

EX.

ORDER

114

COMMITTEE REPORT

Date: 2/29/08

Mr. Speaker:


The Resources Committee considered:

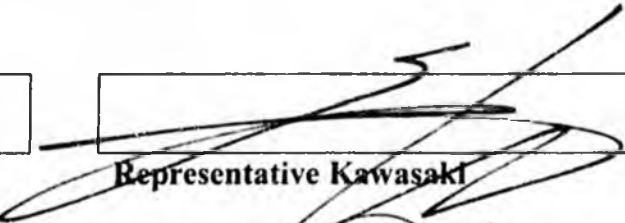
EXECUTIVE ORDER NO. 114

Transferring back certain functions relating to the protection of fish habitat in rivers, lakes, and streams of the state, and related functions regarding fish and game protection, from the deputy commissioner of the Department of Natural Resources to the Department of Fish and Game and making other related transfers of functions from the Department of Natural Resources to the Department of Fish and Game.

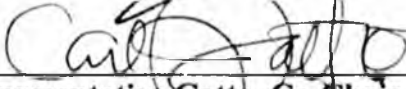
and recommends

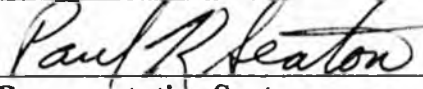
- Approval
- Disapproval
- Attach a House Special Concurrent Resolution

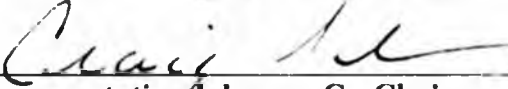

Representative Fairclough


Representative Kawasaki

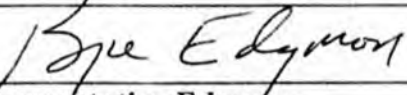

Representative Roses

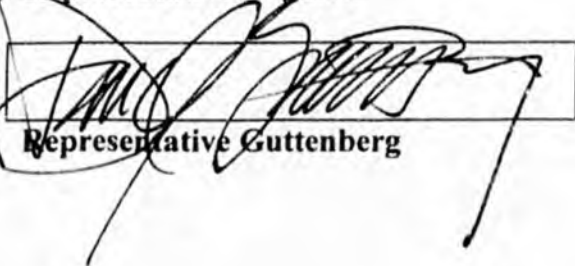

Representative Gatto, Co-Chair


Representative Seaton


Representative Johnson, Co-Chair


Representative Wilson


Representative Edgmon


Representative Guttenberg



Official Business

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1132
Phone: (907) 465-3725
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February 13, 2008

MEMORANDUM

TO: Resources Committee

FROM: Suzi Lowell, Chief Clerk, *SL*

SUBJECT: Executive Order No. 114

The Speaker referred Executive Order No. 114 to the Resources Committee. Unless disapproved by a special concurrent resolution, the order becomes effective in 60 days (Article III, Section 23 of the Alaska Constitution). The 60th day is April 12, 2008.

Please return all pertinent information to the Chief Clerk's Office on or before that date.

Alaska State Legislature: UNIFORM RULES

Rule 49. Resolutions.

(a) The only type of instrument other than a bill or citation authorized under these Uniform Rules is a resolution. The types and uses of resolutions are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bearing the heading "House Resolution" or "Senate Resolution". It may be used to express the will, wish, view, opinion, sympathy, or request of the house adopting it. The simple resolution shall be used to establish a special committee. It does not require committee referral, three readings, or a roll call vote. Approval of a simple resolution requires a majority vote of the full membership of the house.

(2) A special resolution headed "House Special Resolution" or "Senate Special Resolution" is used only for the purpose of expelling a member under provisions of Sec. 12, Art. II, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

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

SARAH PALIN
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 12, 2008

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order transferring back certain functions relating to the protection of fish habitat in rivers, lakes, and streams of the state, and related functions regarding fish and game protection, from the deputy commissioner of the Department of Natural Resources to the Department of Fish and Game and making other related transfers of functions from the Department of Natural Resources to the Department of Fish and Game.

This Executive Order essentially reverses the effects of Executive Order 107, by restoring the functions of the Department of Natural Resources with respect to habitat management and permitting to the Department of Fish and Game, where they had always resided before 2003. The mission and functions of habitat permitting are better aligned with the overall mission and structure of ADF&G. Locating habitat within ADF&G will be more efficient, improve communications and avoid duplication of efforts while allowing habitat permitting to operate in the same manner it has at the Department of Natural Resources to encourage responsible development and protect Alaska's resources. This Order also reassigns duties under the Forest Resources and Practices Act from the state forester back to the commissioner of the Department of Natural Resources, restoring the pre-2003 balance resulting from having separate agency heads focusing on stream preservation and forest stewardship.

The Honorable John Harris
February 12, 2008
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Section 1 of the Order contains the formal findings underlying this action, which are summarized above.

Sections 2 and 3 of the Order take most of the functions of the Department of Natural Resources with respect to habitat management and permitting, and restore those functions to the Department of Fish and Game under the Fish and Game Code (AS 16.05), including statutes setting fishway and hatchery requirements, protecting fish and game habitat in anadromous streams, requiring construction and use permits for anadromous streams, and setting out exemptions and penalties.

Sections 4 and 5 of the Order delete references to AS 41.14 from the general provisions of the Fish and Game Code (AS 16.05), and restore references to sections newly restored to the Fish and Game Code by secs. 2 and 3 of the Order.

Section 6 of the Order deletes references in AS 16.20.070 to sections removed from Title 41, and replaces the deleted references with references to the newly restored sections in the Fish and Game Code (AS 16.05).

Sections 7 - 35 of the Order restore, to their pre-2003 balance, the separate functions of the Department of Fish and Game and the Department of Natural Resources under the Forest Resources and Practices Act (AS 41.17). These sections delete references to a deputy commissioner of the Department of Natural Resources and restore the functions of that position to the Department of Fish and Game. In these same sections, functions that had been delegated down to the state forester in Executive Order 107 are restored to the commissioner of the Department of Natural Resources. Also, references to sections removed from Title 41 are deleted, and replaced with references to the newly restored sections in the Fish and Game Code (AS 16.05).

Sections 36 and 37 of the Order delete references to AS 41.14 from AS 44.62.330 and AS 46.15.020, replace the deleted references with references to the newly restored sections in the Fish and Game Code (AS 16.05), and make conforming changes to reflect changes made by secs. 2 - 5 of the Order.

Section 38 of the Order repeals all of the sections in Titles 41 and 44 that had been created under Executive Order 107, as all such functions are now restored to the Department of Fish and Game under the Fish and Game Code (AS 16.05).

Section 39 of the Order adds a section to the uncodified laws of the State of Alaska to protect the retirement status of certain former Department of Fish and Game employees who were transferred by Executive Order 107 to the Department of Natural

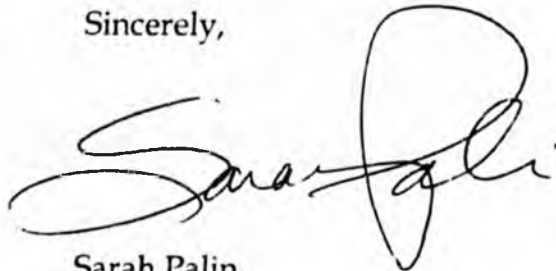
The Honorable John Harris
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Resources, and who may now be transferred back to the Alaska Department of Fish and Game.

Section 40 of the Order adds a transition provision to the uncodified laws of the State of Alaska, providing that litigation, hearings, investigations, and other proceedings, as well as regulations and contract rights, liabilities, and obligations will not be adversely affected by the transfers of duties embodied in this Order.

Section 41 of the Order sets the effective date for the Order of July 1, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Palin". The signature is written in a cursive style with a large, looped initial "S".

Sarah Palin
Governor

Enclosure

Introduced in the House: 2/13/08
 Referred: Resources

Introduced in the Senate: 2/13/08
 Referred: Resources

EXECUTIVE ORDER NO. 114

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, I order the following:

2 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
 3 section to read:

4 FINDINGS. As governor, I find that the transfer back of certain functions relating to
 5 the protection of fish habitat in rivers, lakes, and streams of the state, and related functions
 6 regarding fish and game protection, from a deputy commissioner of natural resources to the
 7 Department of Fish and Game, would be in the best interests of efficient administration. To
 8 restore the statutory balance between stream preservation and forest stewardship, the role
 9 currently assigned to the state forester in the division of forestry, Department of Natural
 10 Resources, is transferred back to the commissioner of natural resources under AS 41.17
 11 (Forest Resources and Practices Act).

12 * **Sec. 2.** AS 16.05 is amended by adding new sections to read:

13 **Sec. 16.05.841. Fishway required.** If the commissioner considers it
 14 necessary, every dam or other obstruction built by any person across a stream
 15 frequented by salmon or other fish shall be provided by that person with a durable
 16 and efficient fishway and a device for efficient passage for downstream migrants.
 17 The fishway or device or both shall be maintained in a practical and effective manner
 18 in the place, form, and capacity the commissioner approves for which plans and
 19 specifications shall be approved by the department upon application. The fishway or
 20 device shall be kept open, unobstructed, and supplied with a sufficient quantity of
 21 water to admit freely the passage of fish through it.

22 **Sec. 16.05.851. Hatchery required.** If a fishway over a dam or obstruction is
 23 considered impracticable by the commissioner because of cost, the owner of the dam

1 or obstruction, in order to compensate for the loss resulting from the dam or
2 obstruction shall, at the owner's option

3 (1) pay a lump sum acceptable to the commissioner to the state fish
4 and game fund:

5 (2) convey to the state a site of a size satisfactory to the
6 commissioner at a place mutually satisfactory to both parties, and erect on it a fish
7 hatchery, rearing ponds, necessary buildings, and other facilities according to plans
8 and specifications furnished by the commissioner, and give a good and sufficient
9 bond to furnish water, lights, and necessary money to operate and maintain the
10 hatchery and rearing ponds; or

11 (3) enter into an agreement with the commissioner, secured by good
12 and sufficient bond, to pay to the fish and game fund the initial amount of money and
13 annual payments thereafter that the commissioner considers necessary to expand,
14 maintain, and operate additional facilities at existing hatcheries within a reasonable
15 distance of the dam or obstruction.

16 **Sec. 16.05.861. Penalty for violating fishway and hatchery requirements.**

17 (a) The owner of a dam or obstruction who fails to comply with AS 16.05.841 or
18 16.05.851 or a regulation adopted under AS 16.05.841 or 16.05.851 within a
19 reasonable time specified by written notice from the commissioner is guilty of a
20 misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the
21 owner fails to comply constitutes a separate offense.

22 (b) In addition to the fine, the dam or other obstruction managed, controlled,
23 or owned by a person violating AS 16.05.841 or 16.05.851 or a regulation adopted
24 under AS 16.05.841 or 16.05.851 is a public nuisance and is subject to abatement.

25 * **Sec. 3.** AS 16.05 is amended by adding new sections to read:

26 **Sec. 16.05.871. Protection of fish and game.** (a) The commissioner shall, in
27 accordance with AS 44.62 (Administrative Procedure Act), specify the various
28 rivers, lakes, and streams or parts of them that are important for the spawning,
29 rearing, or migration of anadromous fish.

30 (b) If a person or governmental agency desires to construct a hydraulic
31 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a

1 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment
2 or log-dragging equipment in the bed of a specified river, lake, or stream, the person
3 or governmental agency shall notify the commissioner of this intention before the
4 beginning of the construction or use.

5 (c) The commissioner shall acknowledge receiving the notice by return first
6 class mail. If the commissioner determines that the following information is required,
7 the letter of acknowledgement shall require the person or governmental agency to
8 submit to the commissioner:

9 (1) full plans and specifications of the proposed construction or work;

10 (2) complete plans and specifications for the proper protection of fish
11 and game in connection with the construction or work, or in connection with the use;
12 and

13 (3) the approximate date the construction, work, or use will begin.

14 (d) The commissioner shall approve the proposed construction, work, or use
15 in writing unless the commissioner finds the plans and specifications insufficient for
16 the proper protection of fish and game. Upon a finding that the plans and
17 specifications are insufficient for the proper protection of fish and game, the
18 commissioner shall notify the person or governmental agency that submitted the
19 plans and specifications of that finding by first class mail. The person or
20 governmental agency may, within 90 days of receiving the notice, initiate a hearing
21 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.

22 **Sec. 16.05.881. Construction without approval prohibited.** If a person or
23 governmental agency begins construction on a work or project or use for which
24 notice is required by AS 16.05.871 without first providing plans and specifications
25 subject to the approval of the commissioner for the proper protection of fish and
26 game, and without first having obtained written approval of the commissioner as to
27 the adequacy of the plans and specifications submitted for the protection of fish and
28 game, the person or agency is guilty of a misdemeanor. If a person or governmental
29 agency is convicted of violating AS 16.05.871 - 16.05.896 or continues a use, work,
30 or project without fully complying with AS 16.05.871 - 16.05.896, the use, work, or
31 project is a public nuisance and is subject to abatement. The cost of restoring a

1 specified river, lake, or stream to its original condition shall be borne by the violator
2 and shall be in addition to the penalty imposed by the court.

3 **Sec. 16.05.891. Exemption for emergency situations.** In an emergency
4 arising from weather or stream flow conditions, the commissioner, through
5 authorized representatives, shall issue oral permits to a riparian owner for removing
6 obstructions or for repairing existing structures without the necessity of submitting
7 prepared plans and specifications as required by AS 16.05.871.

8 **Sec. 16.05.896. Penalty for causing material damage.** If a person or
9 governmental agency fails to notify the commissioner of any construction or use that
10 causes material damage to the spawning beds or prevents or interferes with the
11 migration of anadromous fish, or by neglect or noncompliance with plans and
12 specifications required and approved by the commissioner causes material damage to
13 the spawning beds or prevents or interferes with the migration of anadromous fish,
14 the person or governmental agency shall be guilty of a misdemeanor.

15 **Sec. 16.05.901. Penalty for violations of AS 16.05.871 - 16.05.896.** (a) A
16 person who violates AS 16.05.871 - 16.05.896 is guilty of a class A misdemeanor.

17 (b) The court shall transmit the proceeds of all fines to the proper state
18 officer for deposit in the general fund of the state.

19 * **Sec. 4.** AS 16.05.920(a) is amended to read:

20 (a) Unless permitted by AS 16.05 - AS 16.40 [, BY AS 41.14,] or by
21 regulation adopted under AS 16.05 - AS 16.40 [OR AS 41.14], a person may not
22 take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game,
23 or marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg
24 of fish or game.

25 * **Sec. 5.** AS 16.05.925(a) is amended to read:

26 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,
27 16.05.783, 16.05.831, 16.05.861, and 16.05.905, [AND AS 41.14.860,] a person
28 who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter
29 or AS 16.20, is guilty of a class A misdemeanor.

30 * **Sec. 6.** AS 16.20.070 is amended to read:

31 **Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.05.060 do

1 not affect AS 16.05.871 - 16.05.891 [AS 41.14.870 - 41.14.890].

2 * Sec. 7. AS 41.17.010 is amended to read:

3 **Sec. 41.17.010. Declaration of intent.** The legislature declares that

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

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

10 (3) the state has a fundamental obligation to ensure that management
11 of forest resources guarantees perpetual supplies of renewable resources, provides
12 nonrenewable resources in a manner consistent with that obligation, and serves the
13 needs of all Alaska for the many products, benefits, and services obtained from them;

14 (4) government administration of forest resources should combine
15 professional management services, regulatory measures, and economic incentives in
16 a complementary fashion, and should draw upon the expertise of professional
17 foresters in conjunction with other disciplines;

18 (5) under the leadership of the Department of Environmental
19 Conservation as lead agency, the state should exercise its full responsibility and
20 authority for control of nonpoint source pollution with respect to the Federal Water
21 Pollution Control Act, as amended;

22 (6) subject to AS 41.17.098(c), the provisions of this chapter, and
23 regulations adopted under this chapter, with the approval of the Department of
24 Environmental Conservation, establish the nonpoint source pollution requirements
25 under state law and sec. 319 of the Clean Water Act for activities subject to this
26 chapter;

27 (7) except for activities subject to AS 16.05.841 or 16.05.871
28 [AS 41.14.840 OR 41.14.870] and regulations authorized by those sections, this
29 chapter and regulations adopted under this chapter establish the fish habitat
30 protection standards, policies, and review processes under state law.

31 * Sec. 8. AS 41.17.041(e) is amended to read:

1 (e) The division shall serve as staff to the board. The department, the
 2 Department of Fish and Game [DEPUTY COMMISSIONER], and the Department
 3 of Environmental Conservation shall provide technical staffing and information as
 4 needed by the board.

5 * Sec. 9. AS 41.17.047(c) is amended to read:

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

13 * Sec. 10. AS 41.17.047(d) is amended to read:

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

30 * Sec. 11. AS 41.17.055 is amended to read:

31 Sec. 41.17.055. Powers and duties of the commissioner [STATE

1 **FORESTER]**. (a) The commissioner [STATE FORESTER] may designate and
2 operate experimental and research forests on state land consistent with the limitations
3 of AS 38.05.300. Laboratories and other facilities may be employed in conjunction
4 with those forests.

5 (b) The comr-issioner [STATE FORESTER] may establish and maintain
6 forest vegetation nurseries and greenhouses for planting stock to be made available,
7 with or without charge, to organizations, institutions, government agencies,
8 individuals, and businesses for reforestation, afforestation, and related purposes.

9 (c) The commissioner [STATE FORESTER] is authorized to undertake
10 cooperative forestry programs, extension services, and education programs, and to
11 otherwise offer a full range of professional management services to the interested
12 public. When the commissioner [STATE FORESTER] considers it beneficial, the
13 commissioner [STATE FORESTER] may participate in federal assistance programs
14 by accepting assistance in whatever form offered.

15 (d) The commissioner [STATE FORESTER] may develop regulations
16 under this chapter as part of the state program for control of nonpoint source
17 pollution under the Federal Water Pollution Control Act, as amended. However, the
18 Department of Environmental Conservation is the lead agency for water quality and
19 control of nonpoint source pollution under that Act, and the regulations are therefore
20 subject to the approval of the commissioner of environmental conservation.

21 (e) In the administration of this chapter, the commissioner [STATE
22 FORESTER] shall consult with and draw upon the expertise of interested
23 organizations, enterprises, individuals, government agencies, educational institutions,
24 and landowners. The commissioner [STATE FORESTER] may enter into
25 cooperative agreements and contracts with them to carry out this chapter.

26 (f) The commissioner [STATE FORESTER] shall locate department
27 personnel with forestry expertise throughout the state to facilitate public access to
28 professional management services and other forest resources programs.

29 (g) The commissioner [STATE FORESTER] may take other actions
30 necessary and proper for the administration of this chapter, including the adoption of
31 regulations under AS 44.62 (Administrative Procedure Act) and AS 41.17.047.

1 * **Sec. 12.** AS 41.17.070(a) is amended to read:

2 (a) The commissioner [STATE FORESTER] shall develop and continually
3 maintain a long-range plan for the administration of this chapter that demonstrates
4 that the provisions of AS 41.17.010 are being recognized and that the standards of
5 AS 41.17.060 are being met. The commissioner [STATE FORESTER] shall
6 maintain a current inventory or assessment of timber on forest land to assist in
7 meeting the requirements of this section.

8 * **Sec. 13.** AS 41.17.070(b) is amended to read:

9 (b) To maintain a record of division decision making for public and agency
10 review, the commissioner [STATE FORESTER] shall compile and index each
11 decision made under this chapter regarding directives, stop work orders, waivers
12 from requirements, decisions of hearing officers, and decisions on appeals. The
13 commissioner [STATE FORESTER] shall submit a summary of this record
14 annually to the board.

15 * **Sec. 14.** AS 41.17.080 is amended to read:

16 **Sec. 41.17.080. Regulations.** (a) The commissioner [STATE FORESTER]
17 may adopt regulations necessary to accomplish the purposes of this chapter under
18 AS 44.62 (Administrative Procedure Act) regarding forest practices such as

19 (1) road construction and maintenance, including

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

22 (B) landing location and construction;

23 (C) drainage structures;

24 (D) material sources and spoil disposal sites;

25 (2) timber harvesting, including

26 (A) timber harvest unit planning and design;

27 (B) felling and bucking;

28 (C) cable yarding, shovel, tractor, and wheeled skidder
29 systems;

30 (D) landing clean-up;

31 (E) slash disposal;

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

2 (A) location, design, and construction;

3 (B) maintenance;

4 (C) closure;

5 (D) log storage, rafting, and identification;

6 (4) reforestation, including

7 (A) site preparation and rehabilitation;

8 (B) prescribed burning;

9 (C) exemptions from reforestation requirements;

10 (5) prevention and suppression of forest insects and diseases;

11 (6) salvage logging;

12 (7) vegetative management; and

13 (8) fire and flood hazard management.

14 (b) The commissioner [STATE FORESTER] shall adopt regulations
15 specifying the information to be submitted under AS 41.17.090(c) in the detailed
16 plan of operations to enable the division to determine whether the activities comply
17 with the requirements of this chapter.

18 (c) The commissioner [STATE FORESTER] may establish regions,
19 districts, or other subdivisions of forest land in the state in which different
20 regulations apply to reflect varying conditions in the state or to facilitate
21 administration. In adopting regulations, the commissioner [STATE FORESTER]
22 shall make appropriate distinctions between public and private land.

23 (d) The commissioner [STATE FORESTER] shall adopt only those
24 regulations necessary to accomplish the purposes of this chapter and shall avoid
25 regulations that increase operating costs without yielding significant benefits to
26 public resources.

27 * Sec. 15. AS 41.17.087(b) is amended to read:

28 (b) The commissioner [STATE FORESTER] shall adopt regulations that
29 specify the standards under which a variation will be granted for harvesting timber
30 within the riparian area of

31 (1) a low gradient Type I-A water body with a width of five feet or

1 less: and

2 (2) other appropriate water body types.

3 * Sec. 16. AS 41.17.087(c) is amended to read:

4 (c) A determination by the state forester under (a) of this section and
5 regulations by the commissioner [STATE FORESTER] under (b) of this section
6 shall give due deference under AS 41.17.098.

7 * Sec. 17. AS 41.17.090(b) is amended to read:

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

14 * Sec. 18. AS 41.17.090(d) is amended to read:

15 (d) Within five days after receipt of a detailed plan of operations under (c) of
16 this section, the state forester shall distribute the information received under (c) of
17 this section to [THE DEPUTY COMMISSIONER,] affected state agencies[,] and
18 coastal districts, and shall distribute the information received under (c)(1) of this
19 section to each member of the public who has asked to receive copies of notifications
20 for the affected area.

21 * Sec. 19. AS 41.17.090(e) is amended to read:

22 (e) Within 30 days after receipt of a detailed plan of operations, the state
23 forester shall review the plan to determine if the operations are consistent with this
24 chapter and regulations adopted under this chapter. Operations may begin under the
25 plan upon the expiration of the 30-day period or upon notice from the state forester
26 that the review has been completed, whichever occurs first, unless the division has
27 issued a stop work order for a particular portion of the plan or has notified the
28 operator that a one-time, 10-day extension is necessary for agency review under
29 AS 41.17.098(f). The operator may proceed with operations not covered by the stop
30 work order, notice of field inspection, or the agency review. During the review of a
31 detailed plan of operations, if a question arises concerning the proper classification

1 of water body type for purposes of the standards in AS 41.17.116(a), the
2 Department of Fish and Game [DEPUTY COMMISSIONER] may resolve the
3 question.

4 * Sec. 20. AS 41.17.098(a) is amended to read:

5 (a) In administering this chapter, the commissioner [STATE FORESTER]
6 shall coordinate with other agencies [, THE DEPUTY COMMISSIONER,] and
7 affected coastal districts that have jurisdiction over activities subject to regulation
8 under this chapter.

9 * Sec. 21. AS 41.17.098(b) is amended to read:

10 (b) In a review or implementation of a detailed plan of operations under
11 AS 41.17.090 and in a decision on a proposed variation from requirements under
12 AS 41.17.087, the commissioner [STATE FORESTER] shall consider the
13 comments of [THE DEPUTY COMMISSIONER,] each affected state agency and,
14 where applicable, coastal districts.

15 * Sec. 22. AS 41.17.098(c) is amended to read:

16 (c) The commissioner [STATE FORESTER] shall give due deference to the
17 Department of Environmental Conservation in decisions concerning water quality.
18 The commissioner of environmental conservation retains the authority to adopt
19 nonpoint source pollution regulations for activities subject to this chapter to the
20 extent that regulations are not adopted by the commissioner of natural resources
21 [STATE FORESTER] and approved by the commissioner of environmental
22 conservation under this chapter. The commissioner of environmental conservation
23 may withdraw approval of regulations adopted by the commissioner of natural
24 resources [STATE FORESTER] under this chapter by following the procedure for
25 the adoption, amendment, and repeal of regulations under AS 44.62.180 - 44.62.290.

26 * Sec. 23. AS 41.17.098(d) is amended to read:

27 (d) The commissioner [STATE FORESTER] shall recognize the expertise
28 of the Department of Fish and Game [DEPUTY COMMISSIONER] with regard to
29 fish and wildlife habitat. On private land the commissioner [STATE FORESTER]
30 shall give due deference to the Department of Fish and Game [DEPUTY
31 COMMISSIONER] regarding effects on fish habitat from timber operations

1 including variations to riparian standards, designation of alternative site-specific
 2 riparian protection plans, and road location decisions within riparian areas. On public
 3 land, the commissioner [STATE FORESTER] shall give due deference to the
 4 Department of Fish and Game [DEPUTY COMMISSIONER] regarding effects on
 5 fish and wildlife habitat from timber operations including timber harvest in riparian
 6 areas, variations to riparian standards, and road location decisions within riparian
 7 areas. In making decisions under AS 41.17.087, the commissioner [STATE
 8 FORESTER] shall recognize fish habitat as the primary value in riparian areas.

9 * Sec. 24. AS 41.17.098(e) is amended to read:

10 (e) In this section, "due deference" means that deference that is appropriate
 11 in the context of the agency's [OR DEPUTY COMMISSIONER'S] expertise and
 12 area of responsibility and all the evidence available to support a factual assertion.
 13 Where due deference is given, if the commissioner [STATE FORESTER] does not
 14 agree with a commenting agency [OR THE DEPUTY COMMISSIONER], the
 15 commissioner [STATE FORESTER] shall prepare a written statement of the
 16 reasons for the disagreement.

17 * Sec. 25. AS 41.17.110 is amended to read:

18 **Sec. 41.17.110. Conversion of forest land to other uses.** An intention to
 19 convert forest land to other uses after timber harvesting may be stated in the
 20 notification submitted under AS 41.17.090. In that event, reforestation requirements
 21 adopted under this chapter do not apply, except that conversion shall be completed
 22 during the time set by regulation for minimum reforestation of the land, and other
 23 requirements for revegetation may be imposed to the extent permitted by law. If the
 24 commissioner [STATE FORESTER] finds at any time that the responsible party has
 25 failed to conform to the intent to convert as stated in the notification, the
 26 commissioner [STATE FORESTER] shall revoke approval of the conversion and
 27 require full compliance with reforestation requirements.

28 * Sec. 26. AS 41.17.115 is amended to read:

29 **Sec. 41.17.115. Management of riparian areas; regulations.** (a) The
 30 commissioner [STATE FORESTER] shall protect riparian areas from the significant
 31 adverse effects of timber harvest activities on fish habitat and water quality. The

1 management intent for riparian areas is the adequate preservation of fish habitat by
 2 maintaining a short- and long-term source of large woody debris, stream bank
 3 stability, channel morphology, water temperatures, stream flows, water quality,
 4 adequate nutrient cycling, food sources, clean spawning gravels, and sunlight.

5 (b) The commissioner [STATE FORESTER] shall adopt regulations for the
 6 protection of riparian areas; the regulations may include higher standards of
 7 protection for fish and other public resources on land managed by the department
 8 than on other public land or private land. The regulations may vary by region of the
 9 state and must take into consideration reasonable classification of water bodies and
 10 the economic feasibility of timber operations.

11 * Sec. 27. AS 41.17.116(c) is amended to read:

12 (c) Private forest land adjacent to the following types of waters and located
 13 in Region III is subject to the riparian protection standards established in this
 14 subsection:

15 (1) along a Type III-A water body, harvest of timber may not be
 16 undertaken within 66 feet of the water body;

17 (2) along a Type III-B water body, harvest of timber may not be
 18 undertaken within 33 feet of the water body; between 33 and 66 feet from the water
 19 body, up to 50 percent of standing white spruce trees having at least a nine-inch
 20 diameter at breast height may be harvested without requiring a variation;

21 (3) along a Type III-C water body, harvest of timber within 100 feet
 22 of the water body must be located and designed primarily to protect fish habitat and
 23 surface water quality as determined by the commissioner [STATE FORESTER]
 24 with due deference to the Department of Fish and Game [DEPUTY
 25 COMMISSIONER].

26 * Sec. 28. AS 41.17.118 is amended to read:

27 **Sec. 41.17.118. Riparian standards for state land.** (a) The riparian
 28 standards for state land are as follows:

29 (1) on state forest land managed by the department that is in Region
 30 I,

31 (A) harvest of timber may not be undertaken within 100 feet

1 immediately adjacent to an anadromous or high value resident fish water
2 body;

3 (B) between 100 and 300 feet from the water body, harvest of
4 timber may occur but must be consistent with the maintenance of important
5 fish and wildlife habitat as determined by the commissioner [STATE
6 FORESTER] with due deference to the Department of Fish and Game
7 [DEPUTY COMMISSIONER];

8 (2) on state forest land managed by the department that is in Region

9 II,

10 (A) along a Type II-A water body, harvest of timber may not
11 be undertaken within 150 feet of the water body; additionally, harvest of
12 timber may not be undertaken along outer bends subject to erosion within
13 225 feet of the water body or to the terrace top break, whichever is smaller;

14 (B) along a Type II-B water body, harvest of timber may not
15 be undertaken within 150 feet of the water body; additionally, harvest of
16 timber may not be undertaken along outer bends subject to erosion within
17 325 feet of the water body or to the terrace top break, whichever is smaller;

18 (C) along a Type II-C water body, harvest of timber may not
19 be undertaken within 100 feet of the water body;

20 (D) along a Type II-D water body, there is a 100-foot riparian
21 area; harvest of timber may not be undertaken within 50 feet of the water
22 body;

23 (E) the length of the augmented buffer along an outer bend
24 subject to erosion in (A) or (B) of this paragraph must be equal to a distance
25 eight times the stream width measured on a reach between bends at a point
26 not widened by a point bar or channel movement; the augmented buffer must
27 be located so that three stream widths are upstream and five stream widths
28 are downstream of the point opposite the apex of the point bar;

29 (F) where an estuarine area is adjacent to an anadromous or
30 high value resident fish water body, the riparian retention area for the
31 adjacent water body applies to the estuarine area;

1 (G) along Type II-A, II-B, II-C, and II-D water bodies,
2 harvest of timber may occur between the landward extent of the riparian
3 retention area and 300 feet from the water body, consistent with the
4 maintenance or enhancement of important wildlife habitat as determined by
5 the commissioner [STATE FORESTER] with due deference to the
6 Department of Fish and Game [DEPUTY COMMISSIONER];

7 (3) on state forest land managed by the department that is in Region
8 III,

9 (A) along a Type III-A water body, harvest of timber may not
10 be undertaken within 100 feet of the water body; however, between 66 feet
11 and 100 feet from the water body, harvest of timber may be undertaken
12 where consistent with the maintenance of important fish and wildlife habitat
13 as determined by the commissioner [STATE FORESTER] with the
14 concurrence of the Department of Fish and Game [DEPUTY
15 COMMISSIONER];

16 (B) along a Type III-B water body, harvest of timber may not
17 be undertaken within 50 feet of the water body; between 50 feet and 100 feet
18 from the water body, up to 50 percent of standing white spruce trees having
19 at least a nine-inch diameter at breast height may be harvested;

20 (C) along a Type III-C water body, harvest of timber within
21 100 feet of the water body must be consistent with the maintenance of
22 important fish and wildlife habitat as determined by the commissioner
23 [STATE FORESTER] with due deference to the Department of Fish and
24 Game [DEPUTY COMMISSIONER].

25 (b) The commissioner [DEPARTMENT] may impose additional riparian
26 protection standards for timber harvest operations through the adoption of land use
27 plans under AS 38.04.065. Within a state forest established under AS 41.17.200 -
28 41.17.230, riparian standards adopted by the commissioner under this subsection
29 may not exceed the standards established under (a) of this section unless the
30 commissioner makes a finding of compelling state interest.

31 (c) In the absence of a site-specific determination by the Department of

1 Fish and Game [DEPUTY COMMISSIONER], the commissioner [STATE
2 FORESTER] shall presume for planning purposes that a stream is anadromous if it is
3 connected to anadromous waters that are without Department of Fish and Game
4 [DEPARTMENT] documentation of a physical blockage and has a stream gradient
5 of 8 percent or less.

6 * Sec. 29. AS 41.17.120 is amended to read:

7 **Sec. 41.17.120. Inspections and investigations.** The commissioner [STATE
8 FORESTER] may inspect and investigate forest land and activities on it and may
9 enter upon it in conjunction with any operations as necessary to ensure compliance
10 with applicable regulations and requirements and to otherwise enforce the provisions
11 of this chapter. Other state agencies [AND THE DEPUTY COMMISSIONER] have
12 this same authority to the extent necessary to enforce their own laws and regulations
13 on forest land. Those agencies [, THE DEPUTY COMMISSIONER,] and the
14 commissioner [STATE FORESTER] shall coordinate their actions under this
15 section.

16 * Sec. 30. AS 41.17.900(c) is amended to read:

17 (c) The commissioner [STATE FORESTER] shall exempt by regulation
18 from the provisions of this chapter

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

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

23 * Sec. 31. AS 41.17.900(d) is amended to read:

24 (d) Notwithstanding any other provision of this chapter, the [STATE
25 FORESTER AND THE] commissioner may not employ the authority vested by this
26 chapter so as to duplicate or preempt the statutory authority of other state agencies to
27 adopt regulations or undertake other administrative actions governing resources,
28 values, or activities on forest land except for

29 (1) regulations under the Coastal Management Act; and

30 (2) regulations, if authorized by the commissioner of environmental
31 conservation, relating to control of nonpoint source pollution.

1 * **Sec. 32.** AS 41.17.910(a) is amended to read:

2 (a) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and
3 the **commissioner** [STATE FORESTER] shall work cooperatively with private
4 forest landowners and timber owners to protect, maintain, and enhance wildlife
5 habitat to the maximum extent practicable, consistent with the interests of the owners
6 in the use of their timber resources.

7 * **Sec. 33.** AS 41.17.910(b) is amended to read:

8 (b) The **Department of Fish and Game** [DEPUTY COMMISSIONER]
9 shall provide educational and technical assistance and extension services to owners
10 of private forest land or timber to assist in identifying important wildlife habitat and
11 to assist in designing voluntary management techniques that minimize adverse
12 effects on wildlife habitat.

13 * **Sec. 34.** AS 41.17.910(c) is amended to read:

14 (c) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and
15 the landowner shall cooperate in identifying areas of important wildlife habitat on
16 private forest land and in developing methods for their protection. Methods of
17 protection for wildlife habitat may include, with the agreement of the landowner, the
18 purchase of fee title, purchase of conservation easements, and land exchanges.

19 * **Sec. 35.** AS 41.17.950(1) is amended to read:

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

22 (A) is cataloged under **AS 16.05.871** [AS 41.14.870] as
23 important for anadromous fish; or

24 (B) is not cataloged under **AS 16.05.871** [AS 41.14.870] as
25 important for anadromous fish but has been determined by the **Department**
26 **of Fish and Game** [DEPUTY COMMISSIONER] to contain or exhibit
27 evidence of anadromous fish in which event the anadromous portion of the
28 stream or waterway extends up to the first point of physical blockage;

29 * **Sec. 36.** AS 44.62.330(a)(30) is amended to read:

30 (30) the Department of **Fish and Game** [NATURAL RESOURCES]
31 as to functions relating to the protection of fish and game under **AS 16.05.871**

1 [AS 41.14.870];

2 * Sec. 37. AS 46.15.020(b) is amended to read:

3 (b) The commissioner shall

4 (1) adopt procedural and substantive regulations to carry out the
5 provisions of this chapter, taking into consideration the responsibilities of the
6 Department of Environmental Conservation under AS 46.03 and the Department of
7 Fish and Game under AS 16;

8 (2) develop and maintain a standardized procedure for processing
9 applications and the issuance of authorizations, permits, and certifications under this
10 chapter; shall keep a public record of all applications for permits and certificates and
11 other documents filed in the commissioner's office; shall record all permits and
12 certificates and amendments and orders affecting them and shall index them in
13 accordance with the source of the water and the name of the applicant or
14 appropriator; shall require that temporary water use authorizations are valid only to
15 the extent that the water withdrawal and use comply with applicable requirements
16 of AS 16.05.871 [AS 41.14.870]; and shall make the record of applications,
17 including temporary water use applications under AS 46.15.155 that have been
18 accepted as complete, authorizations, permits, certificates, amendments, and orders
19 affecting them available to the public on the Internet;

20 (3) cooperate with, assist, advise, and coordinate plans with the
21 federal, state, and local agencies, including local soil and water conservation
22 districts, in matters relating to the appropriation, use, conservation, quality, disposal,
23 or control of waters and activities related thereto;

24 (4) prescribe fees or service charges for any public service rendered
25 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
26 under regulations adopted by the department an annual \$50 administrative service
27 fee to maintain the water management program and a water conservation fee under
28 AS 46.15.035;

29 (5) before February 1 of each year, prepare a report describing the
30 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
31 shall notify the legislature that the report is available; the report must include

1 (A) information on the number of applications and
 2 appropriations for the removal of water from one hydrological unit to another
 3 that were requested and that were granted and on the amounts of water
 4 involved,

5 (B) information on the number and location of sales of water
 6 conducted by the commissioner and on the volume of water sold;

7 (C) recommendations of the commissioner for changes in
 8 state water law; and

9 (D) a description of state revenue and expenses related to
 10 activities under AS 46.15.035 and 46.15.037.

11 * Sec. 38. AS 41.14.150, 41.14.160, 41.14.165, 41.14.170, 41.14.180, 41.14.190,
 12 41.14.195, 41.14.200, 41.14.840, 41.14.850, 41.14.860, 41.14.870, 41.14.880, 41.14.890,
 13 41.14.895, 41.14.900, 41.14.990; AS 41.17.905, 41.17.950(5); AS 44.37.055, and 44.37.060
 14 are repealed.

15 * Sec. 39. The uncodified law of the State of Alaska is amended by adding a new section
 16 to read:

17 RETIREMENT SYSTEM STATUS OF CERTAIN TRANSFERRED
 18 EMPLOYEES. (a) Notwithstanding sec. 4, ch. 27, SLA 1983, an employee of the
 19 Department of Fish and Game who, on the day before the effective date of this Order, as
 20 authorized by sec. 4, ch. 27, SLA 1983 is accruing service credit as a peace officer under
 21 AS 39.35 by virtue of having been, on June 23, 1983, in a position as a "qualified employee
 22 of the Department of Fish and Game," whose position was transferred to the Department of
 23 Natural Resources as a result of Executive Order 107 and whose position is transferred back
 24 to the Department of Fish and Game as a result of this Order, continues to accrue service
 25 credit as a peace officer under AS 39.35 after the transfer as long as the employee remains in
 26 a position described in this subsection, in the Department of Fish and Game.

27 (b) Nothing in this section may be construed as guaranteeing continued employment
 28 rights to any state employee.

29 (c) In this section, "qualified employee of the Department of Fish and Game" has the
 30 meaning given in AS 39.35.680 as that statute existed on June 22, 1983.

31 * Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings
3 pending under a law repealed by this Order, or in connection with functions transferred by
4 this Order, continue in effect and may be continued and completed notwithstanding a
5 transfer or repeal provided in this Order.

6 (b) Regulations adopted to implement former AS 16.05.840 - 16.05.860, former
7 AS 16.05.870 - 16.05.895, and former AS 44.37.055 and 44.37.060, and to implement
8 AS 41.14 and AS 41.17 and in effect on July 1, 2008, remain in effect and may continue to
9 be implemented and enforced, consistent with the changes made by this Order, until
10 amended or repealed.

11 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed
12 by this Order, and in effect on June 30, 2008, remain in effect notwithstanding this Order's
13 taking effect. Records, equipment, appropriations, and other property of an agency of the
14 state whose functions are transferred under this Order shall be transferred to implement the
15 provisions of this Order.

16 * Sec. 41. This Order takes effect July 1, 2008.

17
18 DATED: _____
19
20
21

22 _____
23 Sarah Palin
24 Governor

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: EO 114
(H) Publish Date: 2/13/08

Identifier (file name): EO#114-DFG-OHMP-02-08-08 Dept. Affected: Fish and Game
Title: Transfer Habitat Division from DNR to F&G RDU: Habitat and Restoration
Component: Habitat
Sponsor: Governor Old DFG RDU and component
Requester: Governor Component Number: 486

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	3,180.9		3,180.9	3,180.9	3,180.9	3,180.9	3,180.9	3,180.9
Travel	138.4		138.4	138.4	138.4	138.4	138.4	138.4
Contractual	563.0		543.0	543.0	543.0	543.0	543.0	543.0
Supplies	115.8		115.8	115.8	115.8	115.8	115.8	115.8
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	3,998.1	0.0	3,978.1	3,978.1	3,978.1	3,978.1	3,978.1	3,978.1

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	2,944.1		2,924.1	2,924.1	2,924.1	2,924.1	2,924.1	2,924.1
1007 Interagency Receipts	583.5		583.5	583.5	583.5	583.5	583.5	583.5
1061 CIP Receipts	212.9		212.9	212.9	212.9	212.9	212.9	212.9
1108 Stat Des Prog Receipts	257.6		257.6	257.6	257.6	257.6	257.6	257.6
TOTAL	3,998.1	0.0	3,978.1	3,978.1	3,978.1	3,978.1	3,978.1	3,978.1

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	37		37	37	37	37	37
Part-time	1		1	1	1	1	1
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This fiscal note reflects transfer of the Governor's original budget from the Department of Natural Resources to the Department of Fish and Game per Executive Order #114. This note includes an additional \$20.0 GF in contractual for one time additional costs, such as moving, phone and computer transfer costs in the following locations:
Fairbanks (10 staff) / Petersburg (1 staff) - \$0 one time cost as already co-located in ADF&G space;
Anchorage (10 staff) \$9.0 one time cost as nine people moved into ADF&G leased space;
Juneau (8 staff) \$8.0 one time cost as eight people moved into ADF&G leased space;
Palmer (4 staff) \$1.0 one time cost (phones/computer) but no moving as located in same building as ADF&G;
Kenai (3 staff) \$1.0 one time cost (phones/computer) but no moving as located in Kenai River Center shared space;
Craig (2 staff) \$1.0 one time cost (phones/computer) but no moving as no available ADF&G leased space.

Prepared by: Tom Lawson, Director
Division: Administrative Services
Approved by: Denby Lloyd, Commissioner
Fish and Game

Phone: 465-5999
Date/Time: 2/8/08 4:00 PM
Date: February 8, 2008

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: EO 114
 (H) Publish Date: 2/13/08

Identifier (file name): EO114-DEC-CO-2-11-08 Dept. Affected: Dept. of Environmental Conservation
 Title: TRANSFER HABITAT DIV FROM DNR TO F&G RDU: Administration
 Component: Office of the Commissioner
 Sponsor: Governor
 Requester: Governor Component Number: 633

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Clams								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This executive order moves the Habitat Division from the Department of Natural Resources to the Department of Fish and Game. No fiscal impact on the Department of Environmental Conservation is anticipated.

Prepared by: Dan Easton
 Division: Office of the Commissioner
 Approved by: Larry Hartig
Department of Environmental Conservation

Phone 465-5256
 Date/Time 2/11/08 2:20 PM
 Date 2/11/2008

COMMITTEE COPY