not one* of the examples in the column had anything whatsoever to do with the division of Habitat or ADF&G permit authority. His two prime examples were: 1) increased restrictions based on concerns over Steller sea lion populations – a federal regulatory issue driven by agencies such as National Marine Fisheries Service (NMFS) and U. S. Fish and Wildlife Service (USFWS); and 2) long permit delays for a fish processing facility in Akutan - an air-quality issue (emissions and transmission of persistent organic pollutants) driven by EPA with some involvement by state DEC. The

examples had *nothing* to do with the issue at hand, and his acceptance of the Governor's assurance that stewardship over fish habitat would not diminish was simply blind faith. No responsible government official or business executive would ever make a decision – especially one with the significant and long-term ramifications of EO 107 – based on fiction and blind faith.

I do not fault Alaskans who accept or believe these statements. Making fun of politicians is an Alaskan and American tradition. But most people are generally inclined to trust their elected officials. The first responsibility to promote truth – to lead rather than mislead – lies with leadership itself.

Unlike the Administration, I will not make generalized or vague assertions. Nor do I expect you to take these comments at face value. I will be glad to answer any follow-up questions with specifics, and verify my statements with documentation. In addition, I will make myself available to meet with legislators and staff, and/or participate in any other appropriate forum for further review (e.g., oversight/advisory panel, public meetings, working group, etc.).

There's an old saying, "You can't find the right answer if you're debating the wrong questions." The purpose of the following comments is to convey good information, correct some of the major fictions, and help set the record straight. The Legislature and all Alaskans deserve the straight story about why EO 107 is needed – and what it will actually do. So far, the Administration has given us neither.

1. EO 107 ELIMINATES THE FUNDAMENTAL STATUTORY, HISTORIC ROLE OF THE DEPARTMENT OF FISH & GAME IN FISH HABITAT PROTECTION

EO 107 is not simply an issue about Habitat Division. It is an issue about the fundamental role of Alaska Department of Fish & Game in fish habitat protection. Over the years, fish habitat (Title 16) permits have been issued by ADF&G biologists working in Sport Fish division, a habitat section, and (for the past few decades), a habitat division. The division is simply an organizational structure. The legal responsibilities and authorities being transferred to DNR under EO 107 – AS 16.05.840 (Fishway Act) and AS 16.05.870 (Anadromous Fish Act) – have been the Commissioner of ADF&G's core statutory authorities for protection of fish passage and fish stream habitat since 1959. They are not vested in the habitat *division*, but in the *department*. If the Governor's action stands, this will be the first time in our state's history that Alaska's Commissioner of Fish and Game will have no specific, effective authority to protect waters important to migration, rearing and spawning of Alaska's Anadromous and resident fish populations. In plain English, that means salmon, trout, grayling, dolly varden, whitefish, burbot and many other species across the entire state.

EO 107 does not simply change permitting practice. It reverses the fundamental principle that has underlain Alaska's "check and balance" system of resource management since Statehood. Delegates to Alaska's Constitutional Convention, and the first Alaska Legislature considered the idea of a single agency responsible for all

resources. They wanted to facilitate development. They didn't want (and couldn't afford) big bureaucracy. But they were also keenly aware the tremendous importance of fish and wildlife, and particularly concerned about protection of salmon habitat. **After much discussion, the first Alaska Legislature decided to establish two agencies - DNR and ADF&G - with specific separate authorities, to ensure that both land development and fisheries habitat conservation had an effective voice future resource decisions.** When the current State Forest Resources Practices Act was amended in 1989, legislators again considered the question. Forest management and permitting was consolidated in DNR - with the specific exception that ADF&G retained authority over actions affecting fish passage and fish stream habitat. In addition, the State Forester must consult with - and "give deference" to - concerns of ADF&G biologists, prior to granting a request from a timber operator to selectively harvest individual trees within the coastal area stream buffers established on private lands by the Act

These past decisions have served us well. Today, one of the world's largest complex of oil fields operates on Alaska's North Slope. The world's largest open pit gold mine (e.g. Fort Knox) is located just outside Fairbanks, built in a valley that supports wildlife and grayling. Hundreds of millions of board feet of timber have been harvested from National Forest and Native-owned lands in Southeast watersheds. Major hydro-electric projects have been constructed in sensitive watersheds on the Kenai Peninsula (e.g. Bradley Lake) and Kodiak Island (e.g. Terror Lake), and electrical Inter-ties (e.g. Anchorage-Fairbanks) strung across hundreds of miles. All of these, and thousands of other developments, large and small, were developed with ADF&G habitat staff involvement and ADF&G permits. **We continue to develop oilfields, timber, roads, airports and communities. At the same time, Alaskans today continue to enjoy fish and wildlife opportunities that are unequalled in any other state, and are the envy of the world.** Alaska's fish habitats still support healthy populations of wild salmon, trout and other species for sport, commercial and subsistence users. **The fundamental "check and balance" system, enacted in 1959 and confirmed through public debate over succeeding years has been one of the foundations of this success.**

The personal assurances - given by the Governor and Acting Commissioner Duffy, and repeated by supporters of the transfer - that ADF&G will still retain effective authority to protect fish habitat - are nothing more than that - personal statements. They are not supported by the facts and will not be supported by the law if EO 107 goes into effect. Let's just take one example. **Today, if a timber operator wants to harvest some trees from private land with the stream buffer designated by the Alaska Forest Resources Practices Act, DNR foresters must consult with - and "give deference" to - ADF&G biologists prior to deciding whether to allow the cut. If there is disagreement, the issue is elevated to respective DNR/ADF&G directors (and commissioners if necessary) for final decision. Under EO 107, the State Forester decides. The Forester is only required to give deference to the DNR Deputy Commissioner, his boss. There is no requirement that anyone from ADF&G even be involved in the process.** Does this sound like a system that will ensure an effective check-and-balance voice for fish habitat protection, especially over time?

Under Alaska's present system, DNR and ADF&G each come to the table with specific, separate authorities. Under EO 107, DNR has the legal authority, and ADF&G has DNR's "goodwill". I do not discount goodwill, and I have great respect for (and many friends among) the professionals in DNR. I have no doubt that Commissioner Erwin is sincere. The working relationship between Fort Knox gold mine, and ADF&G Habitat division has been exemplary at all levels. Clearly, Tom Erwin's personal commitment to responsible development and stewardship of fish and wildlife has been a key ingredient in the formula for success on this major project. However, what businessperson - or American - would trade a system based on separation of power, and check-and-balance, for a system where one entity held all the authority - and your interests depended solely on the other guy's "goodwill"? Not me - and I hope not you.

2. THE CHARACTERIZATIONS OF PROJECTS USED AS EXAMPLES TO JUSTIFY EO 107 ARE INACCURATE AND TOTALLY MISLEADING

The examples cited by the Governor, of important projects that have been delayed solely by habitat division are misleading at best. Several of the descriptions dramatically misrepresent the individual facts and the overall situation regarding the projects in question.

It is absolutely true that ADF&G concerns about the Glenn-Parks Highway Interchange project required extra time, effort and additional (federal) funding to resolve. The project involves massive fills on wetlands. It is surrounded by Palmer Hay Flats State Game Refuge. Most important, it affects a system of several small creeks that provide some of the most productive coho (silver) salmon-rearing habitat in upper Cook Inlet. Information was gathered. Design changes were made. Pilings were used in some locations where fill had been proposed. Larger culverts were installed. DOT transferred land (excess property acquired with federal highway funds) to ADF&G to be managed as part of the refuge, and water control structures were incorporated to protect and enhance wetland habitat (as recommended in the original Federal Highway Administration environmental impact statement for the proposed project). The issues were complex, the stakes high. Decisions were reviewed and agreements reached at the director and commissioner levels in both ADF&G and the Department of Transportation.

Were there frustrations and tensions along the way? Absolutely. Directors on both sides became personally involved at several points, with good reason. But that is exactly what management is about. Joe Perkins, the State's longest-serving DOT Commissioner, stated recently that ADF&G was right in pushing his department on the project, and that it was also appropriate that the issues rose to his level. The first, because engineers would not have perceived the significance of the small streams and wetlands to salmon-rearing. The second, because only the Commissioner of DOT could have committed the additional federal highway funds needed for effective mitigation. Interestingly, in a recent press article, all three of the key project managers stated on the record that they generally enjoyed very good working relationships with Habitat division.

The claim that Habitat division ignored the Alaska Coastal Management Program (ACMP) approval for the Glenn-Parks Highway Interchange project is absolutely false. The Consistency Finding (approval) required development of specific project stipulations and mitigation to address the ACMP Habitat Standard and protect highly productive fish habitat. The project is under construction today. The difference is that it will now provide safe, efficient travel for people – and safe passage and sustainability for salmon that migrate to five stream systems in the Mat-Su valley.

ADF&G also advanced concerns about fish spawning and fish passage in relation to certain design elements of the proposed Falls Creek Hydropower project in Gustavus. These are being evaluated as part of the planning and design process. **The Governor's statements that Habitat division is responsible for holding up the Falls Creek hydro project near Gustavus is absurd. Falls Creek is located inside the boundaries of Glacier Bay National Park, in congressionally designated Wilderness. An Alaska lodge business, local landowners and the neighboring Hoonah Indian Association have objected to the project, which is under the jurisdiction of the Federal Energy Regulatory Commission and subject to a federal EIS. The project may well be built, but it will almost surely require a congressionally authorized land exchange involving the National Park Service, the state and others. Those discussions have been underway. Given his familiarity and concerns about the project, it is surprising that the Governor is not aware of this, especially since the required exchange falls within the jurisdiction of the Senate Energy and Natural Resources committee which he chaired for the past six years.**

I will not address each of the other examples here. Suffice it to say, they don't hold water either, and I would be glad to discuss them with any legislators who are interested. I would only note that in a recent major news article, the statements by a City and Borough of Juneau official more than adequately debunked the version of the Juneau golf course project that has been used to promote EO 107.

Many people have testified that the average time for issuance of Title 16 permits by Habitat division is two weeks. This is true. It is also true that the great majority of permits issued actually fall close within the two-week "average". However, there are also wide time variances among the some of approximately two-thousand (2000) permits issued annually by the division. A number of permits are issued each year by habitat biologists on-site, in the field. These are often issued within one or two days. On the other hand, do some projects take much longer to permit than the two-week average? Absolutely. Are there legitimate reasons? Take a hard look at the actual details of these specific projects and then decide. Do not simply rely on blanket statements from project proponents who, for whatever reasons, may not have considered or anticipated potential impacts to public fish and wildlife resources that would likely result from their initial project designs or operational plans, or who needed (or wanted) additional time and effort to respond or mitigate impacts.

3. EO 107 WILL WEAKEN, NOT STRENGTHEN THE USE OF "GOOD SCIENCE" IN PROJECT REVIEW AND PERMITTING.

Governor Murkowski has stated that one of his primary objectives for management of the state's natural resources is to insure that decisions are made on the basis of "good science". I completely agree with and support the Governor on this point. "Good science" is not a thing, but a process. Every responsible agency and agency manager should continually seek to enhance the collection and use of new and better information that can help improve our ability to design and develop projects in ways that better sustain environmental resources. However, moving ADF&G permitting staff and permitting authority to DNR will not enhance the use of "good science". It will ultimately result in just the opposite.

Under EO 107, there will still be habitat function in ADF&G – for research, not permitting and compliance. Thus, there will now be two groups of habitat biologists – one in DNR for permitting, one in ADF&G for research. **Today, permit staff in Habitat division interact daily with professional biologists in other ADF&G divisions. They are regularly involved in team efforts within the department and with other state and federal agencies to gather and review current information, and to design and conduct additional research aimed at improving the ability to protect fish habitat as part of resource development or road projects. This is how – and where- science and decision-making get connected.**

Under EO 107, habitat permit staff will separated – by agency and by physical proximately – from fish and wildlife biologist colleagues and from on going science and research. **Separating permit biologists from research and their professional colleagues cannot possibly improve the link between "good science" and good decisions.** In the real world, what is most likely is that those with the most knowledge of how to successfully incorporate biological needs into project designs and permit requirements will leave. Back-filling vacant habitat biologist positions over time in DNR – an agency with much professional expertise, but not in the fields associated with habitat biology – will be equally problematic. The most likely long-term effect will be a decrease in the level of professional experience and quality among permit staff responsible for determining necessary and appropriate habitat stipulations and conditions for many projects.

It is also difficult to reconcile a commitment to "good science" with the recent condemnation of Habitat biologists for delaying projects by requesting additional information. The Juneau golf course was the very first example cited by the Governor as evidence that Habitat division staff attempt to drag out legitimate projects. **When the Juneau golf course project was proposed, eight salmon streams were documented on the project site in the state's Anadromous Waters catalogue. When (following a request from the local government), biologists conducted an updated on-site survey, twenty-three fish bearing streams and stream segments were identified. The streams are there. The fish are in the streams. That is fact. Habitat division worked with this fact – and with the project proponents – to successfully achieve a revised design that will**

allow the project to be developed and will adequately protect fish. **Would it have been "good science" to proceed on the basis of eight fish streams, when there were really twenty-three? Would it have been "good science" to simply ignore the fish resources in those streams once we knew what was there?** Unfortunately, that is exactly what recent criticism about requests for additional information imply - and what Alaskans should expect the real effects of EO 107 on "good science" will inevitably be.

4. EO 107 WILL NOT NECESSARILY RESULT IN PERMIT STREAMLINING OR EXPEDITE DEVELOPMENT OF MOST OF ALASKA'S IMPORTANT PROJECTS.

If EO 107 does result in *greater efficiency* regarding approval of development projects, I firmly believe that such efficiency will come at the cost of *reduced effectiveness* in the protection and stewardship of wildlife and (especially) fish resources.

Nearly all of the projects cited as justification for EO 107 - projects that were supposedly unreasonably delayed because habitat biologists requested additional information and/or recommended additional stipulations or mitigation to protect habitat values - were complex undertakings that have potentially significant effects on fish resources. Second, and equally important, in most cases, while ADF&G had general knowledge regarding biological values in the proposed project locations, important, site-specific information needed to adequately review proposed development plans, work with project proponents, and design reasonable and effective permit stipulations tailored to the specific site conditions, resource values and project needs was lacking when the projects were initially proposed. Third, again in most cases (and independent of any recommendations by ADF&G), project developers made material changes to initial project designs and construction plans during the course of the review and permitting process. None of these three factors are unreasonable. They are common to many projects, especially large-scale resource developments and public infrastructure. However, unless these realities are simply ignored, time is needed to adequately respond.

As has already been shown, in the case of the Juneau golf course, only eight of an actual twenty-three fish-bearing streams in the project area were known (by the developers and ADF&G when the project began). Under the initial proposed design, fairways (areas cleared of all trees and brush and replanted in short grass) would have bisected four important stream segments. The plans would have also eliminated vegetative buffers and brushy cover (critical to preventing swings in water temperature and especially freezing events during winter months) on a number of additional tributary channels. In addition, the developers initially stated that no chemicals (herbicides, fungicides) would be used, but changed their plans when they realized that conditions in southeast Alaska would require some use of chemicals to protect greens and other areas from growth of mosses and mold. The project proponents are local residents. They are well intentioned, but they are not full-time developers or project engineers, and had limited resources. They were not prepared to respond quickly to the more detailed information about site conditions. The City and Borough of Juneau was particularly concerned about potential impacts to both fish resources and water

quality, and requested ADF&G to conduct additional site surveys. In the end (as has recently been reported in the news) **Habitat division offered to assist the developers in redesigning the project. If the developers agreed to take the updated information regarding fish streams into consideration, Habitat division would focus on developing stipulations tailored specifically to the project needs and to the most important habitat values of the site, rather than requiring the standard "buffer" on all tributaries. That is exactly what happened.** ADF&G habitat biologists helped develop a creative design that the agency can now support in good conscience – and has done so on record at City and Borough hearings. Finally, it is interesting to note that the City and Borough still has not issued final approval because of some remaining concerns.

Only over the past few years did ADF&G research (conducted primarily by Sportfish division as part of a project to determine fish movement and production in Mat-Su area stream systems such as the Cottonwood Creek-Wasilla Creek complex) document the extremely high productivity (six thousand coho per acre) of the small stream and wetland complex in the location of the Glenn-Parks Highway Interchange project. Even more recently, analysis of fish survey data indicates that juvenile coho salmon from as many as five different spawning streams migrate to this area for rearing. Research and monitoring efforts continue as this major "design-build" project proceeds. Just a few weeks ago, habitat biologists set fish traps under the ice in area where the contractor was scheduled to set pilings. Project engineers were astounded to find the traps packed with healthy juvenile coho, blackfish and other species – from locations that on the surface appeared to be nothing more than frozen marsh. **Habitat biologists and project engineers used the information to tailor construction activities to protect fish resources while enabling the project to proceed on schedule.**

One could certainly argue that development of these two projects would have been more efficient if the time and effort spent to gather site-specific information and develop site-specific mitigation measures was eliminated. But one would have to accept, given the facts, that the resultant mitigation measures (and the long-term protection of fish productivity) would have been far less effective. **Thus, it would have – certainly should have - made *no difference* whether those with responsibility to address fish protection issues for these two projects were sitting in ADF&G or DNR.** However, there are several other key factors regarding the nature of most major development projects in Alaska which argue that placing habitat permit staff in DNR instead of ADF&G could easily result in a *less efficient* and more confusing process.

Transferring fish habitat permit *authority* to DNR won't necessarily eliminate all of ADF&G's *involvement* in future Alaska development decisions. Under federal laws, such as the Fish and Wildlife Coordination Act, federal agencies are required to consult with the respective state *fish and wildlife* agencies on a variety of issues, including fish habitat protection and input into proposed development projects. In Alaska, under our current system, federal agencies have generally deferred to ADF&G's lead. **If the state's fish and wildlife agency no longer has authority over fish habitat protection, it is easy to imagine the U.S Fish and Wildlife Service, the Corps of Engineers, even EPA and National Marine Fisheries Service, taking a more active**

role in the future. This alone, could result in project delays. Nearly all the project examples that Governor Murkowski has used to justify the transfer and – equally important – nearly all of the new project initiatives he mentioned in his State of the State speech to “get Alaska moving” – are highly dependent on *federal* funds. Most also have federal requirements, and are subject to federal agency reviews, including in many cases, Environmental Impact Statements.

No one should expect agencies such as U.S. Fish and Wildlife Service to defer to (or follow the lead of) a small, isolated group of habitat permit staff in DNR. Rather, Alaskans should expect that federal managers will continue to consult (by law) with biologists in ADF&G, then, become increasingly proactive and independent in their review of state federal-aid projects. The current Katalla oil and gas project is worth noting here. After initial statements that implied Habitat division has been responsible for the lengthy permitting process, the project proponent publicly acknowledged that most of the lengthy process (over eight months) was directly attributable to the U.S. Forest Service, not ADF&G. The lengthy process underway for the Falls Creek Hydro-Project is a federal EIS.

More immediate than the federal agency issues, will be the impacts from the reduction in staff. Based on my project experience inside and outside government, I am confident that the significant and lasting result from these layoffs will be the loss of ability for habitat biologists to get out on the ground, respond timely to the needs of project managers in the field when issues arise, and resolve problems on-site. Even when individual contractors, agencies, or large companies spend the time and effort to thoroughly evaluate site conditions prior to construction, unexpected challenges inevitably arise. It might be the discovery of additional stream tributaries or stream reaches that hold fish, or a lens of unstable soil material. This is the nature of the business. It is not uncommon for Habitat division biologists to respond on-site. But that requires two things: sufficient number of staff to respond; and staff who have both the biological knowledge to assess the situation, and the legal authority to revise or grant a permit. By cutting staff, EO 107 compromises the first. By separating ADF&G biologists from DNR permitters, EO 107 compromises the second.

One significant issue regarding EO 107 that has not been discussed is the increasing trend toward use of “design-build” contracts for major projects, such as state highway improvements. Under the “design-build” system, neither Habitat division staff, nor DOT project managers see all of the detailed design, engineering or construction plans and specifications “up front”. Many important details unfold more like a “work in progress” as the project proceeds through key stages. Certainly, the overall project can be permitted. But how could anyone responsibly determine the specific permit stipulations needed for the setting of pilings in a fish stream if he/she didn't know the time, location, or proposed construction method (e.g. materials, equipment)? Where important fish resources were at stake, the permit conditions would have to be so sweeping that they would very likely unnecessarily impact the contractor's work and the project schedule. This is not hypothetical. **The Glenn-Parks Interchange project is a “design-build”.** In fact, the design-build contractor proposed a major

change to DOT's original entrance-exit ramp alignments – after the project was permitted. The new design actually reduced impacts to wetlands. Habitat division worked with the contractor and DOT to permit the new design.

There is no question that developers, other agencies and even members of the public are wary and/or frustrated from time to time about ADF&G's positions (or expected positions) regarding projects. **But EO 107 will not solve the challenges for some of the projects that have received the most attention from the public, the administration and the legislature over the past few years. The Anchorage Coastal Trail South Extension, Nenana Oil & Gas License project, and the Glenn Parks Highway Interchange all have potential significant effects on state refuges.** Under EO 107, state refuge and critical habitat area management remains within ADF&G, consolidated within the Division of Wildlife Conservation. It would, of course, be ridiculous on its face to transfer state fish and wildlife refuge management out of the state's fish and game. The point of these examples is to further illustrate EO 107's flaws and misguided approach. Equally important, they show that *the present system already enables a governor or the legislature (e.g. Nenana Oil & Gas) to determine policy and make decisions regarding the balance of fish and wildlife protection, and resource development whenever they feel it is warranted.*

5. THE EXAMPLES OF STATES AND SINGLE RESOURCE AGENCY MODELS IN THE LOWER 48 INCLUDE APPLES/ORANGES COMPARISONS TO ALASKA

There are a number of basic principles common to both good science and good decision/policy-making. One of those principles that has been drilled into me over the years by professors and mentors in both fields is that **comparison and correlative value is important, but “mimicry is deadly dangerous”.**

Administration officials and some supporters of EO 107 have pointed to examples of combined, single-agency resource management models in other states in the Lower 48 as evidence of the merits of EO 107. The single (natural resource/fish and wildlife) permitting agency has been touted as a “tried and true model” that works extremely well. When looking at comparisons – and especially when considering another form as a “model” for one's own situation – the critical question to ask is, “what is the same, and what is different?” I am familiar with some of the states and agencies being used as comparisons, including Oregon, which has been referred to most often. **I urge the Legislature to scrutinize these comparisons. If you do, you will discover numerous, substantive differences between these examples and Alaska in key areas such as: agency staffing; agency scope of responsibility and authority; condition of natural and healthy fish and wildlife resources; scale and role of natural resource economies; and the roles, relationships and authorities of other state, local and federal agencies and commissions.**

The various resource management structures in different states, including the unified agency model, work well to a greater or lesser extent within the context of the individual situations and places for which they were designed. Some have certain elements that

could be used to improve Alaska's current system, either by incorporating or adapting certain aspects. However, embracing any of these systems as a model for Alaska, or proof that EO 107 is the right approach for Alaska is naïve and foolhardy.

6. EO 107 WILL COMPROMISE THE STATE'S ABILITY TO PROTECT FISH HABITAT IN MANAGEMENT DECISIONS ON NON-STATE LANDS

Discussion of EO 107 has focused on project permitting, but given the nature of land ownership and resources in Alaska, many proposed activities and decisions with the greatest potential effects on Alaska's wildlife and (particularly) fish resources are not located on state lands, do not include direct involvement by DNR (or other state agencies), and are not specifically subject to state permitting. By breaking up the existing habitat management structure in ADF&G, EO 107 could seriously diminish the state's ability to effectively review and influence major land management decisions to protect fish habitats statewide.

More than one third of Alaska is federally owned public land. In addition to lands set aside by Congress (in ANILCA) as national parks, refuges and other conservation system units, there are millions of acres of federal lands across the state that are subject to multiple use and significant resource development – from National Petroleum Reserve-Alaska (NPR-A) on the north, to Tongass National Forest on the south.

Planning in NPR-A, or the Tongass Land Management Plan (TLMP) are not development *projects* in the traditional sense of the word, but they will certainly result in decisions that establish the pattern – and the standards for major resource development activities over many years. Oil and gas development in NPR-A could have significant effects on fish resources vital to subsistence. Federal management practices on the Tongass will have significant, long-term effects on productivity and sustainability of natural fish stocks important to commercial, subsistence and sport users throughout Southeast Alaska. The State of Alaska has both a role and responsibility under state law to insure that federal agency plans and decisions for these (and other) lands across the state include appropriate measures to protect important fish and wildlife habitats and resources.

The State of Alaska has generally been very successful in raising fish and wildlife issues in federal undertakings. This has been due almost entirely to ADF&G's commitment to active participation in federal project reviews, federal planning efforts and other federal actions. ADF&G has often been the sole voice of the state regarding protection of fish and wildlife resources on which many Alaskans depend. DNR and Department of Community and Economic Development (DCED) had opportunity to actively participate in the TLMP process, but did not. TLMP was arguably one of the most significant resource decisions to face southeast Alaska over the past decade. There are many others. DNR and DCED rarely participate in Corps of Engineer permits that are not directly associated with their own respective agency actions or projects. And, certainly in southeast, these agencies commonly review and actively participate in proposed mining, transportation, hydroelectric, and other projects only to

the extent that these actions may involve state permits (e.g. rights-of-way) or leases of state lands.

This is not intended as criticism of DNR. There are legitimate reasons for DNR's limited involvement. Neither DNR nor DCED have had sufficient funding to participate in broader project review. Due to budget, staffing and agency programs, DNR is focused almost entirely on the management of state lands. Perhaps most important, the great majority of public concerns statewide regarding plans and proposed developments on non- state lands has always centered around fish and wildlife, and water quality issues.

The key points are that, under our present system: 1) ADF&G provides the states oversight for protection of fish and wildlife resources of public concern on many (large and small) plans and activities statewide; and 2) the effectiveness of that effort is directly tied to the current structure of habitat, fisheries and wildlife conservation that exists within ADF&G. Habitat division is (naturally) responsible for habitat – those actions that directly involve land planning, management and permitting. Habitat division commonly serves as the lead representative for the department's involvement in federal planning efforts or project reviews. However, it is critical to understand that Habitat division's role is to coordinate, not decide, overall department input. Virtually every effort – from NPR-A and TLMP, to review of individual Forest Service proposed timber sales, to road projects (developed directly by Federal Highway Administration as opposed to ADOT) – involves a team approach among the ADF&G divisions (Subsistence, Commercial Fish, Sportfish, Wildlife Conservation). Equally important, habitat biologists (including regional supervisors) work directly on both Title 16 permits and on issues such as NPR-A or TLMP.

Lastly, in addition to the direct benefits of ADF&G involvement in plans and reviews, this system has led to the development of state/federal working relationships and cooperative efforts that have resulted in other significant improvements in fish and wildlife stewardship. A prime example is the cooperative survey of fish passage and culvert installations on Forest Service roads in the Tongass. For years, the U.S. Forest Service did not provide opportunity for ADF&G habitat biologists to review proposed stream crossing and culvert installation plans. A comprehensive survey was initiated in 1996. The first official report was published in 2000. However, based on the initial data that documented widespread fish passage problems, the Forest Service officials took a number of immediate steps. The Forest Service expanded internal review by their own biologists regarding proposed culvert design and installation plans for forest roads, and executed an agreement with the state that provides ADF&G with a thirty-day review and concurrence of proposed culvert installations. Recent studies show that these actions have already resulted in significant decrease in fish passage problems on projects.

In addition to comments above regarding EO 107's negative impacts on "good science" in state permitting decisions, dismantling the current habitat protection structure in ADF&G – separating habitat biologists from other fish and wildlife professionals – will seriously impact the state's ability for coordinated, effective

input into major non-permit actions on non-state lands that involve significant fish and wildlife issues.

7. THE PROCESS BEHIND EO 107 IS RECKLESS AND FATALLY FLAWED

With the stroke a pen, Governor Murkowski has proposed to radically alter the system of fish and wildlife, and resource management that has existed in Alaska since Statehood. EO 107 was signed without so much as a single public discussion. **If Alaska's longstanding habitat protection and permit process truly warrants substantive tune-up, let alone fundamental structural change, then it also warrants thoughtful analysis by a range of expertise, careful legislative and public review and – most certainly - a thorough discussion of other options and viable alternatives.**

The Governor's Transition Team for ADF&G never met with ADF&G division directors. Neither the Commissioner, nor the Habitat Director was ever contacted by the team's Habitat Committee. Even so, the Transition Team did *not* recommend transfer of ADF&G permit authority to DNR.

There has been no discussion of any alternatives to EO 107, and no indication that other options were even considered. Wholesale transfer is the only management option being proposed. This in itself is bad public policy, bad science, and dangerous business strategy. If Legislators believe there is a real problem, or even (as I do) that every system can stand review and improvement, there are a number of reasonable actions that should be considered. Establishment of the proposed inter-agency Mat-Su Permit Center would bring to the fastest growing area of our state the proven Alaska model that has received widespread praise on the Kenai. Information systems within Habitat division could easily be upgraded. In October 2002, I proposed to the Board of Forestry several steps that could be taken within the existing Forest Resources Practices Act structure to improve coordination between DNR and ADF&G, and between the state and timber operators. "Cross trainings" between ADF&G and DNR permit staff, and project workshops between permit staff and project managers (e.g. DOT, road contractors, timber operators) could be conducted. (Holding such coordinating workshops was one of my objectives for 2003, had I remained as Habitat director.) These are actions that have been employed with success in both government agencies and corporations to improve coordination, project management and operations.

In the course of the recent committee hearings, Legislators have heard support for EO 107 from some individual developers, several commercial fishing groups (while other groups have expressed opposition), timber operators, and several organizations that promote resource development in Alaska. **What is the analysis and position of professionals within individual, major oil and gas companies, and major project engineering and management firms – the people who actually develop, permit and operate Alaska's major projects – in the industries that actually produce the vast majority of economic activity and revenue in Alaska? I suggest that their absence in the current discussion speaks loudly. I cannot know what the result would be if these**

sorts of individuals with knowledge and experience were given the opportunity to participate in a forum designed for thoughtful review and discussion, but I believe that such a forum would provide useful and meaningful insights. In addition to my experience with industry as Habitat director, I have a number of friends and colleagues in the oil and gas industry and engineering firms. I would never speak for them, but based on our recent conversations, I can assure you that among many professionals who work with the state's current system and who are directly responsible for permitting and developing projects throughout Alaska, there is serious concern over EO 107.

While the recent legislative committee hearings have been extremely important in bringing to light some of the serious flaws and widespread public opposition to EO 107, industry generally does not like to get in the middle of a high-profile public debate. In addition to being naturally conservative, there is no profit for individual companies to engage in the current forum. Industry and business leaders are well aware of the growing public sentiment regarding EO 107. If company officials and professionals express support for EO 107 they will publicly appear to be "anti-habitat" and "anti-fish and wildlife". If they express serious reservations (which I know that many have) regarding EO 107, they will publicly contradict a new, development-friendly Governor at the very start of his four-year term. It is a no-win. Unfortunately, it is the Administration's process (or lack of process) in proposing EO 107 that has put industry, along with many other Alaskans, in this position. The process itself has compromised opportunity for true, substantive review. Thus, the Legislature has been left with the task of sorting out various claims made on behalf of Alaska's major industries and companies.

One of the claims is that under the current system, ADF&G essentially holds a "veto" over projects. **ADF&G has no "veto authority" – either legal or virtual – over resource development projects.** On controversial projects, when issues cannot be resolved and/or agreement reached between agencies at the staff level, the system provides for "elevation" to the respective directors, then to the commissioners. **The final decision-maker – the only entity with veto (or approval) authority – is the Governor.** If Alaska's Governors – whether Jay Hammond, Wally Hickel or Tony Knowles – usually decided in favor of the commissioner of ADF&G instead of the commissioner of DNR, that was both their right and role in the system. Before criticizing the track record of Alaska's governors regarding decisions between ADF&G and other departments, it is worth considering some examples where ADF&G's advice was rejected.

In the Lower Cook Inlet Oil & Gas Lease Sale, DNR refused to delete certain sensitive tracts and include other stipulations. The sale went to court. The state lost. Oil and gas exploration on the large majority of the area that was not subject to dispute was delayed. A resulting citizen commission proposed new, tougher standards for leasing in the entire Cook Inlet basin.

In the early 90's, DOT embarked on the Copper River Highway project over objections and recommendations by ADF&G and other concerned entities. The state was sued – by landowners, Alaska Natives, citizen conservation groups, and cited by the Federal Highway Administration. In the spring of 2002 – ten years after

the event – I worked with Habitat division staff and DOT officials to approve the last of four mitigation/restoration projects that were required by the court-approved settlement. These projects cost the state hundreds of thousands of dollars - paid with scarce state general funds. The state could not pay for its federal violations with federal dollars.

EO 107 did not arise in response to widespread problems permitting among a broad spectrum of resource industries and development activities across the state, or because of working relationships between the great majority of resource company staff and ADF&G habitat biologists at the field level. The issues that gave rise to EO 107 came from a segment of Alaska's timber industry. I will not delve further into that in these comments. There is an extensive written record and documentation regarding the recent situation between ADF&G and segments of the timber industry. It accurately documents the history of ADF&G's implementation of the Fishway Act and the Anadromous Fish Act regarding the timber industry, identifies changes in timber industry economics and practices that led to recent controversies, separates claims and suppositions from facts, and offers workable, reasonable steps (for both timber operators and agency staff) to improve both the efficiency and effectiveness of current timber harvest planning and permitting within the current basic structure of the law. I simply urge you to read it, and would be glad to discuss any questions.

IN CLOSING. A FINAL NOTE

The comments above have been (appropriately) focused on projects, structure, and management. However in closing, I am compelled offer one last observation on a personal level, regarding the people I worked with and was charged with directing over the past year.

Through a series of public statements, whether intentionally or not, Governor Murkowski has smeared the personal and professional integrity of many outstanding individuals with a broad brush. **Despite the Governor's assertions, habitat division permit staff do not conduct daily business based on personal agendas. They are highly professional.** They rarely fly "solo". Habitat staff consult regularly with commercial fisheries, sportfish and wildlife biologists in other ADF&G departments depending on the issues. **They process nearly two thousand permits per year – and handle a substantially higher number of permits per staff than most corporations do – or would consider reasonable.** Complex or sensitive issues are regularly elevated and reviewed by division directors and commissioners. Do ADF&G managers simply support recommendations by staff biologists without question? No. In most cases, adjustments that work for both the project and fish protection are found.

Do habitat biologists have personal views? Of course. Just like doctors or engineers or accountants. Do they sometimes let those views affect their better judgment? Unfortunately, occasionally. That's what management is for. No person, staff, or organization is perfect. Boeing corporation recently withdrew from the National Missile Defense competition – the largest defense contract in the world, because three employees misused information. In addition to losing the project, Boeing may owe the government eight hundred (\$800) million dollars - nearly the size of Alaska's fiscal gap. Habitat

permitting and Habitat division can always be improved. But no one in the division, or ADF&G, has ever made that kind of judgment error. Moreover, thus far, no one has cited a single, important, legitimate project that did not happen because of permit stipulations required by Habitat division. To the contrary, people have been able to cite numerous projects that have been built, and that, because of the efforts of Habitat division staff, will also continue to protect public fish and wildlife resources.

Look at the actual lay-off notices that have been issued as part of EO 107 implementation. They include the biologist who has been working successfully on-site with Glenn-Parks Interchange project managers, and the Habitat representative on the cooperative Kenai River Management Board. EO 107 closes the Sitka office, staffed by one of the most widely respected habitat biologists – and ironically a person who has built one of the most cooperative, effective working relationships with DNR foresters in the division. How can actions like these improve responsiveness in the field, cooperative protection of world-class resources, or coordination among agencies and disciplines?

Alaska is still a young state. There can be no question that there will be much more development in our future as Alaska grows. Will there still be the habitats to support the fish and wildlife opportunities that Alaskans depend on and enjoy today? That is the most important question. There are other questions. And the stakes are incredibly high.

EO 107 is a radical move, promoted through a reckless process, based on falsehoods. I am convinced that it will prove a blunder of historic proportion. I urge the Legislature to thoroughly investigate EO 107 and the claims behind it. If you do, I trust that you see it for what it is and understand the risks that EO 107 implies for the future of Alaska's environment and economy - and will reject it.

Thank you.

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.

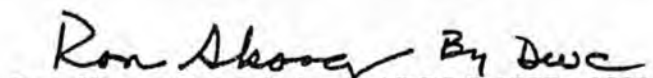
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

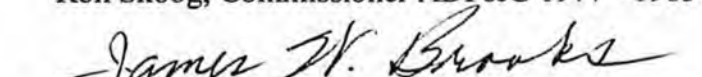
Sincerely,


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

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 *DDZ*

MAR 17 2003

From: Doug Hill
Anchorage
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 50th 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

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 not 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
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348-8519
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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 9th 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 8th 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 8th 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 7th 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 15th 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.

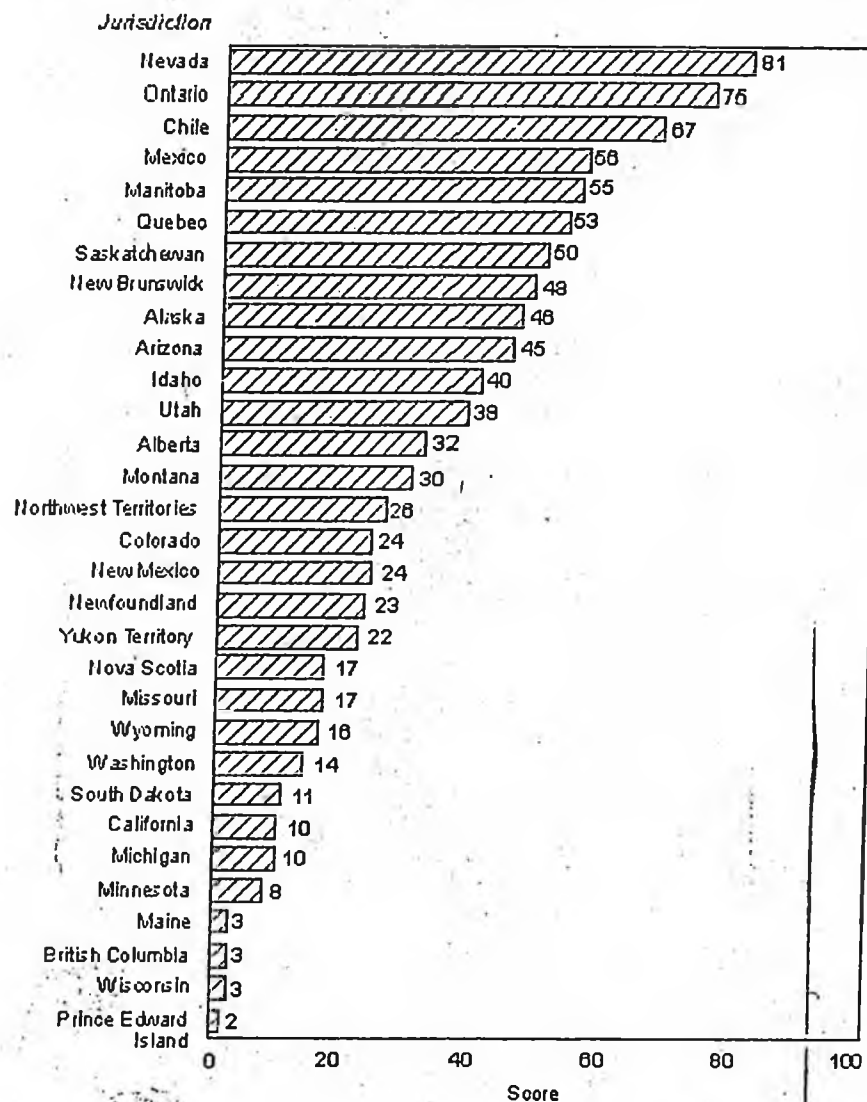
I also have extensive field experience with Alaska's inshore and inland fisheries while working for the Alaska Department of Fish and Game's Habitat, Wildlife, Sportfish and Commercial fisheries Division. I have a degree in biology from UAF and I have approximately 14 years of combined technician and 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.

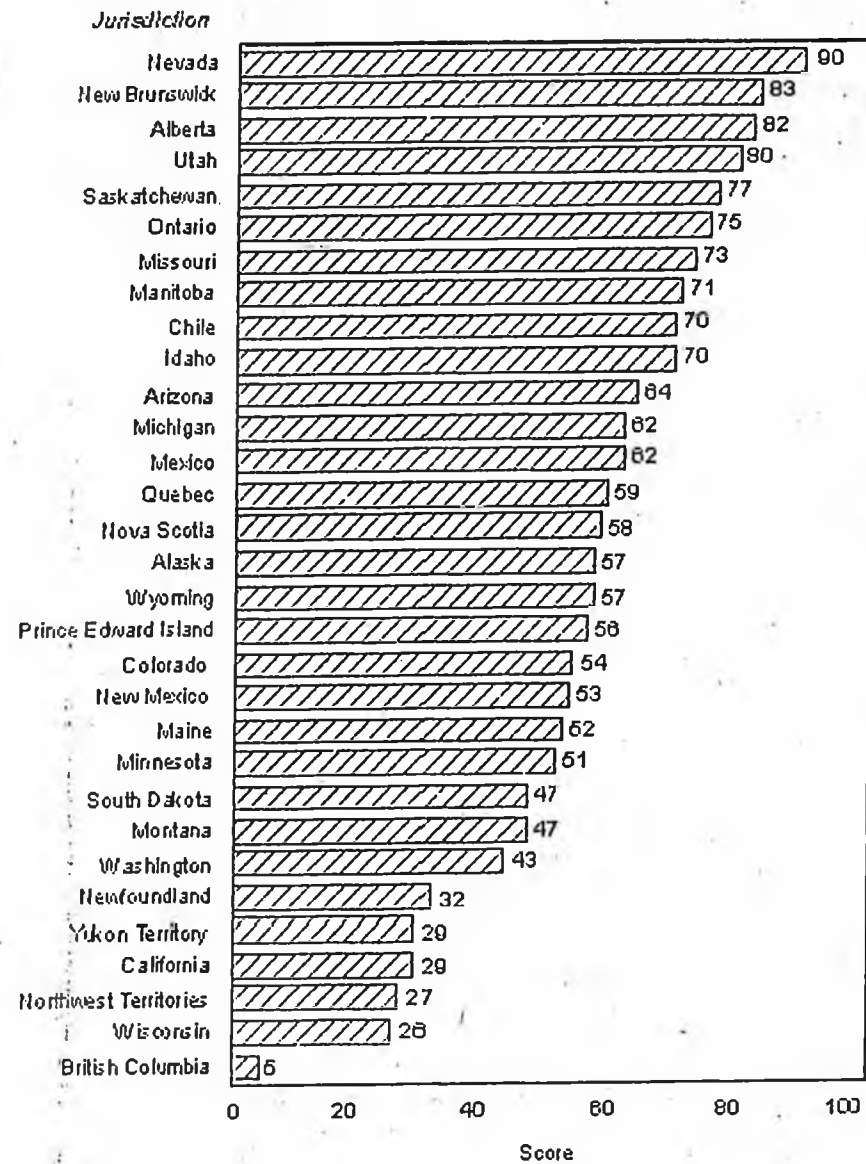
Fraser Institute Survey of Mining Companies Operating In the USA 1998/1999 Report

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)

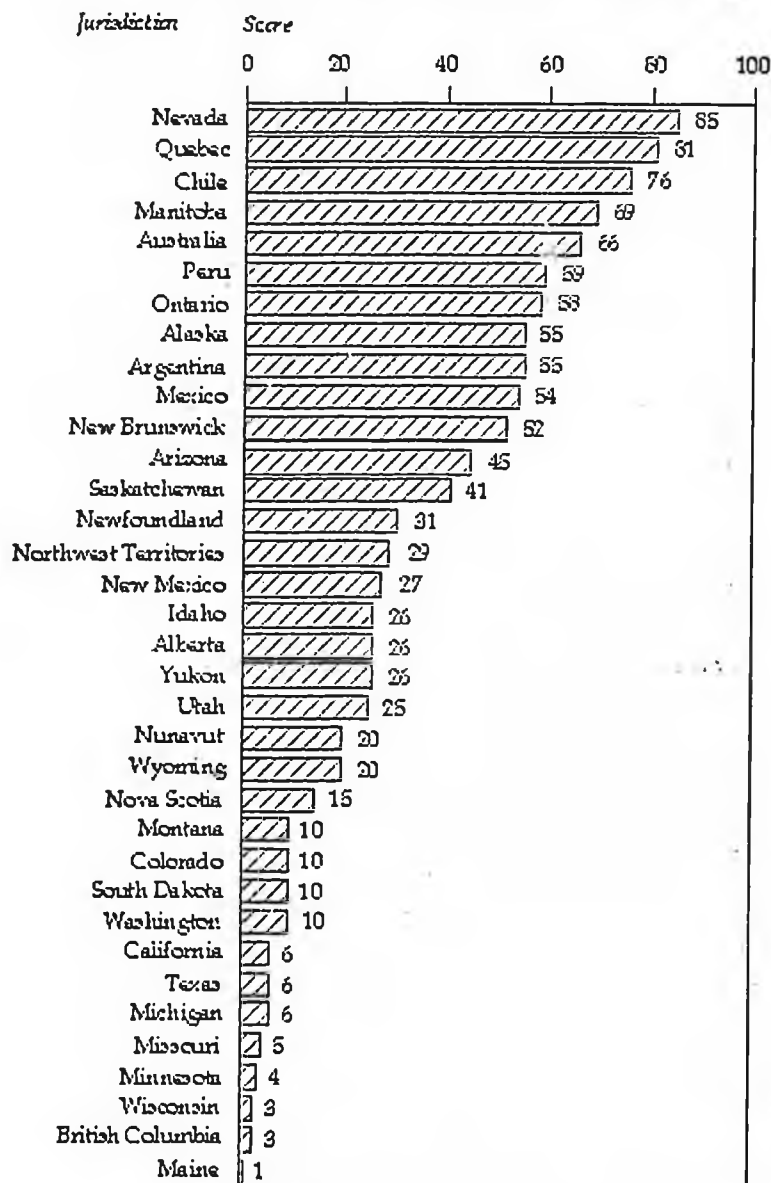


and favourable investment environments.

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).

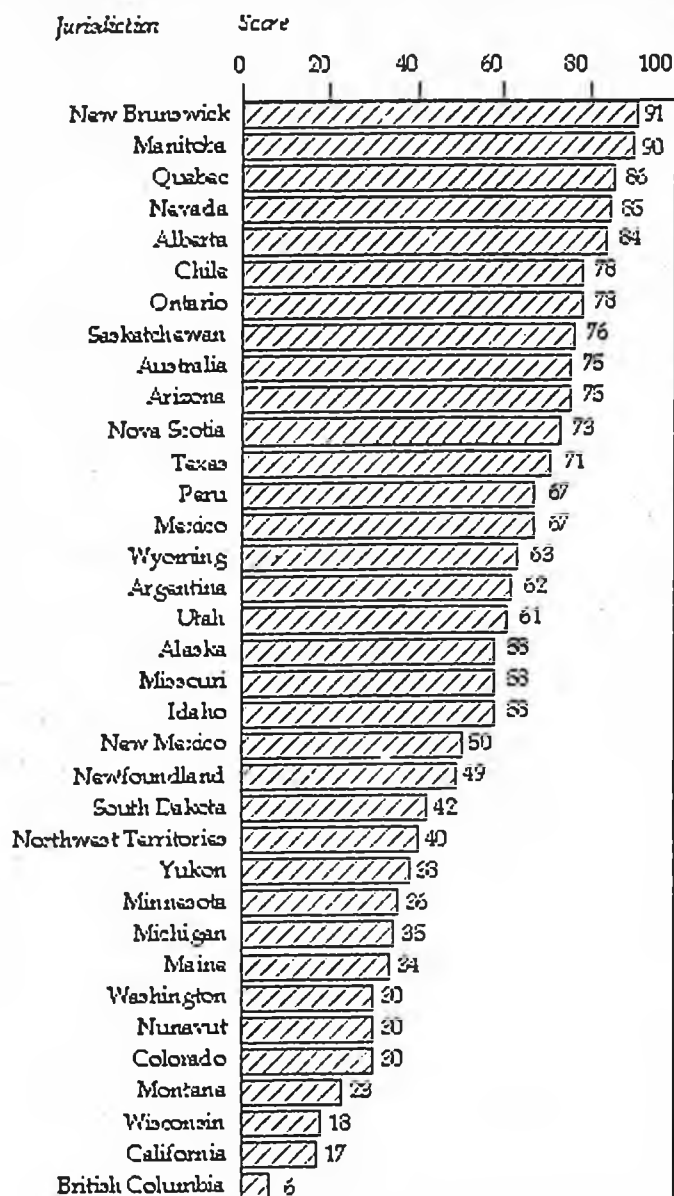
On the other end of the scale, Maine (1), Wisconsin and British Columbia (tied at 3), Minnesota (4), and Missouri (5), were rated the least attractive areas for new mining investment. British Columbia's low rating on the investment attractiveness index is mainly due to its abysmal performance on the 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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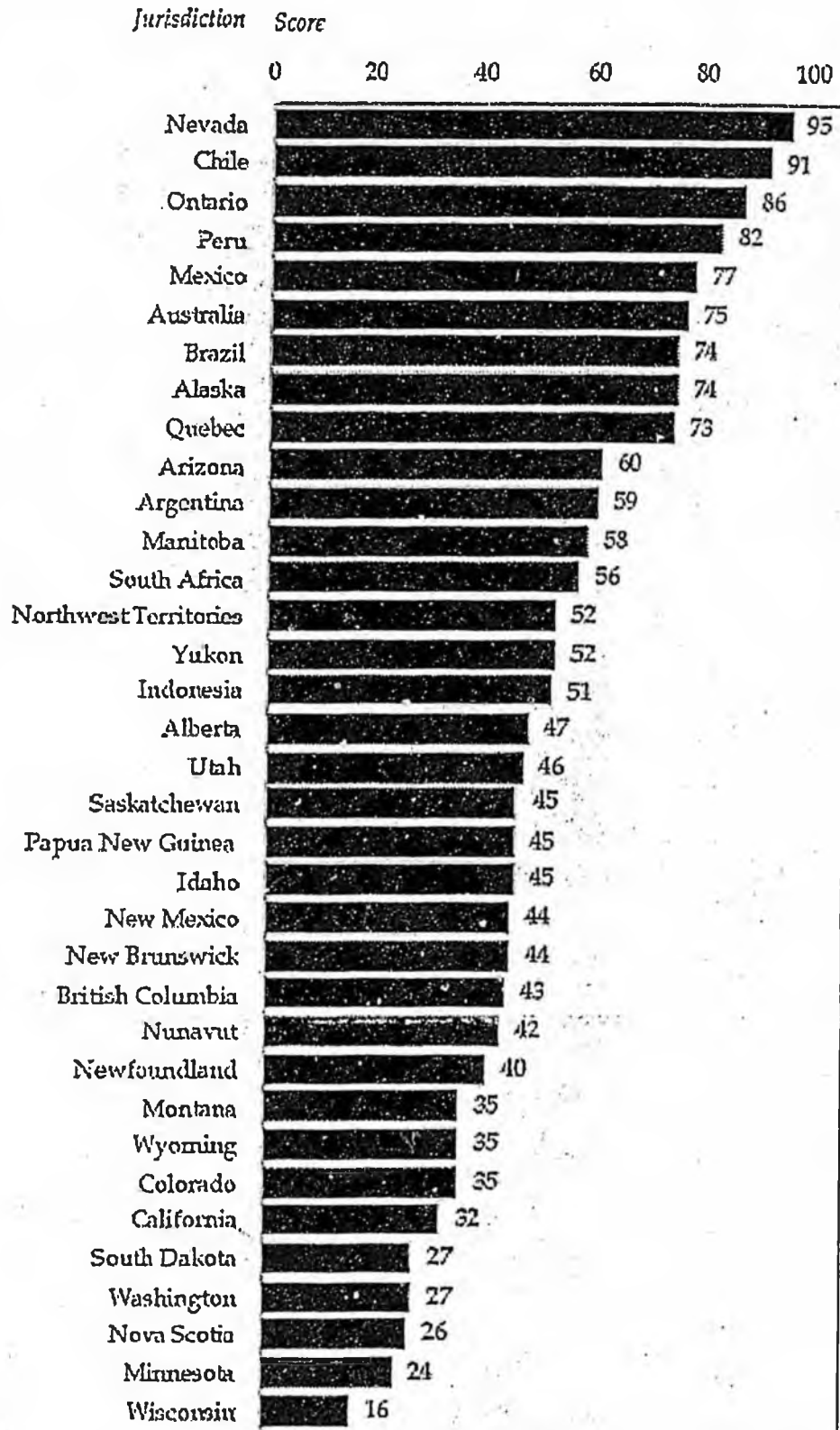
Figure 1: Policy Potential Index



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).

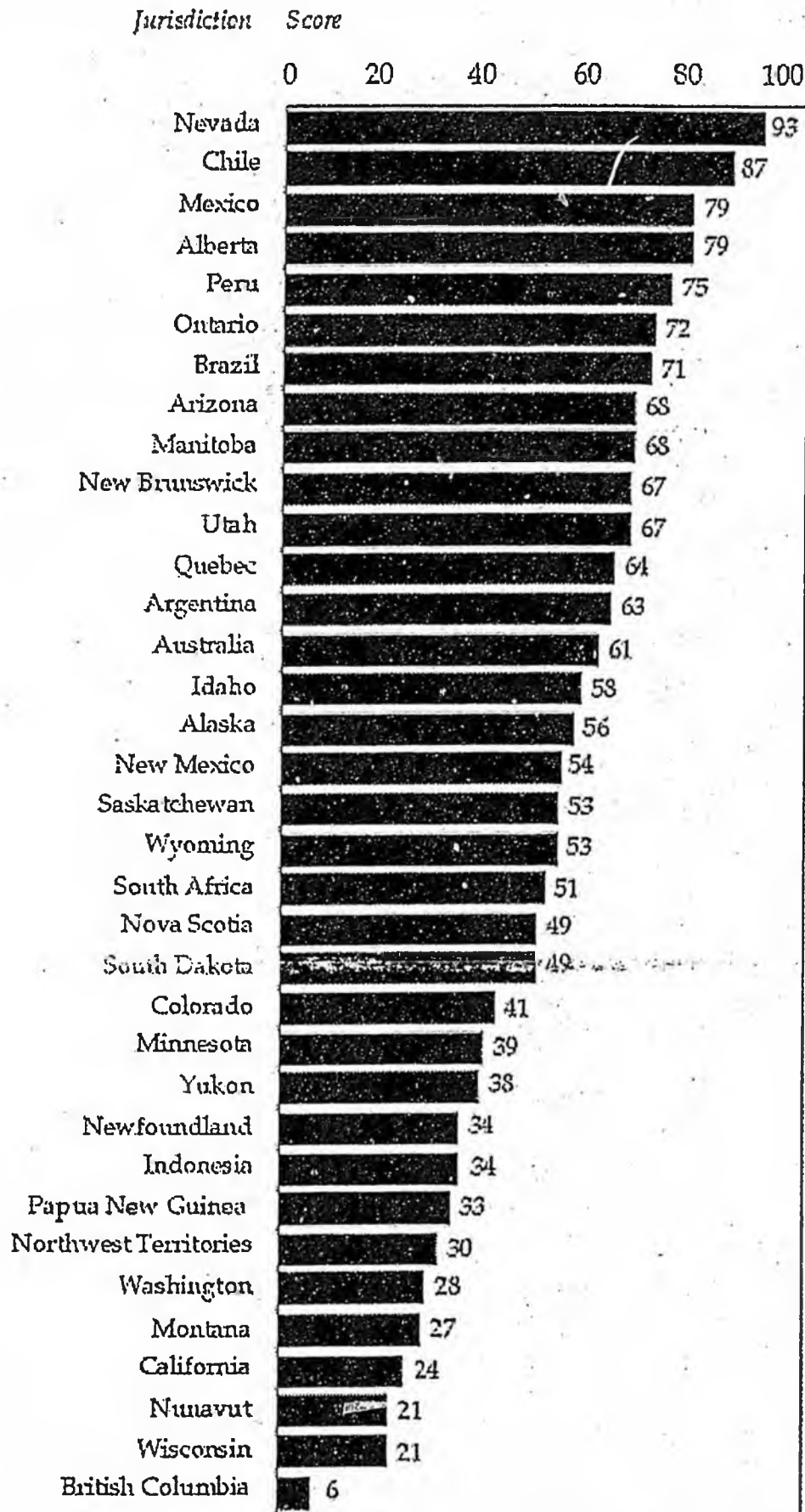
Figure 3: Investment Attractiveness Index



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

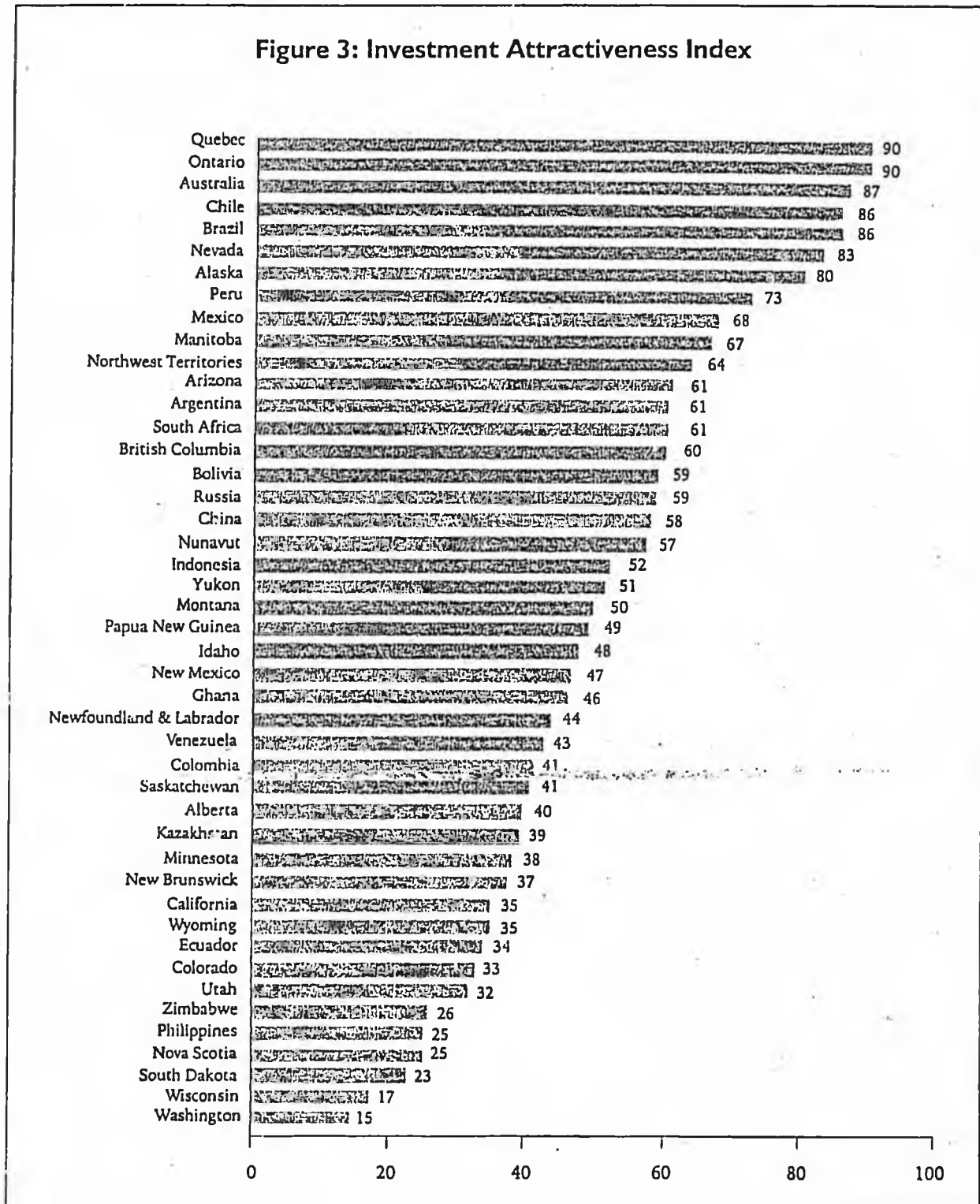
An overall Investment Attractiveness Index is constructed by combining the mineral

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

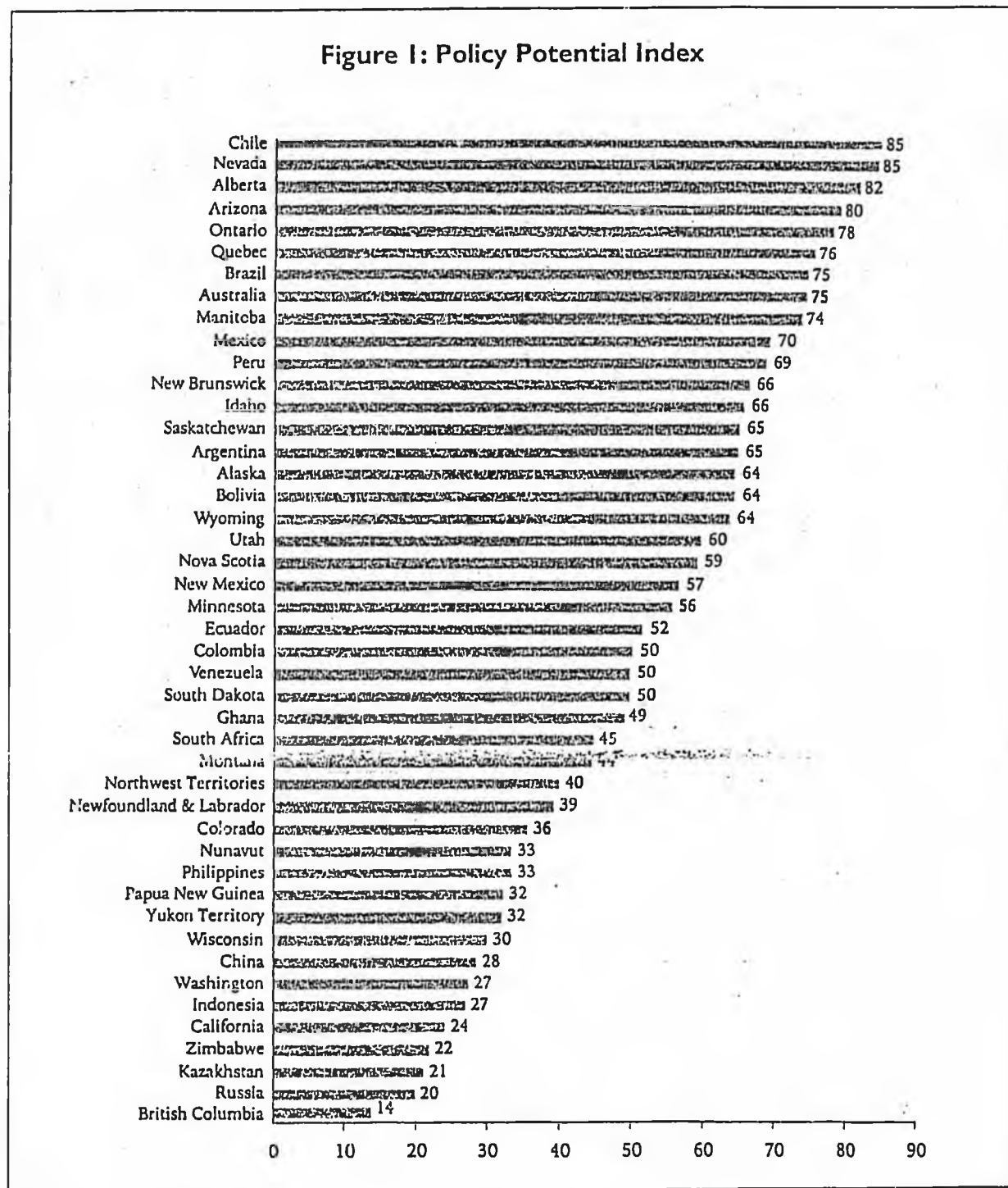


Figure 3: Investment Attractiveness Index

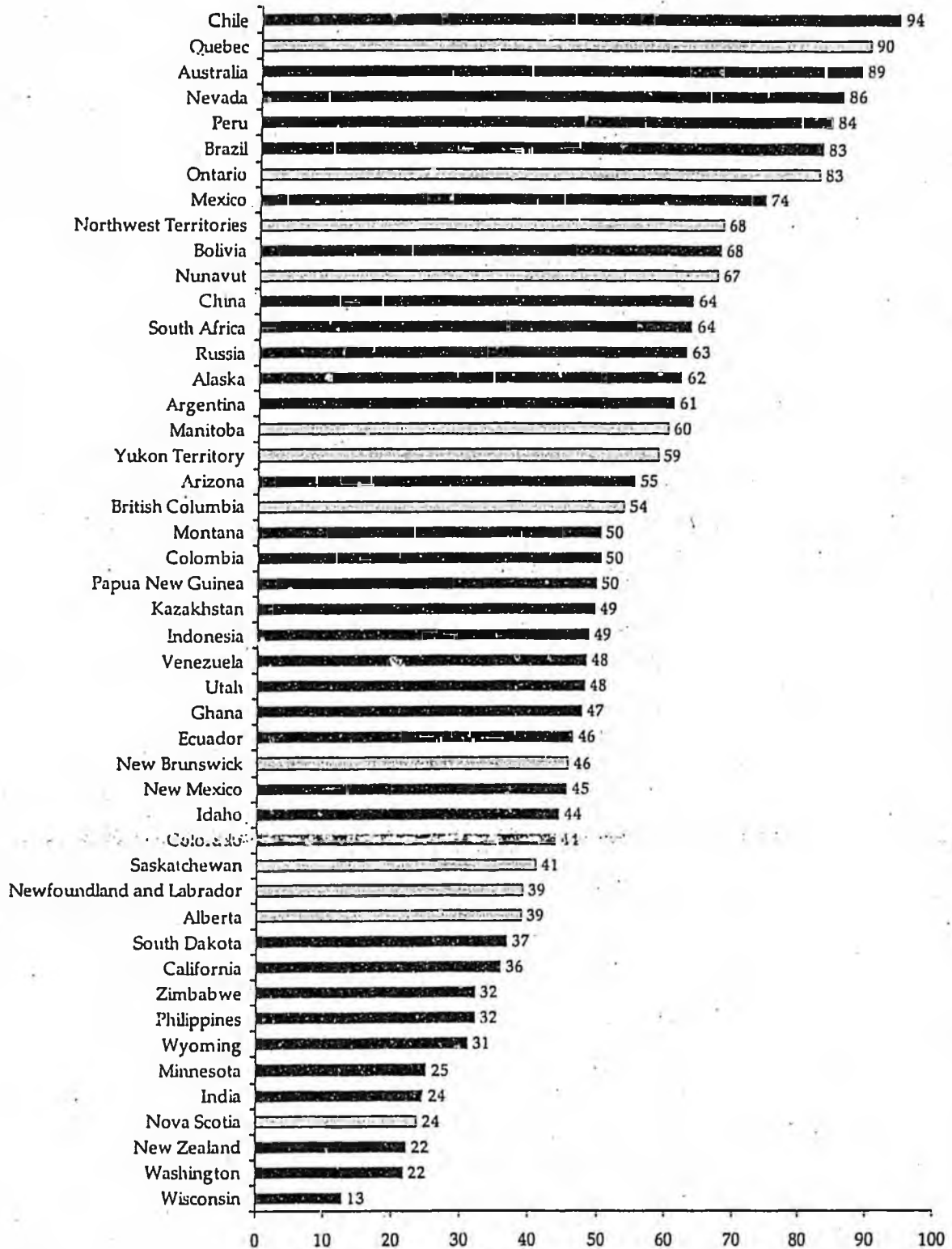
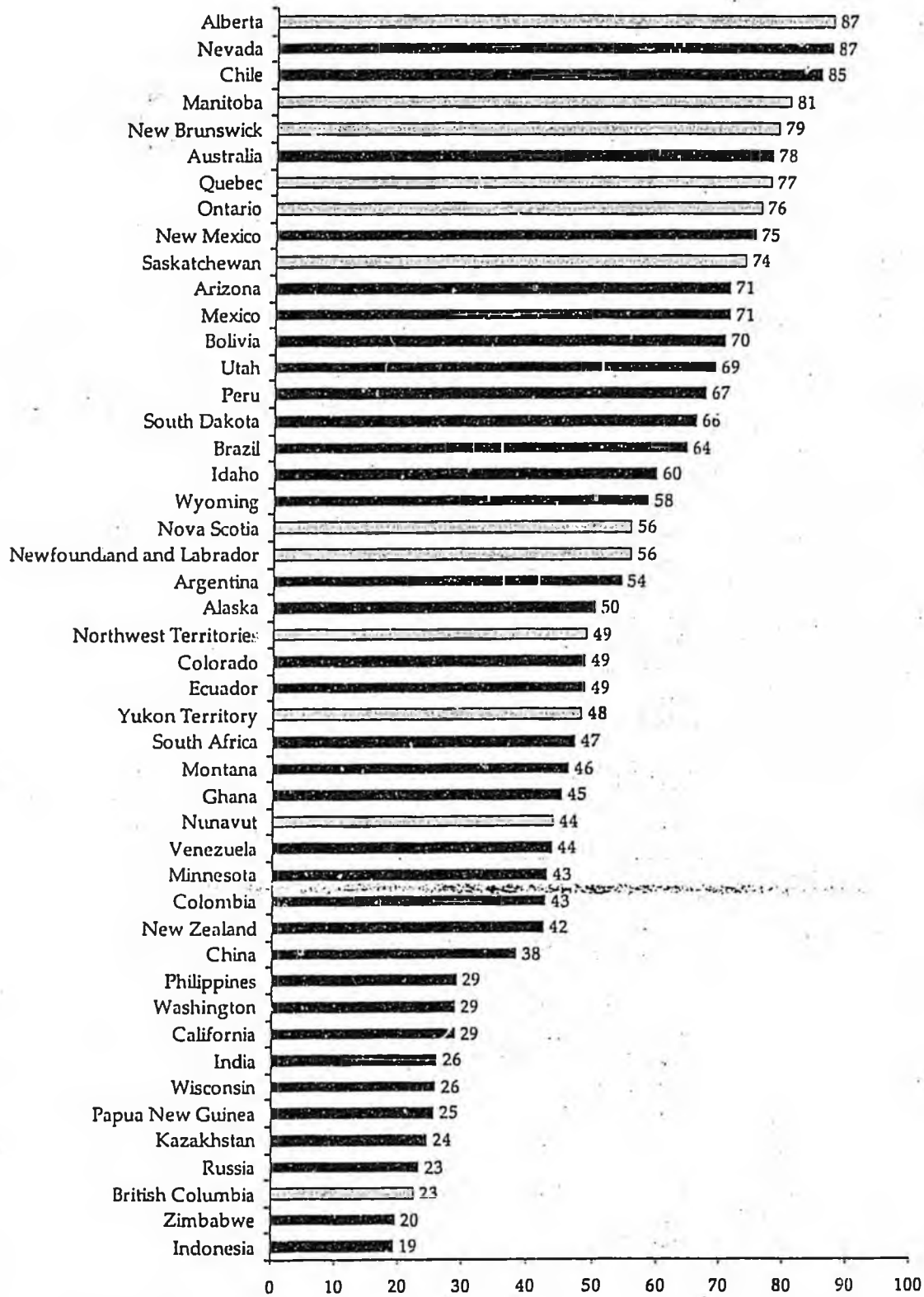


Figure I: Policy Potential Index



DIST.
by Sen.
Elton

February 18, 2003

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

What's At Stake

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

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

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

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

The "Public Interest"

Historical Roots

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

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

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

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

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

Securing the Public Interest

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

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

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

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

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

Practical Considerations

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

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

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

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

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

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

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

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

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

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

The Price of Failure

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

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

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

Conclusion

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

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

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

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

January 30, 2003

Dear Governor Murkowski:

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

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

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

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

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.340).

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

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

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

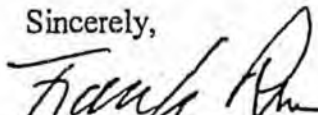
Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper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

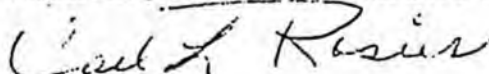
Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of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

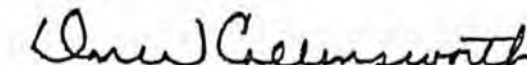
You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

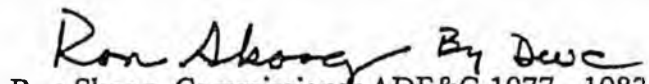
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

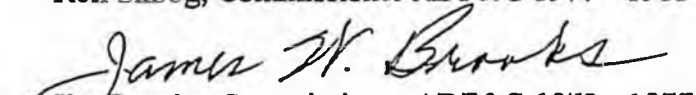
Sincerely,


Frank Rue, Commissioner ADF&G 1995 - 2002


Carl Rosier, Commissioner ADF&G 1991 - 1995


Don Collinsworth, Commissioner ADF&G 1983 - 1991


Ron Skoog, Commissioner ADF&G 1977 - 1983


Jim Brooks, Commissioner ADF&G 1972 - 1977

STATE OF ALASKA

Anchorage Fish & Game Advisory Committee

February 14, 2003

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

Dear Governor Murkowski:

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

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

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

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

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

Anchorage Fish & Game Advisory Committee

Page 2

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

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

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

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

Sincerely,

(via email)

Bob Churchill, Chair
3415 Wentworth
Anchorage, AK 99508

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

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

Table 1. Title 16 Project Reviews

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

Table 2. Other Agency Project Reviews

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

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

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

Table 4. Response Efficiency

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

↑
Time to
issue
permit T16

FY 02

ALASKA DEPARTMENT OF FISH AND GAME
 HABITAT AND RESTORATION DIVISION
 FY 2002 ANNUAL PERMIT SUMMARY
 GENERATED: 04-Oct-02

Table 2. GENERAL SUMMARY OF ADFG TITLE 18 AND OTHER AGENCY REVIEWS STATEWIDE

Regn.	Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Recd.	Average Review Days	Percent within Deadline	# Pre-issued Insp.	# Post-issued Insp.
I	Fish Habitat	248	244	0	4	14	85	645	1787
	Special Area	3	3	0	0	4	100	13	35
	Hazing Permit	3	3	0	0	18	87	0	0
	Sub Total Reg I	254	250	0	4	14	86	658	1822
II	Fish Habitat	744	648	5	91	10	84	538	450
	Special Area	118	112	2	4	26	78	10	10
	Hazing Permit	0	0	0	0	N/A	N/A	0	0
	Sub Total Reg II	862	760	7	95	20	83	548	460
III	Fish Habitat	721	579	0	142	7	89	467	623
	Special Area	14	14	0	0	0	100	25	19
	Hazing Permit	1	1	0	0	39	0	0	0
	Sub Total Reg III	736	594	0	142	7	89	492	642
JPO	Fish Habitat	68	67	2	8	13	88	15	10
	Special Area	0	0	0	0	N/A	N/A	0	0
	Hazing Permit	2	2	0	0	14	100	0	0
	Sub Total Reg JPO	70	69	2	8	13	88	15	10
Total All Regions		1926	1669	9	248	14	91	1700	2334
		Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
I	Other Agency	238	106	2	131	31	87	231	228
II	Other Agency	408	188	21	211	28	72	104	70
III	Other Agency	513	382	0	181	8	100	143	124
JPO	Other Agency	0	0	0	0	N/A	N/A	12	0
Total Other Agency		1159	676	23	483	18	86	490	422
I	Not Reviewed	8	Withdrawn		2				
II	Not Reviewed	33	Withdrawn		57				
III	Not Reviewed	0	Withdrawn		1				
JPO	Not Reviewed	0	Withdrawn		0				
Total Not Reviewed		41	Total Withdrawn		60				

- Notes: 1) Regions: I = Southeast II = Southcentral/Southwest/Western, III = Arctic/Interior/Western, JPO = Joint Pipeline Office
- 2) OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews. Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.
- 3) Virtually all project reviews in Region I, and a substantial number in Regions II and III, are coordinated by OMB under a 30 or 60 day time frame. This increases the average ADFG response time.

FY 02

ALASKA DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION
FY 2002 ANNUAL PERMIT SUMMARY

GENERATED: 04-Oct-02

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

Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Required	Average Review Days	Percents within Deadline	# Pre-issued Insp.	# Post-issued Insp.
Fish Habitat	1778	1828	7	243	13	92	1682	2870
Special Area	142	135	2	3	22	92	48	64
Nozing Permits	6	6	0	0	20	67	0	0
Sub Total A318	1926	1969	9	246	14	91	1709	2934
	Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
Other Agency	1152	636	23	493	18	88	490	420
GRAND TOTAL	3078	2305	32	741	15	89	2199	3354
Not Reviewed	38							
Withdrawn	60							

Notes:

OMB-coordinated reviews with associated A318 reviews are counted in this table as A318 reviews.
Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

PAGE 2 Cooper Landing Advisory Committee February 15, 2003

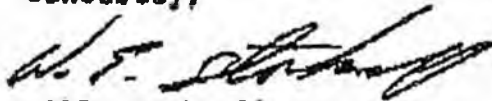
resources. We ask that the Board of Fisheries and Board of Game be given ample time and we ask the Boards to conduct a full and open comment and testimony period for the general public, effected organizations and advisory committees and that the Boards be allowed to make recommendations to you on the 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 effect 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

Alaska Public Waters Coalition

10332 High Bluff
Eagle River, AK 99577

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

February 10, 2003

Dear Gov. Murkowski:

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

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

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

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

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

Sincerely,

Keith Bayha, Steering Committee Chair

cc: all legislators

Subject: ADFG Habitat Permit Authority (cc: of letter to Pete Kott)

Date: Mon, 3 Feb 2003 21:31:41 EST

From: BradMeiklejohn@aol.com

To: representative_les_gara@legis.state.ak.us

Dear Mr. Kott,

I am a resident of Eagle River, a sportsman and a conservationist. I am writing about Governor Murkowski's proposal to move habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources. As a long-time Alaskan I have long been proud of fisheries management in this state. While salmon populations in the lower 48 have been decimated, Alaska maintains strong runs in most of its river systems, thanks largely to the effective management by Fish and Game.

I think we send the wrong message to the world if we strip habitat permitting authority from Fish and Game. This move would tell the world that we are not concerned with "doing it right" but only with "just do it." While Alaskans pride themselves on not caring what folks Outside think, public perception does matter on issues such as ANWR.

It is appropriate to have biologists, not bureaucrats, managing our fish and wildlife. We have the finest fish and wildlife resources in the world, and I hope we keep it that way.

Sincerely,

Brad Meiklejohn
Eagle River, Alaska 99577
(907) 694-9060

POSTAGE PAID

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

February 6, 2003

To: all State of Alaska Legislators

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

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

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

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



American Fisheries Society

ALASKA CHAPTER

February 10, 2003



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

Dear Governor Murkowski:

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

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

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

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



American Fisheries Society

ALASKA CHAPTER

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

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

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

Thank you,
Alaska Chapter of the American Fisheries Society

cc:
Senate and House Legislators



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KRSMA board opposes Murkowski's new permit plan *Resolution to keep responsibilities under Fish and Game gets group's full support*

By **MATT TUNSETH**
Peninsula Clarion


The group responsible for advising Alaska State Parks on issues affecting the Kenai River spoke out Thursday against Gov. Frank Murkowski's plan to move permitting responsibilities from the Habitat Division of the Department of Fish and Game to the Department of Natural Resources.

The Kenai River Special Management Advisory Board unanimously passed a resolution opposing Murkowski's Executive Order 107. Murkowski has said the move will streamline permitting processes, but board members said the opposite may end up being the case.

"The honest-to-God truth is it will slow the permit process down," committee member Lance Trasky told the board.

The governor unveiled his plan to change the way the permitting process works during his State of the State Address. He proposes shifting permitting responsibilities -- often a necessary step in some road and construction projects that cross streams -- to the state Department of Natural Resources.

The plan would effectively give the more industry-friendly Department of Natural Resources final say in issuing permits. It's a significant change since the current process puts state departments at odds with each other when reviewing



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proposals.

Although the implications of the move are not fully known, it's believed the transfer of permitting responsibilities will affect roughly 85 positions within Fish and Game. Of those, Trasky said less than half will be moved to DNR, while the others will likely lose their jobs. Because fewer people will be tasked with more responsibilities, permitting processes could actually take longer.

The governor's order is scheduled to take effect April 15. However, the Alaska Legislature can override the order.

The main problem board members had with the transfer has to do with the perception that habitat concerns will be brushed aside if the permitting process moves to DNR. Board members said they believe Fish and Game -- not Natural Resources -- is best suited to keep tabs on critical habitat issues. Trasky said important Kenai River fish concerns Fish and Game looks at when granting permits may not get the same scrutiny at DNR.

"Everyone says it won't be any different at DNR, but I think that it will be," Trasky said.

Other board members said the Habitat Division has been an effective, efficient mechanism that ensures basic habitat protections are in place before permits are granted.

"The Habitat Division has been the single most effective agency," board member Robin West said. "I think it's a no-brainer."

Board member Chris Degernes -- who also works within DNR as the Kenai area State Parks superintendent -- said the current system is better because it allows both agencies to have a say in what happens to the Kenai River.

"I think if we vote (to oppose the order), we're voting for what's good for the river," Degernes said. "We all know we stand better on two legs than one. ... The Kenai River would be better standing on two legs."

Despite their strong opposition to the governor's proposal, board members said they didn't want to send the message they have a problem with Murkowski's attempt to streamline government -- just that they disagree with this particular approach.

"I would hope we would do this with a little tact and decorum," board member Paul Shadura cautioned.

In the end, the board voted unanimously to send letters to both the Alaska Legislature and Murkowski registering their opposition to the move and asking the Legislature to override the executive order.

The KRSMA board is not the first group to come out against the

Perry Parsons wrote:

> Dear Senator Ellis and Representatives Gara & Heinze:

>

> I am writing to request that you take proactive action regarding Governor
> Murkowski's Executive Order 107. As I'm sure you know, EO 107 will remove
> the Alaska Department of Fish & Game authority to safeguard fish and
> wildlife habitat under Title 16 of the Alaska statutes. The Governor's
> vague proposal has met with much incredulity by all sorts of folks, from
> common people like myself, to former Governors and ADF&G Directors.
> Independent review is essential to the future of fish and wildlife, and
> therefore to the lifestyle and economy of rural Alaskans, fishers, and
> Alaska Natives.

>

> EO 107 goes into effect unless you vote against it. Please press for
> immediate and thorough hearings on this issue so that we all know more
> clearly what the effects of EO 107 will be. And when it comes to a vote, I
> ask that you vote against it.

>

> Thank you for your attention to this matter.

>

> Sincerely

>

> Perry Parsons
> 227 E. 12th #1
> Anchorage, AK 99501

>

Subject: TRANSFERRING ADF&G HABITAT PROTECTION PROGRAMS-PERMITTING TO DNR

Date: Wed, 5 Feb 2003 07:09:36 -0900

From: "walsh" <aawalsh@nushtel.net>

To: <representative_les_gara@legis.state.ak.us>

Dear Representative Gara--

I've heard of the Governor's intention to transfer the ADFG Habitat Protection division to the Department of Natural Resources, and I ask you to convince him to reconsider. I am a hunter and fisherman, a supporter of the current administration, and a strong supporter of the economic development of our state, but I truly believe that protection of natural resources (and fish and wildlife habitat in particular) on state lands is of tremendous importance to everyone. Healthy fish and wildlife habitats makes good business sense in the long term. There are too many examples from the lower 48 where wildlife habitat was placed second to other economic considerations, and the price tag for cleanup and restoration has far exceeded any short-term benefit. Please don't let that happen here.

DNR's economic development mission is clear and straightforward, and certainly an honorable mission. However, that agency should not be placed in charge of overseeing habitat protection. ADFG is the department that remains best suited for this job.

Sincerely,

Patrick Walsh
Dillingham, Alaska

Sunday, March 02, 2003

ADN

Don't look to Oregon for sound fish habitat protection standards

John Sturgeon's comments regarding the virtues of moving habitat permitting to DNR are pretty funny. ("Governor's proposal has precedence, merit," Feb. 27) So Oregon's Department of Forestry has environmental protection responsibilities for fish passage? Has anyone noticed the effects of Oregon's management of wild fish (and their absence thereof)? Habitat protection standards in Alaska depend a great deal on the discretion of the agency that applies them. Alaska Department of Fish and Game commissioners have chosen to professionally apply a high standard. Under the governor's proposal, DNR will soon have discretion in applying habitat standards. And therein lies the problem. DNR's track record on environmental protection is abysmal and their permitting performance is characterized by delay. How can they measure up to the current standard with a reduced habitat work-force to boot? Sturgeon's self-serving analysis is flawed and, as a forest industry mouthpiece, environmental protection is the least of his concerns. Urge your legislators to disapprove the governor's ill-considered proposal.

-- Allan Shayer

Anchorage

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

FRANK MURKOWSKI, GOVERNOR

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

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, Lak Dorothy Hydro, Inc. (LDHI), has proposed a hydroelectric project that would:

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

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

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

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

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

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

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

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

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

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

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

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

H&R Region I Response

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

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

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

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

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

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

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

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

H&R Region I Response - Summary

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

FRANK MURKOWSKI, GOVERNOR

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

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

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

DATE: February 11, 2003

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

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

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

H&R Region II Response - Summary

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

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

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

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

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

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

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

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

H&R Region II Response - Summary

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

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

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

H&R Region II Response - Summary

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

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

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

H&R Region II Response - Summary

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

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

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

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

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

Tok Cut Off Milepost 30-38

Timeline:

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

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

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

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

Glenn Park Highway Interchange

Resource Concerns

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

Project Information

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

Chronology

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

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

ADF&G Permits

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

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

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

12. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**

13. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**

STERLING HIGHWAY MILE 161.4

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

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

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

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

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

1996 Board of Forestry Report

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

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

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

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

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

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