

SCOMM

147:24

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

HB41: Transferring the Habitat Division Back to the Department of Fish and Game

In 2003, former Governor Frank Murkowski made a change to fisheries protection policy that has been controversial ever since. By Executive Order, he transferred the Department of Fish and Game's Habitat Division to the Department of Natural Resources. At the time, every former Commissioner of the Department of Fish and Game (ADFG) objected to the move. They contended, as many still do, that the move created a conflict that would prevent the Division from performing its duty to make sure Alaska's fishing waters and other wildlife resources are protected, and that development projects be designed in a manner that doesn't compromise that goal.

The goal of protecting fish and game habitat is consistent with the goals of the ADFG. The Department of Natural Resources is charged with many functions, including that of resource development. In theory the Habitat Division could serve its function equally within either Department. However, the transfer occurred because certain businesses felt the move would make the agency more compliant with private developer interests and consequently less protective of the fisheries and other resources it was charged with protecting.

With significant projects on the horizon, like the Pebble open pit mine, the public should be confident that the Habitat Division's functions remain independent and uncompromised. For the reasons stated by the Board of Fisheries, and the former commissioners of ADFG, we believe this division should be moved back to the ADFG.

If you have any questions, please do not hesitate to contact our office.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 31, 2007

SUBJECT: Sectional Summary of HB 41 (Work Order No. 25-LS0225\C)

TO: Representative Les Gara
Attn: Darcy

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have requested a sectional summary of HB 41, an Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game.

Please note that a sectional summary of a bill is not the authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Sections 1 and 2 of the bill enact the text of provisions currently conferring authority on the Department of Natural Resources in AS 41.14.840 - 41.14.900 by reassigning them to the Department of Fish and Game under AS 16.05.

Sections 3 - 6 of this bill amend references to statutes formerly in AS 41.14 so as to conform with the sections being relocated to AS 16.05.

Sections 7 - 18 of this bill delete the term "deputy commissioner" and replace it with "Department of Fish and Game," and amend other references to the Department of Natural Resources.

Section 19 of this bill repeals and reenacts the language of a provision defining the powers and duties of the deputy commissioner of natural resources to omit references to powers and duties formerly given under AS 41.14.

Sections 20 - 21 of this bill amend references to AS 41.14 and the Department of Natural Resources in order to conform with the changes made in other sections of this bill.

Section 22 repeals all sections that were transferred to AS 16.05.

Section 23 of this bill provides the transition language stating that proceedings involving the sections amended in this bill will be continued and that certificates, orders, regulations, contracts, or rights based on the amended sections will remain in effect.

Section 24 of this bill provides for an effective date.

BJK:ljw
07-036.ljw

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME BOARD of FISHERIES

SARAH PALIN, GOVERNOR

P.O. BOX 115525
JUNEAU, AK 99811-5525
PHONE: (907) 465-4110
FAX: (907) 465-6094

January 19, 2007

The Honorable Sarah Palin, Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Palin,

This letter is written to express our concern with the previous administration's decision to transfer the Division of Habitat and Restoration along with its statutory management authority from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR) in 2003. At the Dillingham meeting in December, 2006, the Board of Fisheries voted unanimously to request that you rescind Executive Order 107 and return the Division of Habitat and its statutory management authority to ADF&G.

We believe that the best protection and management of fisheries resources will be achieved through that action. Several compelling reasons prompt us to make this request.

- 1) Prior to statehood, our founders had witnessed decades of federal mismanagement of fisheries resources and habitat particularly within the Pacific Northwest salmon runs and correctly anticipated that mismanagement of fisheries and habitat, and the incremental habitat loss were the greatest threats facing Alaska's fisheries as well. Consequently, the first Alaska Legislature established a two-department approach at statehood to insure that adequate checks and balances would exist when important development decisions were to be considered. This system functioned very well for many years allowing ADF&G, along with DNR, to include adequate safeguards for important fish habitat while allowing responsible development of natural resources. The present system potentially removes ADF&G from the advocacy role in many controversial habitat management issues on state lands.
- 2) The charge of DNR is to "develop, conserve and maximize the use of Alaska's natural resources consistent with the public interest". The mission of ADF&G is to "protect, maintain, and improve the fish, game, and aquatic plant resources of the state and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle." Given that the missions of the two departments differ so significantly, many management decisions are likely to be made without adequate regard for resource sustainability. In addition, DNR and ADF&G entered into a Memorandum of Understanding (MOU) to outline the roles and responsibilities of each agency with respect to continued protection of fish and wildlife and their habitats during the review land and water use activities. This MOU further limits ADF&G comment authority for permits and actions, including and in addition to, fish habitat permitting and forest practices. This change, coupled with other decisions made in the past four years, along with a rewrite of Alaska's Coastal Zone

Management program and mixing zone regulations, concerns the Board of Fisheries. We are concerned that these will jeopardize our ability to meet statutory responsibilities to conserve and develop sustainable resources.

3) The Board of Fisheries is further concerned, that when the Habitat Division was transferred to DNR in 2003, there was a dilution of expertise and a loss of close-working associations with ADF&G colleagues in research and management. The Board of Fisheries has no assurances that the staffing level of the DNR habitat permitting staff is adequate to properly provide safeguards in large-scale development projects particularly as regarding the discharge of industrial and domestic wastes into salmon spawning habitat.

The above reasons, coupled with the dramatic changes made by the previous administration to the Alaska Coastal Management Program, the memo of understanding between ADF&G and DNR which limits ADF&G comment authority under the federal Fish and Wildlife Coordination Act, and other significant changes in habitat protection authority and protocol emphasize the crucial nature of this request.

We realize that there will be fiscal and organizational issues to consider; however, we hope that your stated support for fisheries as one of the cornerstones for Alaska's economy will lead to an appropriate level of protection for our fisheries resources and habitat.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melvan E. Morris Jr.", with a stylized, cursive script.

Melvan E. Morris Jr., Chairman

cc: Acting Commissioner Denby Lloyd, Department of Fish and Game
Acting Commissioner Marty Rutherford, Department of Natural Resources

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.

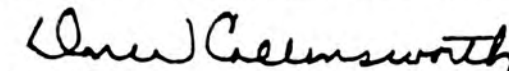
You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

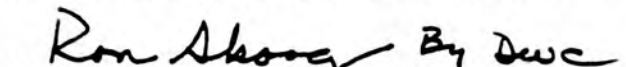
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

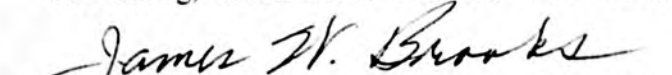
Sincerely,


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



American Fisheries Society

ALASKA CHAPTER

January 5, 2007

Governor Sarah Palin
Office of the Governor
P.O. Box 110011
Juneau, AK 99811-0001

Dear Governor Palin,

The Alaska Chapter of the American Fisheries Society (AFS-AK) represents over 400 fisheries scientists and biologists employed in government, academia, and the private sector throughout Alaska. The mission of the American Fisheries Society (AFS) is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries and aquatic science and by promoting the development of fisheries professionals. While AFS-AK is not an advocacy group, we occasionally bring important issues to the attention of policy makers and the public. We advocate for fisheries and sustainability issues when our position is well grounded in peer-reviewed science.

When your predecessor, Governor Murkowski, transferred the authority to protect anadromous fish habitat and maintain fish passage from the Department of Fish and Game (ADFG) to the Department of Natural Resources (ADNR) in February 2003, the AFS-AK strongly cautioned him against this move. We believe this fundamentally compromises protection of Alaska's fish habitat resources and thus we urge you to return the Division of Habitat to ADFG. Attached you will find our letter to Governor Murkowski for your reference along with a similar letter from the Western Division of AFS, which represents fisheries scientists and biologists from throughout western North America.

As outlined in the letters referenced above, the reason that Alaska has been able to maintain some of the most productive fisheries in the world is that fish and the habitats they depend on have received a high measure of protection since statehood. Governor Murkowski's transfer of responsibility for this protection from ADFG, whose mission is to *protect* the fish and game resources of the state to ADNR whose mission is to *develop* natural resources has eliminated the check and balance that assured that ADFG's interests in protecting fish and game resources have equal standing with DNR's interests in developing resources. The current structure lacks a balance because DNR's mission to develop resources takes priority over the conflicting mandate of its Office of Habitat Management and Permitting to protect fish and wildlife. Moreover, without the critical regulatory tool of habitat permitting ADFG is not able to effectively carry out its mission of protecting fish and game resources. We believe it is crucial that the authority for habitat protection be returned to the Department of Fish and Game immediately, to ensure the long-term sustainability of Alaska's fishery resources.

Additionally, we are very concerned with the reorganization of the Department of Public Safety that changed the Division of Fish & Wildlife Protection into a Bureau within the Division of Alaska State Troopers in August 2003. This action redirected a considerable amount of time and effort by the Wildlife Troopers away from protecting our fish and game resources and assigned them added support duties for the Alaska State Troopers. This action diminished the effectiveness of the fish & wildlife enforcement efforts in Alaska to an unacceptable level. We urge you to reinstate the Division of Fish & Wildlife Protection within the Department of Public Safety immediately. We recognize that protection of our citizens in Alaska is vital; however, we feel that directing our professional Wildlife Troopers to perform these duties is not the answer and compromises the protection of our valuable fish and wildlife resources.

Thank you for your consideration of these important issues. Expert scientists who are members of the Alaska Chapter of AFS would be pleased to provide additional information if that will be useful. Please feel free to contact me at 789-6609 if you have any questions.

Sincerely,

Jamal Moss
President, AFS-AK
NOAA Fisheries
Auke Bay Laboratory
11305 Glacier Hwy.
Juneau, AK 99801

Cc: House and Senate Legislators
Denby Lloyd, Acting Commissioner, ADFG
Marty Rutherford, Acting Commissioner, ADNR

Enclosures (2)

2002 Hitchhiker's Guide to the Alaska Legislature

[Click here to return to the original story](#)

Ex-Fish and Game chiefs slam habitat plan

3 February 2003

THE ASSOCIATED PRESS

ANCHORAGE - Five former commissioners of the Alaska Department of Fish and Game are urging Gov. Frank Murkowski drop his plans to take away the power over development projects from the Department's Habitat Division.

"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," the past commissioners wrote to the governor.

The five noted that they have a combined 30-plus years of experience managing Alaska's Department of Fish and Game.

"We served under Republican, Democratic and (Alaskan) 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," they wrote Murkowski in a letter Thursday.

The commissioners were Frank Rue, Carl Rosier, Don Collinsworth, Ron Skoog and James Brooks. They served under Govs. Tony Knowles, Wally Hickel, Steve Cowper, Bill Sheffield, Jay Hammond and William Egan.

Murkowski, a Republican who was elected in November, has not yet picked his own Fish and Game commissioner.

Moving the habitat division of Fish and Game over to the Department of Natural Resources was a central element in Murkowski's State of the State speech. He said the division has often opposed and delayed "legitimate - and I want to emphasize legitimate - projects."

Moving the habitat permit function to DNR would streamline the permitting process for oil and other resource companies, as well as other developers, he said.

Murkowski's spokesman, John Manly, said the governor is moving ahead with the habitat shift.

"We believe that we can move those permitting functions to the Department of Natural Resources without an adverse impact on the environment," Manly told the Anchorage Daily News.

The former commissioners disputed the contention that Fish and Game has blocked development. The habitat division has worked cooperatively on projects, they said, while providing a habitat-protection balance to the work of the state natural resources agency.

"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," they wrote.

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34 Groups Opposing EO 107

Alaska Boreal Forest Council
Alaska Center for the Environment
Alaska Flyfishers
Alaska Hunters United
Alaska Longline Fisherman's Association
Alaska Public Waters Coalition
Alaska Marine Conservation Council
Alaska Sport Fishing Association
Alaska Trollers Association
American Fisheries Society
Anchorage Audubon Society
Anchorage Fish & Game Advisory Committee
ASEA Local 52
Association of Village Council Presidents
Cascadia Wildlands Project
Chignik Regional Aquaculture Association
Cooper Landing Fish & Game Advisory Committee
Copper River Watershed Project
Defenders of Wildlife
International Erosion Control Association, Pacific Northwest Chapter
Kachemak Bay Conservation Society
Kenai River Special Management Advisory Board
Kenai Peninsula Borough Assembly
Kenai Peninsula Fisherman's Association
Kuskokwim Native Association
National Wildlife Federation
Native Village of Eklutna
Paxson Fish & Game Advisory Committee
Sitka Fish & Game Advisory Committee
Sitka Conservation Society
Southeast Alaska Conservation Council
Trout Unlimited
Western Division of the American Fisheries Society
Yukon River Drainage Fisheries Association

5 Commissioners

House State Affairs Committee Testimony:

60 oppose, 12 support

(From 2003)

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. 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



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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB041-DNR-OHMP-02-07-07
 Bill Version: HB041
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Natural Resources

Title Transfer Habitat Division from DNR to F&G

RDU Resource Development

Component Office of Habitat Mgt & Permitting

Sponsor Rep. Gara

Component No. 2682

Requester H FSH

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	(3,568.5)					
Travel	(143.5)					
Contractual	(554.7)					
Supplies	(106.0)					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(4,372.7)	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	(3,122.3)					
1007 Interagency Receipts	(787.6)					
1061 C/P Receipts	(212.9)					
1108 Stat Des Prog Receipts	(249.9)					
TOTAL	(4,372.7)	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time	-38					
Part-time	-1					
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note reflects the FY08 Governor's original budget request and assumes the full transfer of the budget and positions. DNR assumes that any additional one-time costs associated with the transfer will be covered by Fish & Game and are not included in this fiscal note.

Prepared by: Kerry Howard, Executive Director
 Division: Office of Habitat Management & Permitting
 Approved by: Marty Rutherford, Acting Commissioner
 Agency: Natural Resources

Phone 465-3176
 Date/Time 2/7/2007
 Date 2/7/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB041-DFG-OHMP-02-07-07
 Bill Version: HB041
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Title Transfer Habitat Division from DNR to F&G

Dept. Affected: Fish and Game

RDU Office of Habitat Mgt & Permitting

Component Office of Habitat Mgt & Permitting
New RDU and Component

Sponsor Rep. Gara

Requester House Fisheries Committee

Component No. new

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	3,568.5	3,568.5	3,568.5	3,568.5	3,568.5	3,568.5
Travel	143.5	143.5	143.5	143.5	143.5	143.5
Contractual	576.7	554.7	529.7	529.7	529.7	529.7
Supplies	172.0	106.0	106.0	106.0	106.0	106.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	4,460.7	4,372.7	4,347.7	4,347.7	4,347.7	4,347.7

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	3,210.3	3,122.3	3,097.3	3,097.3	3,097.3	3,097.3
1007 Interagency Receipts	787.6	787.6	787.6	787.6	787.6	787.6
1061 CIP Receipts	212.9	212.9	212.9	212.9	212.9	212.9
1108 Stat Des Prog Receipts	249.9	249.9	249.9	249.9	249.9	249.9
TOTAL	4,460.7	4,372.7	4,347.7	4,347.7	4,347.7	4,347.7

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time	38	38	38	38	38	38
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note reflects the FY08 Governor's original budget request and assumes the full transfer of the budget and positions. In addition, there are one-time FY08 costs associated with the transfer and they are backed out in FY09. One time costs such as moving/phone/computer setup (\$1.0/position) and modular furniture (\$3.0/position) in Juneau, Anchorage, and Palmer space is estimated to be \$4.0 x 22 positions equals \$88.0. In two locations (Fairbanks and Petersburg) staff are already co-located with DFG so no one-time costs. In remaining locations (Craig and Soldotna/Kenai) staff would remain in existing space due to limited space at Fish and Game location. Rent monies are included Habitat budget that is transferred to Fish and Game. In FY10, state owned rental space would be given up in Juneau and Anchorage and \$25.0 would be backed out.

Prepared by: Tom Lawson, Director

Division: Administrative Services

Approved by: Denby Lloyd, Commissionerr

Agency: Fish and Game

Phone 465-5999

Date/Time 2/7/2007

Date 2/7/2007

EXECUTIVE ORDER NO. 107

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

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

4 FINDINGS. As governor, I find that the transfer of certain functions relating to the
5 protection of fish habitat in rivers, lakes, and streams of the state, and related functions
6 regarding fish and game protection, from the Department of Fish and Game to a deputy
7 commissioner of natural resources would be in the best interests of efficient administration.
8 To preserve the existing statutory balance between stream preservation and forest
9 stewardship, the role currently assigned to the commissioner of natural resources under the
10 Forest Resources and Practices Act is transferred to the state forester in the division of
11 forestry, Department of Natural Resources. These transfers will permit closer and more
12 balanced coordination, improving the planning process for projects affecting these bodies of
13 water.

14 * **Sec. 2.** AS 16.05.920(a) is amended to read:

15 (a) Unless permitted by AS 16.05 - AS 16.40, by AS 41.14, or by regulation
16 adopted under AS 16.05 - AS 16.40 or AS 41.14, a person may not take, possess,
17 transport, sell, offer to sell, purchase, or offer to purchase fish, game, or marine
18 aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of fish or
19 game.

20 * **Sec. 3.** AS 16.05.925(a) is amended to read:

21 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,
22 16.05.783, 16.05.831, [16.05.860, AND] 16.05.905, and AS 41.14.860, a person who
23 violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or

1 AS 16.20, is guilty of a class A misdemeanor.

2 * **Sec. 4.** AS 16.20.070 is amended to read:

3 **Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.20.060 do
4 not affect AS 41.14.870 - 41.14.890 [AS 16.05.870 - 16.05.890].

5 * **Sec. 5.** AS 41 is amended by adding a new chapter to read:

6 **Chapter 14. Rivers, Lakes, and Streams.**

7 **Sec. 41.14.150. Enforcement authority.** The following persons are peace
8 officers of the state and they shall enforce this chapter:

9 (1) an employee of the department authorized by the deputy
10 commissioner;

11 (2) a police officer in the state;

12 (3) any other person authorized by the deputy commissioner.

13 **Sec. 41.14.160. Duty to arrest.** Each peace officer designated in
14 AS 41.14.150 shall arrest a person violating a provision of this chapter, or any
15 regulation adopted under this chapter, in the peace officer's presence or view, and shall
16 take the person for examination or trial before an officer or court of competent
17 jurisdiction unless in the judgment of the peace officer it would be in the state's best
18 interest to issue a warning or a citation under AS 41.14.165.

19 **Sec. 41.14.165. Form and issuance of citation.** (a) When a peace officer
20 stops or contacts a person concerning a violation of this chapter or of a regulation
21 adopted under this chapter that is a misdemeanor, the peace officer may, in the
22 officer's discretion, issue a citation to the person as provided in AS 12.25.180.

23 (b) The supreme court shall specify by rule or order those misdemeanors that
24 are appropriate for disposition without court appearance, and shall establish a schedule
25 of bail amounts. Before establishing or amending the schedule of bail amounts
26 required by this subsection, the supreme court shall appoint and consult with an
27 advisory committee consisting of two officers of the division of fish and wildlife
28 protection of the Department of Public Safety, two representatives of the department,
29 two district court judges, and the chairpersons of the House and Senate Judiciary
30 Committees of the legislature. The maximum bail amount for an offense may not
31 exceed the maximum fine specified by law for that offense. If the misdemeanor for

1 which the citation is issued may be disposed of without court appearance, the issuing
2 peace officer shall write on the citation the amount of bail applicable to the violation.

3 (c) A person cited for a misdemeanor for which a bail amount has been
4 established under (b) of this section may, within 15 days after the date of the citation,
5 mail or personally deliver to the clerk of the court in which the citation is filed by the
6 peace officer

7 (1) the amount of bail indicated on the citation for that offense; and

8 (2) a copy of the citation indicating that the right to an appearance is
9 waived, a plea of no contest is entered and the bail is forfeited.

10 (d) When bail has been forfeited under (c) of this section, a judgment of
11 conviction shall be entered. Forfeiture of bail and all seized items is a complete
12 satisfaction for the misdemeanor. The clerk of the court accepting the bail shall
13 provide the offender with a receipt stating that fact if requested.

14 (e) If the person cited fails to pay the bail amount established under (b) of this
15 section or to appear in court as required, the citation is considered a summons for a
16 misdemeanor.

17 (f) Notwithstanding other provisions of law, if a person cited for a
18 misdemeanor for which a bail amount has been established under (b) of this section
19 appears in court and is found guilty, the penalty that is imposed for the offense may
20 not exceed the bail amount for that offense established under (b) of this section.

21 **Sec. 41.14.170. Power to execute warrant.** Each peace officer designated in
22 AS 41.14.150 may execute a warrant or other process issued by an officer or court of
23 competent jurisdiction for the enforcement of this chapter, and may, with a search
24 warrant, search any place at any time. The judge of a court having jurisdiction may,
25 upon proper oath or affirmation showing probable cause, issue a warrant in all cases.

26 **Sec. 41.14.180. Power to search without warrant.** Each peace officer
27 designated in AS 41.14.150 may without a warrant search any thing or place if the
28 search is reasonable or is not protected from searches and seizures without warrant
29 within the meaning of art. I, sec. 14, Alaska Constitution, which specifically
30 enumerates "persons, houses and other property, papers, and effects." However,
31 before a search without warrant is made a signed written statement by the person

1 making the search shall be submitted to the person in control of the property or object
2 to be searched, stating the reason the search is being conducted. A written receipt
3 shall be given by the person conducting the search for property which is taken as a
4 result of the search. The enumeration of specific things does not limit the meaning of
5 words of a general nature.

6 **Sec. 41.14.190. Seizure and disposition of equipment.** Boats, aircraft,
7 automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a
8 violation of this chapter or a regulation adopted under this chapter may be seized
9 under a valid search, and all fish and game, or parts of fish and game, or nests or eggs
10 of birds, taken, transported, or possessed contrary to the provisions of this chapter or a
11 regulation adopted under this chapter shall be seized by any peace officer designated
12 in AS 41.14.150. Upon conviction of the offender or upon judgment of the court
13 having jurisdiction that the item was taken, transported, or possessed in violation of
14 this chapter or a regulation adopted under this chapter, all fish and game, or parts of
15 them are forfeited to the state and shall be disposed of as directed by the court. If sold,
16 the proceeds of the sale shall be transmitted to the proper state officer for deposit in
17 the general fund. Boats, aircraft, or other vehicles, sleds, and other paraphernalia
18 seized under the provisions of this chapter or a regulation adopted under this chapter,
19 unless forfeited by order of the court, shall be returned, after completion of the case
20 and payment of the fine, if any.

21 **Sec. 41.14.195. Forfeiture of equipment.** (a) Vessels, aircraft, other motor
22 vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this
23 chapter, or regulations adopted under this chapter, and all fish and game or parts of
24 fish and game or nests or eggs of birds taken, transported, or possessed contrary to the
25 provisions of this chapter, or regulations adopted under this chapter, may be forfeited
26 to the state

27 (1) upon conviction of the offender in a criminal proceeding of a
28 violation of this chapter in a court of competent jurisdiction; or

29 (2) upon judgment of a court of competent jurisdiction in a proceeding
30 in rem that an item specified above was used in or in aid of a violation of this chapter
31 or a regulation adopted under this chapter.

1 (b) Items specified in (a) of this section may be forfeited under this section
2 regardless of whether they were seized before instituting the forfeiture action.

3 (c) An action for forfeiture under this section may be joined with an
4 alternative action for damages brought by the state to recover damages for the value of
5 fish and game or parts of them or nests or eggs of birds taken, transported, or
6 possessed contrary to the provisions of this chapter or a regulation adopted under it.

7 (d) It is no defense that the person who had the item specified in (a) of this
8 section in possession at the time of its use and seizure has not been convicted or
9 acquitted in a criminal proceeding resulting from or arising out of its use.

10 (e) Forfeiture may not be made of an item subsequently sold to an innocent
11 purchaser in good faith. The burden of proof as to whether the purchaser purchased
12 the item innocently and in good faith shall be on the purchaser.

13 (f) An item forfeited under this section shall be disposed of at the discretion of
14 the department. Before the department disposes of an aircraft it shall consider transfer
15 of ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

16 **Sec. 41.14.200. Power to administer oaths.** Each peace officer designated in
17 AS 41.14.150 may administer to or take from any person, an oath, affirmation, or
18 affidavit when it is for use in a prosecution or proceeding under or in the enforcement
19 of this chapter.

20 **Sec. 41.14.840. Fishway required.** If the deputy commissioner considers it
21 necessary, every dam or other obstruction built by any person across a stream
22 frequented by salmon or other fish shall be provided by that person with a durable and
23 efficient fishway and a device for efficient passage for downstream migrants. The
24 fishway or device or both shall be maintained in a practical and effective manner in
25 the place, form, and capacity the deputy commissioner approves, for which plans and
26 specifications shall be approved by the deputy commissioner upon application. The
27 fishway or device shall be kept open, unobstructed, and supplied with a sufficient
28 quantity of water to admit freely the passage of fish through it.

29 **Sec. 41.14.850. Hatchery required.** If a fishway over a dam or obstruction is
30 considered impracticable by the deputy commissioner because of cost, the owner of
31 the dam or obstruction, in order to compensate for the loss resulting from the dam or

1 obstruction shall, at the owner's option

2 (1) pay a lump sum acceptable to the deputy commissioner to the state
3 fish and game fund;

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

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

15 **Sec. 41.14.860. Penalty for violating fishway and hatchery requirements.**

16 (a) The owner of a dam or obstruction who fails to comply with AS 41.14.840 or
17 41.14.850 or a regulation adopted under AS 41.14.840 or 41.14.850 within a
18 reasonable time specified by written notice from the deputy commissioner is guilty of
19 a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the
20 owner fails to comply constitutes a separate offense.

21 (b) In addition to the fine, the dam or other obstruction managed, controlled,
22 or owned by a person violating AS 41.14.840 or 41.14.850 or a regulation adopted
23 under AS 41.14.840 or 41.14.850 is a public nuisance and is subject to abatement.

24 **Sec. 41.14.870. Protection of fish and game.** (a) The deputy commissioner
25 shall, in accordance with AS 44.62 (Administrative Procedure Act), specify the
26 various rivers, lakes, and streams or parts of them that are important for the spawning,
27 rearing, or migration of anadromous fish.

28 (b) If a person or governmental agency desires to construct a hydraulic
29 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a
30 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or
31 log-dragging equipment in the bed of a specified river, lake, or stream, the person or

1 governmental agency shall notify the deputy commissioner of this intention before the
2 beginning of the construction or use.

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

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

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

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

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

20 **Sec. 41.14.880. Construction without approval prohibited.** If a person or
21 governmental agency begins construction on a work or project or use for which notice
22 is required by AS 41.14.870 without first providing plans and specifications subject to
23 the approval of the deputy commissioner for the proper protection of fish and game,
24 and without first having obtained written approval of the deputy commissioner as to
25 the adequacy of the plans and specifications submitted for the protection of fish and
26 game, the person or agency is guilty of a misdemeanor. If a person or governmental
27 agency is convicted of violating AS 41.14.870 - 41.14.895 or continues a use, work, or
28 project without fully complying with AS 41.14.870 - 41.14.895, the use, work, or
29 project is a public nuisance and is subject to abatement. The cost of restoring a
30 specified river, lake, or stream to its original condition shall be borne by the violator
31 and shall be in addition to the penalty imposed by the court.

1 **Sec. 41.14.890. Exemption for emergency situations.** In an emergency
 2 arising from weather or stream flow conditions, the deputy commissioner, through
 3 authorized representatives, shall issue oral permits to a riparian owner for removing
 4 obstructions or for repairing existing structures without the necessity of submitting
 5 prepared plans and specifications as required by AS 41.14.870.

6 **Sec. 41.14.895. Penalty for causing material damage.** If a person or
 7 governmental agency fails to notify the deputy commissioner of any construction or
 8 use that causes material damage to the spawning beds or prevents or interferes with
 9 the migration of anadromous fish, or by neglect or noncompliance with plans and
 10 specifications required and approved by the deputy commissioner causes material
 11 damage to the spawning beds or prevents or interferes with the migration of
 12 anadromous fish, the person or governmental agency shall be guilty of a misdemeanor.

13 **Sec. 41.14.900. Penalty for violations of AS 41.14.870 - 41.14.895.** (a) A
 14 person who violates AS 41.14.870 - 41.14.895 is guilty of a class A misdemeanor.

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

17 **Sec. 41.14.990. Definitions.** In this chapter, unless the context otherwise
 18 requires,

19 (1) "commissioner" means the commissioner of natural resources;

20 (2) "department" means the Department of Natural Resources;

21 (3) "deputy commissioner" means the deputy commissioner of natural
 22 resources appointed under AS 44.37.055;

23 (4) "fish" has the meaning given in AS 16.05.940;

24 (5) "game" has the meaning given in AS 16.05.940;

25 (6) "take" has the meaning given in AS 16.05.940.

26 * **Sec. 6.** AS 41.17.010 is amended to read:

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

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

31 (2) economic enterprises and other activities and pursuits derived from

1 forest resources warrant the continuing recognition and support of the state;

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

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

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

14 (6) subject to AS 41.17.098(c), the provisions of this chapter, and
15 regulations adopted under this chapter, with the approval of the Department of
16 Environmental Conservation, establish the nonpoint source pollution requirements
17 under state law and sec. 319 of the Clean Water Act for activities subject to this
18 chapter;

19 (7) except for activities subject to AS 41.14.840 or 41.14.870
20 [AS 16.05.840 OR 16.05.870] and regulations authorized by those sections, this
21 chapter and regulations adopted under this chapter establish the fish habitat protection
22 standards, policies, and review processes under state law.

23 * **Sec. 7.** AS 41.17.041(e) is amended to read:

24 (e) The division shall serve as staff to the board. The department, the deputy
25 commissioner [DEPARTMENT OF FISH AND GAME], and the Department of
26 Environmental Conservation shall provide technical staffing and information as
27 needed by the board.

28 * **Sec. 8.** AS 41.17.047(c) is amended to read:

29 (c) The board, working with the division [DEPARTMENT], the Department
30 of Environmental Conservation, the deputy commissioner [DEPARTMENT OF
31 FISH AND GAME], other affected agencies and parties, and the forest-dependent

1 industries, shall conduct an annual survey of research needs related to forest practices.
 2 The board shall review research proposals and shall make recommendations to
 3 promote research projects that would address these needs to the governor and the
 4 legislature.

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

6 (d) The board shall coordinate the monitoring of the implementation and
 7 effectiveness of this chapter, the regulations, and best management practices adopted
 8 under this chapter in meeting state water quality standards, fish and wildlife habitat
 9 requirements, and other forestry objectives. The board shall report annually to the
 10 governor on the effectiveness of this chapter and regulations adopted under it, with its
 11 recommendations for changes and for needed research and monitoring. The board
 12 shall notify the legislature that the annual report is available. The state forester, the
 13 **deputy commissioner** [DEPARTMENT OF FISH AND GAME], and the Department
 14 of Environmental Conservation shall each present an annual report, independently, to
 15 the board on the effectiveness of this chapter, the regulations, and best management
 16 practices adopted under this chapter that protect the resources for which they have
 17 statutory responsibility, and shall make recommendations for changes to correct
 18 procedural or substantive problems. The board shall include the reports as part of its
 19 annual report. The board shall hold hearings at least once annually in southeast,
 20 southcentral, and interior Alaska for purposes of taking public testimony on the
 21 subjects.

22 * **Sec. 10.** AS 41.17.055 is amended to read:

23 **Sec. 41.17.055. Powers and duties of the state forester**
 24 **[COMMISSIONER].** (a) The **state forester** [COMMISSIONER] may designate
 25 and operate experimental and research forests on state land consistent with the
 26 limitations of AS 38.05.300. Laboratories and other facilities may be employed in
 27 conjunction with those forests.

28 (b) The **state forester** [COMMISSIONER] may establish and maintain forest
 29 vegetation nurseries and greenhouses for planting stock to be made available, with or
 30 without charge, to organizations, institutions, government agencies, individuals, and
 31 businesses for reforestation, afforestation, and related purposes.

(c) The state forester [COMMISSIONER] is authorized to undertake cooperative forestry programs, extension services, and education programs, and to otherwise offer a full range of professional management services to the interested public. When the state forester [COMMISSIONER] considers it beneficial, the state forester [COMMISSIONER] may participate in federal assistance programs by accepting assistance in whatever form offered.

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

(e) In the administration of this chapter, the state forester [COMMISSIONER] shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The state forester [COMMISSIONER] may enter into cooperative agreements and contracts with them to carry out this chapter.

(f) The state forester [COMMISSIONER] shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(g) The state forester [COMMISSIONER] may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under AS 44.62 (Administrative Procedure Act) and AS 41.17.047.

* Sec. 11. AS 41.17.070(a) is amended to read:

(a) The state forester [COMMISSIONER] shall develop and continually maintain a long-range plan for the administration of this chapter that demonstrates that the provisions of AS 41.17.010 are being recognized and that the standards of AS 41.17.060 are being met. The state forester [COMMISSIONER] shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

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

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

* **Sec. 13.** AS 41.17.080 is amended to read:

Sec. 41.17.080. Regulations. (a) The state forester [COMMISSIONER] may adopt regulations necessary to accomplish the purposes of this chapter under AS 44.62 (Administrative Procedure Act) regarding forest practices such as

- (1) road construction and maintenance, including
 - (A) road location, construction, maintenance, and post-operation management or removal;
 - (B) landing location and construction;
 - (C) drainage structures;
 - (D) material sources and spoil disposal sites;
- (2) timber harvesting, including
 - (A) timber harvest unit planning and design;
 - (B) felling and bucking;
 - (C) cable yarding, shovel, tractor, and wheeled skidder systems;
 - (D) landing clean-up;
 - (E) slash disposal;
- (3) log transfer, sort yards, and storage facilities, including
 - (A) location, design, and construction;
 - (B) maintenance;
 - (C) closure;
 - (D) log storage, rafting, and identification;
- (4) reforestation, including
 - (A) site preparation and rehabilitation;
 - (B) prescribed burning;

(C) exemptions from reforestation requirements;

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

(6) salvage logging;

(7) vegetative management; and

(8) fire and flood hazard management.

(b) The state forester [COMMISSIONER] shall adopt regulations specifying the information to be submitted under AS 41.17.090(c) in the detailed plan of operations to enable the division to determine whether the activities comply with the requirements of this chapter.

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

(d) The state forester [COMMISSIONER] shall adopt only those regulations necessary to accomplish the purposes of this chapter and shall avoid regulations that increase operating costs without yielding significant benefits to public resources.

* **Sec. 14.** AS 41.17.085(a) is amended to read:

(a) An operator may apply through the state forester [COMMISSIONER] for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures under AS 46.35. The state forester [COMMISSIONER] shall notify the operator of the action taken.

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

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

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

and

(2) other appropriate water body types.

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

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

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

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

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

(d) Within five days after receipt of a detailed plan of operations under (c) of this section, the state forester shall distribute the information received under (c) of this section to the deputy commissioner, affected state agencies, and coastal districts, and shall distribute the information received under (c)(1) of this section to each member of the public who has asked to receive copies of notifications for the affected area.

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

(e) Within 30 days after receipt of a detailed plan of operations, the state forester shall review the plan to determine if the operations are consistent with this chapter and regulations adopted under this chapter. Operations may begin under the plan upon the expiration of the 30-day period or upon notice from the state forester that the review has been completed, whichever occurs first, unless the division has issued a stop work order for a particular portion of the plan or has notified the operator that a one-time, 10-day extension is necessary for agency review under AS 41.17.098(f). The operator may proceed with operations not covered by the stop work order, notice of field inspection, or the agency review. During the review of a detailed plan of operations, if a question arises concerning the proper classification of water body type for purposes of the standards in AS 41.17.116(a), the deputy commissioner [DEPARTMENT OF FISH AND GAME] may resolve the question.

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

(a) In administering this chapter, the state forester [COMMISSIONER] shall

1 coordinate with other agencies, the deputy commissioner, and affected coastal
2 districts that have jurisdiction over activities subject to regulation under this chapter.

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

4 (b) In a review or implementation of a detailed plan of operations under
5 AS 41.17.090 and in a decision on a proposed variation from requirements under
6 AS 41.17.087, the state forester [COMMISSIONER] shall consider the comments of
7 the deputy commissioner, each affected state agency and, where applicable, coastal
8 districts.

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

10 (c) The state forester [COMMISSIONER] shall give due deference to the
11 Department of Environmental Conservation in decisions concerning water quality.
12 The commissioner of environmental conservation retains the authority to adopt
13 nonpoint source pollution regulations for activities subject to this chapter to the extent
14 that regulations are not adopted by the state forester [COMMISSIONER OF
15 NATURAL RESOURCES] and approved by the commissioner of environmental
16 conservation under this chapter. The commissioner of environmental conservation
17 may withdraw approval of regulations adopted by the state forester
18 [COMMISSIONER OF NATURAL RESOURCES] under this chapter by following
19 the procedure for the adoption, amendment, and repeal of regulations under
20 AS 44.62.180 - 44.62.290.

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

22 (d) The state forester [COMMISSIONER] shall recognize the expertise of the
23 deputy commissioner [DEPARTMENT OF FISH AND GAME] with regard to fish
24 and wildlife habitat. On private land, the state forester [COMMISSIONER] shall
25 give due deference to the deputy commissioner [DEPARTMENT OF FISH AND
26 GAME] regarding effects on fish habitat from timber operations including variations
27 to riparian standards, designation of alternative site-specific riparian protection plans,
28 and road location decisions within riparian areas. On public land, the state forester
29 [COMMISSIONER] shall give due deference to the deputy commissioner
30 [DEPARTMENT OF FISH AND GAME] regarding effects on fish and wildlife
31 habitat from timber operations including timber harvest in riparian areas, variations to

1 riparian standards, and road location decisions within riparian areas. In making
2 decisions under AS 41.17.087, the state forester [COMMISSIONER] shall recognize
3 fish habitat as the primary value in riparian areas.

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

5 (e) In this section, "due deference" means that deference that is appropriate in
6 the context of the agency's or deputy commissioner's expertise and area of
7 responsibility and all the evidence available to support a factual assertion. Where due
8 deference is given, if the state forester [COMMISSIONER] does not agree with a
9 commenting agency or the deputy commissioner, the state forester
10 [COMMISSIONER] shall prepare a written statement of the reasons for the
11 disagreement.

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

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

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

24 **Sec. 41.17.115. Management of riparian areas; regulations.** (a) The state
25 forester [COMMISSIONER] shall protect riparian areas from the significant adverse
26 effects of timber harvest activities on fish habitat and water quality. The management
27 intent for riparian areas is the adequate preservation of fish habitat by maintaining a
28 short- and long-term source of large woody debris, stream bank stability, channel
29 morphology, water temperatures, stream flows, water quality, adequate nutrient
30 cycling, food sources, clean spawning gravels, and sunlight.

31 (b) The state forester [COMMISSIONER] shall adopt regulations for the

1 protection of riparian areas; the regulations may include higher standards of protection
 2 for fish and other public resources on land managed by the department than on other
 3 public land or private land. The regulations may vary by region of the state and must
 4 take into consideration reasonable classification of water bodies and the economic
 5 feasibility of timber operations.

6 * **Sec. 27.** AS 41.17.116(b) is amended to read:

7 (b) The state forester [COMMISSIONER] shall adopt regulations for private
 8 land outside of the coastal forest of spruce or hemlock that designate the riparian areas
 9 to be protected and the restrictions on timber harvesting operations within the areas
 10 that are necessary for their protection under the management goals established in
 11 AS 41.17.115.

12 * **Sec. 28.** AS 41.17.118(b) is amended to read:

13 (b) The department [COMMISSIONER] may impose additional riparian
 14 protection standards for timber harvest operations through the adoption of land use
 15 plans under AS 38.04.065 and under forest management plans and reports under
 16 AS 38.05.112 and AS 41.17.230.

17 * **Sec. 29.** AS 41.17.118(c) is amended to read:

18 (c) In the absence of a site-specific determination by the deputy
 19 commissioner [DEPARTMENT OF FISH AND GAME], the state forester
 20 [COMMISSIONER] shall presume for planning purposes that a stream is anadromous
 21 if it is connected to anadromous waters that are without department [DEPARTMENT
 22 OF FISH AND GAME] documentation of a physical blockage and has a stream
 23 gradient of 8 percent or less.

24 * **Sec. 30.** AS 41.17.119 is amended to read:

25 **Sec. 41.17.119. Minimum riparian standards for other public land.** On
 26 other public land, harvest of timber may not occur

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

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

1 * **Sec. 31.** AS 41.17.120 is amended to read:

2 **Sec. 41.17.120. Inspections and investigations.** The state forester
 3 [COMMISSIONER] may inspect and investigate forest land and activities on it and
 4 may enter upon it in conjunction with any operations as necessary to ensure
 5 compliance with applicable regulations and requirements and to otherwise enforce the
 6 provisions of this chapter. Other state agencies and the deputy commissioner have
 7 this same authority to the extent necessary to enforce their own laws and regulations
 8 on forest land. Those agencies, the deputy commissioner, and the state forester
 9 [COMMISSIONER] shall coordinate their actions under this section.

10 * **Sec. 32.** AS 41.17.900(c) is amended to read:

11 (c) The state forester [COMMISSIONER] shall exempt by regulation from
 12 the provisions of this chapter

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

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

17 * **Sec. 33.** AS 41.17.900(d) is amended to read:

18 (d) Notwithstanding any other provision of this chapter, the state forester and
 19 the commissioner may not employ the authority vested by this chapter so as to
 20 duplicate or preempt the statutory authority of other state agencies to adopt regulations
 21 or undertake other administrative actions governing resources, values, or activities on
 22 forest land except for

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

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

26 * **Sec. 34.** AS 41.17 is amended by adding a new section to read:

27 **Sec. 41.17.905. Independent authority.** With respect to matters governed by
 28 this chapter, the deputy commissioner does not have supervisory authority over the
 29 state forester.

30 * **Sec. 35.** AS 41.17.910(a) is amended to read:

31 (a) The deputy commissioner [DEPARTMENT OF FISH AND GAME] and

1 the state forester [COMMISSIONER] shall work cooperatively with private forest
 2 landowners and timber owners to protect, maintain, and enhance wildlife habitat to the
 3 maximum extent practicable, consistent with the interests of the owners in the use of
 4 their timber resources.

5 * **Sec. 36.** AS 41.17.910(b) is amended to read:

6 (b) The deputy commissioner [DEPARTMENT OF FISH AND GAME]
 7 shall provide educational and technical assistance and extension services to owners of
 8 private forest land or timber to assist in identifying important wildlife habitat and to
 9 assist in designing voluntary management techniques that minimize adverse effects on
 10 wildlife habitat.

11 * **Sec. 37.** AS 41.17.910(c) is amended to read:

12 (c) The deputy commissioner [DEPARTMENT OF FISH AND GAME] and
 13 the landowner shall cooperate in identifying areas of important wildlife habitat on
 14 private forest land and in developing methods for their protection. Methods of
 15 protection for wildlife habitat may include, with the agreement of the landowner, the
 16 purchase of fee title, purchase of conservation easements, and land exchanges.

17 * **Sec. 38.** AS 41.17.950(1) is amended to read:

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

20 (A) is cataloged under AS 41.14.870 [AS 16.05.870] as
 21 important for anadromous fish; or

22 (B) is not cataloged under AS 41.14.870 [AS 16.05.870] as
 23 important for anadromous fish but has been determined by the deputy
 24 commissioner [DEPARTMENT OF FISH AND GAME] to contain or exhibit
 25 evidence of anadromous fish in which event the anadromous portion of the
 26 stream or waterway extends up to the first point of physical blockage;

27 * **Sec. 39.** AS 41.17.950 is amended by adding a new paragraph to read:

28 (23) "deputy commissioner" means the deputy commissioner of natural
 29 resources appointed under AS 44.37.055.

30 * **Sec. 40.** AS 44.37 is amended by adding new sections to read:

31 **Sec. 44.37.055. Deputy commissioner.** The commissioner of natural

resources shall appoint a deputy commissioner of natural resources.

Sec. 44.37.060. Certain powers and duties of the deputy commissioner.

The deputy commissioner of natural resources appointed under AS 44.37.055 has, but not by way of limitation, the following powers and duties regarding functions under AS 41.14 and AS 41.17:

(1) to adopt regulations to carry out the purposes of AS 41.14.840 - 41.14.900;

(2) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of AS 41.14.840 - 41.14.900;

(3) to initiate or conduct research necessary or advisable to carry out the purposes of AS 41.14.840 - 41.14.900;

(4) to perform the functions assigned in AS 41.17.

* **Sec. 41.** AS 44.62.330(a)(48) is amended to read:

(48) the Department of Natural Resources [FISH AND GAME] as to functions relating to the protection of fish and game under AS 41.14.870 [AS 16.05.870];

* **Sec. 42.** AS 46.15.020(b) is amended to read:

(b) The commissioner shall

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

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of AS 41.14.870

1 [AS 16.05.870]; and shall make the record of applications, including temporary water
 2 use applications under AS 46.15.155 that have been accepted as complete,
 3 authorizations, permits, certificates, amendments, and orders affecting them available
 4 to the public on the Internet;

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

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

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

17 (A) information on the number of applications and
 18 appropriations for the removal of water from one hydrological unit to another
 19 that were requested and that were granted and on the amounts of water
 20 involved;

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

23 (C) recommendations of the commissioner for changes in state
 24 water law; and

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

27 * **Sec. 43.** AS 46.35.200(4) is amended to read:

28 (4) "permit" means each of the following licenses, permits or
 29 authorizations required to be obtained from a state agency before constructing or
 30 operating a project in the state, or any other license, permit or authorization which
 31 may be designated by the commissioner:

- 1 (A) emission control permit - AS 46.14, 18 AAC 50.120;
- 2 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;
- 3 (C) burning permit during fire season - AS 41.15.050, 11 AAC
- 4 92.010;
- 5 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;
- 6 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;
- 7 (F) brine or other salt water waste disposal permit -
- 8 AS 31.05.030, 11 AAC 22.250;
- 9 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;
- 10 (H) tidelands right-of-way or easement permit - AS 38.05.820,
- 11 11 AAC 62.810;
- 12 (I) authorization for tidelands transportation - AS 38.05.110,
- 13 11 AAC 76.205;
- 14 (J) tide and submerged lands prospecting permit -
- 15 AS 38.05.250;
- 16 (K) mineral and geothermal prospecting permits -
- 17 AS 38.05.145;
- 18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;
- 19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;
- 20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;
- 21 (O) permit to appropriate water - AS 46.15.040, 11 AAC
- 22 72.050;
- 23 (P) permit for use of timber or materials - AS 38.05.110,
- 24 11 AAC 76.185;
- 25 (Q) special material use permit - AS 38.05.115, 11 AAC
- 26 76.540;
- 27 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;
- 28 (S) limited personal use permit - AS 38.05.820, 11 AAC
- 29 62.820;
- 30 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;
- 31 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;

(V) miscellaneous state land use permit - AS 38.05.035,
11 AAC 96.010;

(W) anadromous fish protection permit - former AS 16.05.870,
5 AAC 95.100, AS 41.14.870, and regulations adopted under those
statutes;

(X) critical habitat area permit - AS 16.20.520 - 16.20.530;

(Y) state game refuge land permit - AS 16.20.050 - 16.20.060;

(Z) state park incompatible use permit - AS 41.21.020, 11 AAC
18.010;

(AA) pesticides permit - AS 46.03.320, 18 AAC 90;

(BB) surface oiling permit - AS 46.03.740, 18 AAC 75;

(CC) encroachment permit - AS 19.25.200;

(DD) utility permit - AS 19.25.010;

(EE) driveway permit - AS 19.05.020, 17 AAC 10.020;

(FF) access roads permit - AS 41.21.020, 11 AAC 18.020;

(GG) right-of-way and easement permits - AS 38.05.850,
11 AAC 58.200;

(HH) right-of-way permit - AS 38.05.850;

* **Sec. 44.** AS 16.05.840, 16.05.850, 16.05.860, 16.05.870, 16.05.880, 16.05.890,
16.05.895, and 16.05.900 are repealed.

* **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to
read:

RETIREMENT SYSTEM STATUS OF CERTAIN TRANSFERRED EMPLOYEES.

(a) Notwithstanding sec. 4, ch. 27, SLA 1983, an employee of the Department of Fish and
Game who, on the day before the effective date of this Order, as authorized by sec. 4, ch. 27,
SLA 1983 is accruing service credit as a peace officer under AS 39.35 by virtue of having
been, on June 23, 1983, in a position as a "qualified employee of the Department of Fish and
Game," and whose position is transferred to the Department of Natural Resources as a result
of this Order, continues to accrue service credit as a peace officer under AS 39.35 after the
transfer as long as the employee remains in a position described in this subsection, in the
Department of Natural Resources.

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

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

5 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **TRANSITION.** (a) Litigation, hearings, investigations, and other proceedings
8 pending under a law repealed by this Order, or in connection with functions transferred by
9 this Order, continue in effect and may be continued and completed notwithstanding a transfer
10 or repeal provided in this Order.

11 (b) Regulations adopted to implement former AS 16.05.840 - 16.05.860 and former
12 AS 16.05.870 - 16.05.895 and to implement AS 41.17 and in effect on April 14, 2003, remain
13 in effect and may continue to be implemented and enforced, consistent with the changes made
14 by this Order, until amended or repealed.

15 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by
16 this Order, and in effect on April 14, 2003, remain in effect notwithstanding this Order's
17 taking effect. Records, equipment, appropriations, and other property of an agency of the
18 state whose functions are transferred under this Order shall be transferred to implement the
19 provisions of this Order.

20 * **Sec. 47.** This Order takes effect April 15, 2003.

DATED: _____

Frank H. Murkowski
Governor

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 19, 2003

SUBJECT: Sectional Summary of Executive Order 107
(Work Order No. 23-GS1071\A)

TO: Representative Paul Seaton

FROM: George Utermohle
Legislative Counsel

You have requested a sectional summary of Executive Order 107. Executive Order 107 provides for the transfer of certain permitting functions from the Department of Fish and Game to the Department of Natural Resources and the transfer of certain functions within the Department of Natural Resources.

As a preliminary matter, note that a sectional summary of the Executive Order is not an authoritative interpretation of the Order. The Executive Order itself is the best statement of its contents.

Section 1 of the Order sets out the findings of the governor in regard to the transfer of certain permit functions from the Department of Fish and Game to the Department of Natural Resources and of certain functions within the Department of Natural Resources.

Section 2 of the Order amends AS 16.05.920(a) in order to allow the taking, possessing, transporting, selling, etc. of fish, game, or marine aquatic plants if the taking, possessing, transporting, selling, etc. is permitted under AS 41.14 or under regulations adopted under AS 41.14.

Section 3 of the Order makes a technical conforming amendment to AS 16.05.925(a) by deleting the reference to AS 16.05.860 in order to conform to the repeal of AS 16.05.860 by sec. 44 of the Order.

The amendment also adds "AS 41.14.860" to the list of statute sections that establish specific penalties for certain fish and game crimes that are not covered by the penalty described in AS 16.05.925(a). This change to AS 16.05.925(a) appears to be an error. There is no provision of AS 16.05 or AS 16.20 that would impose a penalty for violation of AS 41.14, so there is no reason to make an exception for AS 41.14.860 in AS 16.05.925(a).

Section 4 of the Order makes a technical change to AS 16.20.070 in order to replace the old statutory reference to the anadromous fish stream permits under AS 16.05.870 - .890 with the new statutory cite for those permits under AS 41.14.870 - .890.

Section 5 of the Order adds a new chapter to AS 41. This new chapter contains those permitting statutes that are transferred from the Department of Fish and Game to Department of Natural Resources. Other provisions of AS 16.05 that may be relevant to the enforcement of the permit functions transferred by the Order are also included in this chapter.

Sec. 41.14.150 sets out who is or may be authorized to enforce AS 41.14. This provision is a copy of AS 16.05.150.

Sec. 41.14.160 sets out the duty of peace officers described in AS 41.14.150 to arrest persons who violate AS 41.14. This provision is a copy of AS 16.05.160.

Sec. 41.14.165 sets out the form and disposition of citations issued for violations of AS 41.14. This provision is a copy of AS 16.05.165.

Sec. 41.14.170 sets out the power of a peace officer to execute a warrant or other process to enforce AS 41.14. This provision is a copy of AS 16.05.170.

Sec. 41.14.180 sets out the power of a peace officer to conduct a search without a search warrant. This provision is a copy of AS 16.05.180.

Sec. 41.14.190 provides for the seizure and subsequent disposition of boats, aircraft, automobiles, and other property used in a violation of AS 41.14. This provision is a copy of AS 16.05.190.

Sec. 41.14.195 provides for the forfeiture of boats, aircraft, automobiles, and other equipment used to violate the provisions of AS 41.14 or regulations adopted under AS 41.14. This provision is a copy of AS 16.05.195.

Sec. 41.14.200 authorizes peace officers to administer oaths or to take depositions for use in enforcing AS 41.14. This provision is a copy of AS 16.05.200.

Sec. 41.14.840 provides that if the deputy commissioner of natural resources considers it necessary, a person who builds a dam or obstruction across a stream frequented by fish shall provide a fishway and a device for passage of downstream migrants. The deputy commissioner shall approve the plans and specifications for the fishway and device. The fishway and device shall be kept open and provided with enough water to allow passage of fish through them. This provision is a copy of AS 16.05.840.

Sec. 41.14.850 provides that if a fishway over a dam or obstruction is determined not to be practicable by the deputy commission of natural resources because of cost, the owner of the dam shall compensate for losses resulting from the dam by paying a lump sum to the fish and game fund, providing a fish hatchery and related facilities, or paying money to the fish and game fund to expand, maintain, and operate an existing fish hatchery near the site of the dam or obstruction. This provision is a copy of AS 16.05.850.

Sec. 41.14.860 sets out the penalty for violating the requirement for a fishway or hatchery. This provision is a copy of AS 16.05.860.

Sec. 41.14.870 provides that the deputy commissioner of natural resources shall specify which waters of the State are important for spawning, rearing, or migration of anadromous fish. A person or governmental agency that wishes to construct a hydraulic project or use, divert, obstruct, pollute or change the natural flow of a body of water identified under this section or to use a vehicle in the bed of a body of water identified under this section must notify the deputy commissioner in advance and obtain prior approval from the deputy commissioner. If the deputy commissioner determines that the information provided is insufficient for protection of fish and game, the deputy commissioner shall notify the person or agency of that finding by first class mail. The person or agency may appeal the decision of the deputy commission within 90 days. This provision is a copy of AS 16.05.870.

Sec. 41.14.880 prohibits the construction on a work or project subject to AS 41.14.870 without first providing plans and specifications to the deputy commissioner of natural resources and without first obtaining approval from the deputy commissioner. Violation of this section is a misdemeanor. The cost of restoring a body of water is to be borne by the violator. This provision is a copy of AS 16.05.880.

Sec. 41.14.890 provides a limited exemption from AS 41.14.870 in the event of an emergency arising from weather or stream flow conditions. This provision is a copy of AS 16.05.890.

Sec. 41.14.895 provides that a person or governmental agency who fails to notify the commissioner of natural resources of any construction that causes material damage to the spawning beds or interferes with the migration of anadromous fish, or by neglect or noncompliance with plans and specifications required and approved by the deputy commissioner causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish shall be guilty of a misdemeanor. This provision is a copy of AS 16.05.895.

Sec. 41.14.900 provides that violations of AS 41.14.895 are a class A misdemeanor. The court shall deposit any fines collected into the general fund. This provision is a copy of AS 16.05.900.

Sec. 41.14.990 sets out the definitions for "commissioner", "department", "deputy commissioner", "fish", "game", and "take".

Sections 6 through 39 of the Order make numerous technical and conforming (and some substantive) changes to AS 41.17, commonly referred to as the Forest Resources and Practices Act, to transfer certain functions from the Department of Fish and Game to the deputy commissioner of natural resources and certain other functions from the commissioner of natural resources to the state forester.

Section 6 of the Order amends AS 41.17.010 by making a technical change to replace "AS 16.05.840 or 16.05.870" with "AS 41.14.840 or 41.14.870" in order to conform to secs. 5 and 44 of the Order.

Section 7 of the Order amends AS 41.17.041(e), relating to staff of the Board of Forestry, by replacing the reference to the Department of Fish and Game with a reference to the deputy commissioner of natural resources.

Section 8 of the Order amends AS 41.17.047(c), relating to an annual survey of research needs related to forest practices, by replacing a reference to the Department of Natural Resources with a reference to the division of forestry and by replacing a reference to the Department of Fish and Game with a reference to the deputy commissioner of natural resources.

Section 9 of the Order amends AS 41.17.047(d), relating to reports on the effectiveness of AS 41.17 in protecting certain resources, by replacing a reference to the Department of Fish and Game with a reference to the deputy commissioner of natural resources.

Section 10 of the Order amends AS 41.17.055 by transferring certain powers and duties regarding forestry matters from the commissioner of natural resources to the state forester.

Section 11 of the Order amends AS 41.17.070(a) by transferring certain planning functions under AS 41.17 from the commissioner of natural resources to the state forester.

Section 12 of the Order amends AS 41.17.070(b) by transferring certain record keeping functions under AS 41.17 from the commissioner of natural resources to the state forester.

Section 13 of the Order amends AS 41.17.080 by transferring rule making authority under AS 41.17 from the commissioner of natural resources to the state forester.

Section 14 of the Order amends AS 41.17.085(a) by transferring responsibility for accepting applications for permits required by other state agencies to operate on forest land from the commissioner of natural resources to the state forester.

Section 15 of the Order amends AS 41.17.087(b) by transferring responsibility for adopting regulations establishing standards for variations for harvesting timber in riparian areas from the commissioner of natural resources to the state forester.

Section 16 of the Order amends AS 41.14.087(c) to make a technical change in order to conform to the transfer of regulatory authority under sec. 15 of the Order from the commissioner of natural resources to the state forester.

Section 17 of the Order amends AS 41.17.090(b) by transferring certain duties of the commissioner of natural resources under AS 41.17 to the state forester.

Section 18 of the Order amends AS 41.17.090(d) by providing that the state forester provide a plan of operation submitted under AS 41.17.090(b) to the deputy commissioner of natural resources.

Section 19 of the Order amends AS 41.17.090(e) by transferring responsibility for determining the proper classification of a water body for purposes of AS 41.17.116(a) from the Department of Fish and Game to the deputy commissioner of natural resources.

Section 20 of the Order amends AS 41.17.098(a) by transferring responsibilities of the commissioner of natural resources to coordinate with other state agencies and with the deputy commissioner of natural resources to the state forester.

Section 21 of the Order amends AS 41.17.098(b) transferring the duties of the commissioner of natural resources to consider comments of state agencies and coastal districts on plans of operations under AS 41.17.090 to the state forester. The state forester is also required to consider the comments of the deputy commissioner of natural resources.

Section 22 of the Order amends AS 41.17.098(c) to transfer responsibilities of the commissioner of natural resources regarding due deference to the Department of Environmental Conservation to the state forester.

Section 23 of the Order amends AS 41.17.098(d) to transfer duties of the commissioner of natural resources concerning deference in regard to fish and wildlife habitat to the state forester. Responsibility for making determinations regarding fish and wildlife habitat is transferred from the Department of Fish and Game to the deputy commissioner of natural resources.

Section 24 of the Order amends AS 41.17.098(e) by making technical changes to the definition of "due deference" in order to conform to the transfer of functions from the commissioner of natural resources to the state forester under secs. 20 - 23 of the Order and to assignment of duties regarding fish and wildlife habitat to the deputy commissioner of natural resources under sec. 23 of the Order.

Sections 25 - 27 of the Order make technical changes to AS 41.17. 110, 41.17.115, and 41.17.116(b) in order to conform the transfer of functions of the commissioner of natural resources under AS 41.17 to the state forester.

Section 28 of the Order amends AS 41.17.118(b) by substituting "department" for "commissioner" in order to provide that the Department of Natural Resources may impose additional riparian protection standards for timber harvest operations through the adoption of land use plans and forest management plans and reports.

Section 29 of the Order amends AS 41.17.118(c) to provide that in the absence of a site-specific determination by the deputy commissioner of natural resources, the state forester is to presume that a stream is anadromous if it is connected to anadromous waters that do not have a physical blockage documented by the Department of Natural Resources and has a stream gradient of 8 percent or less. Responsibility for determining the existence of a physical blockage of a stream is transferred from the Department of Fish and Game to the Department of Natural Resources.

Section 30 of the Order amends AS 41.17.119, relating to minimum riparian standards for certain state land, by transferring certain responsibility from the commissioner of natural resources to the division of forestry.

Section 31 of the Order amends AS 41.17.120 by transferring the authority to inspect and investigate forest land from the commissioner of natural resources to the state forester. AS 41.17.120 is also amended to provide that the deputy commissioner of natural resources has authority to enforce laws and regulations on forest land and that the deputy commissioner shall coordinate his/her actions with other state agencies and the state forester.

Section 32 of the Order amends AS 41.17.900(c) by transferring authority to exempt small scale and noncommercial operations from provisions of AS 41.17 from the commissioner of natural resources to the state forester.

Section 33 of the Order amends AS 41.17.900(d) to provide that the state forester may not duplicate or preempt the authority of state agencies regarding forest land except for regulations adopted under the Coastal Management Act or regulations adopted by the Department of Environmental Conservation in regard to control of nonpoint source pollution.

Section 34 of the Order amends AS 41.17 by adding a new section to provide that in respect to matters governed by AS 41.17, the deputy commissioner of natural resources does not have supervisory authority over the state forester.

Sections 35 - 37 of the Order amend AS 41.17.910 to provide that the deputy commissioner of natural resources shall assume the duties of the Department of Fish and

Game in regard to providing assistance, education, and cooperation to private landowners in regard to wildlife habitat.

Section 38 of the Order amends AS 41.17.950(1), definition of "anadromous water body", to substitute a reference to the Department of Fish and Game with a reference to the deputy commissioner of natural resources and references to AS 16.05.870 with references to AS 41.17.870.

Section 39 of the Order amends AS 41.17.950 by adding a definition of "deputy commissioner".

Section 40 of the Order amends AS 44.37 by adding new sections providing for the appointment of a deputy commissioner of natural resources and providing for certain powers and duties of the deputy commissioner of natural resources.

Section 41 of the Order makes a technical, conforming change to AS 44.62.330(a)(4), relating to administrative adjudications under the Administrative Procedure Act, by substituting references to the Department of Natural Resources and AS 41.14.870 for references to Department of Fish and Game and AS 16.05.870, respectively.

Section 42 of the Order makes a technical, conforming change to AS 46.15.020(b) by substituting a reference to AS 41.14.870 for a reference to AS 16.05.870.

Section 43 of the Order makes technical, conforming changes to AS 46.35.200(4)(W) by adding a reference to AS 41.14.870 and to regulations adopted under that statute.

Section 44 of the Order repeals AS 16.05.840 - .860, which provide for regulation of dams and obstructions to passage of fish, and AS 16.05.870 - .900, which provide for regulation of activities that affect anadromous fish streams. The provisions of the repealed statutes are reenacted as part of AS 41.14 in sec. 5 of the Order.

Section 45 of the Order provides that employees of the Department of Fish and Game who are in the "peace officer retirement program" and whose positions are transferred to the Department of Natural Resources as a result of this Executive Order may continue to accrue service credit as a peace officer under AS 39.35 as long as they remain in those positions.

Section 46 of the Order is the savings clause. Litigation and other proceedings pending under a law repealed or amended by this Order are to continue. Regulations adopted to implement a statute repealed or amended by the Order are to remain in effect until they are repealed. Contracts, rights, liabilities, and obligations created by or under a law repealed or amended by the Order that are in effect on the effective date of the Order remain in effect. Records, equipment, appropriations, and other property of an agency whose functions are transferred by the Order are transferred to the new agency to implement the Order.

Representative Paul Seaton
February 20, 2003
Page 8

Section 47 of the Order provides that the Order takes effect April 15, 2003.

GU:med
03-168.med

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

CSHB041(FSH)

() Publish Date:

Identifier (file name): HB041CSFSH-DNR-OHMP-01-09-08

Dept. Affected: Natural Resources

Title: Transfer Habitat Division from DNR to F&G

RDU Resource Development

Component: Office of Habitat Mgt. & Permitting

Sponsor: Rep. Gara

Requester: H RES

Component Number: 2682

Expenditures/Revenues

(Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services	(1,590.5)	3,180.9					
Travel	(69.2)	138.4					
Contractual	(271.5)	543.0					
Supplies	(57.9)	115.8					
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	(1,989.1)	3,978.1	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	(1,462.1)	2,924.1						
1007 Interagency Receipts	(291.8)	583.5						
1061 CIP Receipts	(106.5)	212.9						
1108 Stat Des Prog Receipts	(128.7)	257.6						
TOTAL	(1,989.1)	3,978.1	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time	(37)	37						
Part-time	(1)	1						
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This fiscal note reflects the transfer of one-half of the FY09 Governor's original budget request effective January 1, 2009. For simplicity of this fiscal note, 50% of the budget is identified as transferring on January 1, 2009; however it is likely that many one-time costs (such as building leases) paid in the first half of the year would result in less than half actually being available for transfer.

DNR assumes that any additional one-time costs associated with the transfer will be covered by Fish & Game and are not included in this fiscal note.

Prepared by: Kerry Howard
 Division: Office of Habitat Management and Permitting
 Approved by: Tom Irwin
 Natural Resources

Phone 465-3176
 Date/Time February 4, 2008
 Date February 4, 2008

**United Southeast Alaska Gillnetters**

P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email: usag@kpunet.net

February 14, 2007

The Honorable Paul Seaton, Chairman
House Fisheries Committee
State Capitol, Room 102
Juneau, AK 99801

Sent Via Fax to: 907 465-3472

Dear Chairman Seaton,

The United Southeast Alaska Gillnetters (USAG) strongly supports HB 41, which would transfer the responsibilities of the Habitat Division from DNR to ADF&G. We believe the basic mission of DNR and ADF&G are different in function and perspective and that our fisheries resources cannot be adequately protected under the existing structure which places responsibility for fish habitat protection with DNR. We believe DNR is charged with the responsibility to conserve and develop the lands and resources of the State of Alaska for the good of all the people of Alaska. Within that mandate, the need to evaluate and protect the fishery resource from development is inconsistent with DNR's other mandates. The responsibilities of the Habitat Division were moved by the Murkowski administration specifically to facilitate the development of resources other than those of fish and game. If this development threatened fish or game resources, that was taken as a secondary consideration to development interests. USAG does not believe this is acceptable to most Alaskans.

We would like to offer two examples where we feel the current system has not worked or is not working. The first deals with the decision by DNR to allow jet boat traffic on the Chilkat River during the spring outmigration of salmon fry and in the fall during salmon spawning season. Local ADF&G biologists responsible for this area had previously found that such traffic should not be allowed during this time period. In spite of ground observation of serious erosion and the fact that studies of impact had not been done on river systems of this size with jet boats of the size in use, DNR approved the extension of the operating season into the previously restricted time periods. This action is in all ways contrary to the precautionary principle of development that requires that if data is unavailable for a proposed activity, it should not be permitted until potential impacts can be determined and analyzed. Instead, DNR determined that the activity should be permitted until damage to the resource could be proven. The philosophy of proceeding with an activity or development until it is PROVEN that damage is occurring to other resources is why salmon runs and populations are such an issue of concern all along the west coast from California to Washington State. Many of these salmon runs are

currently listed as endangered and attempts to restore them is resulting in significant costs and economic impact in the affected areas. We must avoid making this mistake in Alaska. The precautionary principle of management as recognized by the United Nations is the best and may be the only way to assure protection of our renewable resources.

The second example we ask the House Committee on Fisheries to consider concerns the Tulsequah Chief mine project located just across the border in British Columbia on the Tulsequah River, a major tributary of the Taku River. This mine development was originally approved by the BC authorities using road access to the mine site. Now Redcorp Ventures is proposing to assess the mine site using an air cushion barge towed by an Amphitrac tug. When they visited Juneau to meet with concerned parties about this new proposal they met with the Juneau Chamber of Commerce, a group of concerned fishermen, DNR, and the Governors Office. They had no contact with ADF&G. This is in spite of the fact that the tug is a wheeled vehicle that at low water in the Taku may be "driving" on the riverbed; that tug and barge traffic would occur during the spring out-migration of salmon fry when other construction activities are normally shut down for protection of the migrating fry; that operations would occur in the fall during salmon migration and spawning; that tug and barge operations would occur through a traditional gillnet fishery; that tons of heavy metals in the form of ore concentrate would be ferried up and down the Taku River. **That all of this activity is proposed to take place in the Taku River drainage, one of the most important and productive salmon systems in Alaska and the Department of Fish and Game is not even important enough to warrant an initial orientation visit from the company speaks loudly about the importance that Alaska is currently placing on its fisheries resources.** We at USAG believe this is totally unacceptable. No Memorandum of Understanding between DNR and ADF&G can compensate for this lack of consideration for our fisheries resource.

We thank the House Fisheries Committee for its consideration of our concern and we strongly support your approval of HB 41. Thank you.

Yours truly,



Kenneth Duckett
Executive Director

cc: Governor Sarah Palin via fax to: 907-465-3532
United Fishermen of Alaska via email
Denby Lloyd, Commissioner ADF&G via fax to: 907-465-2332
Tom Irwin, Commissioner DNR via fax to: 907-465-3886

From: Matthew LaCroix [mailto:lucidi@mtaonline.net]

Sent: Wednesday, February 14, 2007 1:25 PM

To: Rep. Paul Seaton; Rep. Bryce Edgmon; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Kyle Johansen; Rep. Lindsey Holmes; Rep. Peggy Wilson; Rep. Les Gara

Subject: Document attachments to Matthew LaCroix's testimony on HB 41

Chairman Seaton, members of the Special Committee, and Representative Gara,

This morning I provided testimony on HB 41 and expressed support for returning Fish Habitat permitting and timber review authorities to the Department of Fish and Game (ADF&G). In my verbal and written testimony, I provided examples of how the transfer of these authorities to the Department of Natural Resources (DNR) has changed the way projects are reviewed. This email contains actual agency documents that highlight these differences. I hope that they may be of value to you.

As I stated in my testimony and in response to questions, I believe that most of the biologists at the Office of Habitat Management and Permitting (OHMP) are conscientious and doing the best they can to protect the resources under difficult circumstances. I was never subject to intimidation of any kind during the two and one-half years that I worked for OHMP. The reality is, however, that there are very real sideboards placed on what biologists are allowed to say. If you go outside of these boundaries, your work will be edited. If you push the issue, the project will be taken away and given to someone less willing to stick their neck out. After a while, biologists get tired of pushing. Some keep their heads down and "go along to get along." Others leave when the opportunity presents itself.

As was pointed out in the testimony of others and in comments from Representative Gara, the current arrangement places an OHMP biologist in the impossible position of having to stand up alone, without any authority or support, against their supervisor, director, and commissioner when DNR takes a position that will impact a fish or wildlife resource. Regardless of the integrity of these biologists, there is no way that the interests of resource protection can ever prevail under this system.

Permitters at ADF&G never faced this situation. Not because the ADF&G commissioners never made a policy decision that had negative implications for the resource, but because permittees were never a lone voice within their department. There were always plenty of management and research staff within the ADF&G that had the same information and voiced the same concerns. Issues were addressed, not swept under the rug. When a resource protection versus development situation did develop, the policy discussions were between commissioners with equal authority.

The attached documents, which I sincerely hope go through, relate to seven recent project reviews. These are public documents, nothing confidential or proprietary. The reviews were: coal exploration within the Matanuska Valley Moose Range, the proposed Chuitna coal mine near Beluga, the use of explosives within anadromous water bodies, re-issuance of Nationwide Permits by the Army Corps of Engineers (COE), the submittal of comments about the prospective Pebble mine, re-issuance of a Coe General Permit for placer mining, and permitting of the Rock Creek mine near Nome.

In the case of the coal exploration within the Moose Range, the document is the comments provided by OHMP. ADF&G was not initially given the opportunity to comment on the application even though the Alaska Surface Coal Mining Control and Reclamation Act, the cooperative agreement set up to implement that act, the Moose Range Management Plan, and the ADF&G/DNR MOU all identify ADF&G as a primary reviewer. OHMP did not consult any of these

documents, did not contact ADF&G, and conducted a review that did not meet the standards established in the documents.

In the case of the proposed Chuitna coal mine, I am submitting the scoping comments prepared by ADF&G and OHMP. The ADF&G comments were submitted as input to OHMP. You will see that not all of our input was incorporated.

Regarding the use of explosives within anadromous water bodies, I have included the permit denial issued to ADF&G, along with copies of authorizations that OHMP issued to the Forest Service for similar work along with a report detailing that work. Last year, the legislature authorized substantial additional funding to ADF&G to research and address the causes of decline of Susitna River sockeye salmon stocks. A small component of this project examines the impediment to access upstream spawning habitat from beaver dams. ADF&G's proposal incorporates more protections than required by OHMP for similar projects, yet they denied the project.

The next document is the comments submitted by OHMP during a coastal consistency review of re-issuance of COE Nationwide Permits.

Next is a memorandum from OHMP to ADF&G explaining why they would not pass on to the state's Large Mine Team an ADF&G memo identifying specific wildlife research needed as part of the environmental baseline for the Pebble mine.

Also included are memoranda from ADF&G and OHMP regarding the re-issuance of a COE permit for placer mining. The ADF&G memo was submitted as input to OHMP. OHMP did not incorporate all of ADF&G's comments. Not because they disagreed with our assessment of the well-documented impacts of mining, or because they disagreed with the well-understood methodologies for reclamation, but because our proposed requirements would increase reclamation costs for mine operators. Our proposals did not fit with their strategy for working with the COE to address the issue. There is also an email addressing our different opinions.

Lastly, I have included an email string regarding the Rock Creek mine outside of Nome. This controversial project must be smaller than "a breadbox," because OHMP did not contact or solicit input from ADF&G.

My point in providing this testimony is not to attack the work that is being done or the integrity of biologists and supervisors from either department. I am simply pointing out that the current system is broken and needs to be repaired. I believe that it was deliberately broken in order to tip the scales in favor of development, and that public statements made by our former governor bear this out. It will ultimately be up to the members of this committee, the legislature as a whole, and the Palin administration to discern the truth of the matter and make things right. I only hope this information can assist with that effort.

If I can provide any additional information, or respond to questions you may have, I would be happy to do so. I have stuck my neck out this far, so a little farther couldn't hurt me. There are many biologists within both departments that feel similarly and have information that they could provide the committee. Perhaps my testimony will encourage them to do so. I do know that Betsy McCracken, who has also worked as a permitter for both departments, intends to submit information to the committee. I would encourage you to carefully review and consider any information that she sends you.

Sincerely,

Matthew LaCroix
907-354-3748

P.S. I will let you know if I get transferred to Walrus Islands State Game Sanctuary as a result of my testimony.



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources
Office of Habitat Management and Permitting

1800 Glenn Highway, Suite 12
Palmer, Alaska 99645-6739
Phone: (907) 745-7363 Fax: (907) 745-7369

TO: Russell Kirkham, Geologist
Department of Natural Resources
Anchorage

DATE: December 21, 2006

FROM: Mike Bethe, Habitat Biologist
Area Manager
Palmer, Mat-Su Area *MB*

Case Number: FH-06-IV-0479

SUBJECT: Comments, Coal Exploration Permit Application for Mental Health Land Coal Lease
MHT 9200375: Chickaloon Coal Project
Full Metal Minerals/Alaska Earth Sciences, Inc.

Pursuant to AS 41.14.870(b) and AS 41.14.840, the Department of Natural Resources Office of Habitat, Management, and Permitting (OHMP) has reviewed the coal exploration permit application referenced above. This application seeks to access various locations and to perform test drilling to assess the coal beds within the applicant's lease area. There are several initial bore sites identified in the application, but subsequent drilling sites will apparently depend on the results from the initial exploration.

Based on available documented fisheries information and the permit application, there are several water bodies specified by the Deputy Commissioner as being important for the spawning, rearing or migration of anadromous fishes within the coal lease area. These streams include the Matanuska River (stream number 247-50-10220), the Chickaloon River (247-50-10220-2171), Kings River (247-50-10220-2115), and Coal Creek (247-50-10220-2172). There are likely other resident fish-bearing streams present within the lease. The applicant would require a Fish Habitat Permit from OHMP to cross or to perform any work below the ordinary high water line of the anadromous streams. Depending on the scope of the work, permits from OHMP may also be required for activities impacting water bodies that support resident fish species. Portions of the lease area are within the Alaska Coastal Zone. A Coastal Project Questionnaire must be completed and reviewed before any work is permitted in this area.

Please be advised that these comments do not relieve the applicant of the responsibility for securing other state, federal or local permits, and that they are still required to comply with all other applicable laws. If you have any questions, please feel free to contact me at the above address and telephone number, or by e-mail at mike_bethe@dnr.state.ak.us.

Sincerely,

Edmund J. Fogels, Acting Deputy Commissioner

By: Michael L. Bethe, Habitat Biologist
Office of Habitat Management and Permitting

-kab

cc: K. Kruse, DNR/DML&W

A. Ott, DNR/OHMP

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

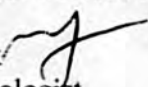
Division of Sport Fish

**FRANK H. MURKOWSKI,
GOVERNOR**

333 Raspberry Road
Anchorage, AK 99518-1599
PHONE: (907) 267-2342
FAX: (907) 267-2464

MEMORANDUM

TO: Megan Marie
Habitat Biologist
Office of Habitat and Permitting
Department of Natural Resources

FROM: Mark Fink 
Habitat Biologist
Division of Sport Fish

DATE: July 20, 2006

SUBJECT: Scoping Comments – Chuitna Coal Project

The Alaska Department of Fish and Game (ADF&G) has conducted a preliminary review of the Draft Scoping Document prepared by the U.S. Environmental Protection Agency (EPA) for the Chuitna Coal Project Supplemental Environmental Impact Statement (SEIS). The proposed project is a surface coal mining and export development located near the community of Beluga, approximately forty-five (45) miles southwest of Anchorage. The project includes the mine itself and associated support facilities such as an access road and utility corridor, coal transport conveyor, personnel housing, airstrip facility, and export terminal with a ten thousand (10,000) foot long trestle and vessel berth. The anticipated mine life based on proven reserves is twenty-five (25) years. We are submitting the following comments to the Office of Habitat Management and Permitting (OHMP) pursuant to the Memorandum of Agreement between our two departments.

ADF&G is mandated under state law to "manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-being of the state . . ." (AS 16.05.020). Managing Alaska's fish and wildlife resources and protecting the habitat that sustains them are integral to the health of the state's economy. The overall mitigative goal of the department is to maintain or establish an ecosystem with the project in place that is as nearly desirable as the ecosystem that would have been there in the absence of that project. Our comments follow the department's mitigation policy which describes the decision levels and order through which a project is reviewed for mitigation.

" . . . shall manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state"



GENERAL COMMENTS

1. Baseline Studies and Impact Assessment: The fish and wildlife species in the area support substantial commercial and sport uses. We anticipate that the identification of potential impacts to the fish and wildlife resources, their habitats, and human use of these resources within the area of proposed mine facilities will be a significant component of the SEIS, as well as the operation and reclamation plans prepared by the applicant. It is imperative that the baseline studies be of sufficient detail to allow for the identification and avoidance of potential impacts to habitats or uses.

It is equally critical that agencies and the public be allowed adequate time to review the results of these studies. Given the prospective size of this mine and the potential economic and ecological ramifications associated with its development, it is imperative that reviewers be able to conduct a thorough and detailed assessment of the baseline data. The SEIS timeline should allow time for the collection of additional data if existing data is determined to be inadequate.

The baseline data for groundwater and water chemistry have not yet been released, but the results of these studies will be of critical importance for assessing potential impacts to aquatic resources from the development of the mine site. Development of the Logical Mine Unit 1 (LMU 1) that changes the permeability and contours of the watershed could have significant and unforeseen impacts to aquatic habitats and fish populations. At a minimum, this data should include modeling of groundwater to generate dewatering discharge volumes, as well as water chemistry and physical characteristics that may be affected by development such as temperature for both surface and groundwater.

The assessment of potential impacts will require information on all project components, including such details as the identification of the locations of material borrow sources for the construction of roads, parking pads, and other facilities requiring fill borrow material. Borrow sites should be located to avoid adverse affects on fish and wildlife habitat and water quality. Material disposal sites should be assessed similarly. Detailed information on other project components such as the wastewater treatment mechanisms (multi-cell sediment ponds, oil/water separator, package plant for treatment of sanitary waste) will also be needed.

We cannot overemphasize that all project components must be designed to avoid and minimize adverse impacts on fish, wildlife, their habitats, and related environmental values. State statutes and regulations require that mining activities will be conducted in a manner that minimizes: (a) the disturbance of drainage systems; (b) changing the character, polluting, or silting of state waters; and (c) the disturbance of fish and wildlife resources. Assessment of the project must include potential impacts to often-overlooked species such as resident fish or intertidal invertebrates. The SEIS should also take into account changes in technology or regulations that have occurred since the original EIS was produced.

2. Cumulative Effects: Project impact assessment must include indirect and cumulative impacts, such as the potential impacts to fish, wildlife, and habitat associated with increased access and use of the Susitna Flats State Game Refuge, or the impact of increased access from project infrastructure and projected changes in harvest pressure.

3. Human Uses: All project components should also be designed to avoid and minimize impacts to access and existing uses such as set-netting, recreational fishing and hunting, and subsistence activities. Assessing the potential impacts of the various project components to human use of fish, wildlife, and plant resources involves a separate and distinct analysis from assessing impacts to the resources themselves. Information pertaining to the commercial, sport, and subsistence harvest of fish, wildlife, and wild plant resources, including harvest levels and harvest locations, should be collected to make this assessment possible.

Every effort must be made to maintain public access to and along the beaches and other lands in public ownership within the project boundary. The economic analysis from the original EIS can no longer be considered current, and needs to be updated. It should assess the potential loss of fisheries resources, habitats and sport angler dollars due to the development of the project. Social impacts should also be addressed, and the assessment of both social and economic impacts should be based on good estimates of salmon abundance in the affected drainages.

4. Mitigation/Reclamation: The SEIS should also address how unavoidable habitat impacts from the development of project infrastructure will be mitigated. It is our expectation that all unavoidable habitat impacts will be fully mitigated, whether they be to wetland, aquatic, terrestrial or intertidal habitats. In order to be able to adequately assess alternative mitigation options, a sufficient description of baseline conditions and the expected level of impact(s) is needed along with an economic valuation of the impacted resources. The updated economic analysis may be used to develop potential value-based mitigation requirements. In addition, plans for reclamation must be of sufficient detail to evaluate the potential for success, including timelines to fully realize restored habitat and ecological functions.

SPECIFIC CONCERNS

Project Infrastructure

5. Aquatic Resources: ADF&G believes that there should be no loss of aquatic habitat at any time during or after the life of the project. These are important habitats and valuable fish stocks. There are approximately seven and one-half (7.5) stream miles within the footprint of LMU 1. Approximately five and one-third (5.3) of these stream miles have been specified pursuant to AS 41.14.870(a) as being important to the spawning, rearing, or migration of anadromous fish.

The main stream is Middle Creek (Stream No. 247-20-10010-2030), of which approximately three (3) miles lie within LMU 1. Three unnamed tributaries of Middle Creek also lie within LMU 1. All three have been specified pursuant to AS 41.14.870. Their stream numbers are: 247-20-10010-2030-3012, 247-20-10010-2030-3018, and 247-20-10010-2030-3021. These four streams provide five and one-third (5.3) miles of rearing habitat for coho salmon, three (3) miles of spawning habitat for coho and pink salmon, and two and one-quarter (2.25) miles of rearing habitat for chinook salmon. These streams also support rainbow trout and Dolly Varden char.

Middle Creek is a tributary of the Chuitna River. The department lacks any productivity information for this tributary. The only data archived by the department on the Chuitna River drainage is catch and harvest numbers of sport caught fish through the Statewide Harvest Survey and a chinook salmon index count, both conducted on an annual basis. The Chuitna River provides the greatest opportunity for harvest of chinook salmon among West Cook Inlet rivers and also supports valuable coho and rainbow trout fisheries. Loss of aquatic habitat in the Chuitna River drainage will likely impact the sport and personal use fisheries.

The extensive loss of such valuable aquatic habitat is not consistent with the department's mandate to manage, protect, maintain, or enhance aquatic resources for the benefit of the state. Those familiar with coal mining under the Surface Mining Control and Reclamation Act have asserted that the technology exists to re-establish a fully functioning stream during reclamation after the area has been mined. If this is the case, we would advocate that the applicant construct a temporary diversion of the affected creeks, which would maintain the valuable public trust resource during the mining phase of the project.

We propose that Middle Creek be fully surveyed and re-established in the western portion of the LMU. A temporary diversion of Middle Creek would be constructed in the dry, and once it is established and functioning as habitat similar to the existing Middle Creek, then the mine could be developed over portions of Middle Creek. Surface and groundwater from the project area and pit would be discharged to infiltration galleries or wells at the headwaters of the temporary Middle Creek diversion. Portions of existing Middle Creek would be incorporated into the pit only as necessary, and would be isolated from downstream portions, fish will be removed, the channel will be de-watered, and the excavation can occur.

When mining has been completed where the existing Middle Creek used to be, the site should be re-contoured so that the stream can be re-established to pre-project conditions. A complete survey, including location, elevations, profile, cross-sections, substrate, discharge, temperatures, pH, surface and groundwater partitioning should be performed on Middle Creek prior to any disturbance so that the temporary diversion of Middle Creek can be established, and the existing stream can be re-established during reclamation to replicate the natural stream as closely as possible. Sufficient hydrologic data should also be collected to describe the seasonal and long-term flow characteristics of the streams both within and downstream of LMU 1.

Baseline studies should assess existing levels of production by collecting information about the spatial and temporal distribution, and use of specific habitats by salmon and resident fish species within Middle Creek and its tributaries. Important habitat areas for resident fish, including spawning, rearing, and overwintering, should be identified so that they can be re-created within the temporary diversion of Middle creek and its tributaries. In addition, data on natural egg retention, pre-spawning mortality, fecundity, and rearing habitat should be collected so that the success of the constructed streams can be evaluated.

6. Human Uses: The SEIS should evaluate alternatives to avoid or minimize adverse impacts to the commercial, sport, and subsistence use of fish and wildlife that occur within and adjacent to the proposed mine site and associated facilities. Game Management Unit (GMU) 16B is a

state subsistence use area for Tier II moose hunt TM569 South Beluga including drainages south and west of the Beluga River, Beluga Lake, and Triumvirate Glacier. All of GMU 16B is also a federally recognized spring/summer subsistence migratory bird hunting and egg gathering area.

Local and non-local trappers have traplines in the area and use snowmachines, highway vehicles, and light fixed-wing aircraft to access trapping areas in the late fall and winter months. Aerial trapping and shooting of wolves also occurs in the area of the proposed mine.

Both local and non-local hunters access the area locally by vehicle and by light aircraft for the purpose of hunting ptarmigan, ruffed and spruce grouse. Fall hunting occurs along the gasline and other service roads throughout the area north and south of the Beluga River. Winter hunting of ptarmigan occurs along the service roads and in the higher elevation areas where snow pack allows landing by light, fixed wing aircraft. Snowmachines are also used to access areas above and below tree-line where ptarmigan occur.

The Beluga area is a popular fall waterfowl hunting area for both local and nonlocal hunters. Access to the tidal flats, and local lakes and wetlands is by light aircraft, and by vehicle along the local service roads.

Personal use fishing occurs during the ice-free months in local lakes and streams draining into the Beluga River. The Beluga River tributaries, Three-mile Creek and the Chvitna River are moderate to heavily used by recreational fishermen to catch rainbow trout, Dolly Varden Char, and primarily chinook and coho salmon. A large run of hooligan goes into the Beluga river. These fish are harvested on the beaches of at Tyonek and Beluga.

During winter months, snowmachine and light aircraft on skis are use to access frozen lakes and streams in the area by local and nonlocal fishermen to fish for trout and other locally occurring freshwater finfish species.

Road, Conveyor, and Utility Corridor

7. **Stream Crossings:** The proposed road, conveyor, and utility corridor would cross three (3) streams that have been specified pursuant to AS 41.14.870 as being important to the spawning, rearing, or migration of anadromous fish. These are: Threemile Creek (Stream No. 247-20-10002), its unnamed tributary (Stream No. 247-20-10002-2019), and also Lone Creek (Stream No. 247-20-10010-2020). Stream number 247-20-10002-2019 would be crossed twice. All crossing structures, whether for road, conveyor, or utilities, should maintain the full hydrologic and ecologic functioning of the stream, taking into consideration maintaining the integrity of the floodplain. Structures should span the full width of these streams and should utilize stream simulation design as a minimum standard.
8. **Wildlife Movements:** The connectivity of wildlife habitats for species such as moose and bears is very important. The wildlife baseline studies, as well as information from the ADF&G, should be used to identify important wildlife movement corridors so that these can be maintained. Specific information concerning species distribution, abundance, and

temporal use of most habitats remains limited, so additional studies may be required to accurately assess the potential impacts of mine development. In order to allow for wildlife movement, portions of the conveyor will need to be elevated. At a minimum the conveyor should be elevated at identified travel corridors, and at stream and wetland crossings. In addition, the potential loss of coal, including coal dust, from the conveyor needs to be addressed. Those portions of the conveyor that cross streams and wetlands should have containment structures to prevent such loss.

9. Wildlife-human Interactions: The development of the access roads and increased human activity that will accompany mine development may increase the potential for wildlife-vehicle collisions, access to presently remote areas, and harvest effort. We also recommend that mine and port operational plans include measures to avoid the habituation of bears to humans or garbage. These plans, as well as protocols for dealing with habituated bears, should be developed in cooperation with the ADF&G.

Ladd Landing, Trestle, and Berth:

Development of the proposed mine will require a loading facility to transfer the coal to large, ocean going vessels for transport to secondary processing sites. We expect that the SEIS will address potential alternatives to the proposed landing location, intertidal bulkhead, and approximate 2-mile long trestle. We also recommend that the SEIS examine potential impacts to the intertidal and nearshore habitat, sediment transport, marine mammal and fish movements, and current public uses of the beach and coastal waters.

10. Marine Mammals: The Cook Inlet beluga whale population is designated as a depleted stock under the Marine Mammal Protection Act (MMPA). The SEIS should address potential noise impacts that may result from the construction, especially the driving of piles, and operation activities, including the transfer of coal along the trestle and increased vessel traffic in the area. The SEIS should also evaluate the potential impact of the physical structure on local beluga movements and seasonal migrations and the potential impact of coal dust or residue that enters the marine environment and effects on belugas directly or indirectly through their prey.

The entire coastal area between the mouths of the Susitna, Ivan, Lewis, Theodore, and Beluga rivers south along the west shore of the inlet is heavily used by harbor seals for pupping and rearing of young, feeding on finfish and potentially some invertebrate species, and for local migrations during tidal inflow and outflow. Seals transit the waters along the shoreline on every tidal cycle throughout the ice-free months. There may be some opportunistic use of the area during winter months when ice conditions are light in order to feed on populations of tomcod that spawn in the lower reaches of the Chuitna River and possible Three Mile and Beluga River. Seal pupping and nursery haulouts are located at the mouths of the above mentioned rivers and are critical to pup survival.

11. Terrestrial Wildlife: The shoreline beach is an important black and brown bear feeding area in the early spring months when runs of hooligan are beached during periods of moderate to heavy surf. Bears travel the beaches in search of stranded fish and other animals and feed on these sources of food. This is important during early spring prior to greenup of vegetation in

snow-free areas. Throughout the summer months bears continue to use the beaches in search of food.

12. Human Uses: Nearshore, intertidal, and estuarine habitat such as that at the mouth of the Chuitna River are of great importance to larval and juvenile fish (both marine and anadromous) and shellfish. A broad range of invertebrate and groundfish resources have been, or currently are, harvested in both commercial and noncommercial fisheries in Cook Inlet.

Commercial setnet fishing occurs along the beaches of the west side of Cook Inlet including the vicinity of Beluga and Tyonek beginning in the last week of May throughout the summer months into September. Fishermen target Chinook during May and June, sockeye in June and July, and coho during August and September. Both local and non-local commercial fishermen fish in the area of the proposed trestle dock facility.

Subsistence salmon setnet fishing occurs on the beaches of the Tyonek Subdistrict between May 15th and October 16th. Residents of Tyonek, Beluga, and Shirelyville obtain permits for setnet fishing on designated days throughout the season.

Tyonek residents who are Alaska Natives qualify under the MMPA to harvest harbor seals and beluga whale. Tyonek residents take harbor seals as part of their annually subsistence harvests. The village of Tyonek has an allocation (1 or 2 whales) under the new beluga harvest restrictions on Cook Inlet beluga whale.

The SEIS should evaluate the potential impacts to harvest activities that may occur as a result of: (a) upstream and down-stream sedimentation resulting from a solid fill intertidal dock facility; (b) changes to fish and marine mammal migration patterns; (c) boat restrictions associated with loading activities near the trestle and vessel terminal that may limit and/or restrict small boat access to beach sites and inlet waters; and (d) increased wave action generated by large cargo vessels.

13. Water Quality: The SEIS should address dust control on the coal stockpiles at the Ladd landing facility and that portion of the conveyor that extends into the marine environment and also the disposal alternatives for waste water that is generated.

That concludes our scoping comments for the development of the Chuitna Coal Project SEIS. Please contact me with any questions you may have at 267-2338.

cc: T. Kavalok, ADF&G/WC
G. Hilderbrand, ADF&G/WC
R. Stanek, ADF&G/ Subsistence
J. Regnart, ADF&G/CF
S. Ivey, ADF&G/SF
B. Stratton, ADF&G/SF
T. Rothe, ADF&G/ WC
J. Fall, ADF&G/Subsistence
J. Fox, ADF&G/CF
D. Rutz, ADF&G/SF
J. Klein, ADF&G/SF
T. Brookover, ADF&G/SF



MEMORANDUM

Department of Natural Resources
Office of Habitat Management and Permitting

STATE OF ALASKA



TO: Tom Crafford
Large Mine Project Leader
Department of Natural Resources

DATE: August 3, 2006

TELEPHONE: 269-6987

FAX: 269-5673

FROM:  Stewart Seaberg
Habitat Biologist

SUBJECT: Chuitna Coal SEIS
Scoping Comments

The Alaska Department of Natural Resource, Office of Habitat Management and Permitting (OHMP), has conducted a preliminary review of the Draft Scoping Document prepared by the U.S. Environmental Protection Agency (EPA) for the Chuitna Coal Project Supplemental Environmental Impact Statement (SEIS). The proposed project is a surface coal mining and export development located in western Cook Inlet, approximately 50 miles west of Anchorage. The proposed project includes the mine itself and associated support facilities such as an access road and utility corridor, coal transport conveyor, personnel housing, airstrip facility, and export terminal. The anticipated mine life is 25 years. We are submitting the following comments to the Office of Project Management and Permitting and have included, as appropriate, input from the Alaska Department of Fish and Game as provided to OHMP as a Tier III category review pursuant to the Memorandum of Agreement between OHMP and ADF&G. These comments are intended for use in developing the State's coordinated response to the EPA for the scoping phase of the Chuitna Coal Project.

GENERAL COMMENTS

1. Baseline Studies and Impact Assessment: The fish and wildlife species in the area support substantial commercial, subsistence, and sport uses. We anticipate that the identification of potential impacts to the fish and wildlife resources, their habitats, and human use of these resources within the area of proposed mine facilities will be a substantial component of the SEIS, as well as the operation and reclamation plans prepared by the applicant. It is important that the baseline studies be of sufficient detail to allow for the identification and avoidance of potential impacts to habitats or uses. The SEIS timeline should allow for the collection of additional data if existing data is determined to be inadequate.

The baseline data for surface hydrology, groundwater, and water chemistry will be important in assessing potential impacts to aquatic resources. These data should include water chemistry and physical characteristics that may be affected by development such as temperature for both surface and groundwater. Groundwater models should be used to generate dewatering discharge volumes in the project area. Sufficient hydrologic data should also be collected to describe the seasonal and long-term flow characteristics of the streams both within and downstream of the mine area boundary.

The assessment of potential impacts will require information on all project components, including the proposed locations of material borrow and disposal sites for the construction of roads, parking pads, and other facilities requiring fill borrow material. All project components must be designed to avoid and minimize: (a) the disturbance of drainage systems; (b) changing the character, polluting, or silting of state waters; and (c) the disturbance of fish and wildlife resources.

2. Cumulative Effects: Project impact assessment must include analysis of cumulative impacts from the proposed project and other current and reasonably foreseeable future developments in the entire Cook Inlet region. The Draft Scoping Document solicits information on past, present, and future actions within a fifty mile radius of the proposed Chuitna Coal Project. We suggest that the EPA include in its cumulative impact assessment any activities in the Cook Inlet Region that may add to the collective significance of this project, regardless of distance from the proposed mine location. Cook Inlet ship traffic will increase as a result of the proposed mine. The proposed Port of Anchorage expansion will also increase the size and number of ships traveling in Cook Inlet. The development of infrastructure for this project could lead to the future development of additional Beluga Coal projects. These and other projects in the Cook Inlet region will significantly increase the potential cumulative impacts of the Chuitna Coal Project.
3. Human Uses: All project components should also be designed to avoid and minimize impacts to access and existing uses such as set-netting, recreational fishing and hunting, and subsistence activities. Assessing the potential impacts of the various project components to human use of fish, wildlife, and plant resources involves a separate and distinct analysis from assessing impacts to the resources themselves. Information pertaining to the commercial, sport, and subsistence harvest of fish, wildlife, and wild plant resources, including harvest levels and harvest locations, should be collected to make this assessment possible. It is our understanding that the project applicant is working directly with the ADF&G Subsistence Division to provide data on subsistence uses in the project area.

Every effort must be made to maintain public access to and along the beaches and other lands in public ownership within the project boundary. The economic impacts analysis should assess the potential loss of fisheries resources, habitats and sport angler dollars due to the development of the project.
4. Mitigation/Reclamation: The SEIS should also address how unavoidable habitat impacts from the development of project infrastructure will be mitigated. In order to adequately assess alternative mitigation options, a sufficient description of baseline conditions and the expected level of impact is needed along with an economic valuation of the impacted resources. The updated economic analysis may be used to develop potential value-based mitigation requirements. In addition, plans for reclamation must be of sufficient detail to evaluate the potential for success, and should include timelines to fully realize restored habitat and ecological functions. One of the key project documents addressing habitat impact mitigation will be the reclamation plan for the project as required under the Alaska Surface Coal Mining Control and Reclamation Act.
5. Spill/Contingency Plans: The SEIS should address the potential for spills, and the possible impacts to Cook Inlet and area streams, lakes, and wetlands from spilled material including but not limited to fuel and other petroleum products, coal, and untreated wastewater. The SEIS should evaluate the adequacy of the applicant's contingency plans for spill response to protect the environment in the project area.
6. Water Quality: The construction and operation of all components of the proposed Chuitna Coal Mine will result in wastewater discharges to the Chuitna River drainage and to Cook Inlet. Wastewater and surface runoff from all project components should meet or exceed the State of Alaska water quality standards. The SEIS should address disposal alternatives for all wastewater discharges and evaluate the potential impacts that wastewater discharges may have to the freshwater and marine resources in the entire project area.

Coal Mine and Mine Facilities

7. Habitat Loss: There are important habitats and valuable fish stocks in the project area. Middle Creek (Stream No. 247-20-10010-2030) and three unnamed tributaries of Middle Creek lie within the area

proposed for mining. Middle Creek and its tributaries have been specified pursuant to AS 41.14.870(a) as being important to the spawning, rearing, or migration of anadromous fish. These four streams provide five and one-third (5.3) miles of known rearing habitat for coho salmon, three (3) miles of known spawning habitat for coho and pink salmon, and two and one-quarter (2.25) miles of known rearing habitat for chinook salmon. These streams also support rainbow trout and Dolly Varden char. In addition to Middle Creek and its tributaries, many other streams and lakes in the project area may support populations of resident or anadromous fish. For any unavoidable aquatic habitat losses, mitigation in the form of habitat creation in another portion of Middle Creek should be considered in addition to reclamation and restoration of the creeks at mine closure.

Middle Creek is a tributary of the Chuitna River. The Chuitna River provides the greatest opportunity for harvest of chinook salmon among West Cook Inlet rivers and also supports valuable coho and rainbow trout fisheries. Loss of aquatic habitat in the Chuitna River drainage may impact the commercial, sport and personal use fisheries in the region. The SEIS should examine the impacts of habitat loss in the mining area as it relates to the productivity of the entire Chuitna River system. Construction activities and work within these waterbodies will require Fish Habitat Permits from OHMP provided plans and specifications have been developed that will ensure the proper protection of fish and game resources.

8. Dewatering: The applicant proposes to dewater the overburden and interburden material to facilitate coal extraction. The SEIS should evaluate the potential impacts of dewatering to freshwater aquatic resources in the immediate project area and the entire Chuitna River watershed. Decreased groundwater recharge to area streams, lakes, and wetlands could impact fish and aquatic invertebrate populations in the entire region. These impacts and mitigation will be considered as part of the Fish Habitat Permit review process.
9. Human Uses: Game Management Unit (GMU) 16B is a state subsistence use area for Tier II moose hunt TM569 South Beluga including drainages south and west of the Beluga River, Beluga Lake, and Triumvirate Glacier. All of GMU 16B is also a federally recognized spring/summer subsistence migratory bird hunting and egg gathering area.

Local and non-local trappers have traplines in the area and aerial trapping and shooting of wolves also occurs in the area of the proposed mine. Ptarmigan and grouse are hunted by locals and non-locals in fall and winter throughout the project area. The Beluga area is a popular fall waterfowl hunting area for both local and non-local hunters. Access to these hunting and trapping areas is by vehicle along the local service roads, by fixed wing aircraft, and by snowmachine.

Personal use fishing occurs in local lakes and streams draining into the Beluga River. The Beluga River tributaries, Three-mile Creek and the Chuitna River are moderate to heavily used by recreational fishermen to catch rainbow trout, Dolly Varden Char, and primarily chinook and coho salmon. A large run of hooligan goes into the Beluga River. These fish are harvested on the beaches at Tyonek and Beluga.

Road, Conveyor, and Utility Corridor

10. Stream Crossings: The proposed road, conveyor, and utility corridor would cross three (3) streams that have been specified as being important to the spawning, rearing, or migration of anadromous fish. These are Threemile Creek (Stream No. 247-20-10002), an unnamed tributary to Threemile Creek, and Lone Creek (Stream No. 247-20-10010-2020). Fish Habitat Permits will be required for these crossings. All crossing structures, whether for road, conveyor, or utilities, should maintain the full hydrologic and ecologic functioning of the stream and maintain the integrity of the floodplain. Structures should span the

full width of these streams and should utilize stream simulation design as a minimum standard. The portions of the conveyor that cross streams and wetlands should have containment structures to prevent the loss of coal, including coal dust.

11. Wildlife Movements: The connectivity of wildlife habitats for species such as moose and bears is very important. The wildlife baseline studies, as well as information from the ADF&G, should be used to identify important wildlife movement corridors so that these can be maintained. At a minimum, portions of the conveyor will need to be elevated or buried at identified travel corridors, and at stream and wetland crossings.
12. Wildlife-human Interactions: The development of the access roads and the increase in human activity that will accompany mine development will increase the potential for wildlife-vehicle collisions, allow access to presently remote areas, and may increase the harvest pressure on fish and wildlife resources in the project area. The SEIS should evaluate the impacts of increased human presence on wildlife populations in the project area. Mine and port operational plans should include measures to avoid the habituation of bears to humans or garbage. These plans, as well as protocols for dealing with habituated bears, should be developed in cooperation with the ADF&G.

Ladd Landing, Trestle, and Berth:

Development of the proposed mine will require a loading facility to transfer the coal to large, ocean going vessels for transport to secondary processing sites. We expect that the SEIS will address potential alternatives to the proposed landing location, intertidal bulkhead, and approximate 2-mile long trestle.

13. Marine Mammals: The Cook Inlet beluga whale population is designated as a depleted stock under the Marine Mammal Protection Act (MMPA). The SEIS should address potential impacts of noise from construction and operation activities such as pile driving, the transfer of coal along the trestle, and increased vessel traffic in the area. The SEIS should also evaluate the potential impact of the bulkhead and trestle on local beluga movements and seasonal migration, and the potential impact of coal dust or residue that enters the marine environment and effects on belugas directly or indirectly through their prey.

The entire coastal area between the mouths of the Susitna, Ivan, Lewis, Theodore, and Beluga rivers south along the west shore of the inlet is heavily used by harbor seals for pupping and rearing of young, feeding on finfish and potentially some invertebrate species, and for local migrations during tidal inflow and outflow. Seals travel the waters along the shoreline on every tidal cycle throughout the ice-free months. There may be some opportunistic use of the area during winter months when ice conditions are light in order to feed on populations of tomcod that spawn in the lower reaches of the Chuitna River and possible Three Mile and Beluga River. Seal pupping and nursery haulouts are located at the mouths of the above mentioned rivers and are critical to pup survival.

14. Marine Fish: The proposed sheetpile bulkhead may significantly impact the movement and migration of juvenile and adult anadromous fish. Changes in current and loss of shallow water habitat could also lead to increased predation in the area of the proposed bulkhead. Potential alternatives to the proposed bulkhead that avoid and minimize impacts to marine fish such as a pile supported structure should be examined in the SEIS.
15. Terrestrial Wildlife: The shoreline beach is an important black and brown bear feeding area in the early spring months when runs of hooligan are beached during periods of moderate to heavy surf. Bears travel the beaches in search of stranded fish and other animals and feed on these sources of food. This is important during early spring prior to greenup of vegetation in snow-free areas. Throughout the summer months bears continue to use the beaches in search of food.

16. Human Uses: Nearshore, intertidal, and estuarine habitat such as that at the mouth of the Chuitna River are of great importance to larval and juvenile fish (both marine and anadromous) and shellfish. A broad range of invertebrate and groundfish resources have been, or currently are, harvested in both commercial and noncommercial fisheries in western Cook Inlet.

Commercial setnet fishing occurs along the beaches of the west side of Cook Inlet, including the area between Beluga and Tyonek, beginning in the last week of May and continuing through the summer months into September. Fishermen target Chinook during May and June, sockeye in June and July, and coho during August and September. Both local and non-local commercial fishermen fish in the area of the proposed trestle dock facility.

Subsistence salmon setnet fishing occurs on the beaches of the Tyonek Subdistrict between May 15th and October 16th. Residents of Tyonek, Beluga, and Shirelyville obtain permits for setnet fishing on designated days throughout the season.

Tyonek residents who are Alaska Natives qualify under the MMPA to harvest harbor seals and beluga whale. Tyonek residents take harbor seals as part of their annually subsistence harvests. The village of Tyonek has an allocation (1 or 2 whales) under the new beluga harvest restrictions on Cook Inlet beluga whale.

The SEIS should evaluate the potential impacts to harvest activities that may occur as a result of: (a) upstream and down-stream sedimentation resulting from a solid fill intertidal dock facility; (b) changes to fish and marine mammal migration patterns; (c) boat restrictions associated with loading activities near the trestle and vessel terminal that may limit and/or restrict small boat access to beach sites and inlet waters; and (d) increased wave action generated by large cargo vessels.

17. Coal Dust: The SEIS should address the potential impacts of coal dust to water quality in Cook Inlet from the proposed stockpiles at the Ladd landing facility and from the portion of the conveyor that extends into the marine environment. Alternatives such as covered stockpiles and a fully enclosed conveyor should be examined.

That concludes our scoping comments for the development of the Chuitna Coal Project SEIS. Please contact Megan Marie at 269-0185 with any questions.

cc: K. Howard, OHMP
A. Ott, OHMP
M. Fink, ADF&G
T. Brookover, ADF&G
B. Buzby, DMLW
R. Fredericksen, DMLW
Kenwyn George, ADEC

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF HABITAT MANAGEMENT AND PERMITTING
JUNEAU AREA OFFICE

FRANK H. MURKOWSKI, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796

PHONE: (907) 465-4105

FAX: (907) 465-4759

FOREST SERVICE CONCURRENCE FH05-I-0092

ISSUED: August 12, 2005

Carol Goularte, District Ranger
Sitka Ranger District
USDA Forest Service
204 Siginaka Way
Sitka, AK 99835

Dear Ms. Goularte:

Subject: Duffield Peninsula Log Structure Demolition
T. 50 S., R. 62 E., Section 35, CRM (Sitka C-5)
Site #18, Milepost 5.582, Duffield Main Channel

Pursuant to AS 41.14.870, the Alaska Department of Natural Resources (DNR) Office of Habitat Management and Permitting (OHMP) has reviewed your proposal improve fish habitat by demolishing existing man-made, stream crossing log structures at milepost 5.582 on forest road 7587 using explosives. Pursuant to AS 41.14.870(a) stream 113-51-10120 (Duffield main channel) has been identified as a first-order stream that provides habitat for spawning and rearing coho, pink and chum salmon as well resident Dolly Varden char. While there are some impacts associated with the use of explosives near waterbodies that contain fish, OHMP finds there are more potential benefits than detriments to overall fish and fish habitat from this proposed work.

The proposed work will take 8-10 hours to complete between the dates of August 16-19th, 2005. These dates were chosen to avoid disturbance of nesting Goshawks in the area. Approximately 500-1500 lbs. of explosives will be used to remove a 70'-long log stringer bridge over the Duffield main channel. Some woody debris will be left in the stream to create additional spawning and rearing habitat. Removal of this structure will improve fish habitat by eliminating barriers to flow, reducing stream diversion potential, improving floodplain function and reducing sedimentation from road surfaces and bank erosion. In order to minimize impacts on fish, OHMP recommends the following measures, when feasible: 1) limit the charge size and detonation velocity; 2) separate sequential detonations by a minimum of an 8 millisecond delay to reduce the shock wave intensity and blast radius; 3) place explosives to minimize impacts to fish habitat; and 4) detonate a length of primer cord or a blasting cap 30-60 seconds before the main blast to scare fish out of the immediate area. An OHMP Habitat Biologist will be present for blasting, and will review the post-project results with Forest Service staff before we concur to use this methodology for the proposed demolition of an additional 40-plus similar structures.

Your proposed activity is consistent with the Alaska Coastal Management Program per 11 AAC 110.730 under General Concurrence Determination (GCD) 7, *Culverts and Bridges*, and GCD 41,

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Debris Removal, when conducted according to the Standard Alternative Measures. I have attached a copy of GCD 7 and GCD 41 for your convenience.

Therefore, in accordance with AS 41.14.870 and the Master Memorandum of Understanding (MOU) 98RMU-10-010 with Supplemental MOU No. 1, between the Alaska Region of the U.S. Forest Service and OHMP, this letter serves as a *Letter of General Concurrence* for the proposed project, pursuant to Section IV. F.

If you have any questions regarding this concurrence, please contact me at (907) 465-1635 or email kristen_dunlap@dnr.state.ak.us.

Sincerely,
Dick LeFebvre, Deputy Commissioner

By Jackie Timothy
Juneau Area Manager
Office of Habitat Management and Permitting

Email cc:

Al Ott, OHMP, Fairbanks
Mac McLean, OHMP, Fairbanks
Kerry Howard, OHMP, Juneau
Joe Donahue, OPMP, Juneau
Robert Miller, USFS, Sitka
Phil Mooney, ADF&G, Sitka
Bob Chadwick, ADF&G, Sitka
Dave Gordon, ADF&G, Sitka
Marlene Campbell, Coastal District, Sitka
Wayne Dolezal, ADF&G, Anchorage

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

Office of Habitat Management and Permitting

SARAH PALIN, GOVERNOR

1800 GLENN HIGHWAY, SUITE 12
PALMER, ALASKA 99645-6736

PHONE: (907) 745-7363

FAX: (907) 745-7369

February 2, 2007

Jeff Fox
Area Management Biologist
Alaska Department of Fish and Game, CFD
43961 Kalifonsky Beach Road, Suite B
Soldotna, Alaska 99669

Re: Denial of Fish Habitat Permit Application
Use of Explosives to Remove Beaver Dams
Trinity Lake System (Stream Number 247-41-10200-2053-3205-4053-5066-6012)
Shell Lake System (Stream Number 247-41-10200-2053-3205-4050)

Dear Mr. Fox:

Pursuant to AS 41.14.870(b), the Department of Natural Resources, Office of Habitat Management and Permitting (OHMP) has completed a review of your application to use explosives to remove beaver dams on the above referenced stream systems. Based on your project description, you wish to remove 12 beaver dams from these two systems with nitroglycerin explosives. Up to 200 pounds of explosives would be used to remove each dam. Explosive charges would be set in multiple locations at the stream bottom-mud interface below each dam. The purpose of removing these dams is to enhance upstream access to spawning habitat for sockeye salmon. Your project plans state that multiple blasting events may be necessary to maintain a desired level and duration of sockeye salmon passage. Your proposal also seeks blanket authorization to blast beaver dams at other non-specified locations within each system as dictated by changing on-site conditions.

The Trinity and Shell Lake systems have been specified as being important for the spawning, rearing, or migration of anadromous fish pursuant to AS 41.14.870(a). Each of these systems are known to support populations of coho, sockeye and pink salmon, as well as a variety of resident fish species. Trinity and Shell Lakes are destination points for recreational anglers and are subject to a wide range of public uses. The fish and game habitats contained within these drainage systems are typical of a transitional boreal ecosystem heavily influenced by coastal maritime weather patterns. Trinity and Shell Lake systems provide highly productive fish and wildlife habitat.

At issue is the detonation of explosives below the waterline of a fish bearing waterway. We believe that using explosives to remove beaver dams in the Trinity and Shell Lake systems would be unnecessarily destructive to valuable fish habitat and would adversely impact existing populations of resident and anadromous fish species. Hand breaching of these beaver dams remains a practical alternative to the use of explosives and provides the best solution for balancing the desire to enhance sockeye salmon access to potential spawning habitat while minimizing potential damages to habitat and other fish stocks.

The Alaska Department of Fish and Game (ADF&G) has actively discouraged the use of explosives in fish bearing waters since the early 1970's. OHMP has continued to discourage its use since its formation under the Department of Natural Resources in May of 2004. Both agencies have utilized

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

FISH HABITAT PERMIT DENIAL
Alaska Department of Fish and Game

February 2, 2007

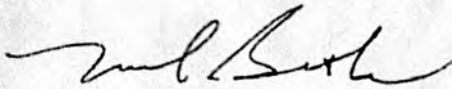
blasting standards originally developed by ADF&G in 1991. These standards prohibit detonation of explosives that produce an instantaneous pressure change of greater than 2.7 psi.

The Department of Natural Resources, Office of Habitat Management and Permitting finds that your project does not provide for the proper protection of fish and game. Therefore, in accordance with AS 41.14.870(d), project approval is hereby denied. Please be advised that within 90 days of receiving this notice, you may initiate a hearing to determine whether authorization should be granted for your project by filing a Statement of Issues with the OHMP as set forth in AS 44.62.370. The appeals process statutes for Fish Habitat Permits is governed entirely by the Administrative Procedures Act as set forth in AS 44.62.330-44.62.630.

If you have any questions, please feel free to contact me.

Sincerely,

Edmund J. Fogels, Acting Deputy Commissioner



By: Michael L. Bethe, Habitat Biologist
Area Manager
Palmer Mat-Su Area (IV)

mlb

cc: E. Fogels, DNR
A. Ott, DNR/OHMP
T. Brookover, ADF&G/R5
S. Lee, MSB
C. Ballard, DNR/OPMP
T. Oleck AST/ABWE/Palmer

K. Howard, DNR/OHMP
D. Rutz, ADF&G/SF
M. Fink, ADF&G/R5
T. Atkinson, DNR/OPMP
M. Agnew, AST/ABWE/Big Lake



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources
Office of Habitat Management and Permitting

TO: Jackie Timothy
Habitat Biologist
OHMP, Juneau

DATE: August 15-19th, 2005

FILE NO: FH05-I-0083 through FH05-I-0092

THRU:

SUBJECT: Trip Report
Duffield Peninsula Log Structure Blasting

FROM: Kristen Dunlap
Habitat Biologist I

TELEPHONE NO: 465-1635

Introduction

The USDA Forest Service Sitka Ranger District conducted a test project using explosives to remove eleven failing log stringer bridges and log box culverts that were blocking fish passage and restricting flow on 2.5 miles of an unused logging road on the Duffield Peninsula on northwestern Baranof Island. Forest Road 7587 was used for logging in the early 1970's and has rarely been used since. The overgrown road parallels the peninsula's main channel (stream no. 113-51-10120) and crosses several tributaries before eventually crossing over the main channel. I was in the good company of several blasters and biologists including Bob Beckley, Perry Edwards, Rob Miller, Mike Mullins, John Pickens, Lance Watkins, Mike Trainor, and Rich Young.

Description of Project

On Monday, August 15th supplies, explosives and an all-terrain vehicle were slung by helicopter into two predetermined sites near the road system. Demolition supplies used include: 5,250 lbs of Emulex 917 (explosive product in 5 lb sticks, density 1.17g/cc, detonation velocity of 5,577 m/s), 2000 ft of detonation cord, 60 non-electric blasting caps and 5000 ft of shock start lead-in line. Of the eleven blasting sites, six were in catalogued anadromous waterbodies, three were in resident fish waterbodies, and two were in drainages that did not support fish. Total costs including materials, personnel and transportation averaged around \$2000 per site. We planned the activities to maximize habitat improvements and minimize impacts to fish. Heavy rains on Thursday the 18th created higher flows in blasting areas. We revisited sites 1-13 on Friday the 19th and had supplies slung out that afternoon.

Conclusions

Most data collected during the study were observational qualitative data. I will provide a brief overview of noteworthy observations (more detailed information is attached). Free swimming juvenile salmonids were noted at six blasting sites before and immediately after shots were detonated. I trapped several of the juveniles before the shots were detonated and placed them in the traps in close proximity to explosives. There were no juvenile mortalities. Adult pink salmon were observed before and after the shots over the main channel at site 18. I noted three adult mortalities and observed several other adults swimming away from the blast area. Two days after blasting at site 6, I observed adults using the area where I had not observed adults before. Pieces of the demolished structures began functioning as large woody debris (LWD). Vegetation and bank disruption occurred within approximately a 30-50ft radius around blast areas.

Discussion

Blasting is an efficient means of removing log structures when time and cost are considered. My observations of the test blasts are that blasting could be an effective way to improve fish passage and habitat in remote overgrown locations. The addition of LWD in a red alder dominated forest should create holding pools for spawning adults and out-migrating smolts, and deep-water pools will support over-wintering juveniles. LWD will also catch carcasses floating downstream allowing them to decompose and add valuable nutrients to the system. I observed minimal fish mortality but hypothesize that a small number of fish may have died as a result of being crushed by large debris or other unknown causes. Nevertheless, these impacts seem outweighed by the potential long-term benefits to the entire system. I would recommend that under normal circumstances blasting not take place during sensitive life stages. For this test project, however, blasting was permitted to occur with adults present to avoid disturbing nesting goshawks earlier in the season.

I will continue to evaluate the efficacy of blasting failed log structures to improve fish passage and fish habitat with Sitka Ranger District staff. In addition to the information I gathered for the test sites, I would like to implement a systematic approach to sampling and quantitative data collection by including in-water instantaneous pressure recordings, as well as temperature, conductivity and dissolved oxygen readings. I would take grab samples downstream from the blasting site and check for persistent nitrates over time. I would visually note if any part of the structure, particularly the sill logs, appear to have been treated with preservatives. In the future, I will plan for additional time in the field prior to and after the blasting events.

Please review the attached blasting plans, site descriptions, pre and post-monitoring data, and before and after pictures and contact me by telephone at 907-465-1635 or by email at kristen_dunlap@dnr.state.ak.us with comments and suggestions for future studies.

SITE 1 Milepost 7.961
N 57°30'42.7", W 135°22'31.0"
FH05-I-0083

Blasting Plan

- 465 lbs explosives
- 100 ft of detonating cord
- 1 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 1 detonating cord loop under bridge
- Initiated with osprey unit

Site Description

- Box log culvert, mostly plugged
- 16 log stringers at 30 in diameter
- 23 ft wide, 6 ft long
- 3 ft of overburden fill
- Low flow stream, fish habitat

Observations/Measurements (pre-blast)

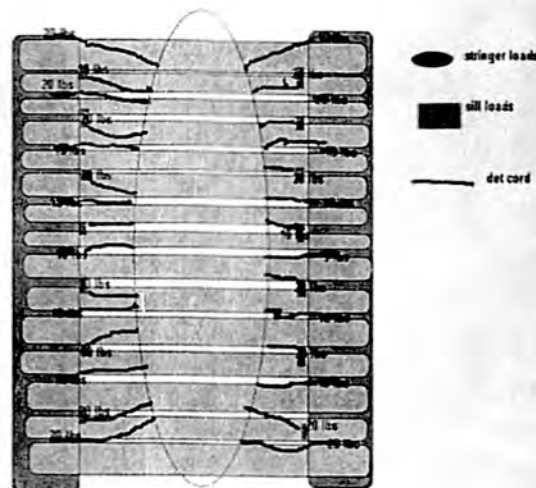
- Trap 1: set in Duffield main channel at mouth of stream, 79 ft stream distance from culvert
- Trap 2: set in main channel 94 ft upstream of trap 1
- Trap 3: set in main channel 67 ft downstream from trap 1
- Alluvium: placed flags in stream substrate (shallow water, disturbed gravel just upstream of a riffle) at 92 ft, 95 ft, and 100 ft downstream distance of the culvert to observe any visible effects on gravel
- Candles (1/4 in diam): placed in substrate at 79 ft, 92 ft, 95 ft, and 100 ft downstream from the culvert, and two in stream bed upstream of the culvert at approximately 20 ft and 40 ft
- Stream banks: noted general width immediately up and downstream from the culvert

Observations/Measurements (post-blast)

- Trap 1: dolly varden and coho; all living 20 minutes after blast
- Trap 2: sculpin, dolly varden and coho; all living 20 minutes after blast
- Trap 3: sculpin, dolly varden and coho; all living 20 minutes after blast
- Alluvium: all substrate material looked undisturbed (no silt cover, no movement)
- Candles: undisturbed (no fractures or breaks)
- Stream banks: width of channel remained the same; slopes around 50 degrees; no vegetation; layer of silt and debris covering everything within a 30ft radius
- Stream bed: blasting hole and small birm present downstream of roadway
- Main channel: adults displayed normal behavior, some small debris in channel

3 days later:

- Flowing water, birm upstream of blasting hole was substantially smaller, good flow below hole



Blasting diagram



ABOVE: box culvert from a downstream view
BELOW: same view, 3 days later



SITE 2 Milepost 7.66
N 57°30'31.0", W 135° 22'46.3"
Stream #113-51-10120-2007
FH05-I-0084

Blasting Plan

- 390 lbs explosives
- 100 ft of detonating cord
- 1 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 1 detonating cord loop under bridge
- Initiated with osprey unit

Site Description

- Box log culvert, constricting channel
- 16 log stringers at 30 in diameter
- 35 ft wide, 8 ft long
- 5 ft of overburden fill
- Small stream with no visible flowing water, saturated soil, pools upstream, excellent rearing habitat
- Forest Service long term monitoring site: monitoring changes in channel gradient, substrate distribution and channel geometry

Observations/Measurements (pre-blast)

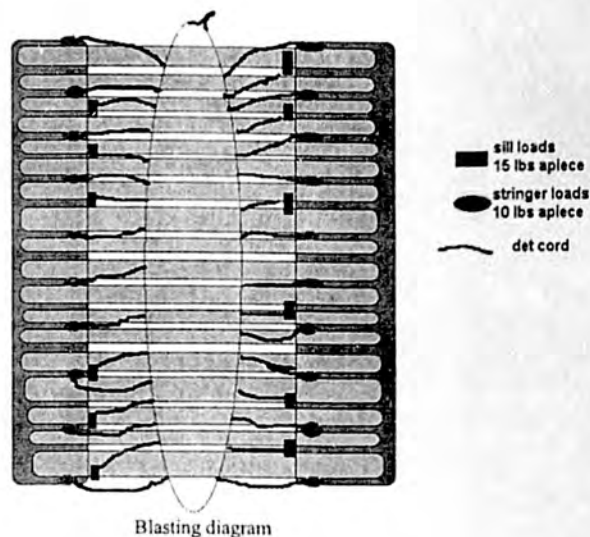
- Trapped 10 coho and 4 dolly varden in a pool upstream from the culvert near the flagged monitoring cross section, released before blast.
- Stream bed: walked stream channel from culvert to main channel (570ft), noticed lack of large woody debris

Observations/Measurements (post-blast)

- Observed juveniles swimming around in same upstream pool
- Stream bed: several 4-8ft sections of stringer logs left in stream bed
- No large blast holes present, debris and silt covering approximately a 30 ft. radius around blast site

3 days later:

- Nice flow through area, some debris washed away



ABOVE: box culvert from a downstream view
BELOW: same view, 3 days later



SITE 3 Milepost 7.477
N 57°30'23.0", W 135° 22'57.4"

Blasting Plan

- 780 lbs explosives
- 100 ft of detonating cord
- 3 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 2 detonating cord loops
- Found small amount of non-detonated product
- Required a clean-up shot, detonated with sites 4 & 5

Site Description

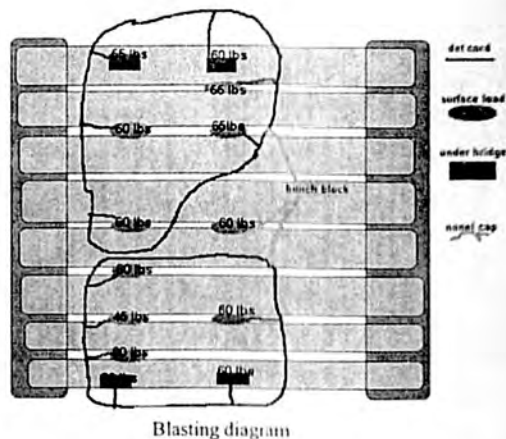
- Stringer bridge serving as a cross drain, plugged
- 10 log stringers at 36 in diameter
- 30 ft wide, 40 ft long
- 1.5 ft of overburden fill
- No flowing water, no defined channel, floodplain characteristics, no habitat, no fish present,

Observations/Measurements

- Stream bed: walked upstream, poor habitat, looks like it only receives water during flood events
- Alluvial aggradation on upstream side of bridge
- No additional monitoring on this site

2 days later:

- Still no flow



ABOVE: top loading explosives into bridge, view from upstream
BELOW: similar view after first blast, clean up blast removed stringers on right side of picture.

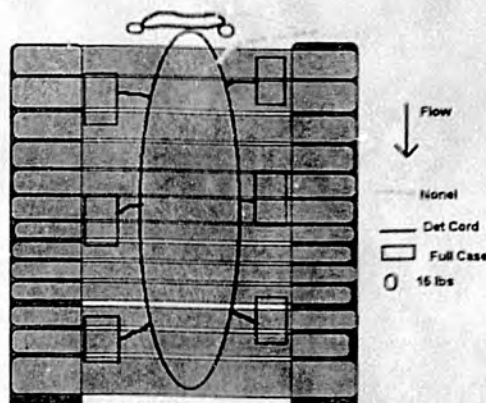


SITE 4 Milepost 7.49
N 57°30'24.0", W 135° 23'00.8"
FH05-I-0085

Page 6 of 13

Blasting Plan

- 340 lbs explosives
- 100 ft of detonating cord
- 2 non-electric blasting cap
- 600 ft shock star lead in line
- 1 shotgun shell primer
- 1 detonating cord loop
- Loaded with full cases of Emulex.
- This shot was initiated with a mushroom detonator and non-electric lead-in-line.
- Detonated with site 5 and clean-up shot for site 3



Site Description

- Box log culvert, failing
- 20 log stringers at 20" diameter
- 28 ft wide, 6 ft long
- 3 ft of overburden fill
- Dry, no flow, sediment pile on upstream side of bridge, skunk cabbage dominated wetland, poor habitat

Observations/Measurements

- Constricting flow and aggradation causing sub-surface flow and poor habitat, no fish, no sign of recent flow in area
- Log debris left in channel, could create good habitat if channel received flow

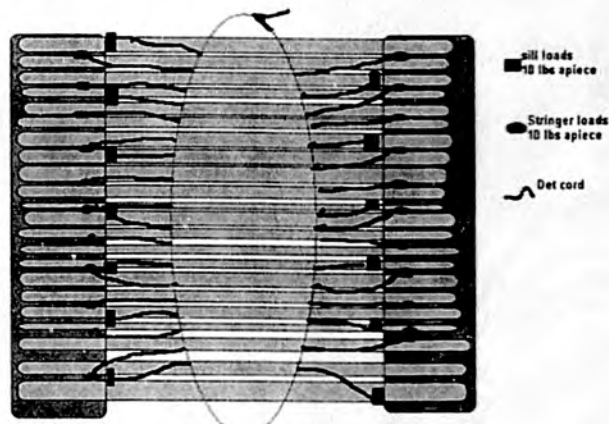
2 days later

- still no flow

SITE 5 Milepost 7.47
N 57°30'21.9", W 135° 23'00.5"

Blasting Plan

- 320 lbs explosives
- 140 ft of detonating cord
- 2 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 1 detonating cord loop
- This shot was initiated with a mushroom detonator and non-electric lead-in-line
- Detonated with site 4 and clean-up shot for site 3
- Used 25 millisecond delay on culvert, and 25 millisecond delay between sites 3, 4 and 5



Site Description

- Box log culvert, failing
- 21 log stringers at 24 in diameter
- 28 ft wide, 7 ft long
- 3 ft of overburden fill
- Dry, no sign of flow, no habitat

Observations/Measurements (pre-blast)

- No sign of fish, no habitat, no sign of recent flow in area
- Large blasting hole and berm on upstream side of site, possible caused by 25 millisecond delay

2 days later

- still no flow, some water in blasting hole

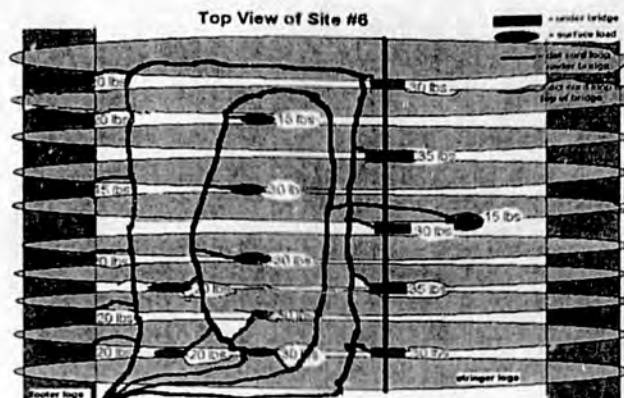
SITE 6 Milepost 7.384
N 57°30'19.4", W 135° 23'4.4"
Stream # 113-51-10120-2009
FH05-I-0086

Blasting Plan

- 465 lbs explosives
- 140 ft of detonating cord
- 1 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 2 detonating cord loops one on top and bottom of bridge
- Initiated with osprey unit
- Both detonating cord loops were initiated simultaneously

Site Description

- Log stringer bridge, rotten sagging logs
- 10 log stringers at 36 in diameter
- 23 ft wide, 25 ft long
- 3 ft of overburden fill
- Larger flowing stream, up to 10 ft wide and 5 ft deep in places, excellent habitat, fish present



Blasting diagram

Observations/Measurements (pre-blast)

- Trap 1: set about 10 ft upstream from bridge, sealed trap before blast and protected with rocks and logs
- Trap 2: set 45 ft upstream from bridge, sealed before blast
- Trap 3: set 46 ft downstream from bridge, sealed before blast
- Alluvium: placed flags at 45 ft and 57 ft upstream to look for movement or disturbance
- Candles (1/4 in diam): placed in substrate at 17.5 ft, 45 ft, and 57 ft upstream of bridge and at 46 ft downstream
- Stream banks: noted width immediately up and downstream from the culvert.
- Distance from bridge to main channel: 748 ft.
- Stream bed: waded underneath bridge to record the approximate depth before blasting
- Conductivity/temperature: took readings at several locations, see table on right

Conductivity/Temperature*

Location (ft from bridge)	Pre- blast temp (°F)	Post- blast temp (°F)	Pre-blast Conductivity (µs)	Post-blast Conductivity (µs)
46.0 downstream	54.0	56.9	84	**
92.5 downstream	54.0	56.9	87	155
143.0 downstream	54.1	55.7	87	137
748 downstream (mouth of stream)	54.3	*	84	*
Main Channel (Duffield River)	48.4	*	71	*

* Temperature readings may not be accurate due to problems with the meter. Due to time constraints, post-blast readings were not taken for all locations.

** Monitored conductivity at this site from approximately 20-35 minutes after blast. Saw a rise from 88-206µs then a rapid decline as the stream became clearer.



Panoramic view of the area on the upstream side of the bridge. Sealed minnow traps with juvenile coho and dolly varden were placed in stream on far left of photo and directly in front of the bridge on the right side bank for the 465lb blast.

Observations/Measurements (post-blast)

- Trap 1: Checked 60 min after blast. 8 Coho and 3 Dolly Varden, alive and active
- Trap 2: Checked 70 min after blast. 9 Coho and 32 Dolly Varden, alive and active
- Trap 3: Checked about 65 min after blast, lots of flowing debris and silt passing through trap. 5 Coho and 19 Dolly Varden, alive and active
- Alluvium: all substrate looked identical to pre-blasting conditions (no silt cover, no gravel movement, etc.)
- Candles: all were undisturbed (no sign of fractures or breaks), couldn't find all candles that were 17.5 ft upstream, lost in debris)
- Stream banks: slopes around 50 degrees; similar width, no remaining vegetation, layer of silt and debris within a 30ft radius. Sill logs left in place for bank stabilization.
- Stream bed: waded same section, depth was the same. Some large woody debris in sections slowing flow.
- Silt load: walked downstream about 400ft for observation and slowly walked back up. Saw a line of sediment and debris coming downstream, no other abnormalities.
- 3 hours later: water cleared and flow increased through blasting area.

2 days later

Exceptional flow through blasting area. Saw adult pinks, juvenile coho and dolly varden in area. High flows from rain washed most debris downstream.



Same panoramic view 60 minutes after shot, most blasting debris stayed within a 40 foot radius, all fish in traps lived.
TOP: view from downstream of flow through site immediately after shot. MIDDLE: flow through site 2 days later.

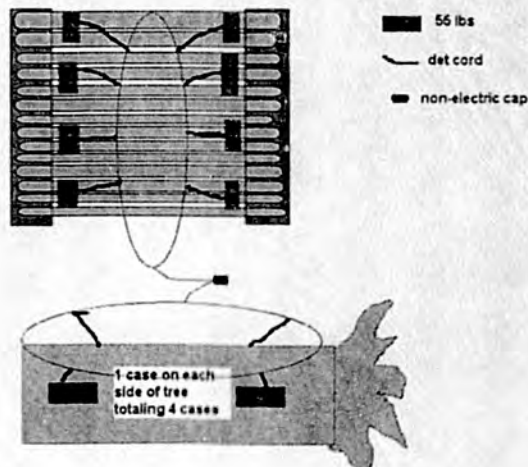
SITE 10 Milepost 6.801
N 57°29'59.8", W 135° 24'45.8"
FH05-I-0087

Blasting Plan

- 440 lbs explosives
- 100 ft of detonating cord
- 1 non-electric blasting cap
- 100 ft shock star lead in line
- 1 shotgun shell primer
- 2 detonating cord loops, one under bridge and one running to log
- Initiated with osprey unit.
- Both detonating cord loops were initiated simultaneously

Site Description

- Box log culvert, constricting flow
- 14 log stringers at 24-30 in diameter
- 35 ft wide, 7 ft long
- 6 ft of overburden fill
- Subsurface flow, upstream aggradation, fish habitat, no fish present
- Very large log blocking stream channel immediately downstream of culvert, approximately 8 ft diameter
- Saturated soil, large deposits of sand upstream of culvert



Observations/Measurements

- No monitoring for this site
- 4-6 ft sections of logs left in stream to improve habitat

2 days later

- Above surface flow through area

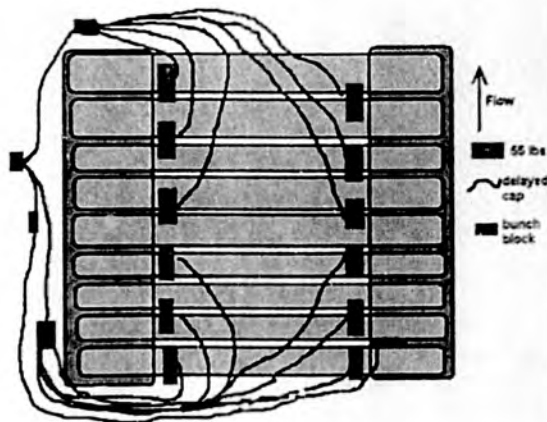
SITE 13 Milepost 6.366
N 57°29'42.3", W 135° 24'10.4"
Stream # 113-51-10120-2011
FH05-I-0089

Blasting Plan

- 660 lbs explosives.
- 14 non-electric blasting cap
- 1000 ft shock star lead in line
- 1 shotgun shell primer.
- Initiated with osprey unit
- Shot was loaded with cases along each sill log of the bridge, cases were placed in water
- Approximately 18-25 inch air gap between case and stringers
- Initiated with a mushroom detonator and non-electric lead-in-line
- 40 lbs of non-detonated product found after shot, possibly caused by lack of intimate contact between explosives and/or water temperature effects

Site Description

- Log stringer bridge, constricting flow
- 9 log stringers at 36 in diameter
- 26 ft wide, 25 ft long
- 3 ft of overburden fill
- Small tributary with some flowing water, pools upstream, good rearing habitat, juvenile fish present



Observations/Measurements

- Very low flow day of blast
- Large woody debris distributed within a 60ft radius

3 days later:

- Much higher unrestricted flow through site

Site #16 Milepost 5.732
N 57°29'36.4", W 135° 25'0.4"
Stream # 113-51-10120-2013
FH05-I-0090

Blasting Plan

- 415 lbs explosives.
- 2 non-electric blasting caps
- 250 ft shock star lead in line
- 1 shotgun shell primer
- 2 detonating cord loops, one on top and bottom of bridge
- Initiated with osprey unit
- Both detonating cord loops were initiated simultaneously
- Clean-up shot to remove log jam in stream

Site Description

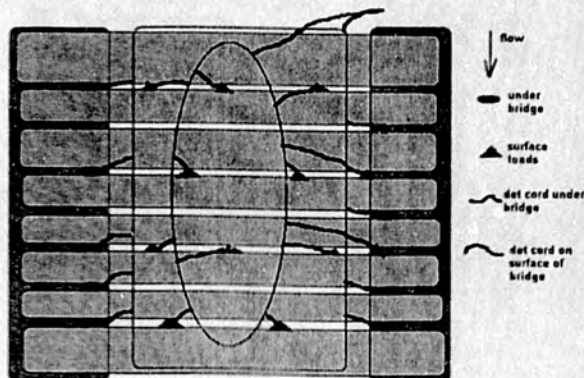
- Log stringer bridge, still intact
- 8 log stringers at 36 in diameter
- 20 ft wide, 50 ft long
- 2 ft of overburden fill
- Larger flowing alluvial stream, fish habitat, fish present

Observations/Measurements (pre-blast)

- Walked upstream and noticed channel was shallow, lack of woody debris in stream. Observed juvenile coho and dolly varden in stream
- Walked downstream, mouth into Duffield main channel about 200 ft away.

Observations/Measurements (post-blast)

- A single log stringer spanning most of the channel didn't explode causing backwatering
- Clean-up blast removed stringer log and flow returned to normal. 4-8ft sections of log were left in the stream to improve habitat



SITE 17 Milepost 5.60
N 57°29'31.4", W 135° 25'9.0"
Stream # 113-51-10120-????
FH05-I-0091

Blasting Plan

- 220 lbs explosives
- 4 non-electric blasting caps
- 100 ft shock star lead in line
- 1 shotgun shell primer
- Initiated with osprey unit
- Full cases were loaded along one sill log in order to leave other sill log in place
- This shot was detonated with site 18

Site Description

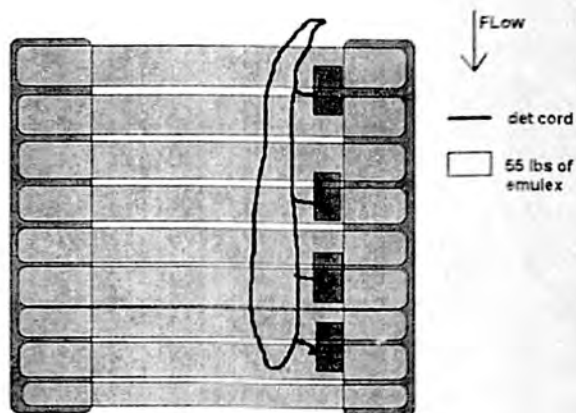
- constricted
- 12 log stringers at 30 in diameter
- 20 ft wide, 5 ft long
- 1 ft of overburden fill
- High flowing channel, good fish habitat, fish present

Observations/Measurements (pre-blast)

- Walked upstream, channel runs through wetlands, some woody debris already in stream, excellent habitat, saw lots of fish.
- Walked downstream, mouth into Duffield main channel about 40 ft away.
- Trap 1: about 31 ft downstream from culvert, protected with rocks and logs
- Trap 2: 116.5 ft thalweg distance upstream from bridge, sealed before blast

Observations/Measurements (post-blast)

- Sill log on north side left in place to help direct flow.
- High flow in area cleared the stream quickly.
- Trap 1: Checked 30 min after blast, no fish.
- Trap 2: Checked 30 min after blast. 1 coho, 1 unknown trout, all lived and looked healthy.



Blasting diagram



ABOVE: Looking at culvert from upstream view, flow is severely restricted.
BELOW: Same view after blast, sill log left intentionally to prevent bank undercutting.



SITE 18 Milepost 5.582
N 57°30'19.7", W 135° 23'4.5"
Stream # 113-51-10120
FH05-I-0092

checked after clean up blast; 1 juvenile
3 adult dolly varden all alive and active.

Blasting Plan

- 580 lbs explosives
- 2 non-electric blasting caps
- 250 ft of detonator cord
- 100 ft shock star lead in line
- 1 shotgun shell primer
- Initiated with osprey unit
- This shot was detonated with site 17
- Clean-up shot to remove stringer logs that were spanning channel causing blockage

Site Description

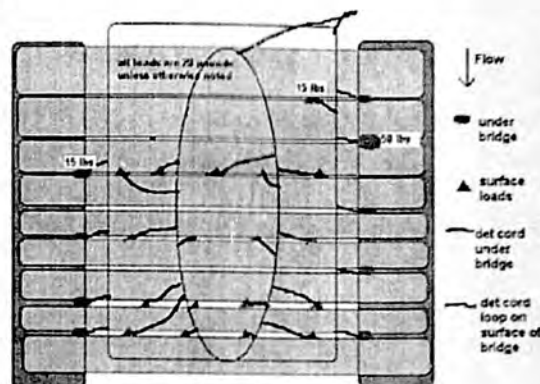
- Large log stringer bridge, failing
- 9 log stringers at 36 in diameter
- 20 ft wide, 70 ft long
- 1 ft of overburden fill
- Duffield main channel, adults and juveniles present
- Rained before, during and after shot

Observations/Measurements (pre-blast)

- Several spawning pink salmon in channel, juveniles present
- Trap 1: 8 ft downstream from bridge on river right, protected with rocks and logs, sealed before blast
- Trap 2: 38 ft downstream from upstream from bridge on river left, sealed before blast
- Trap 3: 75ft upstream downstream from bridge on river right, sealed before blast
- Walked and measured streambed depths downstream and upstream from bridge.
- Conductivity: 55µs; Temperature: 53.2°F

Observations/Measurements (post-blast)

- Waited downstream during shot and walked up main channel immediately afterwards. Observed debris torrent moving downstream and salmon moving downstream, appeared stressed - not moving quickly, resting in pools, off balance. Found 3 dead and 2 nearly dead adult pinks at site.
- Conductivity: 46µs (down 9 units); Temperature: 51.0°F (down 2.2°)
- Water level upstream from bridge approx 2 ft higher than before due debris temporarily constricting flow
- Two 20-30ft stringer logs were placed diagonally in channel to improve habitat. Two additional stringer logs that didn't detonate were left perpendicular to flow in channel causing backwatering.
- Clean up shot cleared logs blocking flow, good flow through site afterwards
- Trap 1: Checked after initial and clean up blast; 7 coho, 1 dolly varden and 1 unknown juveniles, all appeared fine. Trap was filled with debris.
- Trap 2: Checked after clean up blast; 1 coho juvenile, looked healthy. Lots of debris in trap.



ABOVE: Looking at bridge from downstream view.
BELOW: Same view after clean-up shot.



CC via Email:

Al Ott, OHMP, Fairbanks
Mac McLean, OHMP, Fairbanks
Kerry Howard, OHMP, Juneau
Sheila Cameron, OHMP, Juneau
Carl Schraeder, OHMP, Juneau
Bill Morris, OHMP, Fairbanks
Jim Cariello, OHMP, Petersburg
Mark Minnillo, OHMP, Craig
Valerie Blajeski, OHMP, Craig
Wayne Dolezal, ADF&G, Anchorage
Bob Chadwick, ADF&G, Sitka
Phil Mooney, ADF&G, Sitka
Dave Gordon, ADF&G, Sitka
Robert Miller, USFS, Sitka Ranger District
Marty Becker, USFS, Sitka Ranger District
Perry Edwards, USFS, Sitka Ranger District
Ken Coffin, USFS, Sitka Ranger District
Mike Trainer, USFS, Sitka Ranger District
Mike Mullin, TrailMix, Sitka
John Pickens, USFS, Petersburg Ranger District
Lance Watkins, USFS, Petersburg Ranger District
Robert Gubernick, USFS, Petersburg
Rich Young, USFS, Idaho
Bob Beckley, USFS, Montana

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF HABITAT MANAGEMENT AND PERMITTING
JUNEAU AREA OFFICE

FRANK H. MURKOWSKI, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-4105
FAX: (907) 465-4759

FOREST SERVICE CONCURRENCE FH05-I-0083

ISSUED: August 12, 2005

Carol Goularte, District Ranger
Sitka Ranger District
USDA Forest Service
204 Siginaka Way
Sitka, AK 99835

Dear Ms. Goularte:

Subject: Duffield Peninsula Log Structure Demolition
T. 50 S., R. 62 E., Section 25, CRM (Sitka C-5)
Site #1, Milepost 7.961

Pursuant to AS 41.14.870, the Alaska Department of Natural Resources (DNR) Office of Habitat Management and Permitting (OHMP) has reviewed your proposal improve fish habitat by demolishing existing man-made, stream crossing log structures at milepost 7.961 on forest road 7587 using explosives. Pursuant to AS 41.14.870 (a), the stream at milepost 7.961 has been identified as a small tributary that provides habitat for spawning and rearing coho, pink and chum salmon, as well resident Dolly Varden char. While there are some impacts associated with the use of explosives near waterbodies that contain fish, OHMP finds there are more potential benefits than detriments to overall fish and fish habitat from this proposed work.

The proposed work will take about 4 hours to complete between the dates of August 16-19th, 2005. These dates were chosen to avoid disturbance of nesting Goshawks in the area. Approximately 500 lbs. of explosives will be used to completely remove a 6'-long box log culvert and large logging slash immediately downstream. Removal of this structure and debris will improve fish habitat by eliminating barriers to flow, improving floodplain function, and reducing sedimentation from road surfaces and bank erosion. In order to minimize impacts on fish, OHMP recommends the following measures, when feasible: 1) limit the charge size and detonation velocity; 2) separate sequential detonations by a minimum of an 8 millisecond delay to reduce the shock wave intensity and blast radius; 3) place explosives to minimize impacts to fish habitat; and 4) detonate a length of primer cord or a blasting cap 30-60 seconds before the main blast to scare fish out of the immediate area. An OHMP Habitat Biologist will be present for blasting, and will review the post-project results with Forest Service staff before we concur to use this methodology for the proposed demolition of an additional 40-plus similar structures.

Your proposed activity is consistent with the Alaska Coastal Management Program per 11 AAC 110.730 under General Concurrence Determination (GCD) 7, *Culverts and Bridges*, and GCD 41,

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Debris Removal, when conducted according to the Standard Alternative Measures. I have attached a copy of GCD 7 and GCD 41 for your convenience.

Therefore, in accordance with AS 41.14.870 and the Master Memorandum of Understanding (MOU) 98RMU-10-010 with Supplemental MOU No. 1, between the Alaska Region of the U.S. Forest Service and OHMP, this letter serves as a *Letter of General Concurrence* for the proposed project, pursuant to Section IV. F.

If you have any questions regarding this concurrence, please contact me at (907) 465-1635 or email kristen_dunlap@dnr.state.ak.us.

Sincerely,
Dick LeFebvre, Deputy Commissioner

By Jackie Timothy
Juneau Area Manager
Office of Habitat Management and Permitting

Email cc:

Al Ott, OHMP, Fairbanks
Mac McLean, OHMP, Fairbanks
Kerry Howard, OHMP, Juneau
Joe Donahue, OPMP, Juneau
Robert Miller, USFS, Sitka
Phil Mooney, ADF&G, Sitka
Bob Chadwick, ADF&G, Sitka
Dave Gordon, ADF&G, Sitka
Marlene Campbell, Coastal District, Sitka
Wayne Dolezal, ADF&G, Anchorage



MEMORANDUM

STATE OF ALASKA



Department of Natural Resources
Office of Habitat Management & Permitting

TO: Joe Donohue
Project Review Supervisor
Office of Project Management & Permitting

DATE: November 9, 2006

FROM: Jackie Timothy *JT*
JT Habitat Biologist
OHMP

TELEPHONE NO: 465-4275

SUBJECT: NWP Regional Conditions
OHMP Recommendations

The Alaska Department of Natural Resources (DNR) Office of Habitat Management and Permitting (OHMP) has reviewed the Army Corps of Engineers' (COE) proposed changes to the Nationwide Permits (NWP) and associated regional conditions. The COE proposes to eliminate redundancy between general and regional conditions, and to require pre-construction notices (PCN) only for types of projects that generally elicit a response from agency reviewers.

Currently, NWP authorization letters obligate project proponents to review the COE website for general conditions that are applicable to their project. After approval of the changes to the NWPs and regional conditions, the COE will include applicable conditions in the NWP authorization letters. OHMP supports this approach as a way to ensure that project proponents are better able to comply with the appropriate conditions. OHMP believes that the inclusion of the appropriate conditions will not be onerous, as the scope of projects authorized by NWPs can be adequately mitigated with a small number of conditions.

Regional Condition A - Bank Stabilization Projects. OHMP advocates the use of bioengineered streambank stabilization and supports the intent of proposed Regional Condition A. Though the April 2005 guide by Walter, Hughes and Moore is an excellent reference, it is not necessarily applicable in all situations and site-specific conditions may demand other bank stabilization treatments. It is the State of Alaska Department of Transportation and Public Facilities' (ADOT&PF) policy that bioengineered structures will not be used to protect critical infrastructure. An exception occurs when a low structural risk, high environmental benefit situation is specifically reviewed by ADOT&PF's chief engineer. Requiring ADOT&PF to submit an alternatives analysis every time the referenced bioengineered methods are not used at critical infrastructure will not be an effective way to increase the use of bioengineered structures, nor to promote the development of new streambank stabilization technology.

Also, since a Fish Habitat Permit is required for work below the ordinary high water line of anadromous waters pursuant to AS 41.14.870, OHMP Habitat Biologists must participate in the review of bank stabilization projects in fish streams. Therefore, we request the COE continue to provide a PCN for all proposals involving bank stabilizations in fish streams. Notification during project planning phases will help project reviewers from all agencies identify and resolve site specific issues.

Regional Condition B – Agency Coordination. The Alaska Department of Fish and Game (ADF&G) and DNR Memorandum of Understanding (last amended September 22, 2006) establishes a coordinated relationship between DNR and ADF&G to address continued protection of fish and wildlife and their habitats, while eliminating a duplication of efforts. Therefore, in the last sentence of the last paragraph of Regional Condition B, please note that the ADF&G should be contacted only if the activity occurs within a Legislatively Designated Special Area.

Regional Condition B, Part 3 - OHMP recommends that anadromous lakes be included in this exception along with anadromous streams. For example: "(3) Anadromous fish streams *and lakes*, including but not limited to, those identified..."

Regional Condition B, Part 4 - Projects in wetlands further than 100 feet from an anadromous stream may have impacts, due to the surface water connections, that would justify triggering the agency coordination process. OHMP recommends that a PCN be required for these projects. For example: "Part 4) Jurisdictional areas contiguous with anadromous fish streams and lakes..."

Additional Regional Conditions- Frequently, fisheries management agencies seasonally place weirs in streams to monitor fish run timing and size. In the past, some of these projects have been authorized under NWP 4, although they are not specifically listed in the NWP. Please consider adding a regional condition to include fish monitoring weirs in NWP 4. This will simplify the permitting process for a routine agency management project.

The 2002 version of the Regional Conditions required a PCN for NWP 19, Minor Dredging; the notification requirement was removed this time. This NWP^D specifically does not authorize dredging in sensitive sites (submerged aquatic vegetation, spawning areas, and wetlands). The PCN would be useful to the COE in identifying sensitive areas by soliciting site specific information from other agencies.

We appreciate the opportunity to comment on the proposed changes to the Nationwide Permits and regional conditions.

Email cc:

Kerry Howard
Al Ott
Mac McLean
Stewart Seaberg
Dennis Gnath
Mike Bethe
Lee McKinley
Mark Minnillo
Jim Cariello
Dave Casey, COE, Kenai

MEMORANDUM

State of Alaska
Department of Natural Resources

To: Tom Brookover, Regional Supervisor
Sport Fish Division, Habitat
Department of Fish and Game

Date: March 10, 2006

File No:

Telephone Number: 459-7289

FAX Number: 456-3091

From: Al Ott, Operations Manager
Office of Habitat Management and Permitting
Department of Natural Resources

Subject: Pebble Gold Copper
Prospect, Wildlife
Studies

We have received a memorandum, dated February 28, 2006, from your office regarding terrestrial wildlife studies for the Pebble Gold Copper Prospect. Three terrestrial wildlife studies (moose, brown bear, and trace elements) totaling nearly \$1.78 million are recommended for the Pebble Gold Copper Prospect to provide scientifically sound information for environmental impact assessment. Your office requested that we forward the proposed terrestrial wildlife studies to the state's large mines coordinator.

Before we proceed on your request, we would like to receive clarification on why these three studies are necessary for the environmental assessment of the project, but more importantly how these studies would be used to directly support major permit decisions [e.g., solid waste permit for tailing disposal by Alaska Department of Environmental Conservation (ADEC), closure plan as part of both ADEC and Alaska Department of Natural Resources (ADNR) permits, mill site lease by ADNR, fish habitat and fish passage permits by ADNR, wetland fills by the U.S. Army Corps of Engineers, tailing dam by ADNR, solid waste permit for construction debris and putrescible wastes by ADEC, and wastewater discharge by Environmental Protection Agency and ADEC for closure if facility is designed for zero discharge]. As lead for habitat issues, OHMP needs to be responsible for, and support, any information/study requests that we forward to the large mines coordinator.

We also believe it would be beneficial to schedule a meeting with representatives of Northern Dynasty Mines, Inc. to discuss the proposed wildlife studies and to obtain their input on applicability to the Pebble Gold Copper Prospect. We have discussed this approach with Mr. Crafford, the state's large mine coordinator, and he agreed that such a meeting would be appropriate.

Tom Brookover 2
(Pebble Gold Copper Prospect, Wildlife Studies)

March 10, 2006

cc: Kerry Howard, OHMP, Juneau
Stewart Seaberg, ADNR, Anchorage

Scott Maclean, ADNR, Anchorage

AGO/ago



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources
Office of Habitat Management and Permitting

TO: Sadie Wright
Office of Project Management and Permitting
Anchorage

DATE: January 24, 2007

FILE NO: AK 0612-12J

SUBJECT: Re-issue of Placer GP 88-02

FROM: Robert F. "Mac" McLean
Office of Habitat Management and Permitting
Fairbanks

TELEPHONE NO: 907-459-7281

The Office of Habitat Management and Permitting (OHMP) has reviewed the proposed U.S. Army Corps of Engineers modifications to General Permit 88-02P (Placer Mining Fill Discharge Permit Modification and Re-Issue) for consistency with the Habitat Standard at 11 AAC 112.300. The proposed action would reauthorize issuance of a General Permit (GP) for certain placer mining activities under Section 404 of the Clean Water Act. OHMP's review was coordinated with the Alaska Department of Fish and Game (ADF&G) under the Tier 3 provisions of the ADF&G-OHMP Memorandum of Understanding. OHMP has included, in part, ADF&G's recommendations in its comments.

The COE proposes to re-issue GP 88-02P, and re-name it GP 2006-1944. If re-issued, the GP will be in effect for a period of five years. The activities authorized by this GP remain essentially the same as those previously authorized under GP 88-02P. The COE is, however, proposing several substantive changes to the existing GP with this re-issuance. These include:

1. References to "precious materials" were changed to "precious metals." The GP can no longer be used for commercial gravel extraction.
2. Placer mining and other types of mining have been defined to clarify what each activity consists of. The GP now clearly states which activities it authorizes. For example, this GP does not cover recreational mining, marine mining, suction dredging, hard rock mining, or commercial gravel operations.
3. Condition number 9a (formerly condition number 14a) has been split into vegetated vs. unvegetated reclamation requirements.
4. The DNR's *Annual Reclamation Statement for Small Mines* can now be used for reporting as long as the length of all stream diversions is added as a requirement for reporting on the form. The Corps would also need to receive copies of any reclamation documentation submitted to the

State. By using the State's annual report, miners would only have to complete one form for all agencies.

5. Agency review would now be limited to those instances where preliminary review of the APMA/application indicates potential concerns. Only agencies with regulatory oversight would be asked to review.

While the proposed changes in the GP generally represent an improvement to the previously issued GP, OHMP remains concerned that the GP does not meet its stated intent of allowing activities that would "...cause only minimal adverse environmental impact when performed separately, [and] would have only minor cumulative effects on water quality..." Further, under 11 AAC 112.300, coastal habitats within rivers, streams and lakes must be managed to avoid, minimize, or mitigate significant adverse impacts to natural water flow, active flood plains, and natural vegetation within riparian management areas to the maximum extent practicable (*emphasis added*).

Consistency Assessment:

It is OHMP's position that as currently proposed, GP 2006-1944 is inconsistent with the Habitat Standard of the ACMP (11 AAC 112.300). The GP does not fully minimize or mitigate for significant adverse effects to water flow, active floodplains, and the vegetation within riparian management areas to the maximum extent practicable. OHMP is proposing specific alternative measures that, if adopted, would achieve consistency with the Habitat Standard of the ACMP. These specific alternative measures address individual project components and relate to three general principals.

The first issue is that of the authorized area of disturbance. The current ACMP Generally Consistent Determination (GCD-1A) for placer mining limits the cumulative un-reclaimed mined area to five acres at one location. Similarly, the acreage threshold under AS 27.19 for submittal and approval of a mining reclamation plan and bonding is five acres. The GP should likewise be limited in application to those projects where the total area of disturbance is less than five acres. Larger scale mining operations should more appropriately be authorized by individual permits and should be coordinated with ADNR-DML&W's mining reclamation plan approvals. As most placer mining activities occur within the active floodplain and require the removal of vegetation within the riparian management area, minimizing the area of total disturbance associated with projects authorized by the GP will maximize conformance with the ACMP Habitat Standard.

The second group of proposed alternative measures is directed at minimizing the impact of individual project components to the maximum extent practicable. These proposed alternative measures include a number of modifications to existing conditions within the GP in order to increase their effectiveness. The focus is on avoiding and minimizing impacts to water flow, active floodplains, and the vegetation within riparian management areas (11 AAC 112.300(b)(8)).

Lastly, we propose alternative measures for reclamation that would maximize the effectiveness of reclamation as mitigation for disturbances. The purpose of the required reclamation is to re-establish the

functional conditions and resource values of the unmined landscape. Once those conditions and values are obtained, reclamation can be considered mitigation for the impacts.

Proposed Alternative Measures:

The following alternative measures, if adopted, would achieve consistency with the standards of the ACMP. Additions and modifications to the text of existing general permit conditions are shown in **bold**.

Issue 1: Minimizing the area of disturbance.

OHMP proposes changing proposed condition number 1 to limit the cumulative surface disturbance to five unreclaimed acres at any time.

Issue 2: Minimizing the impact of individual mining activities.

Condition 2 of the GP should be modified to read: "...material moved during mining operations shall **not be placed within active floodplains or riparian management areas to the maximum extent practicable. If placed in these areas, material shall be protected from erosion.**"

Condition 3 of the GP should be modified to include the following: "**Stockpiles of organic materials shall not be placed within active floodplains or riparian management areas to the maximum extent practicable. If placed in these areas, the organic materials shall be protected from erosion.**"

Condition 4 of the GP should be modified to include the following: "**Temporary features such as settling ponds, workpads, and roads and stream diversions shall not be placed within active floodplains or riparian management areas to the maximum extent practicable. If not practicable, temporary features shall be designed, constructed, and maintained to withstand, at a minimum, the high waters of a 10-year flood or the life of the structure, if longer. Permanent features such as channel diversions shall be designed, constructed, and maintained to withstand the high waters of a [fifty year (50 yr)] 100-year flood at a minimum.**"

Condition 5 of the GP should be modified to include the following: "**When an existing waterbody is not being mined, existing vegetation within the riparian management area shall be left adjacent to the waterbody to protect it from sedimentation. The sequencing of mining activities shall provide for the retention of vegetation within riparian management areas for as long as reasonably practicable.**"

Condition 6 of the GP should be modified to include the following: "**Settling ponds shall not be located within natural waterbodies, and shall not be placed within active floodplains or riparian management areas to the maximum extent practicable.**"

Condition 7 of the GP should be modified to include the following: "**Both temporary and permanent channel diversions shall be sized to accommodate the bankfull flow (1.5-year flood). Temporary and permanent stream diversions shall also include establishment of an associated floodplain sized to withstand a 10-year flood for temporary diversions, or the life of the structure if longer, and a 100-year flood for permanent diversions.**"

Condition 8a of the GP should be modified to include the following: *"...erosion of the streambed or banks. Stream diversions shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the diversion channel. The stream diversion..."*

Issue 3: Maximizing the effectiveness of reclamation.

Condition 9d of the GP should be modified to include the following: *"There is no defined time scale, but primary stabilization efforts should take place within one year (1 yr) of completing active mining operations. Ongoing efforts to improve stability should take place as needed thereafter."* Also modifying and adding the following: *"Stream channels shall mirror pre-placer mining configuration in terms of length, channel cross-section, substrate, flow velocity... Stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the channel. Diverted stream reaches..."*

Condition 9e of the GP should be modified to read: *"Floodplain widths shall be designed to withstand a [50] 100- year flood event. To 'withstand' shall include the retention of channel, substrate, and floodplain characteristics, without significant down- or head-cutting. The purpose of..."*

This modification is necessary to minimize the risk of flood events scouring sediment and destabilizing the dynamic equilibrium of the stream. Over a 50 year timeframe the difference between a 50-year and 100-year floodplain is a reduction in the risk of flooding from 64% to 39%. Increasing the floodplain width will also more closely approximate the streams meander belt width and give the stream room to adjust its form over time.

Condition 10 of the GP should be modified to include the following: *"... including removal of structures if required by the land manager, fuel drums, equipment, trailers, bone yards, used oil and waste upon abandonment. All areas of surface disturbance shall be reclaimed, stabilized, and contoured to promote revegetation. Access roads and areas of soil compaction shall be ripped, tilled, or otherwise broken up to promote revegetation."*

Advisories

Condition #8 Other Requirements (a-d) include requirements that reference OHMP authorities. It needs to be clear which are Title 41 requirements and which aren't. For example:

- a. Any stream diversion activity shall provide for the free passage of fish, both upstream and downstream with no barriers or entrapments consistent with ADNR-OHMP Alaska Statutes (AS) 41.14.840-860).

This requirement could be clarified by ending the sentence after "entrapments" and ending the paragraph with "The stream diversion must comply with the ADNR-OHMP Fish Habitat Permit issued under AS 41.14.840-900 if such a permit is required."

- b. Pump intakes or stream diversions shall be designed to prevent intake, impingement, entrainment or entrapment of fish consistent with ADNR-OHMP AS 41.14.870 - AS 41.14.900, and ADNR AS 46.15.

The way it's written, screening would only be required on cataloged streams, but not resident fish streams. While not required for consistency with the ACMP, to align the COE's General Permit with State law, this stipulation should be expanded to include consistency with AS 41.14.840 as well as AS 41.14.870 - AS 41.14.900.

Condition 9a. Work in Vegetated Areas. To reduce the likelihood of cumulative impacts and non-point sedimentation, we recommend the COE consider increasing the percent live cover after 2 growing seasons to 60% instead of 40% and further consider requiring active seeding or planting of native seeds, plants, or plant cuttings if a site fails to make progress towards this goal. We recognize that the COE will need to retain some flexibility in applying this standard as growing conditions vary widely in different parts of the state.

Condition 9(f). Reference to OHMP's authorities should be clarified as AS.41.14.

Thank you for the opportunity to comment on this project. If there are any questions regarding our response please contact me at 907.459.7281 or via e-mail at mac_mclean@dnr.state.ak.us.

CC: by email

Kerry Howard, OHMP, Juneau
Al Ott, OHMP, Fairbanks
Jim Cariello, OHMP, Petersburg
Mark Minnillo, OHMP, Craig
Jackie Timothy, OHMP, Juneau
Dennis Gnath, OHNP-JPO, Anchorage
Stewart Seaberg, OHMP, Anchorage
Mike Bethe, OHMP, Palmer
Lee McKinley, OHMP, Soldotna
Mark Fink, ADF&G, Anchorage

Mac,

Per our phone discussion:

I reviewed your draft comments on the proposed COE General Permit for Placer Mining. We appreciate the opportunity to review and agree with your comments, with the following exceptions noted below.

1. Cumulative effects: OHMP did not agree with our recommendation to include a comment requesting the GP consider cumulative effects by, for example, establishing a threshold for total un-reclaimed area within a drainage, beyond which additional mining activities could be authorized, but via an individual permit. OHMP's rationale is that cumulative effects are not clearly addressed within the Habitat Standard, and that OHMP did not want to jeopardize other recommended improvements to the GP.

2. Revegetation: OHMP did not agree with our recommendation to revise Condition 9 to indicate the goal of reclamation is to promote natural succession of vegetation to achieve 60% live plant cover after two growing seasons, and that failure to achieve such goal should require seeding or planting of native plants. OHMP believes that achieving 40% cover is difficult enough in the interior regions of the state, while acknowledging that accelerated revegetation does occur in coastal areas.

You did agree to include an advisory suggesting that the COE consider a more stringent revegetation condition in the GP to reduce erosion and minimize cumulative effects.

Due to the short review turnaround time (comments due to OPMP today), I did not proceed with further discussion/elevation (i.e., agreed to disagree).

I hope this summarizes our discussion.

Mark

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

From: Robert F Mclean [mailto:mac_mclean@dnr.state.ak.us]

Sent: Thursday, January 25, 2007 12:58 PM

To: mark_fink@fishgame.state.ak.us

Subject: DRAFT COE Placer GP Response

Mark - sorry for the short turnaround but I just finally finished a draft for this response. It is due to OPMP by 5 pm today so please review ASAP.

I tried to incorporate much of ADF&G's comments, with some tweaking. Intentionally left the cumulative impact discussion and your request for baseline surveys out largely because the new ACMP regs do not provide for an assessment of cumulative impacts unless it is an "important habitat" identified in a district plan or as otherwise identified under 11 AAC 112.300(c). Whether we agree with that or not it is the way the new regs were crafted.

I did incorporate the 100 foot riparian management area and recommended bumping floodplain reconstruction up to a 100-year event.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

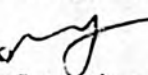
Division of Sport Fish

SARAH PALIN, GOVERNOR

333 Raspberry Road
Anchorage, AK 99518-1599
PHONE: (907) 267-2342
FAX: (907) 267-2464

MEMORANDUM

TO: Robert (Mac) McLean
Area Manager
Fairbanks Area Office
Office of Habitat Management and Permitting

FROM: Mark Fink 
Permitting Supervisor
Sport Fish Division

DATE: January 22, 2007

SUBJECT: Draft Proposed General Permit (GP) 2006-1944, previously identified as GP 88-02P (Placer Mining Fill Discharge Permit Modification and Re-Issue); State I.D. No. AK 0612-12J

The Alaska Department of Fish and Game (ADF&G) has reviewed the Proposed General Permit (GP) 2006-1944 (Placer Mining Fill Discharge Permit Modification and Re-Issue) previously issued by the Corps of Engineers (COE) as GP 88-02P. The ADF&G reviewed the materials distributed by the Office of Project Management and Permitting (OPMP) for consistency with the enforceable standards of the Alaska Coastal Management Program (ACMP). We are submitting the following consistency comments pursuant to the Memorandum of Understanding between the Alaska Department of Natural Resources and the ADF&G. This memorandum also contains additional comments regarding potential environmental impacts which are being submitted pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 662).

The COE proposes to re-issue GP 88-02P, and re-name it GP 2006-1944. This general permit authorizes the discharge of fill material into waters of the U.S. within Alaska for the purpose of placer mining. The GP is issued under the authority of Section 404 of the

"... shall manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state"



Clean Water Act and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403). If re-issued, the GP will be in effect for a period of five (5) years.

The activities authorized by this GP remain essentially the same as those previously authorized under GP 88-02P. The COE is, however, proposing several substantive changes to the existing GP with this re-issuance. These include:

1. References to "precious materials" were changed to "precious metals." The GP can no longer be used for commercial gravel extraction.
2. Placer mining and other types of mining have been defined to clarify what each activity consists of. The GP now clearly states which activities it authorizes. For example, this GP does not cover recreational mining, marine mining, suction dredging, hard rock mining, or commercial gravel operations.
3. Conditions limiting the cumulative surface disturbance to ten (10) acres (number 1) and requiring compliance with applicable national pollution Discharge Elimination System permits (number 8f) have been added.
4. Condition number 9a (formerly condition number 14a) has been split into vegetated vs. unvegetated reclamation requirements.
5. The DNR's *Annual Reclamation Statement for Small Mines* can now be used for reporting as long as the length of all stream diversions is added as a requirement for reporting on the form. The Corps would also need to receive copies of any reclamation documentation submitted to the State. By using the State's annual report, miners would only have to complete one form for all agencies.
6. Agency review would now be limited to those instances where preliminary review of the APMA/application indicates potential concerns. Only agencies with regulatory oversight would be asked to review.

The proposed changes generally represent an improvement to the previously issued GP. The ADF&G is, however, concerned that despite these changes, the GP does not meet its stated intent of allowing activities that would "...cause only minimal adverse environmental impact when performed separately, [and] would have only minor cumulative effects on water quality..."

The environmental impacts often associated with placer mining activities have been well-documented. These may include impacts to: water quality, stream channel and floodplain, vegetation, fish and wildlife habitat, topography, permafrost and groundwater, and auefs. These impacts are often substantial and long lasting, especially when reclamation goals are not met. Past reclamation efforts have often been ineffective leading to impacts that are similar to those of unreclaimed sites. Current reclamation requirements continue to result in inadequate recontouring of soils, leading to erosion and sedimentation (USKH, Inc. 2005).

Unlike other activities typically authorized by general permit, which may occur as isolated events throughout the landscape, placer mining and its impacts are concentrated within the floodplains and valleys of streams. The entire length of a stream channel may be covered by mining claims. Given that the impacts to public trust resources from a

single mining operation can be significant, the cumulative impacts of multiple placer mining operations within a single watershed are of particular concern.

Consistency Assessment:

It is the position of the ADF&G that as currently proposed, GP 2006-1944 is inconsistent with the Coastal Development (11 AAC 112.200) and Habitat (11 AAC 112.300) standards of the ACMP. The GP fails to adequately address cumulative impacts or to minimize and mitigate for significant adverse effects to water flow, active floodplains, and the vegetation within riparian management areas. The department is proposing specific alternative measures that, if adopted, would achieve consistency with the standards of the ACMP. These specific alternative measures address individual project components and relate to four (4) principal issues or areas of deficiency found in the GP as proposed.

The first issue is that of the authorized area of disturbance. The current Generally Consistent Determination (GCD-1A) for placer mining limits the cumulative un-reclaimed mined area to five (5) acres at one location. The GP should likewise be limited in application to those projects where the total area of disturbance is less than five acres. Larger scale mining operations should more appropriately be authorized by individual permits, or perhaps by the Nationwide Permit for mining. As most mining activities occur within the active floodplain and require the removal of vegetation within the riparian management area, minimizing the area of total disturbance associated with projects authorized by the GP will maximize conformance with the ACMP standards.

The second group of proposed alternative measures is directed at minimizing the impact of individual project components. These proposed alternative measures include a number of modifications to existing conditions within the GP in order to increase their effectiveness. The focus is on avoiding and minimizing impacts to water flow, active floodplains, and the vegetation within riparian management areas.

The third issue is that of cumulative impacts. The GP as proposed does not effectively address the cumulative impacts of multiple mining operations within a single drainage. Both the guidelines under Section 404(b) of the Clean Water Act and the ACMP's Coastal Development standard (11 AAC 112.200) identify the need to address cumulative impacts. The ADF&G recognizes there are many ways to approach this issue, and we would welcome discussions with the COE and other agencies on how best to deal with it. We recommend that the final form of the GP acknowledge the significance of cumulative impacts and contain a condition that establishes a metric or threshold to address them.

Lastly, we propose alternative measures that deal with reclamation. The premise and purpose of the required reclamation of disturbed areas must be to re-establish the functional conditions and resource values of the unmined landscape. To minimize impacts to public trust resources, reclamation must fully restore impacted resources, and placer mining activities must not be allowed to result in long-term degradation of water quality or habitat values. Only then can the reclamation be considered mitigation for the impacts as required by the Habitat Standard.

Proposed Alternative Measures:

The following alternative measures, if adopted, would achieve consistency with the standards of the ACMP. Additions and modifications to the text of existing general permit conditions are shown in **bold**.

Issue 1: Minimizing the area of disturbance.

The ADF&G proposes changing proposed condition number 1 to limit the cumulative surface disturbance to **five (5) acres** at any time.

Issue 2: Minimizing the impact of individual mining activities.

Condition 2 of the GP should be modified to read: *"...material moved during mining operations shall not be placed within active floodplains or riparian management areas unless necessary. If placed in these areas, material shall be protected from erosion."*

Condition 3 of the GP should be modified to include the following: *"Stockpiles of organic materials shall not be placed within active floodplains or riparian management areas unless necessary."*

Condition 4 of the GP should be modified to include the following: *"Temporary features such as settling ponds, workpads, and roads shall not be placed within active floodplains or riparian management areas unless necessary. Camps, structures, and vehicle storage or repair areas shall be located a minimum of seventy-five feet (75') from the ordinary high water mark of any waterbody, and shall not be located within active floodplains. Permanent features shall be designed, constructed, and maintained to withstand the high waters of a one hundred year (100 yr) flood. To 'withstand' shall include the retention of channel, substrate, and floodplain characteristics, without significant down- or head-cutting."*

Condition 5 of the GP should be modified to include the following: *"When an existing waterbody is not being mined, existing vegetation within the riparian management area shall be left adjacent to the waterbody to protect it from sedimentation. The sequencing of mining activities shall provide for the retention of vegetation within riparian management areas for as long as reasonably practicable."*

Condition 6 of the GP should be modified to include the following: *"Settling ponds shall not be located within natural waterbodies, and shall not be placed within active floodplains or riparian management areas unless necessary."*

Condition 7 of the GP should be modified to include the following: *"Construction of stream diversions shall include the establishment of an associated floodplain. The floodplain shall be sized to withstand the high waters of a ten year (10 yr) flood for temporary diversions, and a one hundred year (100 yr) flood for permanent diversions."*

Condition 8a of the GP should be modified to include the following: "...erosion of the streambed or banks. *Stream diversions shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the diversion channel. The stream diversion...*"

Condition 8c of the GP should be modified to include the following: "...the diversion channel shall approximate the length, sinuosity, channel cross-section, substrate, flow velocity..."

Issue 3: Addressing cumulative impacts.

Minimizing the scale and impacts of individual placer mining projects is essential, but in itself is not sufficient to meet the COE's regulatory responsibilities or achieve consistency with the referenced standards of the ACMP. The Section 404(b) guidelines and the state's Coastal development standard require an assessment of cumulative impacts. In addition, re-issuance of the GP constitutes a proposal to authorize multiple placer mining projects. In order for the COE's proposed action to actually avoid, minimize, and mitigate significant adverse impacts to water flow, active floodplains, and the vegetation within riparian management areas, issuance of the GP must include provisions to address the cumulative impact of the individual actions it might authorize.

In the case of placer mining, cumulative impacts may be spatial (multiple activities within a single drainage) or temporal (repeated disturbance of same area). The spatially cumulative impacts are of greater concern, and if multiple placer mining activities occur along the length of a single waterway, the impacts of all activities should be considered collectively. Each additional area of disturbance within a single drainage compounds the loss of fish and wildlife habitat, and increases impacts both within and downstream of mined areas by contributing to sediment load and decreasing the inherent stability of stream channels and floodplains. This reduces the ability of a stream to compensate for mining disturbances and facilitates the downstream propagation of failures such as channel avulsions due to flood events.

The single largest factor contributing to environmental impacts from placer mining is the total area disturbed at any given time. As the COE has access to data that includes the location and un-reclaimed acreage figures for individual projects, this data could reasonably be used to establish a threshold for total un-reclaimed area within a single drainage.

As an example, a threshold for total un-reclaimed area of no more than thirty percent (30%) of the channel length of a given waterbody could be established. Once this threshold was reached, additional mining activities could be authorized, but authorization would be via an Individual Permit and would contain additional conditions to address cumulative impacts.

Alternatively, performance standards could be established that would serve as thresholds indicating when the level of cumulative impacts required additional conditions for additional mining activities within the same drainage. Ongoing exceedances of water

quality standards, evidence of significant impacts to habitat or hydrology downstream of mined areas, or non-compliance with the GP conditions could all be used as indicators of when cumulative impacts are no longer 'minor.'

Issue 4: Maximizing the effectiveness of reclamation.

The ADF&G proposes adding the following additional condition: ***"A baseline survey of waterway, floodplain, and vegetation conditions prior to project implementation shall be conducted. The baseline survey shall constitute the reference condition for reclamation proposals."***

Several subparts of condition 9 (reclamation) of the GP identify pre-mining conditions as the standard for reclamation efforts. These include topography, stream channel, floodplain, and hydrological characteristics. A baseline survey is necessary to assess these features prior to mining and establish reclamation goals. In the event that a proposed area has previously been mined, a baseline survey will help to determine whether the existing stream channel is stable and what reclamation efforts will be necessary to return the waterway and floodplain to a functionally stable condition.

In order to minimize the environmental impacts from the authorized activities, it is necessary to eliminate the different reclamation standards for vegetated and unvegetated areas. Revegetation is *"...desirable and practicable..."* for all areas, not just those that were previously undisturbed or previously vegetated. The re-mining of previously disturbed areas is common, and not requiring revegetation on these sites simply perpetuates existing levels of impacts. Mining-related impacts need to be minimized and mitigated for (meaning eliminated over time through reclamation).

The first paragraph of Condition 9a of the GP should be eliminated, and the second paragraph modified to read: ***"Mined areas shall be re-contoured to match the reference conditions from the baseline survey. For previously disturbed sites, the re-contouring shall be to achieve the target conditions of the reclamation plan. All material, including overburden, side cast material, and tailings, shall be used. Stable slopes and soil surfaces shall be attained, and stockpiled organic material (including vegetation, topsoil, overburden, and settling pond sediments) shall be spread over the contoured mine workings to hold moisture and promote natural plant growth. For previously mined areas, topsoil may need to be imported. Tall, steep slopes that are high above the level of the stream will result in excessively drained soils and should be avoided. After re-contouring, equipment should 'track' the slopes, perpendicular to the contours, to help prevent the loss of sediments."***

"The goal of this condition is to promote the natural succession of vegetation representative of the area and to achieve sixty percent (60%) live plant cover of the entire reclaimed area by the end of two (2) growing seasons. Failure to achieve or make progress toward this goal shall require active seeding or planting of native seeds, plants, or plant cuttings. Acceptable indicators of progress toward this goal are a reasonable presence, density, species composition, and distribution of pioneer native species of plants typical of the area."

Condition 9c of the GP should be modified to read: ***"Settling ponds shall be reclaimed, and pond sediments removed and spread over the contoured mine workings to promote natural plant growth."***

Condition 9d of the GP should be modified to include the following: ***"There is no defined time scale, but primary stabilization efforts should take place within one year (1 yr) of completing active mining operations. Ongoing efforts to improve stability should take place as needed thereafter."*** Also modifying and adding the following: ***"Stream channels shall mirror pre-placer mining configuration in terms of length, sinuosity, channel cross-section, substrate, flow velocity... Stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the channel. Diverted stream reaches..."***

Condition 9e of the GP should be modified to read: ***"Floodplain widths shall be designed to withstand a one hundred year (100 yr) flood event. To 'withstand' shall include the retention of channel, substrate, and floodplain characteristics, without significant down- or head-cutting. The purpose of..."***

Condition 10 of the GP should be modified to include the following: ***"... including removal of structures, fuel drums, equipment, trailers, bone yards, used oil and waste upon abandonment. All areas of surface disturbance shall be reclaimed, stabilized, and contoured to promote revegetation. Access roads and areas of soil compaction shall be ripped, tilled, or otherwise broken up or replanted in order to promote revegetation."***

The ADF&G appreciates the opportunity to comment. If you have any questions regarding this memorandum, please do not hesitate to contact me.

cc: T. Brookover
E. Simpson
N. Nichols
T. Schumacher
J. Hall-Schempf
V. Blajeski
M. LaCroix
K. Klein

Reference:

USKH, Inc. 2005. Harrison Creek Reclamation, Phase I. An overview of issues and updated approaches for the reclamation of placer-mined lands. Final Report Prepared for the Bureau of Land Management, Northern Field Office, 1150 University Ave. Fairbanks, Alaska.

FYI. Similar issues, to some degree, identified in the Response to Comments document as we have with Pebble...

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

From: Robert F Mclean [mailto:mac_mclean@dnr.state.ak.us]

Sent: Friday, August 11, 2006 11:32 AM

To: 'Kate Persons'

Cc: 'Nichols, Todd F (ADFG)'; 'Machida, Steven (ADFG)'; 'Bente, Peter J (ADFG)'; 'Fink, Mark J (ADFG)'; al_ott@dnr.state.ak.us

Subject: RE: rock creek mine

Kate - I am aware of the controversy and mis-information that is spreading in Nome over the Rock Creek Mine. The Large Mine Permitting Team, of which I am a member, has responded to most of these concerns and has tried to set the record straight. We have also been working on a Response to Comments (attached), which was just completed yesterday afternoon, to clarify issues. It was my intent to distribute this to affected ADF&G staff to help in answering local questions.

The Rock Creek project has been under exploration and development planning for nearly a decade. The current proposal does not include an open cyanide leach pad but rather will use cyanide within enclosed vats with secondary containment. The operation will be a zero discharge facility during operations and will meet aquatic life water quality standards on closure.

State authorizations include provisions to guard against accidental wildlife mortalities. The processing system is similar to that utilized successfully by Fort Knox here in Fairbanks. The tailings facilities are both sited and designed to ensure that aquatic life water quality standards are met and that long-term acid generation is prevented. The State's analysis that the waste rock and tailings will be non-acid generating has been confirmed by both the applicant's required geochemical testing and an independent third party review contracted by the State.

The original proposal to use gravity separation rather than a closed cyanide circuit was modified nearly a year and a half ago and has been publicly stated by Alaska Gold.

On August 9, 2006 the following State permits and authorizations were issued:

- . DEC Waste Management Permit (2003-DB0051)
- . DEC 401 Certificate of Reasonable Assurance (POA-2006-742-4)
- . DNR Reclamation Plan Approval
- . DNR Title 41 Fish Habitat Permit
- . DNR Temporary Water Use Permits for Rock Creek (4)
- . DNR Temporary Water Use Permits for Big Hurrah (2)

The DNR / Alaska Coastal Management Program (ACMP) issued its Final Consistency Decision on July 31, 2006.

All of the above documents can be viewed on the DNR Large Mine Permitting / Rock Creek Project web site:

<http://www.dnr.state.ak.us/mlw/mining/largemine/rockcreek/>

I apologize if your office feels left out of the loop. In the 1990s and early 2000-2001 I did coordinate with ADF&G Nome staff to ensure that I had a handle on issues of concern to them. Subsequently we have worked with the applicant and other state and federal agencies to ensure that those issues were fully addressed. The current proposal addresses those concerns.

Absent new concerns, the general direction I've received from Nome staff in the past has been to listen to their concerns and then just proceed and address them. However, you should not hesitate to call me at 907-459-7281 at any time if you need clarification or want to share new concerns with me.

My office may have been shifted to DNR, but after personally spending 30 years with ADF&G you can't take the ADF&G out of the habitat biologist. I will do a better job in the future with copying Nome staff with all correspondence so you can keep up with events as I negotiate the details.

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

From: Kate Persons [mailto:kate_persons@fishgame.state.ak.us]

Sent: Thursday, August 10, 2006 3:37 PM

To: Mclean, Robert F (DNR)

Cc: Nichols, Todd F (ADFG); Machida, Steven (ADFG); Bente, Peter J (ADFG); Fink, Mark J (ADFG)

Subject: FW: rock creek mine

Hi Mac,

As suggested by Mark Fink, I am sending you the comments below that I sent to my supervisor, Steve Machida on August 1. I am dumbfounded that just this morning I was asked to comment on potential impacts to wildlife that could occur during repair of storm damage on a long existing road, and that I routinely am asked to comment on innocuous land transfers, yet our office received nary a peep about the proposed Rock Creek mine development.

In the past several weeks the Nome Fish and Game office has been contacted by a number of Nome residents concerned about the proposed Rock Creek mine 8 miles north of Nome in the Snake River drainage. Nome is a community founded by miners, and support for mining projects runs deep here. However, it has only recently come to light in Nome that the proposed Rock Creek mine, a hard rock mine, involves practices such as cyanide leaching that are potentially more environmentally far reaching than the placer mining that has previously occurred here. The fact that toxic tailing piles are slated to remain in the Rock Creek drainage after the life of the mine is only just beginning to sink in to public awareness. As you know, Rock Creek drains into the Snake River, which is a very important river drainage for subsistence wildlife and fish species, and provides critical moose habitat for a large portion of the Unit 22C moose population. Additionally, numerous people get their drinking water from the river below the mine site, and the Snake River runs right into the city of Nome, emptying into the subsistence and commercial and crab fishery grounds in Norton Sound. Understandably, many residents have become concerned and they look to us for answers and assurances that no harm will come from this project.

The only contacts our office has had soliciting comments about the mine came from Bristol Environmental in July 2003 asking about potential impacts from the proposed road to the mine site, and in October 2003, asking for population and harvest information for species found in the Snake River drainage. At that time Nova Gold's operational plan did not call for cyanide leaching and our comments were confined to impacts associated with the physical footprint of the road and mine, and increased human activity in the Snake River drainage. Now as the public calls our attention to the plans for cyanide leaching in Nome's backyard, we are in the embarrassing situation of feeling asleep at the wheel. We wonder why Fish and Game was not included in the assessment of the project, or if someone in ADF&G was, why our local office had no opportunity to comment. We are the ones most knowledgeable about the importance of this valley to wildlife populations, and the significant extent to which local people utilize the fish, wildlife and plant resources located there. We wonder why there has not been an EIS requested, and why we have never been informed about the details of the project. The Nome public is only now becoming aware of what is at stake here. I don't know if the State permits have already been issued, but if not, I urge a delay in permitting this mine until the potential impacts and contingency plans, should things go awry, be objectively assessed, and the public has an opportunity to comment in an informed and meaningful manner.

Kate Persons
GMU22 Area Wildlife Biologist
ADF&G
Nome, Alaska 99762

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

From: Todd F Nichols [mailto:todd_nichols@fishgame.state.ak.us]
Sent: Monday, August 07, 2006 12:11 PM
To: steve_machida@fishgame.state.ak.us
Cc: Persons, Catherine (ADFG)
Subject: RE: rock creek mine

Fear not,

I talked with Mac McLean (OHMP) who's been handling the permitting. He explained there has been much misinformation about this operation. The cyanide leaching will be contained (vat), the stream system diverted, and truck traffic dust mitigated. Why you were not in the loop directly, I don't know. This whole system still needs to be fine-tuned. This is only one of many examples of confusion and miscommunication between us and OHMP.

Mac's phone is 459-7281.

Todd "Nik" Nichols
Habitat Biologist
ADF&G, Fairbanks
(907) 459-7363

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

From: Steve Machida [mailto:steve_machida@fishgame.state.ak.us]
Sent: Friday, August 04, 2006 10:03 AM
To: todd_nichols@fishgame.state.ak.us
Cc: Persons Kate (E-mail)
Subject: RE: rock creek mine
Importance: High

Todd-Is it too late to comment on this project?

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

From: Mark Fink [mailto:mark_fink@fishgame.state.ak.us]
Sent: Thursday, August 03, 2006 4:44 PM
To: Steven Machida (Steven Machida)
Cc: robin_willis@fishgame.state.ak.us; 'Todd F Nichols'
Subject: FW: rock creek mine
Importance: High

Steve,

You should contact Todd (Nik) Nichols in Fairbanks (459-7363). He might have some insight into this project. DNR/Office of Habitat Management and Permitting (OHMP) would have the lead on this. I'd have Kate send over her comments and cc Nik.

Mark

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

From: Robin Willis [mailto:robin_willis@fishgame.state.ak.us]
Sent: Tuesday, August 01, 2006 5:12 PM
To: mark_fink@fishgame.state.ak.us
Subject: FW: rock creek mine
Importance: High

Hi Mark - Do you have an answer for Steve? I don't even know about this mine proposal. robin -----Original Message-----

From: Steve Machida [mailto:steve_machida@fishgame.state.ak.us]
Sent: Tuesday, August 01, 2006 1:46 PM
To: Willis Robin (E-mail)
Subject: RE: rock creek mine
Importance: High

Robin-The Nome public and our staff were caught by surprise on the cyanide leaching portion of this mining proposal. Is this whole thing a done deal, or can we still send comments to DNR?

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

From: Kate Persons [mailto:kate_persons@fishgame.state.ak.us]
Sent: Tuesday, August 01, 2006 9:38 AM
To: Machida, Steven (ADFG)
Subject: rock creek mine

Hi Steve,

Please look over this letter that I want to send as an email to the DNR permitting folks (if only to clear my conscience) and give me a call.
Thanks, Kate

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 2007

Melvan E. Morris Jr., Chairman
Alaska Board of Fisheries
Alaska Department of Fish & Game
P.O. Box 115525
Juneau, AK 99811-5525

Dear Mr. Morris:

Thank you for your January 19, letter which describes concerns by the Alaska Board of Fisheries with the previous administration's decision to transfer what was once known as the Division of Habitat and Restoration from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

As you know, this happened on May 1, 2003, when former Governor Murkowski signed Executive Order 107, which transferred fish habitat permitting and forest practices authorities from ADF&G to DNR under a new entity known as the Office of Habitat Management and Permitting.

That office is now responsible for issuing Fishway Permits and Fish Habitat Permits under AS 41.14.840 and AS 41.14.870. It also gained certain responsibilities under the Forest Resources and Practices Act (AS 41.17) that were previously contained in AS 16 under the authority of ADF&G. However, ADF&G retained permitting authority within legislatively-defined special areas such as refuges, critical habitat areas, and sanctuaries.

Along with the Alaska Board of Fisheries, there have been a number of constituent groups - including the ADF&G Transition Team - who have requested consideration for a reversal of Executive Order 107 and return the "habitat division" to ADF&G. In contrast, the DNR Transition team - along with other constituent groups - have also recommended against moving the habitat functions back to ADF&G.

I have carefully evaluated the track record of that office in fulfilling its duties and have come to the conclusion that the office is meeting its statutory responsibilities and other permit review functions. My commissioners of ADF&G and DNR both concur with this assessment. As such, I do not plan to move the office back to ADF&G.

To ensure that interagency cooperation, responsibilities, and exchange of information are working well between these two departments, I have requested the commissioners of both ADF&G and DNR review an existing memorandum of

Melvan E. Morris Jr., Chairman
February 8, 2007
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understanding (MOU) which outlines the roles and responsibilities of each agency with respect to continued protection of fish and wildlife and their habitats during the review of a wide variety of land and water uses.

I specifically asked them to recommend whether any amendments are needed to meet our constitutional responsibilities to balance resource development with resource protection.

The review of the MOU should be accomplished over the next several weeks. After interdepartmental review of the MOU, it is also important to conduct stakeholder outreach, which didn't occur under the previous administration, in order to assure the public that the departments are working cooperatively and effectively to manage Alaska's important habitat resources and consistent with the public interest.

While the habitat functions, perhaps, should never have been moved from ADF&G to DNR, that reorganization has already occurred. The disruption of reversing that reorganization does not need to be repeated in order to address issues regarding close communication and coordination between DNR and ADF&G.

Please know that as we continue to review the MOU and evaluate potential changes, these will be done with a conscientious effort toward maintaining the proper levels of expertise and working relationships between and within the agencies. My administration will be committed to making sure that there are proper safeguards in place for large-scale development projects, particularly in regards to the discharge of industrial and domestic wastes into salmon spawning habitat.

Mr. Morris, I sincerely want to thank you and all the members of the Alaska Board of Fisheries for raising this issue. Your concerns are valid, and I am heartened that you chose to write a letter to call these concerns to my attention. I will also instruct ADF&G and DNR to keep you informed regarding their review of the MOU, and seek your input during their outreach.

Thank you again.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sarah Palin", written in a cursive style.

Sarah Palin
Governor



Cordova District Fishermen United

P.O. Box 939 | Cordova AK 99574

Ph: (907) 424 3447 Fax: (907) 424 3430

Email: cdfu@ak.net

February 8, 2007

Representative Paul Seaton, Chairman

Members of the House Special Committee on Fisheries

Alaska State Legislature

State Capitol Room 102

Juneau AK 99801-1182

Representative Les Gara, Sponsor

State Capitol Room 500

Juneau AK 99801-1182

RE: HB 41 "An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

Dear Representative Seaton, and Members of the House Special Committee on Fisheries:

The Cordova District Fishermen United (CDFU) represent the interests of the Copper River and Prince William Sound, Area E, fisheries.

In the past seventy years, both before Statehood, and since, our organization and its members have been witness to the changing tides of fisheries management decisions. We are committed to promoting legislation that will further the general wellbeing of the Area E fishery and those who depend upon its sustainability and success.

In 2003 the CDFU opposed Governor Murkowski's order, transferring the Department of Fish and Game's Habitat Division to the Department of Natural Resources.

The CDFU supports House Bill 41, and supports the rescinding of Executive Order 107.

The Habitat Division is mandated to protect the habitat of fish and game resources; the Alaska Department of Fish and Game's mission is to protect, maintain, and improve the state's fish,

game, and aquatic plant resources, and manage their use and development while ensuring sustainability and a harvestable surplus of fish and wildlife.

Returning the Habitat Division, and its statutory management authority, to ADF&G will remove the conflict created by Executive Order 107, and restore confidence among Area E fishermen that Habitat Division management decisions are being made with true regard for resource sustainability.

February 8, 2007

Yours Sincerely,

Catherine Crawford
Executive Director, CDFU

Cc. Senator Albert Kookesh
Representative Bill Thomas

Representative Paul Seaton, Chairman
Members of the House Special Committee on Fisheries
Alaska State Legislature
State Capitol Room 102
Juneau AK 99801-1182

Representative Les Gara, Sponsor
State Capitol Room 200
Juneau AK 99801-1182

RE: HB 41 "An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

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In 2003 the CDFU opposed Governor Winkowski's order, transferring the Department of Fish and Game's Habitat Division to the Department of Natural Resources.

The CDFU supports House Bill 41, and supports the rescinding of Executive Order 107.

The Habitat Division is mandated to protect the habitat of fish and game resources; the Alaska Department of Fish and Game's mission is to protect, maintain, and improve the state's fish,

February 14, 2007

Mark Kaelke
Trout Unlimited
419 Sixth Street
Juneau, AK 99801
(907) 321-4464

Representative Paul Seaton
House Fisheries Committee
State Capital, Room 102
Juneau, AK 99801

Subject: Support for HB41

Dear Representative Seaton and Committee Members:

I'm Mark Kaelke, I am the Southeast Alaska Project Director for Trout Unlimited. Trout Unlimited is North America's largest coldwater fisheries conservation group, with roughly 170,000 members, approximately 3,500 of which reside here in Alaska. I appreciate this opportunity to voice our support for HB 41.

I would first like to recognize the comments on this matter from former Fish and Game commissioners and other department employees. Trout Unlimited supports their viewpoints and experience on this issue and urge you to do the same.

It is our understanding that 37 Fish & Game Habitat employees were part of the transfer of that division to DNR. These individuals brought extensive experience in fish and game habitat advocacy with them at that time. But we are concerned about what will happen when these employees are replaced. Will their successors have the same knowledge, experience and commitment to our fish and game resources as that of their predecessors? It's obviously a difficult question to answer now, but we believe passage of HB 41 offers the best chance for this as it will insure future Habitat employees work for the agency specifically charged with protecting fish and game habitat.

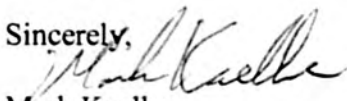
I spent 12 years in the sport fishing industry prior to my work with Trout Unlimited. Doing so gave me an opportunity to see firsthand not only the great wealth of fish and game resources we have been blessed with, but also the great wealth of knowledge our fish and game employees possess. Were it not for these professionals and the management systems they

have undertaken, Alaska would not likely lay claim to our position as a pre-eminent sport fish destination, nor would we have, what are generally recognized as the best-managed commercial fisheries in the world. Other economically tangible matters like the Marine Stewardship Council certification of our salmon stocks depends on our continued ability to manage fish to the highest degree possible. We question whether that is truly being done now given the current status of permitting authority.

We believe Governor Murkowski's executive order tipped the balance of permitting power in favor of development concerns and we see HB41 as an opportunity to set things back to the way they should be. We believe it's very hard to argue with the 50-some years of successful fish and game management that took place before that executive order. Furthermore, as major projects like the Pebble Mine enter the permitting process, the people of Alaska should be assured that ADF&G, the agency specifically charged with maintenance of fish and game habitat, is doing exactly that.

Thank you.

Sincerely,



Mark Kaelke

House Bill 41 Testimony - February 12, 2007

My name is Thomas Pebler. I am a concerned citizen and I offer my support to House Bill 41.

1. It is necessary and appropriate that the "Habitat Division" be returned to its proper place within the Alaska Department of Fish and Game. As we all know, the Board of Fisheries has given its unanimous support to this intention.
2. The Departments of Natural Resources and Fish and Game have previously performed separate roles for the sake of balancing the resource needs of Alaska. It is critically important that these separate roles maintain an equal status of integrity.
3. The consequences of Governor Murkowski's Executive Order 107 would only be realized after many years of cumulative effect. Evaluating a 3 ¼ year track record for permitting projects that are so typically long-term is an inadequate measure of confidence.
4. Governor Palin has stated that it is important to conduct stakeholder outreach in order to assure the public that departments are working cooperatively and effectively to manage Alaska's habitat resources and consistent with public interest. Having understood Governor Palin and knowing that the public's desire is to restore the Habitat Division to its proper place, we must do so by means of legislative action as necessary. The public could then be assured that the departments are correct without the effort of stakeholder outreach.
5. It is understandable that there is apprehension at the expense and effort of, again, moving this office. It is not convenient that we should have to fix the mistake of a previous administration however, long-term benefits would appreciate as resources could be accurately managed.
6. May the Governor and Officers and Employees of the State of Alaska be respectfully reminded that the foundations of our state and of our country have not been achieved by convenient means and this is our revered patriotic tradition.

Thank you very much for your attention.



Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515



Alaska State Legislature

Please enter into the record my testimony to the

House Fish

Committee name

Committee on

HB 41

Bill/Subject

dated

2/14/07

Signed:

Matthew LaCroix

Testifier

Self

Representing (Optional)

7362 W. Parks Highway #453, Wasilla, 99654

Address

373-3748

Phone number

malacroix

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2/14/2007

Testimony in support of HB 41

Chairman and members of the committee. My name is Matthew LaCroix. For the past five years I have worked as a permitter and project reviewer for both the Departments of Fish and Game (ADF&G) and Department of Natural Resources (DNR). I am here on my own time providing this testimony as a private citizen. It is based on my personal experiences and opinions. In no way does what I say reflect the official position of any office or division within either the Department of Fish and Game or Natural Resources.

I strongly support returning Fish Habitat permitting authority to the ADF&G.

I was working for the ADF&G within the former Habitat and Restoration Division as a permitter when Governor Murkowski issued Executive Order 107. As a result of the Executive Order the Habitat Division was eliminated along with thirty percent of its positions. The remaining positions were split between ADF&G's Sport Fish Division and the new Office of Habitat Management and Permitting (OHMP) at DNR. I was one of those that received a layoff notice.

But I was not laid off. Instead, I was offered a position within the new OHMP area office in Palmer. I accepted the position, and began work to open the new office. I was the only biologist in the office for the first several months, and I received a director's commendation from Kerry Howard for the work that I did during that time. In total, I spent two and one-half years with the OHMP. I have been back with ADF&G as a permitter in the Sport Fish Division for the past eighteen months.

I relate my personal history so that you know that I am not presenting innuendo or hearsay. I have been issuing permits and coordinating per the ADF&G/DNR Memorandum of Understanding (MOU) ever since it was originally written. This has been almost four years, and I can say that the arguments put forward by those who support keeping Fish Habitat permitting within DNR are disingenuous to the extreme.

The mantra from these supporters seems to be: "...it is the same statutes, same biologists, same protections," but this is far from the truth. If there truly is no difference in protection, why did our former governor feel so strongly that creating OHMP was necessary? I will tell you why. Because there is such a thing as corporate culture, because concentrating permitting and project review authorities within DNR was essential to sending the message and creating the reality that was central to the Murkowski administration's goals.

That message and reality was that the State of Alaska was "open for business." That the state was pro-development, and that facilitating development was a priority within all state agencies. The governor publicly stated time and again that he was moving permitting to DNR because ADF&G had stalled or blocked development projects. The governor's sole purpose for creating OHMP was to grease the skids for development.

malacroix

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2/14/2007

I saw first-hand the differences in perspective between ADF&G and DNR. At ADF&G, the focus was on doing a complete, in-depth review of proposed projects. In-depth reviews do occur at OHMP, but there is a greater focus on short review times. At ADF&G, we take a broad view when reviewing projects, considering potential impacts to all fish and wildlife, as well as users of the resource. The OHMP focuses much more closely on anadromous fish.

At ADF&G, we address likely impacts and recommend conservative management measures to maintain the existing high quality and productivity of our resources. At OHMP, applicants are given all reasonable doubt. The burden is on the biologists to demonstrate "significant" and direct impacts to "important" or "high value" fish or wildlife populations before activities can be conditioned. In some cases, such as impacts to spawning habitats the full scope of the problem may not be apparent for years; and no one is out looking for or documenting them. But even documented impacts may be ignored if avoiding them would add costs to a project.

At ADF&G, detailed permits are written with a focus on their clarity and enforceability. This is much less of a concern at OHMP. And there were sideboards placed on my work at OHMP. If at all possible, permits were to be three pages or less, with five or fewer stipulations. Detailed project descriptions were discouraged. If they didn't like the focus of your review, they simply took the project away and gave it to someone less inclined to "rock the boat."

Or just changed your work. Proposed projects that were inconsistent with coastal standards became consistent, eight alternative measures became one, and ten stipulations became three.

This is significant because violations of the Fish Habitat permitting statutes are criminal rather than civil offenses. While other state agencies may also issue permits for a given project, generally the OHMP permit is the only one that can be effectively enforced. Violators can be cited by commissioned OHMP staff or by the state troopers. Vague permits are difficult to enforce. The Division of Mining, Land and Water within DNR might issue a twenty-page permit with twenty conditions, while the OHMP permit (the one that actually could be enforced) might be two pages with two stipulations.

Kerry Howard testified on Monday about the close working relationship that exists between OHMP and ADF&G. About how OHMP routinely consults with ADF&G biologists on every project "bigger than a bread box," and how seventy-nine percent of OHMP biologists once worked for ADF&G. If this is the case, then why not send the OHMP biologists back to ADF&G where they came from?

If so many of the OHMP staff really are co-located with ADF&G, why would it be so "disruptive" to return permitting to ADF&G? By the way, ADF&G does not have permanent staff based in the Kenai River Center. We did have permitting staff there — those individuals now work for DNR.

malacroix

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If ADF&G really has the expertise that OHMP personnel need to do their jobs; and if OHMP permittees really do rely on and incorporate the input they receive from ADF&G staff, how does it possibly make sense for DNR to have that permitting authority instead of ADF&G?

It makes sense if you want DNR to have editing and veto power over ADF&G's comments and concerns. And that is how things are now. ADF&G provides "input" that can be disregarded by DNR. If DNR does not agree with ADF&G's comments, those comments simply do not get passed on to the coastal program or to project proponents and do not become part of the public record. The silencing of dissent was a major factor in concentrating review and permitting authorities within DNR.

In her testimony, Ms. Howard pointed out that ADF&G was granted a "full seat at the table" regarding review of the prospective Pebble mine. This seat at the table was only granted after the ADF&G protested that the OHMP was editing its comments to the Large Mine Team. In fact, OHMP refused to pass on a memorandum regarding wildlife baseline study needs.

ADF&G may have a seat at the table, but no authority, and we still had to submit comments through OHMP for the recent coastal review of exploration activities. And this seat at the Large Mine Team table is only for Pebble, not for any other mines.

Although Executive Director Howard pointed out the common responsibilities of all state agencies under our constitution, the departments of Fish and Game and Natural Resources are not interchangeable, and neither are their respective biologists. If they were, there would be no need for an MOU between the two departments. There would be no need for OHMP to consult with ADF&G, or for ADF&G to review projects at all.

We know that the idea of "...same statutes, same, biologists, same protections" is false. That is why there is an MOU, and why even the current governor acknowledges that it is necessary.

About that MOU. If there is such a close relationship between the two departments, why is this MOU eleven pages long, and why has it been amended four times in less than four years? Even if I didn't already know how convoluted and unworkable this document is, Governor Palin's letter to the boards and Ms. Howard's testimony would give me pause.

If the MOU is the key to coordination between the two departments, why should we accept that a "new and improved" version would be any more effective than the previous five versions? If the MOU is about coordination, and if OHMP really does contact the ADF&G on all projects "bigger than a breadbox," why didn't they contact ADF&G about the Rock Creek mine? Or about coal exploration activities within the Matanuska Valley Moose Range? The MOU identifies ADF&G as the lead for review of activities within the Moose Range. Perhaps these projects are smaller than a breadbox.

malacroix

Page 4

2/14/2007

And if the working relationship between DNR and ADF&G is so congenial, why is it that virtually the only permit denial issued by the Palmer OHMP office in the last eighteen months was issued to ADF&G? This is in referral to the beaver dam removal project brought up by Ms. Howard during her testimony. Why is it that OHMP couldn't work with the ADF&G to modify the project instead of issuing a denial? And why exactly did the OHMP deny this application when they have issued permits to the Forest Service and other applicants for the same activity?

In conclusion, I need to say that I have nothing against OHMP biologists. They did not create the situation and for the most part are conscientiously doing the best they can under difficult circumstances. These are good biologists who do good work, but the reality is that neither department currently has the necessary staff to adequately protect the state's valuable fish and wildlife resources.

I do object to the message that is being given to this committee, to the legislature as a whole, to the governor, and to the public. That message is that there are no issues here, that the protection provided to our resources is the same as it was prior to EO 107. It is not. The state lost many of its most experienced permitters and project reviewers as a result of that Order. Review responsibilities are fragmented and uncoordinated. There is more duplication, not less, and the work is being done by fewer, less experienced biologists. It will take years for either ADF&G or DNR to rebuild the capacity lost as a result of EO 107.

The big loser here are the resources, and of course the public that utilizes and depends on them. If we truly focused on protecting and maintaining the resources for the public in accordance with the constitution it wouldn't matter who issued the permits. Unfortunately, however, we are not there yet, and so it does matter. The OHMP has demonstrated a willingness to defend developers and industry, but have they shown they are willing to defend our fish and wildlife? If Executive Director Kerry Howard had given one example of when OHMP had stood up in opposition to a position taken by DNR, we could give them the benefit of some doubt that they were first and foremost looking out for the resource. But she did not. The OHMP is 37 people in a very large and powerful department, and frankly, I don't think that they are willing to fight their own commissioner.

The ADF&G, on the other hand, has a proven track record of being willing to fight to protect the state's fish and wildlife resources. If the legislature recognizes the true value of these resources, it will realize that they are worth fighting for, and it will give the ability to do so back to ADF&G.

I urge you to return Fish Habitat permitting to ADF&G.

Thank you for providing this opportunity to comment.

Lance Trasky
3941 Truro Drive
Anchorage, Alaska 99507
907 344-4220

February 10, 2007

Representative Les Gara
House Fisheries Committee
State Capital, Room 102
Juneau, Alaska 99801-1182

Subject: Support for HB41

Dear Representative Seaton and Committee Members:

My name is Lance Trasky and I am a fisheries biologist, a small business owner, and for 31 years was a fisheries research biologist, habitat biologist and Regional Supervisor for the Habitat Division of the Alaska Department of Fish and Game (ADF&G). I am testifying today to voice my strong support for House Bill 41 which would reverse former Governor Murkowski's Executive Order 107 and return the responsibility to protect salmon streams and prevent blockages of fish streams to the Department of Fish and Game where it rightfully belongs.

Such an action will accomplish two things. First, it will help to restore public confidence in the states' regulatory system which was badly eroded during the Murkowski administration. Secondly, it will place the authority to protect our socially, economically, and culturally valuable fisheries resources back in the hands of Department of Fish and Game fisheries biologists with a statutory mandate and the expertise to protect, preserve, maintain and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state, as the founding fathers of this state intended.

Alaska's founders witnessed decades of fisheries and fisheries habitat mismanagement when other interests trumped conservation. The founders also witnessed the final demise of the once great salmon fisheries of the Pacific Northwest in the 1950's and predicted that the loss of habitat as a result would be the biggest long-term threat facing Alaska's fisheries as well as the subsistence, commercial and sport fishers who depend upon them. As the framework of state government was taking shape, a heated debate ensued between Alaskan fishermen and those involved in mining, logging, and hydropower development regarding how state government would be organized in addition to deciding what functions various agencies would have. Miners and loggers wanted a traditional system with a Department of Natural Resources and a simple fish and game management division having no authority in critical habitat decisions. Fish interests wanted a separate Department of Fish and Game. They also wanted this department to have an equal voice in state resource management decisions, a constitutional mandate for sustained yield, and the statutory authority to prevent the destruction of anadromous fish habitat on public and

private lands, as well as to prevent blockage of fish passage from dams and other obstructions. Fisheries interest won out and for 43 years this was the law of the land.

Unfortunately in 2003, Governor Murkowski was able to do what our founding fathers feared most. By transferring the Anadromous Fish Act and the Fish Ways Act to the Alaska Department of Natural Resources (ADNR) and implementing a Memorandum of Agreement granting ADNR oversight of the Federal Fish and Wildlife Coordination Act, and radically changing the Alaska Coastal Management Program; Governor Murkowski was able to funnel all of the authority to approve development projects into the ADNR. He also appointed managers who shared his views to implement his vision. He set Alaska on the same dead-end road that the former salmon producing western states followed.

The transfer of these statutory authorities and programs has directly affected the consideration that fish habitat and subsistence, commercial, and sport fishermen receive in state resource development and permitting decisions in several ways:

1. ADF&G and ADNR have very different missions. ADF&G has the statutory mandate to protect and maintain fish resources, while ADNR has the mandate to develop the states' renewable and non-renewable resources. Removing the responsibility to protect fish habitat from ADF&G makes it much easier for ADNR to inappropriately sacrifice fish habitat to facilitate non-renewable resource development.
2. The balance that state founders sought in resource development decisions has been lost. Some people have tried to make the argument that ADNR employees would protect fish as diligently as they did at ADF&G. These people must not have heard of corporate culture. The transfer of staff and authorities is akin to moving the Mercedes design team to Hyundai and then expecting that they will still be building Mercedes.
3. Over my career I was involved with many different development projects where the Department of Fish and Game and ADNR had very different positions on ADNR projects and activities affecting fish, wildlife and public use. Examples include:
 - One example was the issue of requiring logging operations on state and private lands to follow the law and submit plans for stream crossing structures to ADF&G for review for adequacy before construction. Loggers and ADNR did not want ADF&G's Habitat Division to require loggers to obtain permits from ADF&G to build roads across fish streams. ADF&G asserted its authority under the Anadromous Fish Act and Fish Ways Acts and continued to require loggers to get permits.
 - A second example is mixing zones in spawning areas. The Alaska Department of Environmental Conservation (ADEC) proposed to change their regulation's to allow mixing zones for harmful substances in fish spawning areas during both the Hickel and Knowles Administrations. Habitat Division led the ADF&G's opposition to the change and it was withdrawn both times. After the Habitat and Restoration (H&R) Division was transferred to ADNR

ADEC change to allow mixing zones in fish spawning areas was supported by ADNR, and no one in ADF&G fought it.

- A third example was the attempt by an ADNR Commissioner and the Division of Forestry in the 1990's to transfer management of all of the state-owned forest land in the Matanuska Valley to a Finnish timber company under a 50-year Forest Management Agreement developed by the ADNR Commissioner's ex-husband. After reviewing the ADNR proposal, Habitat Division found the agreement to be inconsistent with the Alaska Coastal Management Program and with ADF&G statutes because it would not protect fish habitat or public access to this heavily used public recreation area. There was a heated internal debate between ADF&G and ADNR over the agreement until the public became aware of the terms of the agreement and the public outcry ended ADNR's attempts to sign the agreement.
4. One question which comes up often is how has permitting changed now that it is administered by ADNR? Because there is no public notice requirement for the thousands of ADNR fish habitat permits issued annually, the only people who know if these permits effectively protect fish habitat are the ADNR person issuing the permit and the applicant. The same is true for violations of these permits. I do not have access to these permits but asked this question of a number of state, federal, and private biologists who have experience in ADF&G fish habitat permitting and are knowledgeable about fish habitat permitting before and after the transfer of ADF&G's permit authority to ADNR. I won't disclose their names or positions because of concerns about retaliation. However, here is what I was told about the differences:

A. Comments from Federal Biologists:

1. I review federal projects affecting fish and wildlife and do not see ADF&G or ADNR-Office of Habitat Management and Permitting (OHMP) as a player in projects any more. Often no one from ADF&G or OHMP even attends project meetings.
2. My agency has no relationship with ADF&G or ADNR-OHMP any more. Staff at one OHMP office does not even return calls.
3. The policy at OHMP seems to be to narrowly interpret their responsibilities to permitting within the banks of anadromous streams and stream blockages. Overshadowing issues such as activities which may impact a watershed seem to be ignored. There is little interest in wildlife issues.
4. The few former ADF&G H&R staff that remains at OHMP seems to be trying to do a good job. The new hires that attend project meetings rarely open their mouths. Most of them do not seem to know much about the issues that they are dealing with.
5. Consultants have asked me why ADF&G and OHMP no longer asks any tough questions related to environmental documents for the road, oil and gas, and mining projects they are working on.

6. Some of the best biologists have left OHMP when they had an opportunity to return to ADF&G or retire.

B. Comments from State Biologists:

1. OHMP staff has lost the close working relationship with ADF&G staff and the information that they provided on projects. There is no priority in OHMP to solicit ADF&G input on projects, particularly projects that that ADF&G may not like.
2. Regional OHMP staff does not receive any support on enforcement actions.
3. The permits that the OHMP leadership wants us to write do not contain project specific conditions and are largely unenforceable. The emphasis is on reducing review time and increasing permit numbers, not a high level of fish habitat protection.
4. For a fisheries or wildlife biologist, working at ADNR is a dead end. For career advancement they will need to go elsewhere.
5. A number of experienced habitat biologists left ADNR when the opportunity arose. They were replaced with people with little or no experience.
6. ADNR-OHMP biologists are discouraged from participating in multi-agency working groups which are working on means to avoid impacts on fish and wildlife and from attending project meetings. Biologists don't do coastal reviews, or review subdivision plats that the Borough sends over even though the development would affect a salmon stream.
7. Biologists are told to act as facilitators for applicants, not regulators protecting the public's interest in fish or wildlife habitat.
8. Biologists are told not to put stipulations such as timing windows on permits, and to accept damage from projects which would cause sedimentation and/or water pollution that only lasts a few days or weeks.
9. OHMP ignored a violation on Wasilla Creek where a developer worked in an anadromous stream without a permit.
10. The close coordination and exchange of information that existed between the fisheries, wildlife, and subsistence divisions and the project reviewers in the Habitat and Restoration Division when they worked in the same building for the same Department is largely gone.
11. ADF&G does not have the staff or the expertise to review the fish and wildlife impacts of large mines. ADNR is now by law the states expert on fish habitat protection and restoration. ADNR won't fund ADF&G to hire staff with expertise that ADNR has, or review decisions that ADNR makes.
12. All ADF&G has now is management biologists who have information on harvest and escapement. This information has little value in determining if projects such as a large mine should be permitted.

13. ADF&G isn't a real player in the large mines process. These are very complex project's which requires very technical analyses that can't be done by a fisheries management biologist.

In summary I believe that the changes that former Governor Murkowski made during his administration substantially reduced the protection that fish habitat receives both at the policy level and the issuance of permits for individual projects. It also increases the risk that large projects will be approved. Projects that will have very significant short and long-term impacts on fish and wildlife resources as well as commercial, subsistence and sport fishermen who depend on these resources. I urge you to restore the balance in state resource decisions and pass HB 41. Thank you.

Sincerely,

Lance Trasky

Louie Flora

From: doug hill [deeryard2001@yahoo.com]
Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
Subject: Please support HB 41 - TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Re: House Bill 41
TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Representative Lynn,

I want to thank Representatives Gara and Crawford for the wisdom and foresight they have exhibited by sponsoring HB 41.

From the start and from the standpoint of anadromous fish and habitat protection I don't believe there was any basis in reason or fact for moving key Title 16 responsibilities from AD&G to ADNR. I listened to and read Frank Murkowski's first "State of the State" address where he announced his desire to move anadromous fish habitat protection functions and other responsibilities to ADNR via Executive Order 107. Allegations made against ADF&G-Habitat Division in the "State of the State" address were easily refuted and evidence was provided to the legislature. Further Habitat Division damaging spin came from ex-large scale mine manager and the then current ADNR Commission Tom Irwin. For example, whether Irwin was aware of it or not, he erroneously conveyed information from Canada's Fraser Institutes mining report (the "Fraser Report") to support the anti ADF&G-Habitat campaign. ADF&G - Habitat Division had no support from conveniently "acting" Commissioner Kevin Duffy and the balance of power in the legislature at the time favored supporting nearly anything the Governor or Jim Clark wanted.

I believe the wisdom of the states founders should be heeded and we should return to the "check and balance" type system where, prior to EO 107, the following responsibilities resided outside of ADNR (the states lead resource extraction agency) and within ADF&G:

- Title 16 fish passage and anadromous fish stream permitting;
- the Anadromous Waters Catalog;
- Project-related research and compliance monitoring;
- Forest Resources and Practices Act permitting, monitoring and compliance.

With potential projects such as the Pebble Gold Mine on the horizon - a mine which will affect two of the worlds largest remaining wild salmon and rainbow trout watersheds - I don't believe that state's lead mineral extraction agency should be in the business of Title 16 fish habitat and passage protection, Title 16 monitoring and compliance activities, or determining which streams are anadromous and which are not. As result of EO 107 ADNR is responsible for determining which streams are cataloged as anadromous fish streams and which streams are not. As many of you know non-anadromous fish streams are not afforded the same protection as anadromous fish streams. I strongly encourage the Governor and the legislature to think about the future and support HB 41. Please "transfer the Habitat Division out of ADNR and back to ADF&G.

Anadromous fish populations are one of Alaska's true potential "permanent funds".

I am currently an ADF&G - DWC employee with 14 years of service. I have fished commercially and subsistence in Alaska. In addition, I have worked as a carpenter/maintenance worker in bush and urban Alaska. I am a hunter/fisher, skier, and moving water canoer.

Thanks for your time and service,

Douglas D. Hill
PO Box 220236
Anchorage, Alaska 99522
907-348-8519
deeryard2001@yahoo.com

Louie Flora

From: Stephen Taufen [staufen@seanet.com]
Sent: Tuesday, February 13, 2007 8:58 AM
To: Sen. Gary Stevens; Rep. Paul Seaton; Rep. Gabrielle LeDoux; Rep. Les Gara
Subject: Endorse HABITAT Move back to ADF&G

Dear Senator Stevens, and Representatives Gara, LeDoux and Seaton:

We support the return of the HABITAT division to the ADFG. The state functions much like a doctor over these resources, and **we must have an unbreakable code of "do no harm."**

Recent news indicates that such protections are often in Natural Resource departments in other states, and working well. We dispute that assumption - just by looking around at the problems in other states - and argue that **this is what made Alaska so special.** It is important to have a **strong agency function** akin to **"the huck stops here"** so that in cases where the fisheries cannot speak for themselves, mankind does so with a **firm protective stance.**

Thank you for your efforts to ensure Habitat gets moved back under the ADF&G.

Stephen Taufen - Groundswell Fisheries Movement
Watchdog for citizen-taxpayers and harvesters and communities in Alaska fisheries.

February 13, 2007

FROM:

Bruce H. Baker
P.O. Box 211384
Auke Bay, AK 99821
Phone: (907) 789-9354

TO:

Representative Paul Seaton, Chair
House Fisheries Committee
Alaska House of Representatives
State Capital, Room 102
Juneau, AK 99801

SUBJECT: HB41 – Reassignment of the Authority for the Anadromous Fish Act & Fishways Act from ADNR to ADF&G

Dear Chairman Seaton and Committee Members:

My name is Bruce Baker and I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to support and promote passage of HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

During your February 12 hearing on this bill, Mr. Lance Trasky, retired ADF&G Fisheries Biologist, Habitat Biologist, and Habitat Division Regional Supervisor, discussed his February 10 letter to your committee. I had the privilege of working with Mr. Trasky for 15 years, first during the years I worked as a Natural Resource Policy Specialist in the Office of the Governor during the Hammond administration and later when he and I both worked in ADF&G's Habitat Division. As you consider the well researched points made in Mr. Trasky's letter to you, I hope you'll keep in mind that he is the most knowledgeable, responsible, diligent, and, above all, effective leader in protecting the state's fish and wildlife habitats that I have ever met in state government. Many professional biologists and users of the state's fishery resources will tell you the same thing. You are very fortunate to have the benefit of the analysis his February 10 letter and February 12 testimony provide you with.

That said, here are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they are with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.

3. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

4. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During your committee's February 12 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be a smooth-running and effective administration of these functions. It would have been helpful if she had presented your committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

5. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that has worked so effectively to resolve these conflicts in a mutually beneficial way ever since Statehood.

6. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before your committee is neither a substitute nor a prerequisite to passing HB41, and I encourage the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkowski fixed something that most Alaskans did not consider broken. Now, the Legislature and Governor Palin have an opportunity to fix what is.

Sincerely,

/s/ Bruce Baker

House Bill 41 Testimony - February 12, 2007

My name is Thomas Pebler. I am a concerned citizen and I offer my support to House Bill 41.

1. It is necessary and appropriate that the "Habitat Division" be returned to its proper place within the Alaska Department of Fish and Game. As we all know, the Board of Fisheries has given its unanimous support to this intention.
2. The Departments of Natural Resources and Fish and Game have previously performed separate roles for the sake of balancing the resource needs of Alaska. It is critically important that these separate roles maintain an equal status of integrity.
3. The consequences of Governor Murkowski's Executive Order 107 would only be realized after many years of cumulative effect. Evaluating a 3 ¾ year track record for permitting projects that are so typically long-term is an inadequate measure of confidence.
4. Governor Palin has stated that it is important to conduct stakeholder outreach in order to assure the public that departments are working cooperatively and effectively to manage Alaska's habitat resources and consistent with public interest. Having understood Governor Palin and knowing that the public's desire is to restore the Habitat Division to its proper place, we must do so by means of legislative action as necessary. The public could then be assured that the departments are correct without the effort of stakeholder outreach.
5. It is understandable that there is apprehension at the expense and effort of, again, moving this office. It is not convenient that we should have to fix the mistake of a previous administration however, long-term benefits would appreciate as resources could be accurately managed.
6. May the Governor and Officers and Employees of the State of Alaska be respectfully reminded that the foundations of our state and of our country have not been achieved by convenient means and this is our revered patriotic tradition.

Thank you very much for your attention.



Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515

57-43-204

Let's call the meeting to order

Let the record reflect that it is 8:30 a.m. on Monday, February 11th, 2007

Present are:

Representative Johnson ✓

Representative LeDoux *Late*

Representative Wilson

Representative Johansen ✓

Representative Holmes *Late*

Representative Edgmon ✓

And myself, Representative Seaton ✓

At this time I would like to remind everyone to turn off their cell phones and address questions through the chair.

Today we will hear

**HB 74 BAN MIXING ZONES IN
SPAWNING AREAS**

And

**HB 41 TRANSFER HABITAT DIV FROM
DNR TO F&G**

February 13, 2007

FROM:

Bruce H. Baker
P.O. Box 211384
Auke Bay, AK 99821
Phone: (907) 789-9354

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Alaska House of Representatives
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Sincerely,

/s/ Bruce Baker

Louie Flora

From: doug hill [deeryard2001@yahoo.com]
Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
Subject: Please support HB 41 - TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Re: House Bill 41
TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Representative Lynn,

I want to thank Representatives Gara and Crawford for the wisdom and foresight they have exhibited by sponsoring HB 41.

From the start and from the standpoint of anadromous fish and habitat protection I don't believe there was any basis in reason or fact for moving key Title 16 responsibilities from AD&G to ADNR. I listened to and read Frank Murkowski's first "State of the State" address where he announced his desire to move anadromous fish habitat protection functions and other responsibilities to ADNR via Executive Order 107. Allegations made against ADF&G-Habitat Division in the "State of the State" address were easily refuted and evidence was provided to the legislature. Further Habitat Division damaging spin came from ex-large scale mine manager and the then current ADNR Commission Tom Irwin. For example, whether Irwin was aware of it or not, he erroneously conveyed information from Canada's Fraser Institutes mining report (the "Fraser Report") to support the anti ADF&G-Habitat campaign. ADF&G - Habitat Division had no support from conveniently "acting" Commissioner Kevin Duffy and the balance of power in the legislature at the time favored supporting nearly anything the Governor or Jim Clark wanted.

I believe the wisdom of the states founders should be heeded and we should return to the "check and balance" type system where, prior to EO 107, the following responsibilities resided outside of ADNR (the states lead resource extraction agency) and within ADF&G:

- Title 16 fish passage and anadromous fish stream permitting;
- the Anadromous Waters Catalog;
- Project-related research and compliance monitoring;
- Forest Resources and Practices Act permitting, monitoring and compliance.

With potential projects such as the Pebble Gold Mine on the horizon - a mine which will affect two of the worlds largest remaining wild salmon and rainbow trout watersheds - I don't believe that state's lead mineral extraction agency should be in the business of Title 16 fish habitat and passage protection, Title 16 monitoring and compliance activities, or determining which streams are anadromous and which are not. As result of EO 107 ADNR is responsible for determining which streams are cataloged as anadromous fish streams and which streams are not. As many of you know non-anadromous fish streams are not afforded the same protection as anadromous fish streams.

I strongly encourage the Governor and the legislature to think about the future and support HB 41. Please "transfer the Habitat Division out of ADNR and back to ADF&G.

Anadromous fish populations are one of Alaska's true potential "permanent funds".

I am currently an ADF&G - DWC employee with 14 years of service. I have fished commercially and subsistence in Alaska. In addition, I have worked as a carpenter/maintenance worker in bush and urban Alaska. I am a hunter/fisher, skier, and moving water canoer.

Thanks for your time and service,

Douglas D. Hill
PO Box 220236
Anchorage, Alaska 99522
907-348-8519
deeryard2001@yahoo.com

Louie Flora

From: Stephen Taufen [staufen@seanet.com]
Sent: Tuesday, February 13, 2007 8:58 AM
To: Sen. Gary Stevens; Rep. Paul Seaton; Rep. Gabrielle LeDoux; Rep. Les Gara
Subject: Endorse HABITAT Move back to ADF&G

Dear Senator Stevens, and Representatives Gara, LeDoux and Seaton:

We support the return of the HABITAT division to the ADFG. The state functions much like a doctor over these resources, and **we must have an unbreakable code of "do no harm."**

Recent news indicates that such protections are often in Natural Resource departments in other states, and working well. We dispute that assumption - just by looking around at the problems in other states - and argue that **this is what made Alaska so special.** It is important to have a **strong agency function akin to "the buck stops here"** so that in cases where the fisheries cannot speak for themselves, mankind does so with a **firm protective stance.**

Thank you for your efforts to ensure Habitat gets moved back under the ADF&G.

Stephen Taufen - Groundswell Fisheries Movement
Watchdog for citizen-taxpayers and harvesters and communities in Alaska fisheries.



MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Office of Habitat Management and
Permitting

TO: Rep. Paul Seaton
Chair
House Special Committee on Fisheries

DATE: February 22, 2007

TELEPHONE: 465-3176

FROM: Kerry Howard *KH*
Executive Director

SUBJECT: Response regarding
Projects

During last Wednesday's House Special Committee on Fisheries hearing, numerous testifiers mentioned projects where they alleged inappropriate actions on behalf of the Office of Habitat Management and Permitting (OHMP). At the end of the hearing, you verbally requested that I provide additional information about these projects. After the hearing, DNR's legislative liaison, Melanie Lesh, contacted your staff, Mr. Flora, to determine which projects, in particular, you wanted me to respond to. Given other duties, Mr. Flora did not provide a specific list.

As such, I referred to notes I took during the hearing, and have responded to projects I made notes on. This list is not meant to be all-inclusive. However, if there are additional projects the Committee wants additional information on, please let me know which specific ones, and I will gladly respond. For ease of referencing earlier testimony, I have identified the testifier and the project they discussed by name, followed by a paraphrasing of their concern, and then OHMP's response.

I'd appreciate you making this response available to committee members and the bill sponsor, Representative Gara. If you need additional information, please feel free to contact me through DNR's legislative liaison.

Enclosure

**Response to the House Special Committee on Fisheries
Office of Habitat Management and Permitting (OHMP)/DNR
Re: Additional Information regarding projects
Discussed in other testimony**

As requested by Chair Seaton, OHMP has prepared the following brief comments regarding projects that were specifically discussed in testimony from other parties. The responses are denoted by the testifier, followed by the project name. Our response is intended to provide clarifying information to members of the House Special Committee on Fisheries.

- **Mr. Herb Simon; Sheep Mountain Disposal:** *Mr. Simon expressed concerns that DNR did not consult with ADF&G before making disposals.* **Response:** Pursuant to the Memorandum of Understanding (MOU) between the Department of Natural Resources (DNR) and the Alaska Department of Fish and Game (ADF&G), ADF&G not OHMP is responsible to provide comments to the DNR Division of Mining Land and Water (DMLW) on land disposals. Further questions on what actions were or were not taken by the State should be directed to ADF&G or the DMLW.
- **Dr. Hal Geiger, Chilkat Jet Boat:** *Mr. Geiger disagreed with the DNR/Division of Parks (DOP) decision to allow a tourist operation using jet boats in the Chilkat Bald Eagle Preserve.* **Response:** The DOP initially requested that OHMP recommend conditions that would protect salmon in a DOP Parks Permit for a jet boat tourist operation proposed in the Chilkat Bald Eagle Preserve. OHMP staff analyzed two Chilkat River studies by Dr. David Hill of Penn State University that describe the effects of erosion, turbidity and turbulence on juvenile salmonids, both in the field and in the lab. In addition, OHMP evaluated a literature review and the recommendations of a former ADF&G Habitat biologist on the effects of jet boats on fish eggs and fry. OHMP provided recommendations to the DOP that were identical to the conclusions in Dr. Hill's study and the recommendations of the former ADF&G Habitat biologist. OHMP and the DOP then discovered that the implementing statutes for this Preserve require the DOP to seek comments from ADF&G on parks permits. As such, OHMP immediately closed our file, informed the DOP, and passed along all information to ADF&G.¹ ADF&G reviewed the same studies, and their Commissioner wrote a memo stating that sufficient scientific evidence did not exist to disallow the requested permitted use.
- **Mr. Matthew LaCroix, Pebble Wildlife Studies:** *Mr. LaCroix alleged that OHMP did not forward an ADF&G memo on wildlife research needs to the State's Large Mine Project Team (LMPT).* **Response:** Initial state and federal agency review of the proposed Pebble Gold Copper Prospect project, as proposed by Northern Dynasty Minerals (NDM) Inc., began in early 2004. In April 2004,

¹ The MOU was also amended on January 26, 2006 to clarify that ADF&G shall always have the lead on these projects.

the State's LMPT signed a funding MOU with NDM. Both OHMP and ADF&G were included in this MOU, and both agencies had staff participate in all LMPT meetings and in meetings with NDM.

NDM also initiated environmental baseline field studies in the summer of 2004, and these studies, including wildlife work, continued through the summer of 2006. In February 2006, ADF&G submitted recommendations for wildlife studies to OHMP, including a request that these recommendations be forwarded, via the State's Large Mine Project Team (LMPT), to NDM.

The recommendations made by ADF&G encompassed three areas of concern-- moose, brown bear, and trace elements-- with proposed scopes of work and associated cost estimates of about \$1.78 million dollars. OHMP was charged with the responsibility to either forward the recommendations, as written, or make a determination that the proposed studies and associated scope and costs were not justified. Specifically, OHMP's responsibility was to forward what we believed to be solid and defensible recommendations, based mainly on relevancy to permitting or mitigation, that can be considered in making permitting decisions.

To help us make this decision, in March 2006, OHMP requested that ADF&G provide additional clarification on why these studies were needed for the environmental assessment, but more importantly how these studies would be used to directly support major permit decisions. In May 2006, ADF&G responded to OHMP's request, by reiterating their initial recommendations and expanding the proposed study scope. OHMP then forwarded ADF&G's May 2006 recommendations to the State's LMPT coordinator who, in turn, provided them to NDM. OHMP did not take a position on the ADF&G recommendations. In addition, in September 2006, DNR and ADF&G mutually agreed to amend our MOU to clarify that both OHMP and ADF&G would fully participate in the State's review process and each agency would comment directly to the DNR LMPT.

Finally, in early December 2005, OHMP recommended to the State's LMPT that small technical work groups be formed as a good way to make progress on a number of topics pertinent to the Pebble Gold Copper Prospect. Although letters have since been exchanged between NDM and the State's LMPT agreeing to this approach, no technical work groups have yet been formed nor meetings held. OHMP has stated on more than one occasion that such topics as wildlife studies would be an excellent subject matter for such a technical work group, which would include NDM, their consultants, OHMP, ADF&G, and other appropriate state and federal agencies.

- **Mr. Matthew LaCroix, Rock Creek:** *Mr. LaCroix alleged that OHMP did not "contact or solicit input from ADF&G".* **Response:** The Rock Creek Mine was under pre-permitting development for over a decade. In the 1990s and early 2000-2001, while Habitat was still at ADF&G, Habitat staff coordinated the

review of this project with ADF&G Nome staff (Wildlife, Sport Fish, and Commercial Fish), to ensure that we understood and incorporated issues of concern to them. Subsequently, both before and after Habitat was moved to DNR, OHMP worked with the applicant and other state and federal agencies to ensure that ADF&G's issues were fully addressed. The current mining proposal addresses concerns previously raised by ADF&G.

In the later stages of project development, specifically for the new access road up Big Hurrah Creek, OHMP coordinated with Mr. Charlie Lean (former Commercial Fisheries (CF) Area Management Biologist, who we initially coordinated with and who is now retired but working on fisheries issues in Nome for Norton Sound Economic Development). This decision to continue coordinating with Mr. Lean was intentional, as he had lived in Nome most of his life and had more knowledge about Big Hurrah Creek than the new CF Area Biologist. The CF Area Biologist was aware both that we were coordinating with Mr. Lean and conducting pre-mine permitting fisheries investigations in the Big Hurrah drainage.

Finally, the OHMP staff person who coordinated OHMP's review of this project has almost 22 years of direct work experience in the Nome Area, far more than any current ADF&G biologist.

- **Mr. Matthew LaCroix, Coal Exploration Matanuska Valley Moose Range:** *Mr. LaCroix alleged that ADF&G was not initially given the opportunity to comment on the application and that OHMP conducted a review that did not meet standards established in a cooperative agreement.* **Response:** Full Metals Minerals, Inc. recently submitted a proposal to the DMLW to drill 30 initial, and up to 100 secondary test holes, and to dig one small test pit to determine the feasibility of mining high grade coal. OHMP reviewed the aspects of the project related to our authorities under AS 41.14.840 and .870. On approximately February 6, OHMP learned from ADF&G Sport Fish Division that a portion of the lease would be on the Matanuska Valley Moose Range. Pursuant to our MOU, which states that ADF&G has the lead for activities within legislatively designated special areas, we immediately agreed that ADF&G should have the lead for the review. A public meeting was held in Chickaloon on February 7, and representatives from both ADF&G and OHMP attended. OHMP is not a signator to the cooperative agreement mentioned by Mr. LaCroix, as it was signed before we were moved to DNR. ADF&G is a signator and, as such, could have independently asserted that they should have a lead role, which they now have.
- **Mr. Matthew LaCroix, ADF&G Permit Denial, Use of Explosives to Remove Beaver Dams:** *Mr. LaCroix alleged that OHMP authorized similar work conducted by the U.S. Forest Service (USFS), but denied a permit to ADF&G.* **Response:** On February 2, 2006, OHMP denied a Fish Habitat Permit to ADF&G for the removal of beaver jams with nitroglycerin explosives on the Trinity and Shell Lake systems in the Susitna River drainage. Denial of this permit was based

on our belief that using explosives to remove beaver dams would be unnecessarily destructive to valuable fish habitat and existing populations of resident and anadromous fishes. We believe that non-destructive hand removal techniques represent a viable alternative to the use of explosives. The ADF&G proposal to remove beaver dams did not adequately address alternative removal techniques, it did not address population control measures for surviving beaver populations, nor did it include provisions for the proper protection of fish and game as provided for under AS 41.14.870.

The use of explosives to remove beaver dams on Trinity and Shell Creeks significantly differs from a research project designed to evaluate the use of explosives for removal of culverts on USFS lands in Southeast Alaska. The beaver dams on Trinity and Shell Creeks represent natural barriers to fish passage in a fully mature and stable ecosystem. Beaver dams are a natural habitat component in these systems and provide high value habitat for a variety of fish other than coho salmon. In contrast, the use of explosives to remove culverts in Southeast Alaska was a component of a research project designed to evaluate removal of artificial barriers to fish passage (culverts) in remote locations where no practical alternatives existed. Specifically, the USFS Sitka Ranger District proposed to remove 11 dilapidated log stringer bridges and culverts on the Duffield Peninsula of Northwestern Baranof Island. The purpose of the project was to improve fish habitat and restore fish passage in approximately 3.5 miles of stream. The collapsed and failing structures on forest road were restricting fish passage and re-routing stream channels in the area. Due to the remote location and forest regeneration in the area the USFS proposed a pilot project using explosives for the removal of the first 11 of 45 structures. OHMP issued concurrences (5 under .870, 4 under .840, and 2 structures didn't require concurrence) and agreed to accompany Sitka Ranger District staff during the project to observe impacts and assess the efficacy of the project.

In most cases explosives were placed in road fill or to the underside of sill logs above the stream. Due to site specific logistics and safety concerns, explosives were placed on the streambed in 3 instances when no surface flow was present in non-anadromous streams and drainages, and on the streambed 1 anadromous stream with extremely low flow. OHMP staff observed juvenile salmonids in close proximity to the structures prior to and after blasts at six sites. There were no observed juvenile mortalities. After removing the structures, adult pink salmon were observed upstream of the road. Large woody debris from the structures created new habitat for juveniles.

In 2006, OHMP issued 11 more concurrences for the removal of structures along the same road system. OHMP staff monitored blasting activities and began data collection for a comprehensive study on the effects of underwater pressures created by blasting log stringer and box log culverts. We will continue our research this summer of 2007 by collecting more detailed information during blasts on the Duffield Peninsula and in Fish Bay.



Cordova District Fishermen United

P.O. Box 939 | Cordova AK 99574

Ph: (907) 424 3447 Fax: (907) 424 3430

Email: cdfu@ak.net

February 8, 2007

Representative Paul Seaton, Chairman
Members of the House Special Committee on Fisheries
Alaska State Legislature
State Capitol Room 102
Juneau AK 99801-1182

Representative Les Gara, Sponsor
State Capitol Room 500
Juneau AK 99801-1182

RE: HB 41 "An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

Dear Representative Seaton, and Members of the House Special Committee on Fisheries:

The Cordova District Fishermen United (CDFU) represent the interests of the Copper River and Prince William Sound, Area E, fisheries.

In the past seventy years, both before Statehood, and since, our organization and its members have been witness to the changing tides of fisheries management decisions. We are committed to promoting legislation that will further the general wellbeing of the Area E fishery and those who depend upon its sustainability and success.

In 2003 the CDFU opposed Governor Murkowski's order, transferring the Department of Fish and Game's Habitat Division to the Department of Natural Resources.

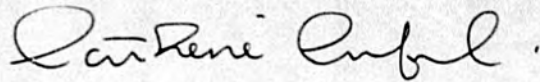
The CDFU supports House Bill 41, and supports the rescinding of Executive Order 107.

The Habitat Division is mandated to protect the habitat of fish and game resources; the Alaska Department of Fish and Game's mission is to protect, maintain, and improve the state's fish,

game, and aquatic plant resources, and manage their use and development while ensuring sustainability and a harvestable surplus of fish and wildlife.

Returning the Habitat Division, and its statutory management authority, to ADF&G will remove the conflict created by Executive Order 107, and restore confidence among Area E fishermen that Habitat Division management decisions are being made with true regard for resource sustainability.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Crawford".

Catherine Crawford
Executive Director, CDFU

Cc. Senator Albert Kookesh
Representative Bill Thomas

Louie Flora

From: Carlson Family [carlson1@gci.net]
Sent: Tuesday, February 13, 2007 11:22 PM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Subject: Support for HB 41

Representative Paul Seaton, Chair
 House Fisheries Committee

Dear Representative Seaton and Committee:

My name is Barbara Carlson. I am an educator & a citizen who cares deeply about stewardship of the great land of Alaska, what we *Unangan* (Aleutian Aleut) call *Alaxsxa*. This stewardship extends naturally to the water & sea. Some of our most profound traditional rules for living are these:

1. *Tuman tana' agliisaa'tan. E / Tana' agliisada. W / Take care of the land.*
2. *Tuman ala'u' agliisaa'tan. E / Ala'u' agliisada. W / Take care of the sea/ocean.*
3. *Tuman taanga' agliisaa'txin. E / Taanga' haqayaasada. W / Take care of the water.*

Their simplicity belies their importance. We believe that it is everyone's responsibility to live the way we know that we should live. That includes taking care of renewable resources in such a way that they can be given back to ourselves & future generations. What we Alaskans have is uniquely precious. I write to urge you to pass HB 41 restoring the Habitat Division to the Alaska Department of Fish & Game where the authority belongs. In 2003 Executive Orders 106 & 107 were passed without much fuss. They were bad ideas then & leaving them in place is a bad idea now. How could such catastrophic negative changes have been allowed to be put into place? I wrote each & every Senator & Representative asking them to oppose the orders. I remember feeling physically ill to learn how quickly the orders were a done deal. Like I said then, I absolutely agree that we need development, but we must have wise development. The balance of careful conservation will allow us to prosper AND to not foul our proverbial nests.

HB 41 is a chance to not only begin to repair the mess that was made of the protections that served the diverse renewable resource constituencies well since statehood, but will also help prevent future damage to the unparalleled sustainable yields of Alaska. We must do this, not only for ourselves, but for future generations; for our citizens & the tourists that come with money to spend as they appreciate what has already been destroyed in other states who once had similar resources. We must make these restorations for the nation &, indeed, the rest of the world who value & depend upon Alaska's renewable resource products that grow more precious as each year goes by.

As a serious steward I took it upon myself to laboriously review & comment upon changes made to the Coastal Management Program until I became totally frustrated with the ridiculousness. When I repeatedly checked back for the appearance online of appropriate agency comments they have never been forthcoming, despite the fact that they should have been posted, at the latest, more than a year ago. Said misguided executive orders have caused a great deal of unnecessary work & have opened up the opportunity for the unrestrained destruction of invaluable habitats everywhere in the state. Please do pass HB 41 so that we may get back to the business of doing things we know are right, eschewing the haste of expediency for its own sake.

Thank you for your time & consideration.

Yours truly,
 Barbara Carlson
 6050 W Dimond Blvd.
 Anchorage, AK 99502
 248-2503

Louie Flora

From: Jeff Parker [gparker@alaska.net]
Sent: Wednesday, February 14, 2007 12:32 AM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Cc: sarah_palin@gov.state.ak.us; denby_lloyd@fishgame.state.ak.us; Rep. Les Gara; Lance Trasky; tom_irwin@dnr.state.ak.us
Subject: HB 41

I am a 27-year Alaskan, practice law related to fisheries, guided for many years in the Bristol Bay drainages and elsewhere, am a former outdoor writer, and represent several clients in opposition to matters related to Pebble Mine. I am writing in my individual capacity.

Representative Gara is doing the state a great service by sponsoring HB 41. As an occasional angling companion, I have every respect for his understanding of the importance of fisheries and transferring the statutes and the personnel of the former Habitat Division of ADF&G back to ADF&G.

Matters of fishery conservation belong in an agency, ADF&G, whose statutory mission IS conservation. They do not belong in an agency, DNR, whose statutory mission is conflicted by a combination of development and conservation missions.

The statutes in question, chiefly the Anadromous Fish Act, AS 41.14.870, and the Fish Ways Act, AS 41.14.840, and related sections of the Alaska Code, have been with ADF&G since statehood. Before that, during the territorial days, the precursors of these statutes were with the precursor of ADF&G. More recently, certain review functions under the Forest Practices Act were also assigned to ADF&G. They, too, were transferred to DNR to mute ADF&G. Nevertheless, there is huge history in this issue and it reflects importance of fisheries in this state. History means something and in this instance reflects wisdom.

I appreciate the reports that Governor Palin may take another look at the issues. I hope that she will conclude that her initial rationale for declining to restore the Habitat Division and its functions -- i.e., that although the move of Habitat functions to DNR may not have been right in the first place, it would be "disruptive" to move the staff and statutory authority back to ADF&G -- does not appear supportable by the facts. As I understand the facts, except for about 3 or 4 staff in Anchorage, the staff that were "transferred" to DNR in fact physically remained at their offices in ADF&G even though they were "transferred" to DNR authority.

Please support HB 41.

Thank you.
Jeff Parker
907-222-6859 wk
residence: 7431 Huckleberry Cir., Anchorage, AK 99502

Louie Flora

From: Carlson Family [carlson1@gci.net]
Sent: Tuesday, February 13, 2007 11:22 PM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Subject: Support for HB 41

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 House Fisheries Committee

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1. *Tunan tana' agliisaa'tan. E / Tana' agliisada. W / Take care of the land.*
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Their simplicity belies their importance. We believe that it is everyone's responsibility to live the way we know that we should live. That includes taking care of renewable resources in such a way that they can be given back to ourselves & future generations. What we Alaskans have is uniquely precious. I write to urge you to pass HB 41 restoring the Habitat Division to the Alaska Department of Fish & Game where the authority belongs. In 2003 Executive Orders 106 & 107 were passed without much fuss. They were bad ideas then & leaving them in place is a bad idea now. How could such catastrophic negative changes have been allowed to be put into place? I wrote each & every Senator & Representative asking them to oppose the orders. I remember feeling physically ill to learn how quickly the orders were a done deal. Like I said then, I absolutely agree that we need development, but we must have wise development. The balance of careful conservation will allow us to prosper AND to not foul our proverbial nests.

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Thank you for your time & consideration.

Yours truly,
 Barbara Carlson
 6050 W Dimond Blvd.
 Anchorage, AK 99502
 248-2503



American Fisheries Society

ALASKA CHAPTER

January 5, 2007

Governor Sarah Palin
Office of the Governor
P.O. Box 110011
Juneau, AK 99811-0001

Dear Governor Palin,

The Alaska Chapter of the American Fisheries Society (AFS-AK) represents over 400 fisheries scientists and biologists employed in government, academia, and the private sector throughout Alaska. The mission of the American Fisheries Society (AFS) is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries and aquatic science and by promoting the development of fisheries professionals. While AFS-AK is not an advocacy group, we occasionally bring important issues to the attention of policy makers and the public. We advocate for fisheries and sustainability issues when our position is well grounded in peer-reviewed science.

When your predecessor, Governor Murkowski, transferred the authority to protect anadromous fish habitat and maintain fish passage from the Department of Fish and Game (ADFG) to the Department of Natural Resources (ADNR) in February 2003, the AFS-AK strongly cautioned him against this move. We believe this fundamentally compromises protection of Alaska's fish habitat resources and thus we urge you to return the Division of Habitat to ADFG. Attached you will find our letter to Governor Murkowski for your reference along with a similar letter from the Western Division of AFS, which represents fisheries scientists and biologists from throughout western North America.

As outlined in the letters referenced above, the reason that Alaska has been able to maintain some of the most productive fisheries in the world is that fish and the habitats they depend on have received a high measure of protection since statehood. Governor Murkowski's transfer of responsibility for this protection from ADFG, whose mission is to *protect* the fish and game resources of the state to ADNR whose mission is to *develop* natural resources has eliminated the check and balance that assured that ADFG's interests in protecting fish and game resources have equal standing with DNR's interests in developing resources. The current structure lacks a balance because DNR's mission to develop resources takes priority over the conflicting mandate of its Office of Habitat Management and Permitting to protect fish and wildlife. Moreover, without the critical regulatory tool of habitat permitting ADFG is not able to effectively carry out its mission of protecting fish and game resources. We believe it is crucial that the authority for habitat protection be returned to the Department of Fish and Game immediately, to ensure the long-term sustainability of Alaska's fishery resources.

Additionally, we are very concerned with the reorganization of the Department of Public Safety that changed the Division of Fish & Wildlife Protection into a Bureau within the Division of Alaska State Troopers in August 2003. This action redirected a considerable amount of time and effort by the Wildlife Troopers away from protecting our fish and game resources and assigned them added support duties for the Alaska State Troopers. This action diminished the effectiveness of the fish & wildlife enforcement efforts in Alaska to an unacceptable level. We urge you to reinstate the Division of Fish & Wildlife Protection within the Department of Public Safety immediately. We recognize that protection of our citizens in Alaska is vital; however, we feel that directing our professional Wildlife Troopers to perform these duties is not the answer and compromises the protection of our valuable fish and wildlife resources.

Thank you for your consideration of these important issues. Expert scientists who are members of the Alaska Chapter of AFS would be pleased to provide additional information if that will be useful. Please feel free to contact me at 789-6609 if you have any questions.

Sincerely,

Jamal Moss
President, AFS-AK
NOAA Fisheries
Auke Bay Laboratory
11305 Glacier Hwy.
Juneau, AK 99801

Cc: House and Senate Legislators
Denby Lloyd, Acting Commissioner, ADFG
Marty Rutherford, Acting Commissioner, ADNR

Enclosures (2)

February 13, 2007

FROM:

Bruce H. Baker
P.O. Box 211384
Auke Bay, AK 99821
Phone: (907) 789-9354

TO:

Representative Paul Seaton, Chair
House Fisheries Committee
Alaska House of Representatives
State Capital, Room 102
Juneau, AK 99801

SUBJECT: HB41 – Reassignment of the Authority for the Anadromous Fish Act & Fishways Act from ADNR to ADF&G

Dear Chairman Seaton and Committee Members:

My name is Bruce Baker and I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to support and promote passage of HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

During your February 12 hearing on this bill, Mr. Lance Trasky, retired ADF&G Fisheries Biologist, Habitat Biologist, and Habitat Division Regional Supervisor, discussed his February 10 letter to your committee. I had the privilege of working with Mr. Trasky for 15 years, first during the years I worked as a Natural Resource Policy Specialist in the Office of the Governor during the Hammond administration and later when he and I both worked in ADF&G's Habitat Division. As you consider the well researched points made in Mr. Trasky's letter to you, I hope you'll keep in mind that he is the most knowledgeable, responsible, diligent, and, above all, effective leader in protecting the state's fish and wildlife habitats that I have ever met in state government. Many professional biologists and users of the state's fishery resources will tell you the same thing. You are very fortunate to have the benefit of the analysis his February 10 letter and February 12 testimony provide you with.

That said, here are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they are with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.

3. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

4. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During your committee's February 12 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be a smooth-running and effective administration of these functions. It would have been helpful if she had presented your committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

5. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that has worked so effectively to resolve these conflicts in a mutually beneficial way ever since Statehood.

6. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before your committee is neither a substitute nor a prerequisite to passing HB41, and I encourage the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkoswki fixed something that most Alaskans did not consider broken. Now, the Legislature and Governor Palin have an opportunity to fix what is.

Sincerely,

/s/ Bruce Baker

Louie Flora

From: doug hill [deeryard2001@yahoo.com]
Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
Subject: Please support HB 41 - TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Re: House Bill 41
TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Representative Lynn,

I want to thank Representatives Gara and Crawford for the wisdom and foresight they have exhibited by sponsoring HB 41.

From the start and from the standpoint of anadromous fish and habitat protection I don't believe there was any basis in reason or fact for moving key Title 16 responsibilities from AD&G to ADNR. I listened to and read Frank Murkowski's first "State of the State" address where he announced his desire to move anadromous fish habitat protection functions and other responsibilities to ADNR via Executive Order 107. Allegations made against ADF&G-Habitat Division in the "State of the State" address were easily refuted and evidence was provided to the legislature. Further Habitat Division damaging spin came from ex-large scale mine manager and the then current ADNR Commission Tom Irwin. For example, whether Irwin was aware of it or not, he erroneously conveyed information from Canada's Fraser Institutes mining report (the "Fraser Report") to support the anti ADF&G-Habitat campaign. ADF&G - Habitat Division had no support from conveniently "acting" Commissioner Kevin Duffy and the balance of power in the legislature at the time favored supporting nearly anything the Governor or Jim Clark wanted.

I believe the wisdom of the states founders should be heeded and we should return to the "check and balance" type system where, prior to EO 107, the following responsibilities resided outside of ADNR (the states lead resource extraction agency) and within ADF&G:

- Title 16 fish passage and anadromous fish stream permitting;
- the Anadromous Waters Catalog;
- Project-related research and compliance monitoring;
- Forest Resources and Practices Act permitting, monitoring and compliance.

With potential projects such as the Pebble Gold Mine on the horizon - a mine which will affect two of the worlds largest remaining wild salmon and rainbow trout watersheds - I don't believe that state's lead mineral extraction agency should be in the business of Title 16 fish habitat and passage protection, Title 16 monitoring and compliance activities, or determining which streams are anadromous and which are not. As result of EO 107 ADNR is responsible for determining which streams are cataloged as anadromous fish streams and which streams are not. As many of you know non-anadromous fish streams are not afforded the same protection as anadromous fish streams. I strongly encourage the Governor and the legislature to think about the future and support HB 41. Please "transfer the Habitat Division out of ADNR and back to ADF&G.

Anadromous fish populations are one of Alaska's true potential "permanent funds".

I am currently an ADF&G - DWC employee with 14 years of service. I have fished commercially and subsistence in Alaska. In addition, I have worked as a carpenter/maintenance worker in bush and urban Alaska. I am a hunter/fisher, skier, and moving water canoer.

Thanks for your time and service,

Douglas D. Hill
PO Box 220236
Anchorage, Alaska 99522
907-348-8519
deeryard2001@yahoo.com

Louie Flora

From: Stephen Taufen [staufen@seanet.com]
Sent: Tuesday, February 13, 2007 8:58 AM
To: Sen. Gary Stevens; Rep. Paul Seaton; Rep. Gabrielle LeDoux; Rep. Les Gara
Subject: Endorse HABITAT Move back to ADF&G

Dear Senator Stevens, and Representatives Gara, LeDoux and Seaton:

We support the return of the HABITAT division to the ADFG. The state functions much like a doctor over these resources, and **we must have an unbreakable code of "do no harm."**

Recent news indicates that such protections are often in Natural Resource departments in other states, and working well. We dispute that assumption - just by looking around at the problems in other states - and argue that **this is what made Alaska so special.** It is important to have a **strong agency function akin to "the buck stops here" so that in cases where the fisheries cannot speak for themselves, mankind does so with a firm protective stance.**

Thank you for your efforts to ensure Habitat gets moved back under the ADF&G.

Stephen Taufen - Groundswell Fisheries Movement
Watchdog for citizen-taxpayers and harvesters and communities in Alaska fisheries.

- Federal Fish/Wildlife
Administrator by

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→

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Changes into

A.C.M.P.



P.O. Box 20161, Juneau, Alaska 99802

Office: (907)-463-7124; Facsimile: (907) 463-7356

February 14, 2007

RE: Support for passage of HB 41

Mr. Chairman and Members of the Committee;

The Southeast Alaska Inter-Tribal Fish and Wildlife Commission have been working on subsistence and commercial fishing issues in Alaska for many years because they provide a good way of life for our people in Alaska. As Tlingits, our people have always made a living from the land and sea. We have traditional knowledge about the land, oceans, and resources from which we make a living here in Southeast Alaska. This traditional knowledge has helped protect, promote, preserve, and enhance the fish and game in Alaska. Our TEK knowledge is now being used by western scientists to supplement their knowledge base in generating sustainable resource management plans in Alaska.

Our Native TEK knowledge has become common knowledge in the eyes of the western world as vital in the cycle of life of our natural resources. Alaska Natives are part of the natural life cycle here in Alaska.

The Alaska Department of Fish and Game also has been part of the natural life cycle of our fish and game resources in Alaska. The wisdom of past leaders thought so and we agree. Fish, game, and habitat are part of the same life cycle. It's the right thing to do, "Transfer habitat authority and management back to the Fish and Game Department." The ADF&G cannot abdicate their rights, roles, and responsibility to manage fish and game in Alaska.

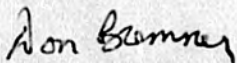
The Department understands better than any other State agency what it takes to develop and manage a sustainable salmon fisheries policy in Alaska;

- The Department knows that Alaska's salmon fishery is healthy and sustainable, largely because of abundant pristine habitat properly managed with sound, precautionary, conservation practices.
- The ADF&G has recognized the need for a comprehensive policy of regulation and management.
- The ADF&G has worked to develop plans which achieve maximum salmon abundance. The Department considers factors which include environmental change, habitat loss or degradation, data uncertainty, inconsistent funding for research and management, harvest patterns, new or expanding fisheries.
- The ADF&G understands that to effectively assure sustained yield and habitat protection for wild salmon stocks; fishery management plans and programs require consistent and controlled guiding principles and criteria.
- The Department has set goals of ensuring conservation of salmon, and salmon's marine and aquatic habitats, protection of customary and traditional subsistence uses, and other uses, and the sustained economic health of Alaska fishing communities.

Fish, game, and habitat are natural life cycles which are the responsibility of the Alaska Department of Fish and Game. The Department cannot abandon their responsibility in achieving sustainable fisheries policy in Alaska, even when parts of their role and authority are legislated away. The Department has State and Federal legal contracts which say they will manage fish, game, and habitat to achieve sustainable fisheries.

Passing HB 41 is the right thing to do and we look forward to working with State agencies which are organized to make decisions based on experience and efficiency.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Bremner". The signature is written in a cursive, slightly slanted style.

Don Bremner, Natural Resource Coordinator
Southeast Alaska Inter-Tribal Fish and Wildlife Commission

SARAH PALIN
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 2007

Melvan E. Morris Jr., Chairman
Alaska Board of Fisheries
Alaska Department of Fish & Game
P.O. Box 115525
Juneau, AK 99811-5525

Dear Mr. Morris:

Thank you for your January 19, letter which describes concerns by the Alaska Board of Fisheries with the previous administration's decision to transfer what was once known as the Division of Habitat and Restoration from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

As you know, this happened on May 1, 2003, when former Governor Murkowski signed Executive Order 107, which transferred fish habitat permitting and forest practices authorities from ADF&G to DNR under a new entity known as the Office of Habitat Management and Permitting.

That office is now responsible for issuing Fishway Permits and Fish Habitat Permits under AS 41.14.840 and AS 41.14.870. It also gained certain responsibilities under the Forest Resources and Practices Act (AS 41.17) that were previously contained in AS 16 under the authority of ADF&G. However, ADF&G retained permitting authority within legislatively-defined special areas such as refuges, critical habitat areas, and sanctuaries.

Along with the Alaska Board of Fisheries, there have been a number of constituent groups - including the ADF&G Transition Team - who have requested consideration for a reversal of Executive Order 107 and return the "habitat division" to ADF&G. In contrast, the DNR Transition team - along with other constituent groups - have also recommended against moving the habitat functions back to ADF&G.

I have carefully evaluated the track record of that office in fulfilling its duties and have come to the conclusion that the office is meeting its statutory responsibilities and other permit review functions. My commissioners of ADF&G and DNR both concur with this assessment. As such, I do not plan to move the office back to ADF&G.

To ensure that interagency cooperation, responsibilities, and exchange of information are working well between these two departments, I have requested the commissioners of both ADF&G and DNR review an existing memorandum of

Melvan E. Morris Jr., Chairman
February 8, 2007
Page 2

understanding (MOU) which outlines the roles and responsibilities of each agency with respect to continued protection of fish and wildlife and their habitats during the review of a wide variety of land and water uses.

I specifically asked them to recommend whether any amendments are needed to meet our constitutional responsibilities to balance resource development with resource protection.

The review of the MOU should be accomplished over the next several weeks. After interdepartmental review of the MOU, it is also important to conduct stakeholder outreach, which didn't occur under the previous administration, in order to assure the public that the departments are working cooperatively and effectively to manage Alaska's important habitat resources and consistent with the public interest.

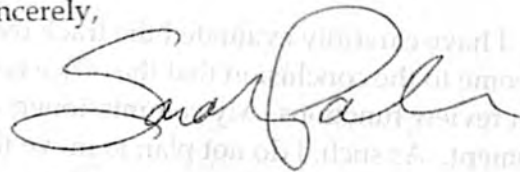
While the habitat functions, perhaps, should never have been moved from ADF&G to DNR, that reorganization has already occurred. The disruption of reversing that reorganization does not need to be repeated in order to address issues regarding close communication and coordination between DNR and ADF&G.

Please know that as we continue to review the MOU and evaluate potential changes, these will be done with a conscientious effort toward maintaining the proper levels of expertise and working relationships between and within the agencies. My administration will be committed to making sure that there are proper safeguards in place for large-scale development projects, particularly in regards to the discharge of industrial and domestic wastes into salmon spawning habitat.

Mr. Morris, I sincerely want to thank you and all the members of the Alaska Board of Fisheries for raising this issue. Your concerns are valid, and I am heartened that you chose to write a letter to call these concerns to my attention. I will also instruct ADF&G and DNR to keep you informed regarding their review of the MOU, and seek your input during their outreach.

Thank you again.

Sincerely,



Sarah Palin
Governor

Transition Team Assessment of DEC's Current Situation and Future Issues:

- **Federal Funding:** 31% of DEC's total budget is derived from federal funds. Declining federal funding will have significant impact on DEC's ability to deliver services. Reduction in federal funds will have the most impact on the division of water (43% of budget), division of environmental health (36% of budget) and information and administrative services (34% of budget).
- **PERS Obligation and Transfer of Costs to Users:** DEC has a large PERS obligation (unconfirmed estimate of \$10,000 per qualified employee). DEC is proposing to pass on its share of the obligation to its funding sources (state, federal and user fees). The federal agencies (grants program) are refusing to accept supplemental overhead charge for the PERS obligation. This raises serious concern that the historic obligation may be passed on to current and future entities paying fees.
- **Ocean Ranger Program:** The Cruise Ship Ballot Initiative substantively duplicates DEC's existing commercial vessel environmental compliance program and includes a new permit and ocean ranger program. DEC estimates that 60 employees will have to be hired, which result in at least a \$2 million shortfall to implement the ballot initiative.
- **Oil Spill Prevention Account Declining Balance:** Expenditures under the Prevention Account of the Oil and Hazardous Substances Spill Prevention and Response Fund are estimated to exceed revenues, leading to a depletion of the account during FY09.
- **Employee Attrition:** 40% of DEC staff is qualified to retire within five years.
- **Attracting Employees:** DEC in some instances is unable to fully engage its mission due to lack of qualified personnel. Their ability to attract and retain these individuals will require DEC to offer comparable wage and benefit packages to compete with both the private and public sector entities vying for the same qualified candidates.
- **Failure to Extend 319 Grant:** DEC elected to not extend an EPA section 319 grant (over \$350,000) that is an important source of funding for DNR Office of Habitat Management and Protection, the states' forestry program and forest practices effectiveness monitoring that is matched by the private sector. No clear explanation was provided for the decision not to renew the grant.
- **EPA Audit and Liability Village Safe Water Program:** The DEC village safe water program EPA program audit concluded that the state failed to meet key reporting requirements and faces an outside liability that could

FVI

Louie Flora

From: George Matz [geomatz@alaska.net]
Sent: Monday, February 12, 2007 12:58 PM
To: Louie Flora
Subject: Habitat

Louie

Thanks for sending the transition team reports. I set in on today's hearing on Habitat. I think it would be useful for the Subcommittee to know that the DEC transition team report states the following. Can you pass this on the Representative Seaton

"Failure to Extend 319 Grant: DEC elected to not extend an EPA section 319 grant (over \$350,000) that is an important source of funding for DNR Office of Habitat Management and Protection, the state's forestry program and forest practices effectiveness monitoring that is matched by the private sector. No clear explanation was provided for the decision not to renew the grant."

I wonder if this slip-up would have happened if Habitat were still with DF&G who was a stronger advocate for program.

George

|

February 20, 2007

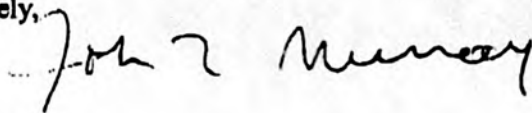
To: Fisheries Committee

I support HB 41 and believe Habitat needs to move back to Fish & Game. If done thoughtfully, it should not be disruptive and would certainly have a positive effect on our fish resources.

Having Habitat under Fish & Game worked well for many years. It offers much greater protection then under DNR.

Many of us in commercial fisheries have good working relationships with Fish & Game staff both locally and regionally. DNR offices are not even around locally and their different mission runs counter to the long standing cooperation we have with Fish & Game. I feel it is clearly better for the resource to move Habitat back under Fish & Game.

Sincerely,



John L. Murray
F/V Loran
224 Observatory Street
Sitka, AK 99835
907-747-6212 jmfish@ptialaska.net



City of Craig

PO Box 725, Craig, AK 99921
(907) 826-3275 Fax (907) 826-3278

Fax

To: Alaska State House of Representatives ^{From:} Dennis Watson
Fax: (907) 4105-3172 Pages: 4pg with cover
Phone: Date: 2-16-2007
Re: Sender: Cody Sather

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please review and return any comments
that you may have. Thank you for your
help.

From: Ed Weiss [mailto:eww@gci.net]
Sent: Thursday, February 15, 2007 12:04 AM
To: Rep. Paul Seaton
Subject: HB41

Dear Rep. Seaton,

I've had the opportunity to listen to the testimony given on Monday and Wednesday of this week regarding the transfer of fish habitat protection functions (Habitat Division) back to ADF&G. Since I am one of the OHMP Habitat Biologist who have worked under both ADF&G and ADNR systems over the last 18 years this surprised me a bit. I new the bill was out there, yet I had no idea or warning that it had come up for discussion. Unfortunately I was unaware the testimony was taking place until late yesterday and was unable to participate or prepare comments.

I would like to prepare comments and feel that I can possibly provide some of the clarification the committee seems to be looking for, or at least my personal experience and perspectives of working within both systems. Can you let me know when the deadline is for providing written comments? I'm also willing to discuss the matter with you or the committee informally if we can schedule it outside of work. I do support the move of these functions back to ADF&G and am encouraged by the testimony given so far. However, I do believe that there are other important issues that should be looked at as well and can possibly be included in any legislation or reorganization put forward.

Ed Weiss
25115 Homestead Road
Chugiak, Alaska 99567
907-688-6029
eww@gci.net

Rep. Paul Seaton

From: Betsy McCracken [browndogs@gci.net]
Sent: Saturday, February 17, 2007 8:04 AM
To: Rep. Paul Seaton; Rep. Bryce Edgmon; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Kyle Johansen; Rep. Lindsey Holmes; Rep. Peggy Wilson; Rep. Les Gara
Subject: HB 41 Testimony
Follow Up Flag: Follow up
Flag Status: Blue

Chairman Seaton, members of the Special Committee, and Representative Gara,

My name is Betsy McCracken. I live in Anchorage and have been a resident of Alaska since 1981. I was a permitter and project reviewer with the Alaska Department of Fish and Game (ADFG), Habitat Division for 2.5 years prior to being transferred by EO 107 to the Alaska Department of Natural Resources, Office of Habitat Management and Permitting (DNR/OHMP). I worked at OHMP as a permitter and project reviewer for over a year before deciding to leave. My testimony solely reflects my personal experiences and opinions; and not necessarily those of either the ADF&G or ADNR. I support HB 41.

During my tenure with the ADF&G Habitat Division I was an area biologist permitter for the Prince William Sound, Copper River Basin and Mat-Su Valley regions. When OHMP was created, the area boundaries were altered such that the Fairbanks office incorporated the Copper River Basin into its area; and a new office was created in Palmer to cover the Mat-Su area. I remained a permitter for the PWS region.

OHMP does not review projects the same way that ADFG did. While working for OHMP I had sideboards regarding what I could say and require. This happened to me. I had several projects occurring in the PWS area including the Million Dollar Bridge renovation in Cordova, the replacement of five bridges along Dayville Road in Valdez, and the Valdez sewer outfall project. The Valdez sewer outfall terminates in an area of specified pink salmon spawning. This project was removed from my review, and as I am sure you all well know, the mixing zone regulations went on to be rewritten and diluted.

The Million Dollar bridge project is one where Fish and Game and the OHMP had significant differences of opinion over potential impacts to the fisheries resources of the Copper River. The applicant was originally required by ADFG to remove a fill pad put in place during the renovation of the bridge prior to a specific date. The applicant later requested authorization under OHMP to leave the fill pad in place. ADFG repeatedly expressed concerns related to the fisheries resources and their ability to manage the fishery as a result of allowing the fill pad to remain in the river. OHMP, against the recommendation of ADFG, authorized the applicant's request to allow the fill pad to remain in place.

Construction timing windows originally required of the Dayville Road bridge replacement project were eliminated for all but one of the rivers. Construction timing windows were required to protect incubating eggs within the streambed in known spawning areas. This requirement was upheld in only one of the five rivers; and timing windows are no longer required by OHMP.

I mention these three projects specifically because they were all taken away from me mid-project and authorized under the Fairbanks Area Office. These are projects that I was reviewing, and the review responsibility was transferred to the Fairbanks office. Thorough reviews were not encouraged; in fact,

reviews as a whole were not encouraged. I was asking too many questions. The ability to request full plans and specifications necessary to conduct a thorough project review to assess potential impacts to the state's resources was removed. When I attempted to do so, I projects would be taken away from me. The emphasis was on the number of permits issued and the facilitation of development.

I also had permit stipulations edited, challenged and written by the applicant. This is not how the permit review process was conducted at ADFG. Applicants were not allowed to write their own permits. At ADFG we are the experts on fish and wildlife and their habitats, and on the proper protection of these resources. This responsibility should be returned to ADFG. OHMP does not focus on the protection of the state's fish and wildlife resources; or on their sustainable use.

If there are those who believe the permitting system was broken at ADFG, then surely it is shattered residing at OHMP. I left OHMP because I was not allowed to be effective at my job and unable to provide the proper protection of the resources.

I also want to voice that I fully support the written and oral testimony provided by Matthew LaCroix. His testimony presents integrity, intelligence, knowledge and truth regarding many examples of the dysfunctional results of EO 107 and how, over and over again, the results fail to protect the resources and the best interest of Alaskans.

I urge you to please carefully review and consider the information and testimonies provided in support of HB 41.

Thank you for the opportunity to provide testimony.

Sincerely,

Betsy McCracken
907 344 6118

Bruce H. Baker

P.O. Box 211384

Auke Bay, AK 99821-1384

Phone: (907) 789-9354

February 19, 2007

Governor Sarah Palin
P.O. Box 110001
Juneau, AK 99811

Subject: Return of Anadromous Fish Act and Fishways Act to the Department of Fish and Game

Dear Governor Palin –

I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to follow through on what I understand was your campaign promise to restore the state's Habitat and Restoration Division to ADF&G. Toward this end, I urge you to support HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

Enclosed is a summary history of how the State of Alaska's fish and wildlife habitat protection program has evolved.

The following are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they do with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.
3. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that worked so effectively to resolve these conflicts in a mutually beneficial way from Statehood until 2003.

4. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before the House Fisheries Committee is neither a substitute nor a prerequisite to passing HB41, and I urge you and the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

5. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During the House Fisheries Committee's February 12, 2007 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be the effective administration of these functions. It would have been more helpful and objective if she had presented the committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

6. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkowski fixed something that most Alaskans did not consider broken. Now, you and the Legislature have an opportunity to fix what is.

Sincerely,

/s/ *Bruce H. Baker*

Enclosure: Summary history of Alaska's fish and wildlife habitat protection program

Summary History of the State of Alaska's Fish & Wildlife Habitat Protection Program 2007

The founders of the State did not operate in a vacuum. Prior to statehood, they had witnessed decades of fisheries decline due to mismanagement of fisheries and fish habitat. The founders had witnessed the final demise of the once great salmon fisheries of the Pacific Northwest in the 1950s and anticipated that mismanagement of fisheries and incremental loss of habitat were the biggest long-term threats facing Alaska's fisheries and the subsistence, commercial, and sport fishers who depend upon them. As the framework of state government was taking shape, a heated debate ensued, between interests involved in fishing and those involved in nonrenewable resource development, over how state government would be organized and what functions various agencies would have.

The debate occurred in three contexts: 1) in the context of framing a constitution, 2) in the context of organizing executive branch departments, and 3) in the context of whether the future board of fisheries and game (it was initially one board) would be an independent agency not under the control of either a department of fish and game or the governor, except through the power of appointment.

Alaska's fishermen, hunters, and subsistence users, who were watching the decline of salmon populations in the Pacific Northwest, sought and obtained a natural resource title in the constitution – unique to Alaska's Constitution – that balanced conservation and development concerns and articulated express provisions to conserve fish and game. They sought and obtained an independent board, created by the First Legislature in 1959. They sought and obtained a strong Department of Fish and Game with statutory authority to assure that fish habitat was not lost to pollution, dams, mines, logging, agricultural, and other activities. Mining and timber interests, on the other hand, had sought a Department of Natural Resources with a division of fish and game to simply manage harvests but to have no authority to protect salmon habitat. Because of the importance of fishing and hunting to Alaska's economy and culture, the fishing, hunting, and subsistence interests won out on all three measures.

In 1959, two departments - one for fish and game, and one for other natural resources - were established. Also that year, the First Legislature enacted the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840). These seminal statutes provided that the new Department of Fish and Game, through permitting, would regulate activities that could otherwise result in the destruction of fresh waterbodies important for the spawning, rearing, and migration of salmon and other anadromous fish, or for the blockage of fish passage. These statutes contributed to the restoration of fish stocks that ensued in the following decades, and the statutes remained in the Fish and Game Code (Title 16 of the Alaska Statutes) from 1959 to 2003.

In 2003, former Governor Murkowski launched an assault on fish and wildlife habitat conservation by 1) transferring ADF&G fish habitat protection responsibilities to ADNRR with executive order 107 and asking the Legislature to switch the Anadromous Fish Act and Fishways Act from ADF&G's Title 16 to ADNRR's Title 41; 2) dismantling the Alaska Coastal Management Program and its standards which protected fish and wildlife habitat, stripping local governments of their authority to influence state and federal projects within their boundaries, and transferring what remained of the program to ADNRR; 3) compelling ADF&G to sign a Memorandum of Understanding (MOU) with ADNRR limiting ADF&G's ability to influence federal decisions

affecting fish and wildlife under the federal Fish and Wildlife Coordination Act; and 4) adopting Alaska Department of Environmental Conservation regulations allowing the discharge of industrial and domestic wastes into salmon spawning areas in spite of overwhelming opposition from fishing interests and the public

There is strong public support for restoring the ADF&G Habitat Division and returning the Anadromous Fish Act and Fishways Act to ADF&G, and there are strong Constitutional and statutory reasons for doing so. The Board of Fisheries has voted unanimously to urge restoration of the ADF&G Habitat Division and the statutory authorities it administered. There is broad public interest in the withdrawal or cancellation of Governor Murkowski's Executive Order 107. And there is public support for reconstituting the pre-2003 Alaska Coastal Management Program and reestablishing the Division of Governmental Coordination within the Office of the Governor where it belongs.

Bruce H. Baker

P.O. Box 211384

Auke Bay, AK 99821-1384

Phone: (907) 789-9354

February 19, 2007

Governor Sarah Palin
P.O. Box 110001
Juneau, AK 99811

Subject: Return of Anadromous Fish Act and Fishways Act to the Department of Fish and Game

Dear Governor Palin –

I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to follow through on what I understand was your campaign promise to restore the state's Habitat and Restoration Division to ADF&G. Toward this end, I urge you to support HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

Enclosed is a summary history of how the State of Alaska's fish and wildlife habitat protection program has evolved.

The following are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they do with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.
3. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that worked so effectively to resolve these conflicts in a mutually beneficial way from Statehood until 2003.

4. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before the House Fisheries Committee is neither a substitute nor a prerequisite to passing HB41, and I urge you and the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

5. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During the House Fisheries Committee's February 12, 2007 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be the effective administration of these functions. It would have been more helpful and objective if she had presented the committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

6. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkowski fixed something that most Alaskans did not consider broken. Now, you and the Legislature have an opportunity to fix what is.

Sincerely,

/s/ Bruce H. Baker

Enclosure: Summary history of Alaska's fish and wildlife habitat protection program

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City of Craig

PO Box 725, Craig, AK 99921
(907) 826-3275 Fax: (907) 826-3278

Fax

To: Alaska State House of Representatives ^{From:} Dennis Watson
Fax: (907) 4105-3172 Page: 4 pg with cover
Phone: Date: 2-16-2007
Ref: Sender: Cody Sather

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please Review and return any comments
that you may have. Thank you for your
help.



Dear Governor Palin,

12/29/06

This probably isn't the best way to contact you on Departmental issues but it is the only way I know of right now.

The issue at hand is the Board of Fisheries request to re-constitute Habitat Division. This is cause for great concern for myself, and many municipal and business leaders around the state that frequently use the state permitting process.

My familiarity with this issue includes seventeen years as the Mayor of the City of Craig and thirty-four years as an active commercial salmon fisherman in Southeast Alaska. Suffice it to say, I have considerable experience with the state regulatory process, a great deal of it with the former Habitat Division, and as well a vested and personal interest in the protection of fish habitat.

As Mayor I witnessed for many years Habitat Division operate with out good leadership with virtually no continuity between one biologist and the next. It was painfully obvious that personal agendas and anti development philosophies carried greater weight in their decision making process than common sense or science. This led to individuals applying their own interpretation of division policy and the creation of much unnecessary confusion and expense for permit applicants. And, rarely ever were these people held accountable for their lack of diligence and professionalism.

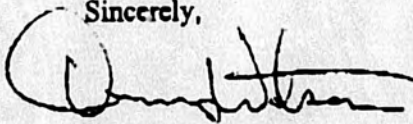
I strongly supported moving Habitat Divisions functions to DNR. The move did a lot toward streamlining and bringing consistency to the permitting process, as well as consolidating it. The change did though have one great shortcoming, it did not provide for direct ADFG comment on habitat issues related to the process, a must if the Department is to maintain reasonable control over fish and game management.

With your Administration coming on board it would be an excellent time to reexamine this issue. A consideration would be to have the Commissioner of Fish and Game designate the appropriate person or persons within the Department that would be charged with reviewing and providing comments on permit applications. This could be accomplished with minimal impact, and reasonable guidelines, or sideboards, for the position could be developed to prevent the process from regressing back to the ways of the defunct Habitat Division.

I believe this change would go a long ways toward addressing the Board of Fisheries concerns while speaking to the fears that many have of recreating Habitat Division.

4

Sincerely,

A handwritten signature in black ink, appearing to read 'Dennis Watson', written over a horizontal line.

Dennis Watson
Mayor
City of Craig



Alaska State House of Representatives
Special Committee on Fisheries

RE: testimony on HB-41

Dear Chairman Seaton,

2/16/07

I would like to have my 12/29/06 letter to Governor Palin entered into the record as testimony opposing the passage of House Bill 41.

Thank you,

Dennis Watson
Mayor
City of Craig

February 20, 2007

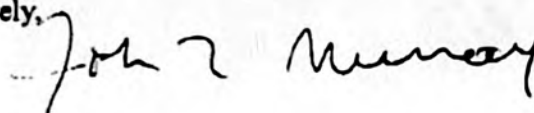
To: Fisheries Committee

I support HB 41 and believe Habitat needs to move back to Fish & Game. If done thoughtfully, it should not be disruptive and would certainly have a positive effect on our fish resources.

Having Habitat under Fish & Game worked well for many years. It offers much greater protection then under DNR.

Many of us in commercial fisheries have good working relationships with Fish & Game staff both locally and regionally. DNR offices are not even around locally and their different mission runs counter to the long standing cooperation we have with Fish & Game. I feel it is clearly better for the resource to move Habitat back under Fish & Game.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Murray". The signature is written in a cursive, flowing style.

John L. Murray
F/V Loran
224 Observatory Street
Sitka, AK 99835
907-747-6212 jmfish@ptialaska.net



Copper River Watershed Project

Community Voices, Community Actions

February 14, 2007

Board of Directors

Ben Seifert,
President
Tazlina

Keith
VandenBroek,
Vice-President
Cordova

Katy Boehm,
Secretary
Cordova

Bert Lewis,
Treasurer
Cordova

Erin Cooper,
Cordova

Cory Larson,
Gakona

Kathy Libbey,
Kenny Lake

Kari Rogers,
Gakona

Chairman Paul Seaton
House Fisheries Committee
AK State Legislature, Room 102
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Chairman Seaton,

I'm writing to submit written testimony today in support of H.B. 41 and its proposal to transfer the habitat permitting function back to the Alaska Department of Fish & Game. I represent the Copper River Watershed Project, a membership-driven non-profit organization whose geographic focus extends from the headwaters of the Copper River up by Mentasta Village down to the Copper River delta.

This issue speaks to the very heart of our mission as an organization. We emphasize integrating the effects of proposed development on all types of a community's capital. This includes social/cultural capital, natural resource capital, and economic capital. We support sustainable economic development projects that enhance at least one of these forms of capital without detracting from any of the others.

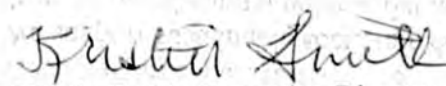
Salmon are a public resource for all. They are a renewable resource that should be managed for that annual productivity.

We often hear miners, land developers and loggers complain about the expense of erosion control, pollution control and stream protection. But the expense of sustaining hatcheries, fish ladders around dams, the stream restoration work being undertaken in Washington and Oregon is outrageously high. We cannot afford to make short-term expense short-cuts at the risk of incurring these long-term, large scale restoration costs.

For these reasons, we believe strongly that salmon need an independent voice to ensure balanced decision making when considering the costs and benefits of mining, land use, and timber harvest development. This balance is about husbanding resources for long-term availability and long-term economic return. Characterizing these decisions as "jobs vs. the environment" is a false, misleading construct. The Alaska Department of Labor's December, 2006 issue of its *Trends* publication analyzed Alaska's fisheries industry, calling it "Alaska's Bread and Butter."

In the Copper River region, we rely strongly on a salmon economy – a subsistence salmon economy, a commercial salmon economy, and a sportfish salmon economy. We urge you to return the habitat permitting function to the Alaska Department of Fish and Game.

Sincerely,


Kristin Smith, Executive Director

thanks for
opportunities to
testify.

Good Day Mr. Flora,

You are mentioned (on Alaska Conservation Voters' web page) as being interested in collecting info regarding the possible move of the F&G Habitat Div. I am copying you some input that I have sent also to the Governor's office on this most important issue. So far, I have only received back an automated reply. (I understand the issue will be looked at some point).

My contention is that one need look no further than all the testimony now resting in DNR planning offices in Anchorage regarding the Knik River Watershed to get a convincing snapshot of severe management failures.

Yes, we now have minimal legislation that *may* eventually correct some of this - nevertheless it is a good case study in what is happening and has happened to our wildlife and fisheries resources.

There is actual documented loss of an anadromous stream and strong evidence of others in a similar fix. Protection of critical wetlands and adjacent transitional zones are in the balance. Records of wildlife abuses have been collected during the too lengthy process of seeking solutions for this example area.

Please feel free to contact me with any discussion!

Thank You,
Robert Howard
Palmer, AK.
745-0868

Begin forwarded message:

From: Robert Howard <rvhoward@mac.com>
Date: February 13, 2007 12:14:53 PM AST
To: John Bitney <john_bitney@gov.state.ak.us>
Subject: Fwd: Habitat Division/HB41

Good Day, Mr Bitney!

It has been suggested (by Eric Uhde of ACE) that I forward my mailing to Governor Palin and others to you, as well.

Please feel free to contact me with any questions.

Regards,
Robert Howard
Palmer
745-0868

Begin forwarded message:

From: Robert Howard <rvhoward@mac.com>
Date: February 13, 2007 11:40:34 AM AST
To: Butte Area Residents <resource@buttealaska.org>, Eric Uhde <eric@akcenter.org>, ACV <suzanne@akvoice.org>
Cc: Randy Virgin <randy@akcenter.org>, Mike Frank <mfrank@trustees.org>
Subject: Fwd: Habitat Division/HB41

Hello!

Bob Loeffler, former area director for DNR (resigned following Commissioner Tom Irwin's dismissal) admitted to Cecily Fritz (Chair - KRWG) that the Knik Watershed had been managed as a "sacrificial" area. While DNR may be cranking out resource development permits on a schedule acceptable to some, the flip side of the coin is whether or not habitat is being protected, too! The example I have offered the Gov. (below) is but one of many examples of habitat degradation/enforcement problems documented in the Knik. I can also cite a DNR permitting violation by MSB that has contributed heavily to habitat issues.

Bringing forth the Knik Watershed as example of what has not been done should raise the bar for discussion on moving the Habitat Division - this area is a real 'black eye' for DNR. (It remains to be seen what success HB 307, Knik PUA, will have on the ground in correcting these specific examples - talks about moving the division are now, apparently).

I'll let you know if I receive a response from the Governor.

Cheers,
R. Howard

Begin forwarded message:

From: Robert Howard <rvhoward@mac.com>
Date: February 13, 2007 9:48:58 AM AST
To: Sarah Palin <sarah_palin@gov.state.ak.us>
Subject: Habitat Division

Dear Gov. Palin,

I am Robert Howard of Palmer, former MSB Trails Comm. , Mat Su Trails Council, and founding/steering member of Knik River Watershed Group. Twenty years of my life have been spent seeking solutions for the notorious Jim Creek area and the Knik Watershed in general - I spent 11 days lobbying in Juneau last session to try for improvements on HB307 (Knik PUA - legislation labeled 'feeble' by Sen. Green when she, thankfully, doubled the budget). Lately , I have been helping to complete a USFWS assessment grant of the area - soon to be delivered to DNR planners for the area. Sen. Huggins and Rep. Stoltze actually declared 'war' (ADN) on us when we went to them for help - all documented history now, as we wait to see if this minimal legislation will make on the ground improvements.

To my point : It is with great interest that I watch headlines and

listen to news stories such as the one in today's ADN;

Governor considers moving Habitat Division back to Fish and Game

I would like to provide you with a real example of a an anadromous stream (currently listed in F&G's Anadromous stream catalog) that is no longer viable under DNR's watch. Here is a small excerpt from my public scoping comments to DNR on this issue:

"5. One anadromous stream (1st crossing on Rippy is no longer viable for fish passage) *The second stream is in the same, and immediate, danger.* I have watched this happen even as DNR has provided me with 'No ATV's in Streams' signs to post – a perfect example demonstrating the lack of respect by some ATV riders and the futility of keeping ATV's out of streams and off wetlands in any area they are allowed to use. There has been no enforcement of the law. Further, the needed budget for 24 hr. effective enforcement is not a component of the existing legislation, yet DNR and F&G are charged with the responsibility to protect these habitats.

See documentation (Historic Photos of First Stream Crossing.doc.), current online F&G Anadromous Stream catalog, Title16 info.doc, and 'Legal Toolbox' document."

Through the lengthy process of my civic duty in seeking solutions, and also having personally had (as well as hearing testimony from others with similar experiences) the unfortunate experience of not being able to get an officer in the field for observed violations; I have witnessed the frustrations of Habitat Enforcement. I would like to encourage you to stop by DNR offices and ask for the binder containing my testimony in hard copy and on CD's - particularly to view the stream issue (photo documentation) I have raised for this example. Brandon McCutcheon (Chief planner for the Knik PUA)

can hand it to you. It is too much to send you in an E-Mail!

Though this PUA planning effort brings some promise, this example still speaks significantly to this issue of enforcement and I would be willing to talk with you about it or provide you with the materials , should you need.

I realize these are very busy times, but wanted to provide a real time example - as it appears the window for your consideration of moving the Habitat Div. may be small. I would like to strongly encourage you to move the division!

Thank You!

Robert Howard
Palmer

Alaskan since 1961

745-0868

Louie Flora

From: Jeff Parker [gparker@alaska.net]
Sent: Wednesday, February 14, 2007 12:32 AM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Cc: sarah_palin@gov.state.ak.us; denby_lloyd@fishgame.state.ak.us; Rep. Les Gara; Lance Trasky; tom_irwin@dnr.state.ak.us
Subject: HB 41

I am a 27-year Alaskan, practice law related to fisheries, guided for many years in the Bristol Bay drainages and elsewhere, am a former outdoor writer, and represent several clients in opposition to matters related to Pebble Mine. I am writing in my individual capacity.

Representative Gara is doing the state a great service by sponsoring HB 41. As an occasional angling companion, I have every respect for his understanding of the importance of fisheries and transferring the statutes and the personnel of the former Habitat Division of ADF&G back to ADF&G.

Matters of fishery conservation belong in an agency, ADF&G, whose statutory mission IS conservation. They do not belong in an agency, DNR, whose statutory mission is conflicted by a combination of development and conservation missions.

The statutes in question, chiefly the Anadromous Fish Act, AS 41.14.870, and the Fish Ways Act, AS 41.14.840, and related sections of the Alaska Code, have been with ADF&G since statehood. Before that, during the territorial days, the precursors of these statutes were with the precursor of ADF&G. More recently, certain review functions under the Forest Practices Act were also assigned to ADF&G. They, too, were transferred to DNR to mute ADF&G. Nevertheless, there is huge history in this issue and it reflects importance of fisheries in this state. History means something and in this instance reflects wisdom.

I appreciate the reports that Governor Palin may take another look at the issues. I hope that she will conclude that her initial rationale for declining to restore the Habitat Division and its functions -- i.e., that although the move of Habitat functions to DNR may not have been right in the first place, it would be "disruptive" to move the staff and statutory authority back to ADF&G -- does not appear supportable by the facts. As I understand the facts, except for about 3 or 4 staff in Anchorage, the staff that were "transferred" to DNR in fact physically remained at their offices in ADF&G even though they were "transferred" to DNR authority.

Please support HB 41.

Thank you.
Jeff Parker
907-222-6859 wk
residence: 7431 Huckleberry Cir., Anchorage, AK 99502

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Key Hunt → 055 to ADF/c
cc: [illegible]
to: [illegible]
sent: Wednesday, February 14, 2007 12:35 AM
from: Jeff Parker [illegible]

Yummy in a wild
lighter stick 5-20

Rep. Paul Seaton

From: Betsy McCracken [browndogs@gci.net]
Sent: Saturday, February 17, 2007 8:04 AM
To: Rep. Paul Seaton; Rep. Bryce Edgmon; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Kyle Johansen; Rep. Lindsey Holmes; Rep. Peggy Wilson; Rep. Les Gara
Subject: HB 41 Testimony
Follow Up Flag: Follow up
Flag Status: Blue

Chairman Seaton, members of the Special Committee, and Representative Gara,

My name is Betsy McCracken. I live in Anchorage and have been a resident of Alaska since 1981. I was a permitter and project reviewer with the Alaska Department of Fish and Game (ADFG), Habitat Division for 2.5 years prior to being transferred by EO 107 to the Alaska Department of Natural Resources, Office of Habitat Management and Permitting (DNR/OHMP). I worked at OHMP as a permitter and project reviewer for over a year before deciding to leave. My testimony solely reflects my personal experiences and opinions; and not necessarily those of either the ADF&G or ADNR. I support HB 41.

During my tenure with the ADF&G Habitat Division I was an area biologist permitter for the Prince William Sound, Copper River Basin and Mat-Su Valley regions. When OHMP was created, the area boundaries were altered such that the Fairbanks office incorporated the Copper River Basin into its area; and a new office was created in Palmer to cover the Mat-Su area. I remained a permitter for the PWS region.

OHMP does not review projects the same way that ADFG did. While working for OHMP I had sideboards regarding what I could say and require. This happened to me. I had several projects occurring in the PWS area including the Million Dollar Bridge renovation in Cordova, the replacement of five bridges along Dayville Road in Valdez, and the Valdez sewer outfall project. The Valdez sewer outfall terminates in an area of specified pink salmon spawning. This project was removed from my review, and as I am sure you all well know, the mixing zone regulations went on to be rewritten and diluted.

The Million Dollar bridge project is one were Fish and Game and the OHMP had significant differences of opinion over potential impacts to the fisheries resources of the Copper River. The applicant was originally required by ADFG to remove a fill pad put in place during the renovation of the bridge prior to a specific date. The applicant later requested authorization under OHMP to leave the fill pad in place. ADFG repeatedly expressed concerns related to the fisheries resources and their ability to manage the fishery as a result of allowing the fill pad to remain in the river. OHMP, against the recommendation of ADFG, authorized the applicant's request to allow the fill pad to remain in place.

Construction timing windows originally required of the Dayville Road bridge replacement project were eliminated for all but one of the rivers. Construction timing windows were required to protect incubating eggs within the streambed in known spawning areas. This requirement was upheld in only one of the five rivers; and timing windows are no longer required by OHMP.

I mention these three projects specifically because they were all taken away from me mid-project and authorized under the Fairbanks Area Office. These are projects that I was reviewing, and the review responsibility was transferred to the Fairbanks office. Thorough reviews were not encouraged; in fact,

reviews as a whole were not encouraged. I was asking too many questions. The ability to request full plans and specifications necessary to conduct a thorough project review to assess potential impacts to the state's resources was removed. When I attempted to do so, I projects would be taken away from me. The emphasis was on the number of permits issued and the facilitation of development.

I also had permit stipulations edited, challenged and written by the applicant. This is not how the permit review process was conducted at ADFG. Applicants were not allowed to write their own permits. At ADFG we are the experts on fish and wildlife and their habitats, and on the proper protection of these resources. This responsibility should be returned to ADFG. OHMP does not focus on the protection of the state's fish and wildlife resources; or on their sustainable use.

If there are those who believe the permitting system was broken at ADFG, then surely it is shattered residing at OHMP. I left OHMP because I was not allowed to be effective at my job and unable to provide the proper protection of the resources.

I also want to voice that I fully support the written and oral testimony provided by Matthew LaCroix. His testimony presents integrity, intelligence, knowledge and truth regarding many examples of the dysfunctional results of EO 107 and how, over and over again, the results fail to protect the resources and the best interest of Alaskans.

I urge you to please carefully review and consider the information and testimonies provided in support of HB 41.

Thank you for the opportunity to provide testimony.

Sincerely,

Betsy McCracken
907 344 6118



Alaska Conservation Alliance

Uniting for Alaska's Future

March 20, 2007

The Honorable Paul Seaton
Chair, House Fisheries Committee
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Seaton,

The Alaska Conservation Alliance (ACA), a consortium of 40 Alaska-based conservation groups with a combined membership of 38,000 Alaskans, fully supports HB 41 and would like to commend and thank Representative Gara for his efforts to advance this important piece of legislation.

Returning the Habitat Division back to ADF&G emerged as a top administrative priority for ACA. Though we support this legislative initiative, we would also like to register our intent to pursue the move through administrative channels as well. In this regard, we view the emergence of HB 41 as an important impetus in getting the Palin Administration to give this issue the attention it deserves.

I would like to share a personal historical insight as to why it is important to restore the checks and balances in resource decision-making by returning the Habitat Division back to Fish and Game. In the late 1980's, I represented the fishing industry when the State Forest Practices Act was being negotiated among affected stakeholders. When United Fishermen of Alaska signed on to the agreement and the resulting legislative proposal, the balance of power and influence between the Department of Natural Resources and the Department of Fish and Game was *absolutely* critical to the successful outcome.

Knowing that the Department of Fish and Game had due deference in permit matters affecting fish and wildlife habitat, the fishing industry made *major* concessions in riparian area standards for state and private forest lands. Without the check and balance of ADF&G, the fishing industry would have never agreed to allow targeted timber harvest within riparian areas. In fact, faith in the Habitat Division was the glue that made and kept the agreement together. It was the glue that delivered the State Forest Practices Act.

When the Murkowski Administration came into power, they announced the system was broken and took swift action to upset this important and delicate balance. We certainly hope the Palin Administration will see otherwise and undo this mistake as soon as possible.

It is important to note that our last Governor claimed that the Habitat Division had stood in the way of development projects that should have gone forward: "We've got to do a better job of

Page 2

trying to develop these resources in a responsible manner, by making prompt decisions in a reasonable time frame based on the best science available, as opposed to just one point of view," he said. This claim was made despite the fact that the Division of Habitat's record on permit transactions showed a denial rate less than 1% and a clear record of relying on science when reviewing and modifying permit applications.

As was noted by every former Commissioner of ADF&G, the system was not broken. Like others, the Commissioners cited that the move actually did the breaking. The ill-advised consolidation of power in DNR created a conflict that would compromise the Division's ability to protect Alaska's fishing waters and ensure that projects would be designed in a manner that would not compromise protection standards.

With many large resource development projects on the horizon, it would be prudent to reinstate the carefully negotiated and crafted system of checks and balances that guided Alaska for years. Regardless of one's view of the proposed Pebble Mine, it will serve the State's best interest to ensure a balanced review of all permits. This can not happen when the State's primary development agency holds all the key cards.

I understand that there is some reluctance to transfer the Habitat Division back to ADF&G because it would be internally disruptive to staff. This is a reasonable concern. We, too, worry about disruption to important government functions and the impact of the move on employee morale. We urge the Palin Administration to continue to be sensitive to these very real concerns. However, in the grand scheme of things we believe the stakes are too high to make this the primary basis for a decision to retain the status quo. At a minimum, it would be helpful to conduct an independent evaluation of the potential disruption this would cause before a final decision is made.

While people will continue to disagree about the extent to which the habitat has suffered under the new regulatory regime, there is little doubt that this ill-advised decision has dangerously undermined public confidence in our permitting process. And what if the critics are right? As noted by former commissioner Carl Rosier in public testimony, the damage could be huge and irrevocable.

In the event that the Palin Administration does not decide to rescind Executive Order 107, I would strongly urge you to pursue passage of HB 41 to return the Habitat Division back to Fish and Game. The Alaska Conservation Alliance would like to thank you again for your consideration of this important piece of legislation.

Sincerely,



Kate Troll
Executive Director

cc: The Honorable Representative Gara

From: Ed Weiss [mailto:eww@gci.net]
Sent: Thursday, February 15, 2007 12:04 AM
To: Rep. Paul Seaton
Subject: HB41

Dear Rep. Seaton,

I've had the opportunity to listen to the testimony given on Monday and Wednesday of this week regarding the transfer of fish habitat protection functions (Habitat Division) back to ADF&G. Since I am one of the OHMP Habitat Biologist who have worked under both ADF&G and ADNR systems over the last 18 years this surprised me a bit. I new the bill was out there, yet I had no idea or warning that it had come up for discussion. Unfortunately I was unaware the testimony was taking place until late yesterday and was unable to participate or prepare comments.

I would like to prepare comments and feel that I can possibly provide some of the clarification the committee seems to be looking for, or at least my personal experience and perspectives of working within both systems. Can you let me know when the deadline is for providing written comments? I'm also willing to discuss the matter with you or the committee informally if we can schedule it outside of work. I do support the move of these functions back to ADF&G and am encouraged by the testimony given so far. However, I do believe that there are other important issues that should be looked at as well and can possibly be included in any legislation or reorganization put forward.

Ed Weiss
25115 Homestead Road
Chugiak, Alaska 99567
907-688-6029
eww@gci.net

03/30/2006

RE: Glennallen - Palmer - natural gas line routing design. Final public written comment date, 4/24/2006, 5:00 P.M. - Fax # 646-5012

Joint Pipeline Office
Ms. Janetta Pritchard
411 West 4th Avenue
Anchorage, Alaska 99501

Dear Ms. Pritchard,

Having attended the public meeting, March 28, 2006, Anchorage, Loussac Library and given testimony, I am of the opinion additional comment is necessary.

The proposed routing, is, West from Eureka, down Squaw Creek, turning North West, up Caribou Creek over Chitna Pass, into the headwaters of Boulder Creek, then downstream Boulder Creek, across the Chickaloon River, along the base of Castle Mountain, across King River, West on a power line right a way to Palmer. Reviewing the Alaska Atlas and Gazetteer it appears the most Northern route of the pipeline will be 20 miles North of the existing highway. This is not acceptable.

In modern times, for the past 100 years, Alaskans, myself included, have had hands on experience harvesting food for their table from this region of the Talkeetna Mountains. If left in it's natural beauty, managed for quantity and quality of wildlife resources, this area will continue to be a quality experience for the next 100 years and beyond.

This region, Talkeetna Mountains, contains a high concentration of Dall Sheep which mix with the sheep in the Chugach Mountain Range, directly South of the highway. The reason for the high concentration of sheep is lack of snowfall, whereas very few sheep live on the far Western end of the Talkeetna Mountain Range due to extreme snow fall.

Herb's copy

Regardless of the difficulties, the pipeline must be routed on the highway right a way or South of the highway which will not disturb one of the "bread baskets" of Alaska for food on the table.

Trappers, fishermen, hunters, hikers all depend on this area. The State of Alaska must display a "good neighbor policy" in place of pipeline economic reasons to protect this area.

Sincerely,



Warren E. Olson

Founding President, Foundation for North American Wild Sheep, AK CH.

CC: Mr. Wayne Heimer, Director, National FNAWS

CC: Mr. Ray Lee, President, National FNAWS

LITTLE NELCHINA FARM

Dear Rep Siston - Re: HB41

02/15/07

As per your request the enclosed info is forwarded to your office. Additional documentation will be sent early next week.

Since Habitat was transferred to DNR, private folks have had a hard time dealing with DNR on such & some issues as well as habitat determinations. The Dept of F & G have been bypassed and intentionally left out of the loop, & F & G on the DNR team have been overpowered by the DNR leadership -

Based upon the quality & creditable testimony at your committee meeting yesterday I am confident that Gov. Palin will concur with re-establishing Habitat back into F & G.

Since a picture is worth a thousand words I'm including a photo of what this critical habitat can produce -

Sheep mtn has been closed to hunting sheep & goats since the late 1940's. My father-in-law harvested these sheep under a territorial Education permit in 1951. This wildlife display is in the Milwaukee Wisconsin Museum of Natural History. You will notice the wide flare of the TALKEETNA Ram & the heavy tight horns of the Cheyenne Ram. These sheep mingle freely and the mix provides the hybrid vigor that enhances high production. Who would trade this perfect combination of habitat & genetics?

Mr Olson's letter to the pipeline office has been ignored and he is a senior recognized expert on this subject.

I appeal to you Rep Siston to consider the transcribing yesterday's testimony for our new Gov to review. She is a smart lady and may initiate the attitude adjustments required to get this issue back on track -

If I can be of further assistance please do not hesitate to call me -

Sincerely
Herb Simon

LITTLE NELCHINA FARM
Mile 135 Glenn Hwy.
HC 1, Box 2292
Glennallen, AK 99588

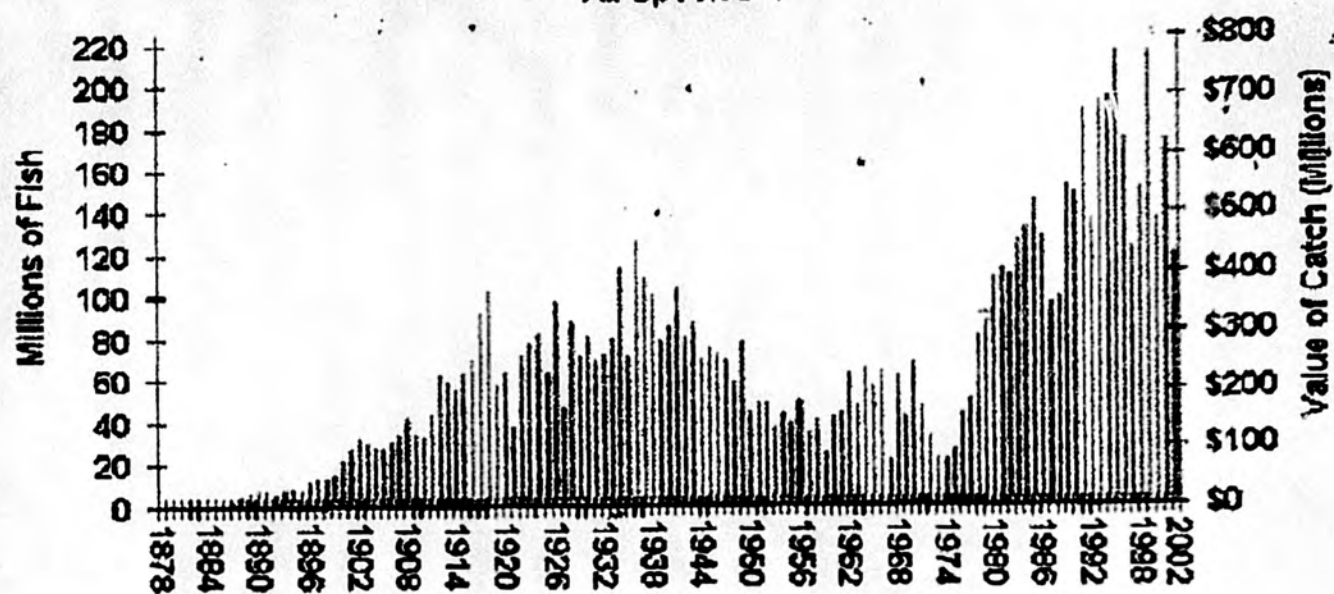
Mile 135 Glenn Highway • Alaska 99645 • (907) 822-3059



Little Nelchina Farm

Alaska Commercial Salmon Catches & Value 1878-2002

All Species



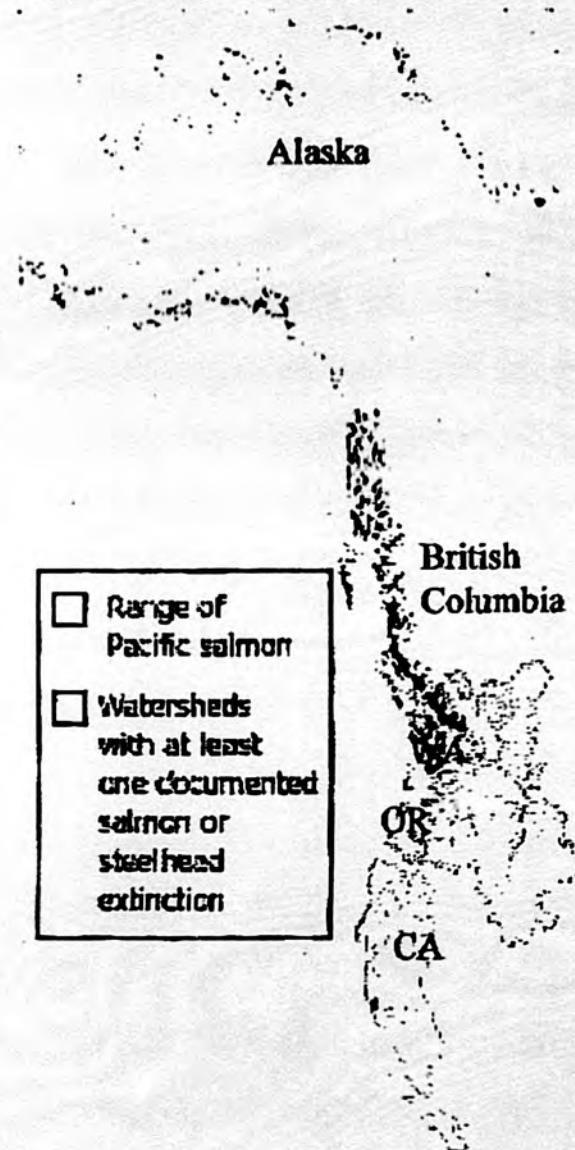
Regional Perspective

Salmon populations in North America: past and present

Region	Historic (1000s)	Current (1000s)	Pct (%)
Alaska	175,160	187,470	>100
British Columbia	68,556	24,800	36
California	3,060	278	9
Puget Sound	20,036	1600	8
Oregon Coast	3,074	213	7
Columbia River	13,072	221	2
Washington Coast	3,935	72	<2

From Gresh et al. (2000)

State of Salmon in the North Pacific Rim



Testimony of Carl Rosier
Legislative Fisheries Committee
February 14, 2007

Good morning Mr. Chairman, my name is Carl Rosier and I am here testifying in support of HB41 as a concerned Alaskan. I applaud Representative Gara's efforts to provide a forum for public debate of the decision by Murkowski to transfer Habitat to the Department of Natural Resources (DNR).

I began fisheries work in Alaska in 1955, went to work for Alaska Department of Fish and Game (ADF&G) Commercial Fisheries Divisions in 1959 and held positions of increasing responsibility with commercial fisheries as an Area Manager Biologist, Region Supervisor, Division Director, and Deputy Commissioner. I left State employment in 1980 to take over as Chief of Fisheries Development with the National Marine Fisheries Service. In this position I am proud to have been of help in the Americanization of our Exclusive Economic Zone. I capped my fisheries career by serving Governor Hickel as Commissioner of ADF&G from 1990 to 1995.

First I would like to say that I fully support and agree with the testimony presented on Monday by Mr. Lance Trasky. Needless to say I am extremely proud of the job the professionals of ADF&G have done in protecting and extending the fish, wildlife, and aquatic plant resources of our state.

ADF&G has a 50 year history of fishery management and habitat protection that is the model and envy of every state fortunate enough to have anadromous fish populations. Alaska's success has come about as the result of a strong fishery management program and habitat protection for long term sustainability and abundance. California, Oregon, Washington and the southern half of British Columbia have all seen their salmon stocks decline precipitously due largely to damage by other extractive industries such as irrigation, electric generation, logging, mining, urban pollution, and in some cases over-fishing. The costs of rebuilding, if possible, will be in the 100's of millions of dollars; not to mention the peripheral costs associated with an ever increasing federal involvement as the list of endangered species continues to grow. With the transfer of the habitat function to DNR, Alaska has now placed our resources on the same slippery slope that has caused the declines in the majority of coastal areas supporting anadromous stocks.

We all know that the resource extractive industries are the future of Alaska, but we have to be smart stewards in terms of protecting the renewable versus non-renewable resources. Yes, there have been some problems between industry and the habitat staff, but the transfer of the Division of Habitat to DNR did nothing to resolve anything except exacerbate the controversy. The logging leadership as well as some segments of the mining industry were the political friends of Murkowski that forced the transfer and have placed the fishery resources in a dangerous compromised position. These resources are renewable, they support the economy of many Alaska communities; commercial salmon alone are valued at between \$500 to \$800 million annually. Fisheries in Alaska are second only to oil in terms of economic importance. This is a resource that deserves to be represented at the cabinet level under an agency charged with their welfare. That was exactly what our early Legislators decided in placing this responsibility with ADF&G. That decision, in my view, is as good today as it was when title 16 was promulgated in the late 1950's.

I am pleased that Governor Palin has elected to take a second look at this issue. She has not been hesitant to reverse bad decisions by the Murkowski administration and I believe that upon closer scrutiny the Governor will see through the political nonsense espoused by the previous administration and the greed of the industries that have been willing to compromise a great resource so important to so many Alaskans. Control of the habitat by a deputy commissioner under a Commissioner charged with management of land resources simply makes no sense.

In conclusion, the memorandums of understanding may sound good. However they will only work if the signature parties are somewhat equal in authorities. DNR currently holds all of the policy aces in this regard and with all due respect to the current Commissioner of DNR, the interagency agreement will not stand the test of time.

Thank you for the opportunity to testify.

Carl Rosier
8298 Garnet Street
Juneau, Alaska 99801

(907) 789-9117



PO Box 47 Homer, AK 99603
www.alaskabackcountryhunters.org

To: House Special Committee on Fisheries
Inre: House Bill 41 – “Transferring the Habitat Division Back to the Department of Fish and Game”

Dear Chairman Seaton, and Representatives Johansen, Johnson, LeDoux, Wilson, Edgmon, and Holmes,

I am Mark Richards, co-chair of Alaska Backcountry Hunters and Anglers (ABHA), a pro-hunting and fishing conservation org committed to sound stewardship, management, and protection of our fish and game resources and habitat for future generations of hunters and anglers.

ABHA strongly supports HB 41 to return the Habitat Division and permitting authority back to ADFG, and we thank you for taking the time to accept testimony on this important bill.

The reality of Governor Murkowski’s EO-107 that moved habitat out of ADFG and placed it within DNR is that it effectively negated the checks and balances and environmental safeguards our constitutional founders had wisely recognized were necessary for our new state, in order that we did not make the same mistakes of the Lower-48 with our valuable fisheries stocks and habitat. For nearly fifty years, professional habitat biologists working for the Habitat Division of ADFG oversaw the permitting of countless new resource development projects, while still maintaining and protecting the world’s last great wild salmon runs.

We’ve all heard the phrase, “If it ain’t broke, don’t fix it.” Well the system wasn’t broke, yet EO-107 deceptively claimed that it was, and the sad truth is that it was the timber industry and mining interests that pushed for Governor Murkowski to “streamline” and “fast-track” the permitting process for new development by removing the authority from ADFG and placing it within DNR.

Nearly every proponent of leaving Habitat within DNR today says that moving it out of ADFG initially was a bad idea. But, they say, to move it back now is an equally bad idea. The reasoning behind this argument is that to move Habitat back to ADFG now would cause unnecessary disruption, and that OHMP's (short) "track record" proves that they are doing as effective a job as the former Habitat Division within ADFG.

In listening to Director Kerry Howard's (of OHMP) testimony, I can fully understand her frustration and resentment when some allude that DNR habitat biologists, or OHMP, will not concern itself with the same protections of our habitat and fisheries resources as if the permitting authority was back with ADFG. The professionalism and dedication of Director Howard can't be denied, and I'm confident she is doing the best she can with the system now in place, and that the biologists under her purview are also doing the best they can.

However, we simply can't forget, or deny, that the very mission and culture of DNR is completely different than the mission and culture of ADFG. While few biologists now working for OHMP, or ADFG, have been willing to publicly testify on HB 41, there have been some who have testified and honestly explained the differences in the culture between the two agencies, and how OHMP habitat biologists may have their reports or analysis either discounted or disregarded if it does not meet the direction DNR itself wishes to take with habitat permitting for certain projects.

Carl Rosier and several other former F&G commissioners have spoken out as well about their long-term fears of keeping Habitat within DNR, and the cultural (and mission) differences between DNR and ADFG. When every former F&G commissioner supports returning Habitat to ADFG, we can either believe that their opinion speaks to some kind of inter-department jealousy and/or resentment, or that it speaks to their genuine concerns about the long-term future of Alaska's fisheries resources and habitat. I firmly believe it is the latter, and that we should give much weight to their expertise and opinion on this matter.

Much has been made of the ever-changing MOU between DNR and ADFG over Habitat permitting, and just why this MOU is now so long-winded and seems to have conflicting views on just what agency has authority, and when. Some call for "more study" of this MOU, and of the track record of OHMP to date, but there just isn't any need for "more study" on this issue.

If we do not return Habitat to ADFG, where it has always rightly belonged, and where it has served our state so well for so long, then we put at grave risk the future of our fisheries and habitat, because the former balance we had between resource development and habitat protections simply is no longer there if Habitat permitting and authority stays within DNR.

Right now, Director Howard is doing a fine job, and this new administration may also be able to make this new system "work," but if we let EO-107 stand, and think honestly about the future, what that future holds is different administrations, with likely differing philosophies on resource development and habitat protections, and by leaving Habitat permitting and authority within DNR it virtually opens the door to an imbalance between future resource development and habitat protections, depending on the whim of whatever new administration comes to power, whom they appoint as commissioners and directors of our various agencies, and their ties (and obligations) to big industry and resource development.

That is the real fear of Alaska Backcountry Hunters and Anglers, and that is the fear of our former F&G commissioners and the habitat biologists who have spoken out in support of HB 41 and returning Habitat Division and permitting authority back to ADFG. We need to retain the former checks and balances we've had since statehood, so that no one administration in the future can override permitting and habitat protections simply as they see fit.

That should be the real long-term concern before us. We must not invalidate the legacy and foresight of our constitutional founders and our first legislature, who knew that we needed a system of checks and balances in place so that resource development wasn't done at the expense of our fisheries and habitat.

We wish to thank Representative Les Gara for proposing this bill, and Representative Crawford for co-sponsoring it. We'd like to see HB 41 move through committee so that public testimony and honest debate will allow Governor Palin to seriously reconsider rescinding EO-107, and returning the Habitat Division back to ADFG.

Sincerely,
Mark Richards
Co-chair Alaska Backcountry Hunters and Anglers

PO Box 47
Homer, AK 99603
www.alaskabackcountryhunters.org

Louie Flora

From: George Matz [geomatz@alaska.net]
Sent: Wednesday, February 14, 2007 2:00 PM
To: Rep. Paul Seaton
Cc: Rep. Les Gara
Subject: HB 41

Attachments: DNR & DF&G Comparisons.doc



DNR & DF&G
Comparisons.doc (68.

Dear Representative Seaton:

Considering today's discussion during the Fisheries Subcommittee meeting, I thought it might be useful to forward you a comparison I provided the Board of Fisheries on the differences between DNR and DF&G goals and objectives (see attachment) based on their budgets.

While it is good that the committee has shown an interest in "corporate cultural" I think it needs to be said that every agency has a bias. This is neither good or bad, just human nature. The more pertinent question is; what type of agency bias is most suitable for the protection of fish and game habitat, DNR's or DF&G's. This has little to do with how well someone is or is not doing their job.

I think you will see from the attached letter that there are significant differences between these two agencies, and in time, the cumulative differences that can be expected. This is what the committee needs to focus on.

I would appreciate it if you could circulate this email and my letter to the committee.

Thank you

George Matz

Jim Marcotte
Alaska Department of Fish and Game
Boards Support Section
PO Box 115526
Juneau, AK 99811-5526

January 9, 2007

Re: Suggested material on Habitat budgets for the Board of Fisheries

Dear Jim:

I would like to submit the following budget material regarding the Division/Office of Habitat to the Board of Fisheries for its meeting this Thursday. This material should be of interest to Board members as they investigate changes that have occurred in the State's permitting process, particularly with regards to fish habitat. I think the information clearly shows a trend over the past couple of years from an emphasis on habitat conservation to an emphasis on expediting permits needed for resource development.

The table below compares Habitat related aspects of the Department of Fish and Game (DF&G) budget for FY 03 which was submitted to the legislature the last month of the Knowles Administration to the Department of Natural Resources (DNR) budget in FY 04 and FY 07 under the Murkowski Administration. FY 04 is the first year that Habitat was in DNR's budget and FY 07 is the current fiscal year for state agencies. It should be noted that the Murkowski Administration changed the budget structure from that which was standard, making it harder to track agency budgets over several years. However, at the departmental policy level, which is what is being reported here, the changes were mostly semantic.

The budgets for each department do provide information regarding the operations and expenditures of Habitat, but at the component level. I have not included this information since it is so detailed and voluminous that only a budget analyst might appreciate what it offers. But it is available.

Once again, thank you for your cooperation.

Sincerely,

George Matz

**Budget Policy Changes to Habitat:
From DF&G to DNR**

Dept. of Fish & Game FY 03 Operating Budget	Dept. of Natural Resources FY 04 Operating Budget	Dept. of Natural Resources FY 07 Operating Budget
Department Mission: To protect, maintain, and improve	Department Mission: Develop, conserve, and	Department Mission: Develop, conserve, and

the fish, game, and aquatic plant resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle.	maximize the use of Alaska's natural resources consistent with the public interest.	maximize the use of Alaska's natural resources consistent with the public interest. Core Services (18): Habitat Management & Permitting
Goals and Strategies: 3. MAINTAIN, RESTORE, OR ENHANCE ALL HABITAT IMPORTANT TO ALASKA'S FISH AND WILDLIFE RESOURCES. •Encourage and support development that maintains healthy habitat, especially anadromous fish habitat, wetlands, and important uplands. •Work with municipalities as well as timber, tourism, oil and gas, and mining industries to ensure projects meet legal requirements and adequately protect fish and wildlife resources. •Coordinate with the Dept. of Transportation & Public Facilities, Natural Resources and Environmental Conservation, and with federal land managers to ensure resource sustainability and multiple uses when planning timber sales, oil and gas leases, mining, transportation, and tourism projects. •Protect traditional public access to fish and wildlife resources.	Goals and Strategies: 4. Streamline natural resource leasing, sales, and permitting processes. Transfer of Habitat permitting staff to DNR and integrate them into overall resource development timeframes	Strategies to Achieve Results B1: Enhance our Title 41 review process by adding appropriate conditions to protect resources, reviewing projects in a timely manner, and monitoring as needed. Target #1: 99% of Title 41 permit applications are approved as is or modified with appropriate conditions to protect the resources Measure #1: Percentage of Title 41 permits approved as is or modified with appropriate conditions.
Key Department Issues FY02 – 03 Habitat The greatest challenge the Habitat and Restoration Division faces is maintaining important habitats for fish and wildlife while facilitating responsible resource development. Ensuring adequate staff time to work with development interests during project planning phases	Key Department Issues FY 03 – 04 Making the transfers of Habitat and the Alaska Coastal Zone Management Program a success.	Key Department Challenges Nothing specific to the Office of Habitat. Related items: Mining Projects. An important challenge for Alaska is completing the permitting to enable the development, or continued development, of Alaska's large mines:

is the most cost-effective method for protecting Alaska's resources and providing for economic growth and development.

Reauthorization of the TAPS lease; construction of a gas pipeline from Prudhoe Bay; highway expansions; oil and gas development in Cook Inlet and the North Slope including NPRA; and development of ore deposits in the Interior continue to pose challenges. Maintaining experienced permitting staff to work on these projects is increasingly difficult due to the department wide challenges of recruitment and retention.

Many road culverts in salmon streams are blocking fish passage. The division will continue to prioritize problem culverts for replacement and has already initiated an assessment of stream crossings on the road system in cooperation with DOTPF and the USFWS. The division will also continue working with private landowners by conducting inventories and helping to renovate or replace problem culverts.

Protecting Alaskans' access to fish and wildlife on public lands remains a challenge. The department will continue to review RS 2477 and 17(b) easements to protect public access to state lands. The department will continue to address increasing pressures on key state rivers and watersheds, and will conduct habitat restoration projects along major salmon spawning and rearing areas associated with these fisheries.

- Improve timeliness of Permit/Lease Processing. Methods to increase efficiency and improve the quality of the Department's land management include making better use of technology through such techniques as allowing online payment and applications, and through streamlining procedures and processes.

Major Accomplishments in 2001: Habitat Projects started in FY01 include an ecological assessment of log transfer facilities in Southeast; road culvert assessment for efficient fish passage in the Matanuska-Susitna Valley and in portions of the Kenai Peninsula; fish habitat restoration projects in the Matanuska-Susitna Valley, Copper River Basin, and Anchorage Borough; forest practices regulations for the Interior; and an assessment of ATV impacts to fish spawning and rearing habitat in the lower Kenai Peninsula. The conversion of the Southeast Anadromous Waters Catalog into a GIS format was 95% complete, bringing the overall conversion to approximately 80% of the cataloged water bodies within the state. Conversion to GIS will allow electronic distribution to other agencies, the public and to industries that require efficient access. In FY01 the division provided applicants with assistance on 3,266 projects statewide, to meet project objectives while avoiding or minimizing impacts to fish and wildlife. Numerous habitat restoration projects were completed in cooperation with other agencies, municipalities, and private organizations and individuals throughout Southcentral with a continued focus on the Kenai River and the Matanuska-Susitna Valley. The division successfully resolved numerous construction issues with the oil industry in the Cook Inlet Basin and North Slope and continued its work at Red Dog, Fort Knox and Green's Creek.	Major Accomplishments in 2002: Nothing specific to the Office of Habitat	Significant Changes in Results to be Delivered in FY2007 Nothing specific to the Office of Habitat
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Key Performance Measures for FY2003 Nothing specific to the Div. of Habitat	Key Performance Measures for FY2004 Nothing specific to the Office of Habitat	Major Department Accomplishments in 2005 Nothing specific to the Office of Habitat
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Dear Governor Palin,

12/29/06

This probably isn't the best way to contact you on Departmental issues but it is the only way I know of right now.

The issue at hand is the Board of Fisheries request to re-constitute Habitat Division. This is cause for great concern for myself, and many municipal and business leaders around the state that frequently use the state permitting process.

My familiarity with this issue includes seventeen years as the Mayor of the City of Craig and thirty-four years as an active commercial salmon fisherman in Southeast Alaska. Suffice it to say, I have considerable experience with the state regulatory process, a great deal of it with the former Habitat Division, and as well a vested and personal interest in the protection of fish habitat.

As Mayor I witnessed for many years Habitat Division operate with out good leadership with virtually no continuity between one biologist and the next. It was painfully obvious that personal agendas and anti development philosophies carried greater weight in their decision making process than common sense or science. This led to individuals applying their own interpretation of division policy and the creation of much unnecessary confusion and expense for permit applicants. And, rarely ever were these people held accountable for their lack of diligence and professionalism.

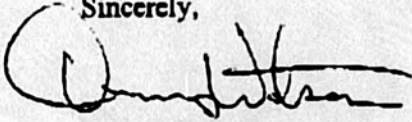
I strongly supported moving Habitat Divisions functions to DNR. The move did a lot toward streamlining and bringing consistency to the permitting process, as well as consolidating it. The change did though have one great shortcoming, it did not provide for direct ADFG comment on habitat issues related to the process, a must if the Department is to maintain reasonable control over fish and game management.

With your Administration coming on board it would be an excellent time to reexamine this issue. A consideration would be to have the Commissioner of Fish and Game designate the appropriate person or persons within the Department that would be charged with reviewing and providing comments on permit applications. This could be accomplished with minimal impact, and reasonable guidelines, or sideboards, for the position could be developed to prevent the process from regressing back to the ways of the defunct Habitat Division.

I believe this change would go a long ways toward addressing the Board of Fisheries concerns while speaking to the fears that many have of recreating Habitat Division.

4

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Watson", with a large circular flourish on the left side.

Dennis Watson
Mayor
City of Craig

Louie Flora

From: Peter Metcalfe [metcom@gci.net]
Sent: Sunday, February 25, 2007 9:28 AM
To: Rep. Paul Seaton
Subject: HB 41 is a bad idea

Follow Up Flag: Follow up
Flag Status: Blue

Representative Seaton:

A quick review of your committee's testimony leads me to believe the other side of the story hasn't been fully heard.

While Habitat was housed in the Department of Fish & Game the so-called "culture" of that department countenanced a mean-spirited bureaucratic obfuscation in stark contrast to the Knowles' Administration's political posturing of being "open for business." (This is coming from a Democrat -- I campaigned for Knowles.)

As an advocate of an public recreation project, a golf course, on City & Borough of Juneau land -- a project requested by the CBJ Assembly -- I spent seven years toe-to-toe with biologists of the ADF&G Habitat Division. Our group of volunteers spent countless hours dealing with the results of being blind-sided by habitat biologists at public meetings, fighting fanciful definitions of habitat, arguing about streams without water, staving off demands to survey goshawk and flying squirrel habitat (in other words, to prove that the land in question did not host nearly impossible to find animals), studying "black bear migration routes" ... The list goes on and on and on.

So far, I haven't heard a clear description of the problem that needs to be fixed -- only the usual crystal ball certainties of why placing habitat within the Department of Natural Resources will have such ill effects.

I'm all for protecting wilderness habitat, but what was happening when the division was with Fish & Game was not pro-habitat, it was quite simply misanthropic mismanagement.

Feel free to contact me.

Regards,

Peter Metcalfe

P.S. I'm a life-long Democrat and proud of it.

--
Metcalfe Communications Inc.
352 Distin Ave.
Juneau, Alaska 99801
907-586-1166
Fax 586-1811
Cell 907-723-3483
www.MetComAlaska.com

Walter J. Hickel

Box 101700
Anchorage, Alaska 99510-1700
Telephone 907-343-2400
Fax 907-343-2211
Email wjhickel@gci.net

February 22, 2007

The Honorable Sarah Palin
Governor of Alaska
State Capitol
Juneau, AK 9981

FAX 907-465-3532

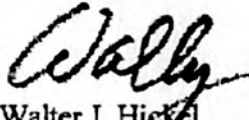
Dear Governor Palin:

I urge you to keep the Habitat Division under Commissioner Irwin's wise and balanced leadership.

The wildlife biologists from the Division staff look through the eyes of what's best for wildlife, as they should. But without guidance, they sometimes fail to make decisions that address the needs of people, too.

As resource development is central to Alaska's economic health, Tom will provide the leadership needed.

Sincerely,



Walter J. Hickel

→ C: Commissioner Tom Irwin (Fax 465-3886)



Alaska State House of Representatives
Special Committee on Fisheries

RE: testimony on HB-41

Dear Chairman Seaton,

2/16/07

I would like to have my 12/29/06 letter to Governor Palin entered into the record as testimony opposing the passage of House Bill 41.

Thank you,

Dennis Watson
Mayor
City of Craig

Department of Natural Resources Office of Habitat Management and Permitting

[State of Alaska](#) > [Department of Natural Resources](#) > [Office of Habitat Mgmt & Permitting \(OHMP\)](#)

Many documents on this website are PDF files. Adobe Acrobat PDF files require a free reader available directly from Adobe.



The mission of the Office of Habitat Management and Permitting is to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.

About Us

- > Overview
- > Area Offices
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- > Interagency Agreements
- > Search DNR or OHMP

Of Interest

- > Publications and Technical Resources
- > Public Review of AWC Changes Updated 8/30/06

OHMP Research Activities

- † Fort Knox Fish Studies
- † Greens Creek Biomonitoring Studies
- † North Slope Mine Site Fish Studies
- † Red Dog Mine Biomonitoring Studies
- † North Slope Whitefish Studies
- † North Slope Vibroseis Studies

FeedBack

Click [here](#) to let us know how this site might better serve your needs.

Activities Requiring Title 41 Permits

- > **Title 41 (Fish Habitat) Permit Information**
- > **Fish Habitat Permit Application Form**
- > Stream diversion
- > Streambank or streambed disturbance
- > Gravel removal
- > Stream crossings
- > Bridge or culvert construction and maintenance
- > Streambank restoration/protection; Erosion control
- > Stream fluming
- > Ice bridge/road construction
- > Water withdrawal
- > Dam and impoundment construction
- > Placer mining activities
- > Recreational suction dredging
- > Use of explosives near stream corridors

General Permits

- > Authorized Vehicle Stream Crossings
- > Authorized Boat Launches
- > Recreational Suction Dredging Permits
- > Miscellaneous



*Adobe Acrobat PDF files require a free viewer available directly from [Adobe](#).

Site optimized for Netscape 7, IE 6 or above.

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Last Updated 01/24/2007

Department of Natural Resources Office of Habitat Management and Permitting

[State of Alaska](#) > [Department of Natural Resources](#) > [OHMP](#) > [About OHMP](#)



The mission of the Office of Habitat Management and Permitting is to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.



The Office of Habitat Management and Permitting (OHMP) is an office within the Alaska Department of Natural Resources ([Alaska Executive Order 107](#)) that works to preserve the state's fish and wildlife resources by protecting the areas they need to complete their life cycles.

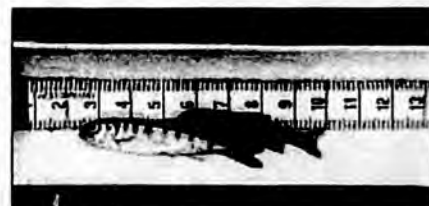
OHMP has the specific statutory responsibility for protecting freshwater anadromous fish habitat ([Anadromous Fish Act, AS 41.14.870](#)) and providing free passage for anadromous and resident fish in freshwater bodies ([Fish Way Act AS 41.14.840](#)).

OHMP fulfills this responsibility by writing Fish Habitat Permits for activities and projects conducted by private individuals or other state or federal government agencies below the ordinary high water of anadromous streams. Habitat biologists in OHMP conduct research and field surveys, review plans with permit applicants to permit a project that does not adversely impact fish habitat, and monitor projects for compliance with permit standards.

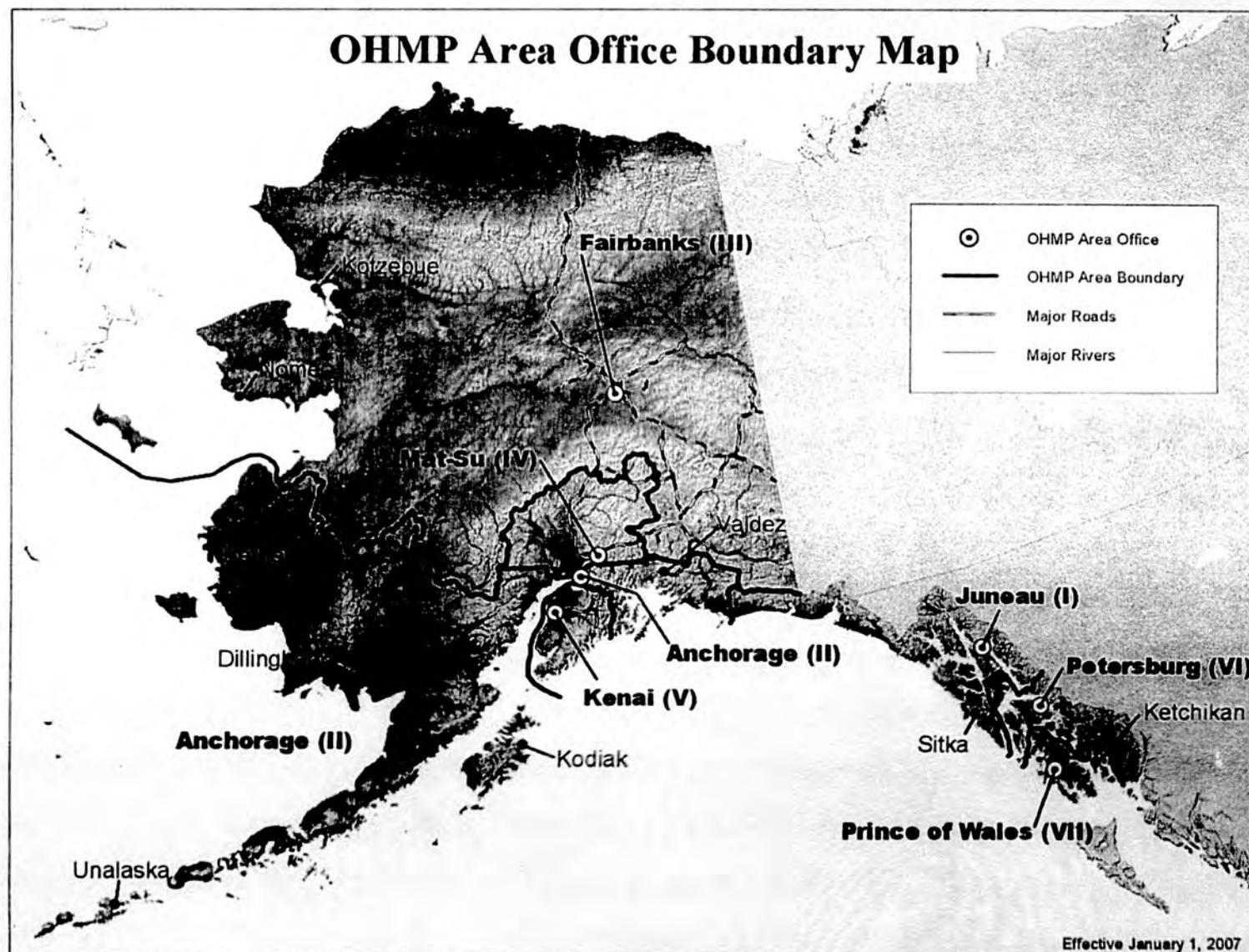


In addition to permitting duties, OHMP coordinates with other agencies during plan reviews to provide expertise for protecting both important fish and wildlife habitat throughout the state. Three examples of these reviews would include working with the state [Division of Forestry](#) to review timber harvest plans; working with the [DNR Office of Project Management and Permitting](#) (OPMP) on large project teams for hard rock mines, oil and gas development and major new transportation projects; and providing comments to OPMP on projects under review for consistency with the [Alaska Coastal Management Program](#).

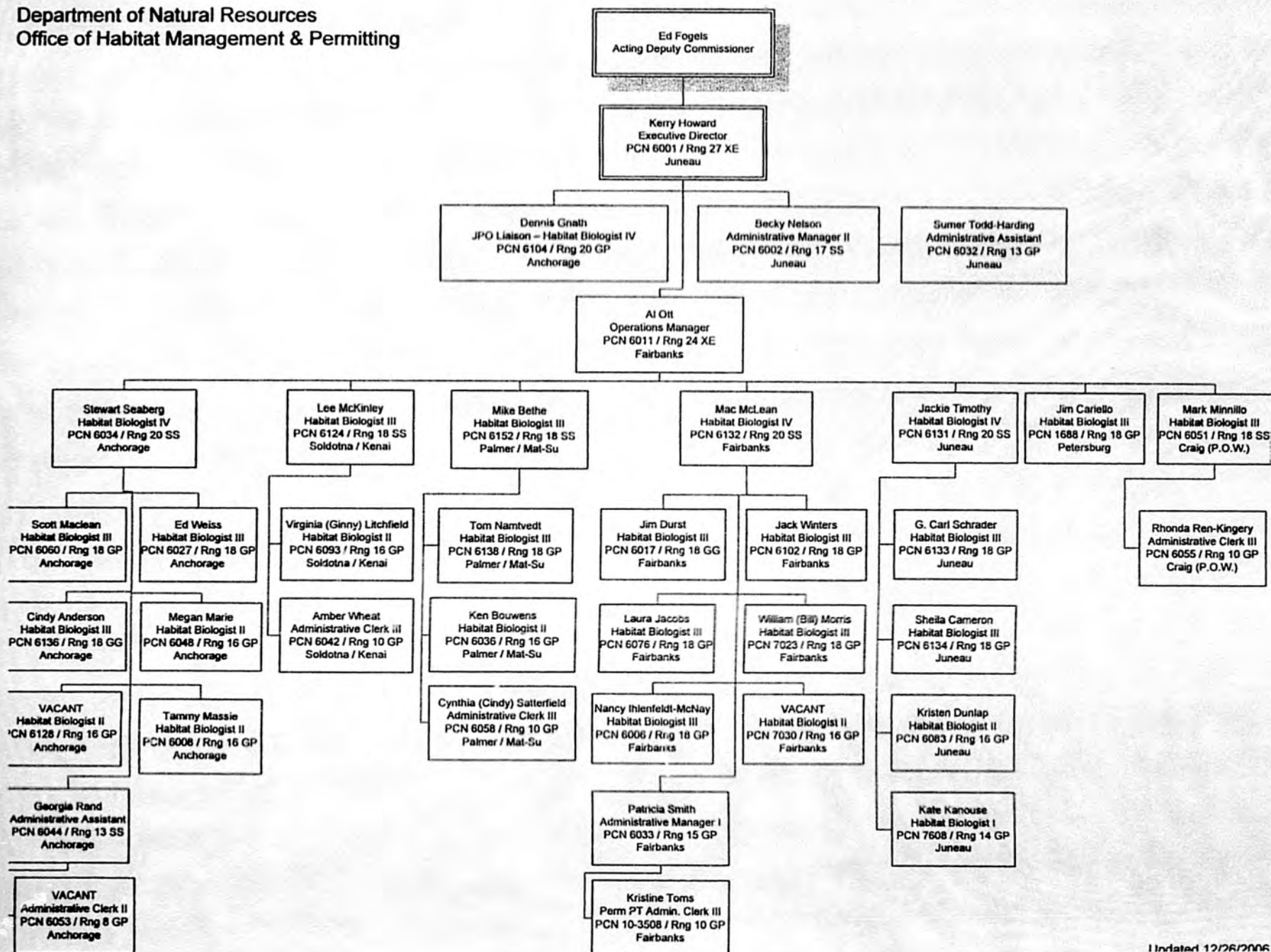
OHMP also works cooperatively with the Alaska Department of Fish and Game to maintain and revise the [Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes](#). This document lists water bodies that are known to be used by anadromous fish and legally gives these streams and lakes protection as important fish habitat.



OHMP Area Office Boundary Map



Department of Natural Resources
Office of Habitat Management & Permitting



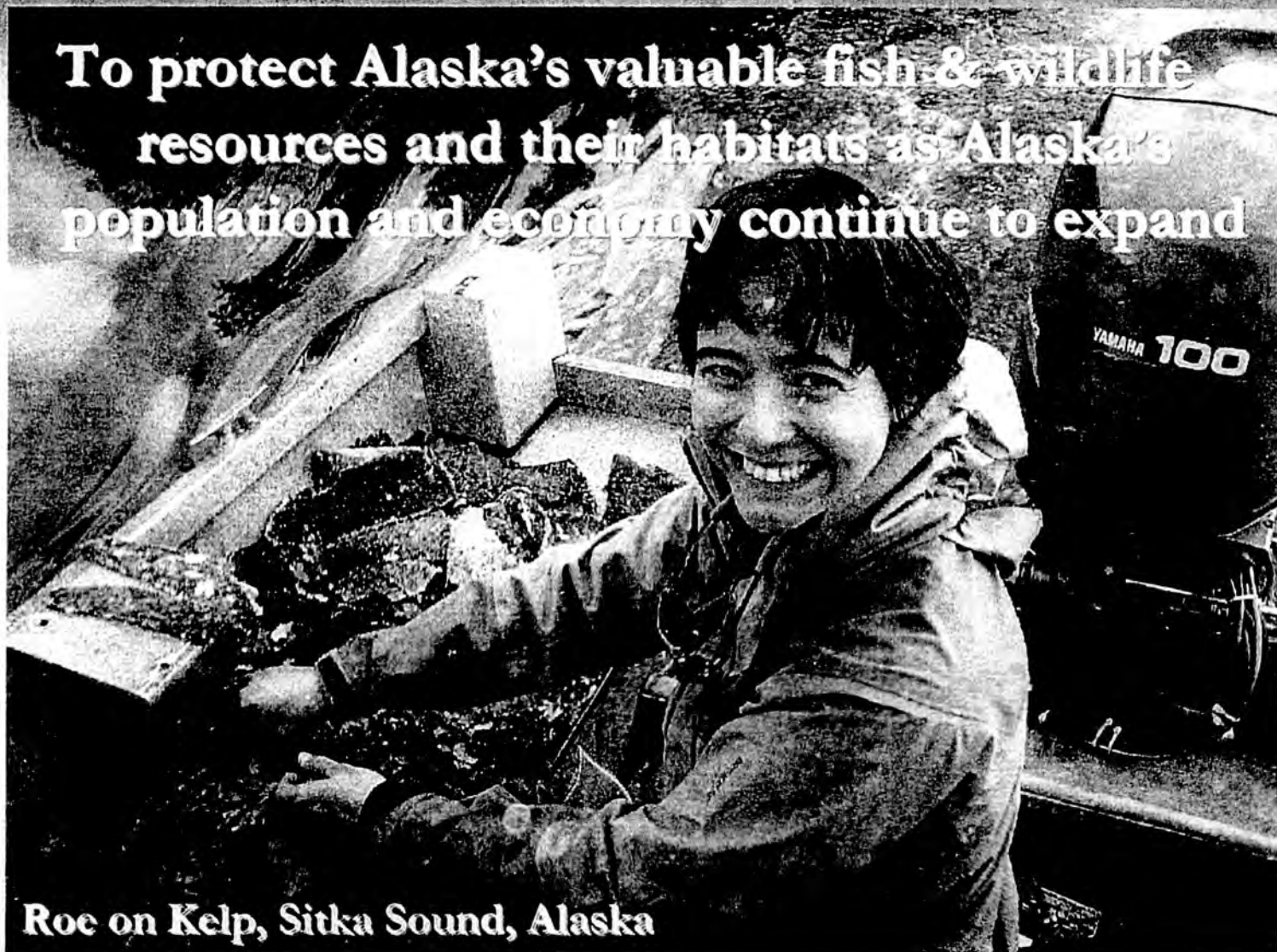
OFFICE OF HABITAT MANAGEMENT & PERMITTING



<http://www.dnr.state.ak.us/habitat/>

Mission Statement

**To protect Alaska's valuable fish & wildlife
resources and their habitats as Alaska's
population and economy continue to expand**



Roe on Kelp, Sitka Sound, Alaska

OHMP Statutory Authorities

© AS 41.14.840
Fish Passage

© AS 41.14.870
Fish Habitat



Sockeye Salmon, Steep Creek, Juneau, Alaska

DNR OHIMP & ADF&G

Memorandum of Understanding



Sow & Cubs, Buddy Creek, Northwest Alaska

- * Establishes a relationship that ensures the protection of fish & wildlife resources and fish & wildlife habitats
- * Delineates responsibilities
- * Avoids duplication

OHMP Workload Priorities



- Anadromous Waters Catalog
- Title 41 Fish Habitat Permits
- Alaska Coastal Management Consistency Reviews
 - Emphasis on Title 41 Permits or important habitat issues not addressed by other authorities
- Forest Resources and Practices Act implementation
- Large Projects of importance to the State, and
- Research to aid in permitting decisions

Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes



Caroline Creek, Juneau, Alaska



Catalog & Atlas - Updates

▣ Yearly Updates to 11 AAC 195.010

- ▣ Nominations
- ▣ Additions
- ▣ Deletions
- ▣ Definitions

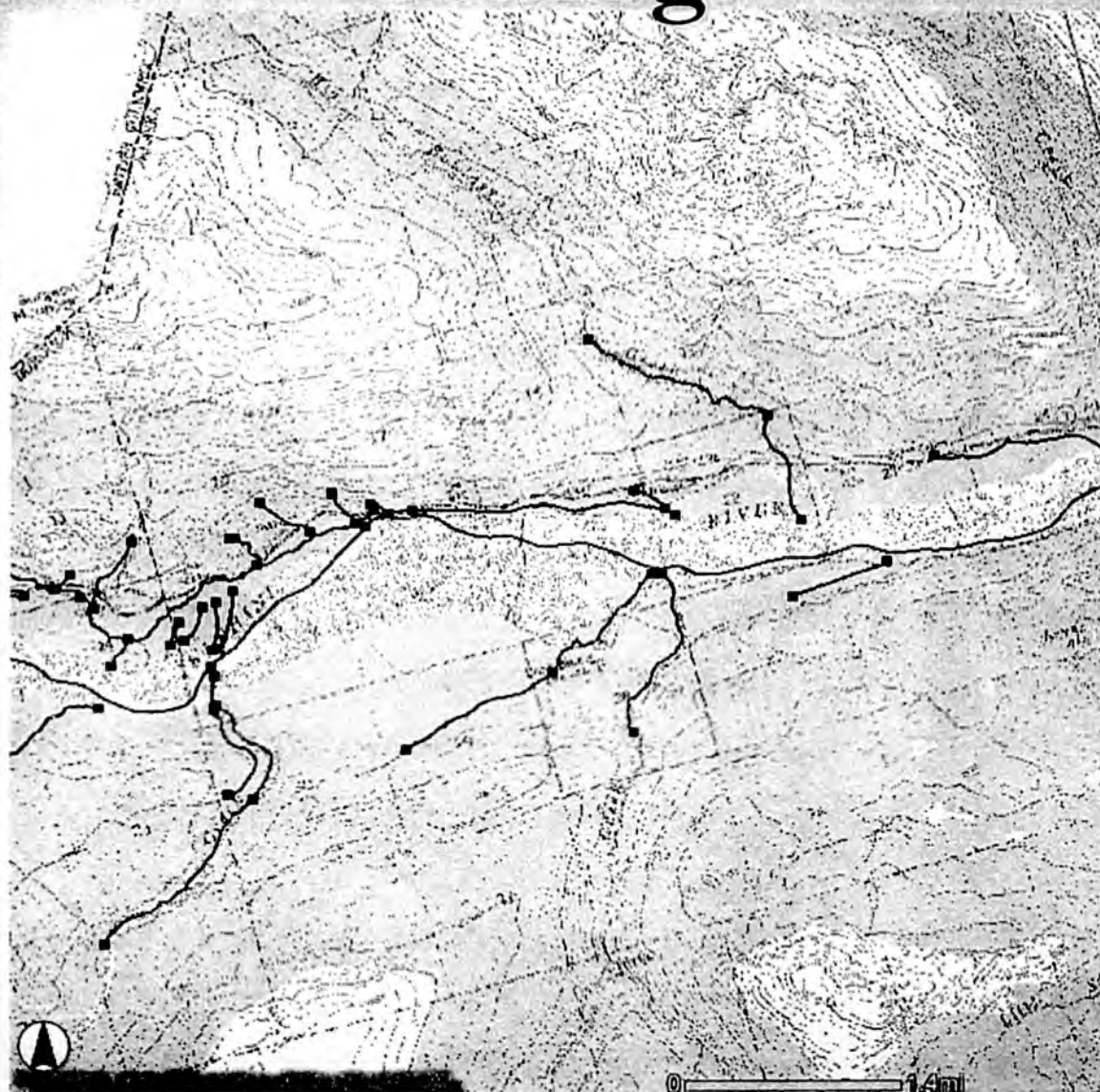
▣ Historical Database

▣ You can help us!



Airport Ditch, Gustavus, Alaska

How do we use the Catalog?



tag grayling red dog mine
freshwater reservoir

tag grayling ft. knox mine

stream surveys red dog mine

stream cross section
measurements greens ck

fish sampling ikalukrok river

fish identification

stream cataloging surveys

juvenile king surveys ruby crk.

invert. sampling buddy cr

electro-fishing training

stream crossing exams

Title 41 Fish Habitat Permits



Multi-use trail bridge, Tidewater Slough, Girdwood , Alaska

Protect Anadromous Fish Habitat



Unauthorized Activities

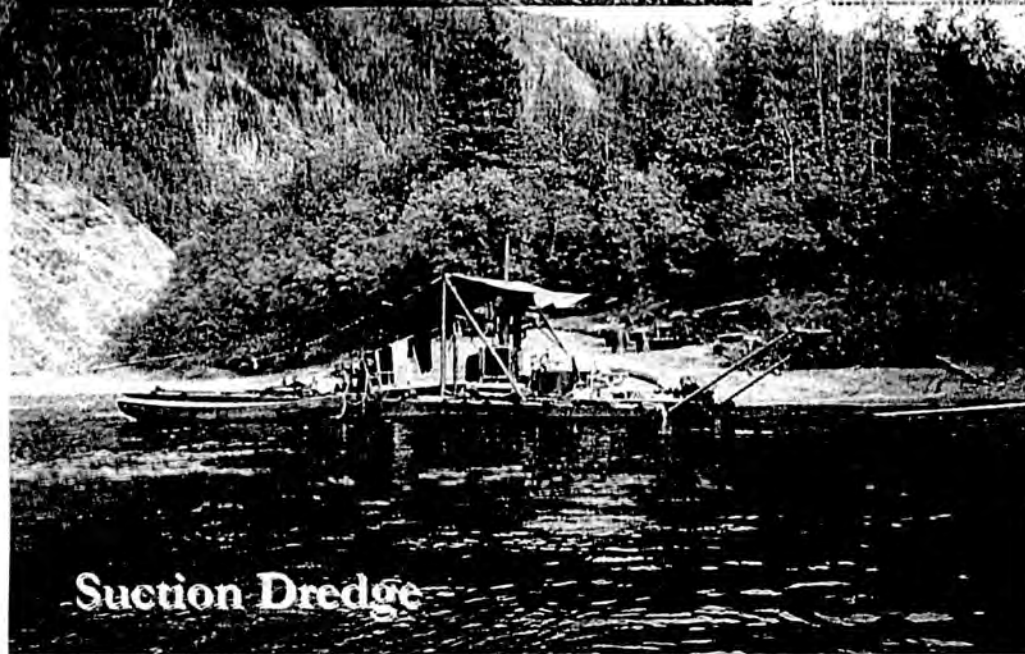
Instream Activities

Water Intake



Fish Weir

Suction Dredge



Bank Stabilization

R
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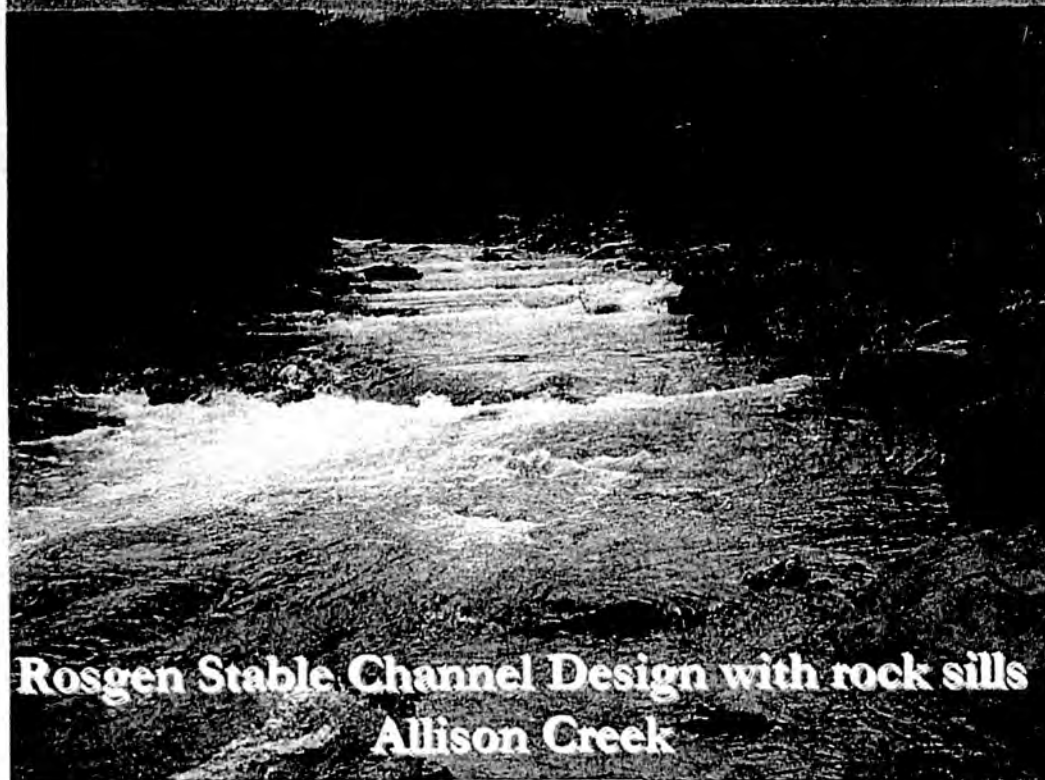
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Stream Reconstruction



**Rosgen Stable Channel Design with rock sills
Allison Creek**

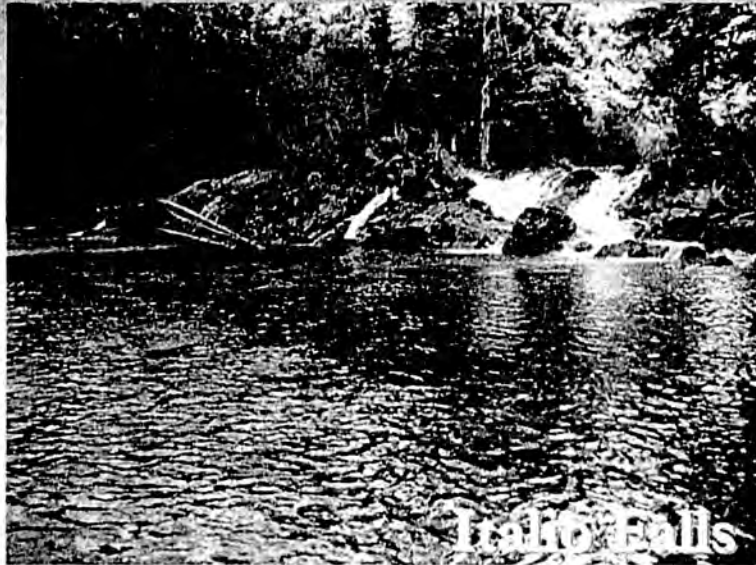


Rosgen Stable Channel Design, Marion Creek

Fish Enhancement

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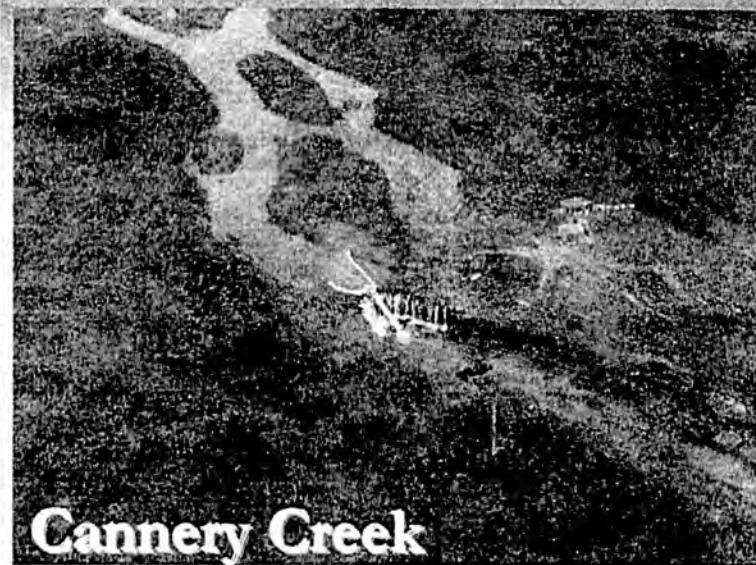
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Itallo Falls



Kizuchia Creek



Cannery Creek



Baranof Island

F
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Stream Crossings



Fords



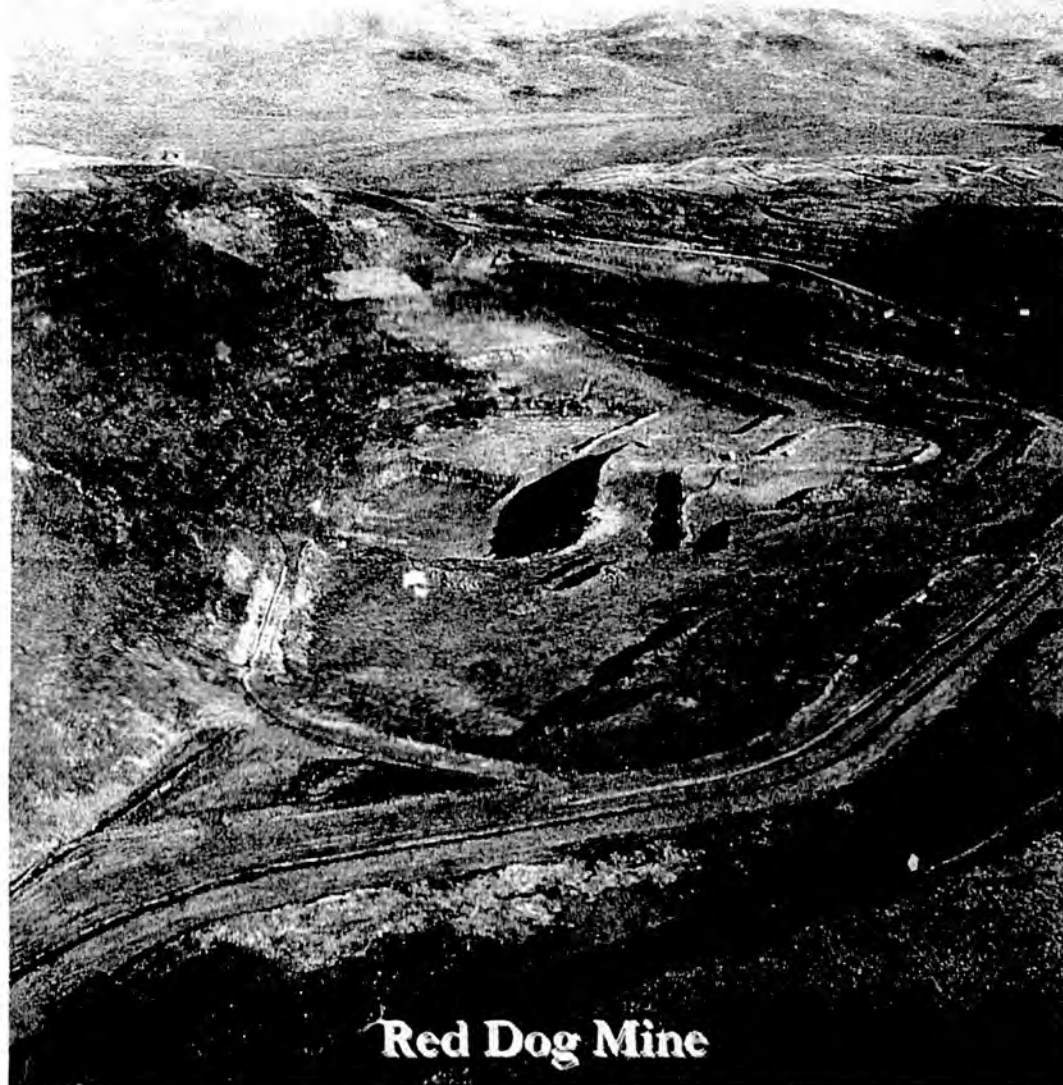
Bridges



Culverts

- Most activities that require a T41 Fish Habitat Permit are generally consistent with the Alaska Coastal Management Program

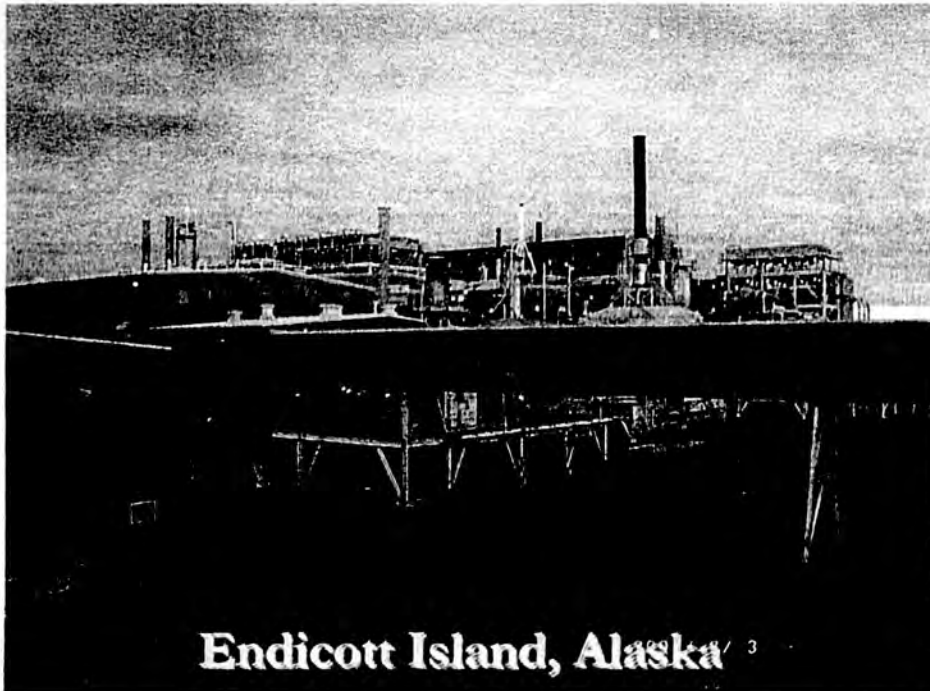
Large Projects of Importance to the State



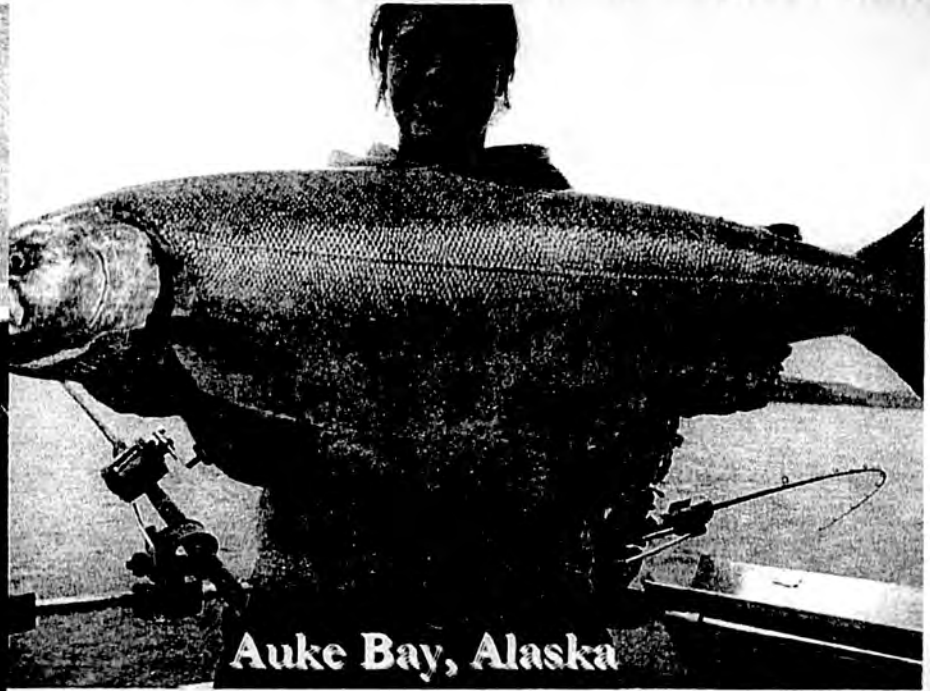
Red Dog Mine

Alaska State Constitution

Article VIII, Natural Resources



Endicott Island, Alaska³



Auke Bay, Alaska

- Section 1 encourages the development of land and utilization of resources recognizing the collective interests of the public

Alaska State Constitution

Article VIII, Natural Resources



✦ In addition to development and utilization, conservation is a resource management objective in Section 2

Alaska State Constitution

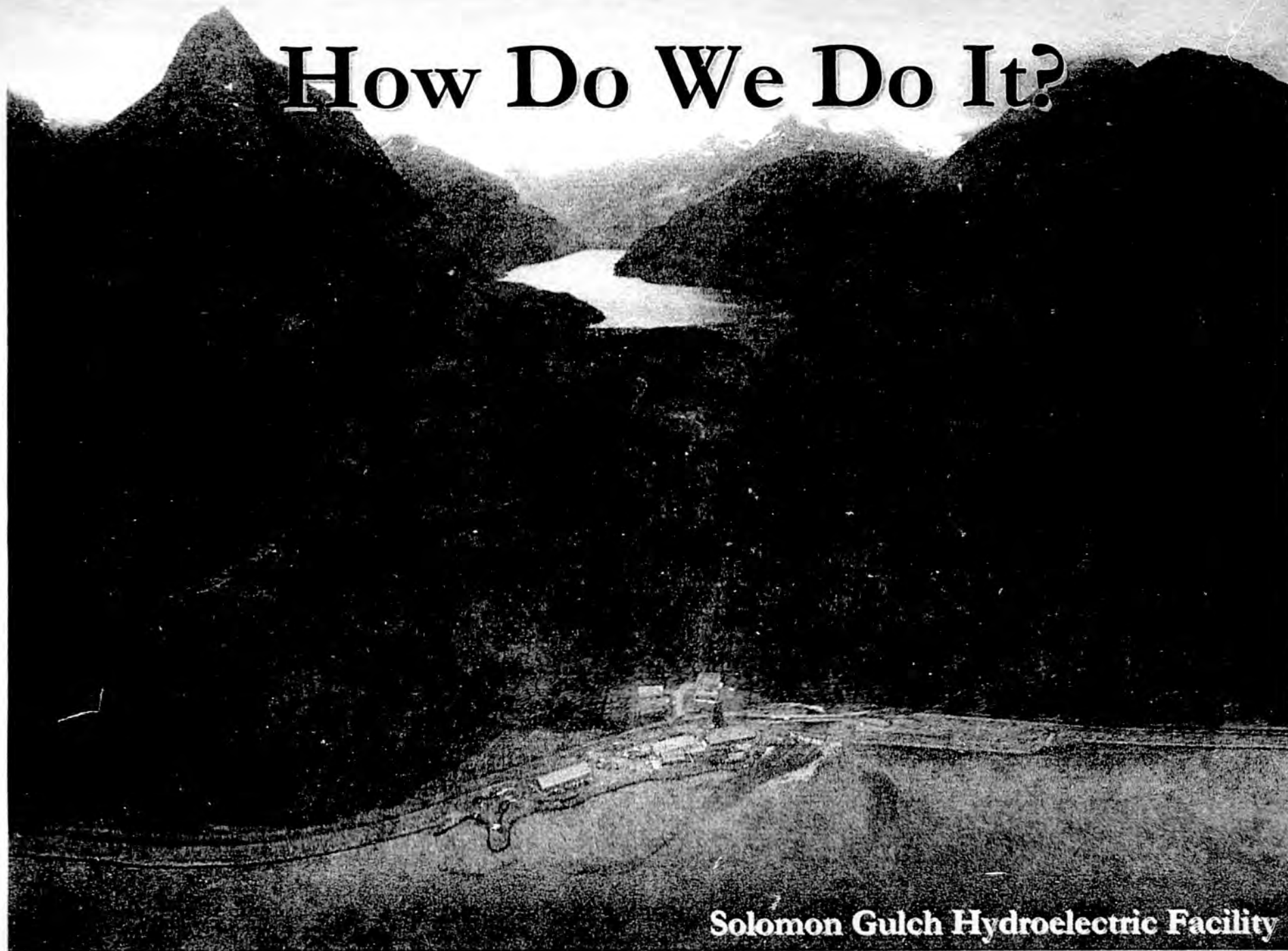
Article VIII, Natural Resources



- OHMP Habitat Biologists are tasked to find the often delicate balance between resource development and resource protection



How Do We Do It?



Solomon Gulch Hydroelectric Facility

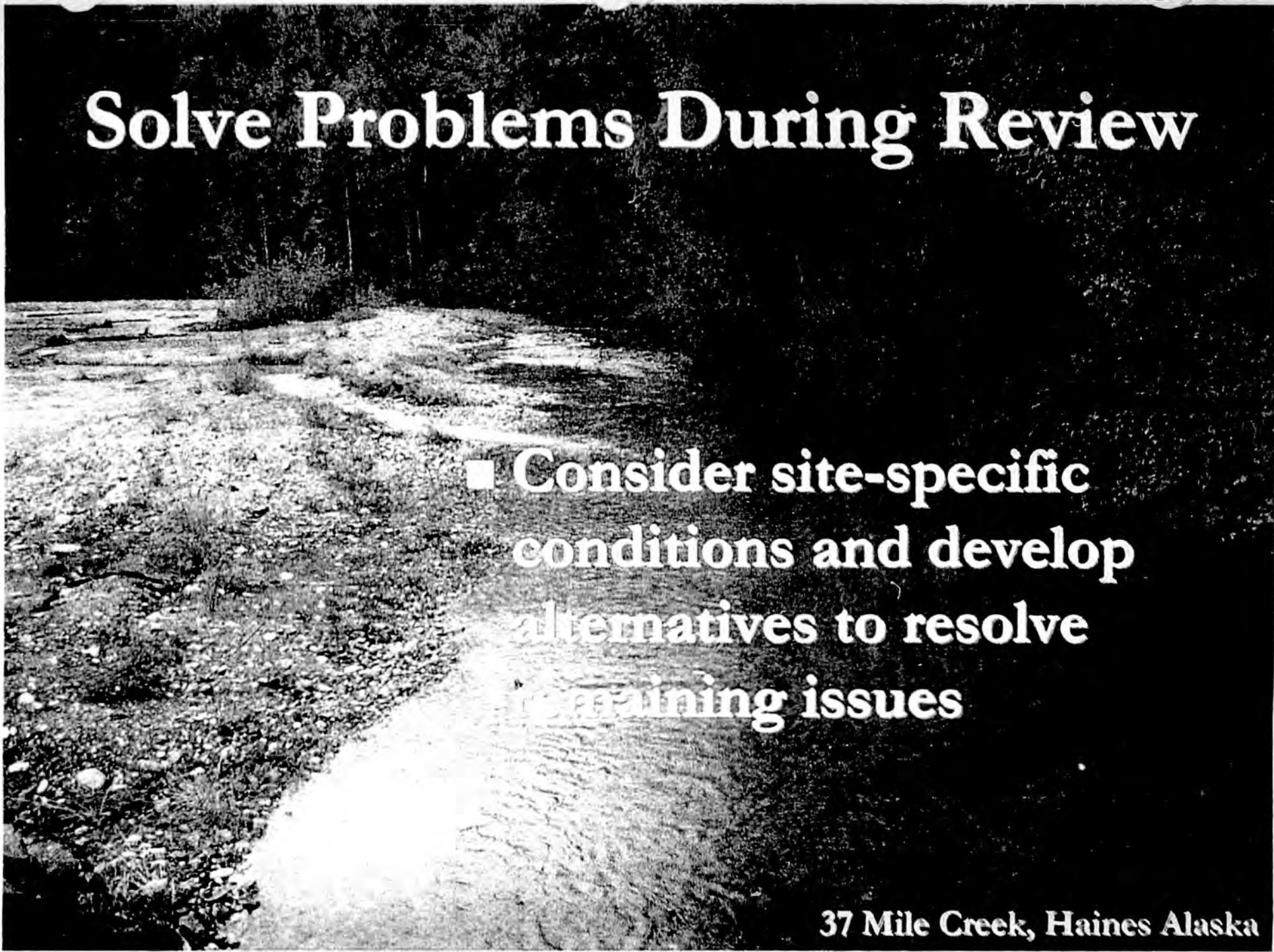
Get Involved Early in Process

- Assist applicants during project planning phases to identify and resolve issues up front



Duffield Peninsula Habitat Enhancement





Solve Problems During Review

- **Consider site-specific conditions and develop alternatives to resolve remaining issues**

37 Mile Creek, Haines Alaska

Be Realistic

- Anticipate community and economic growth

P.Mooney ADF&G -08/01/05

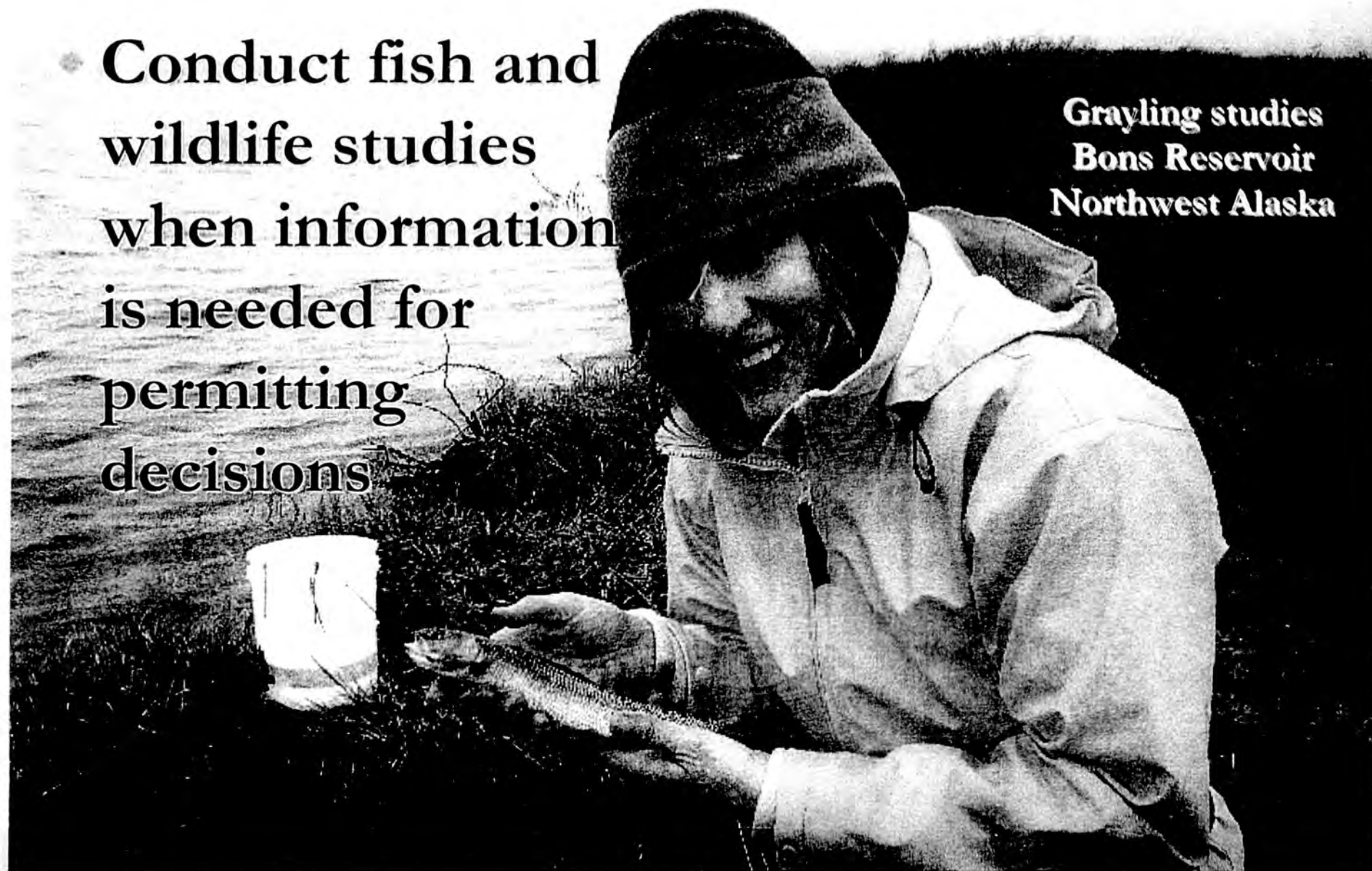


Sitka, Alaska

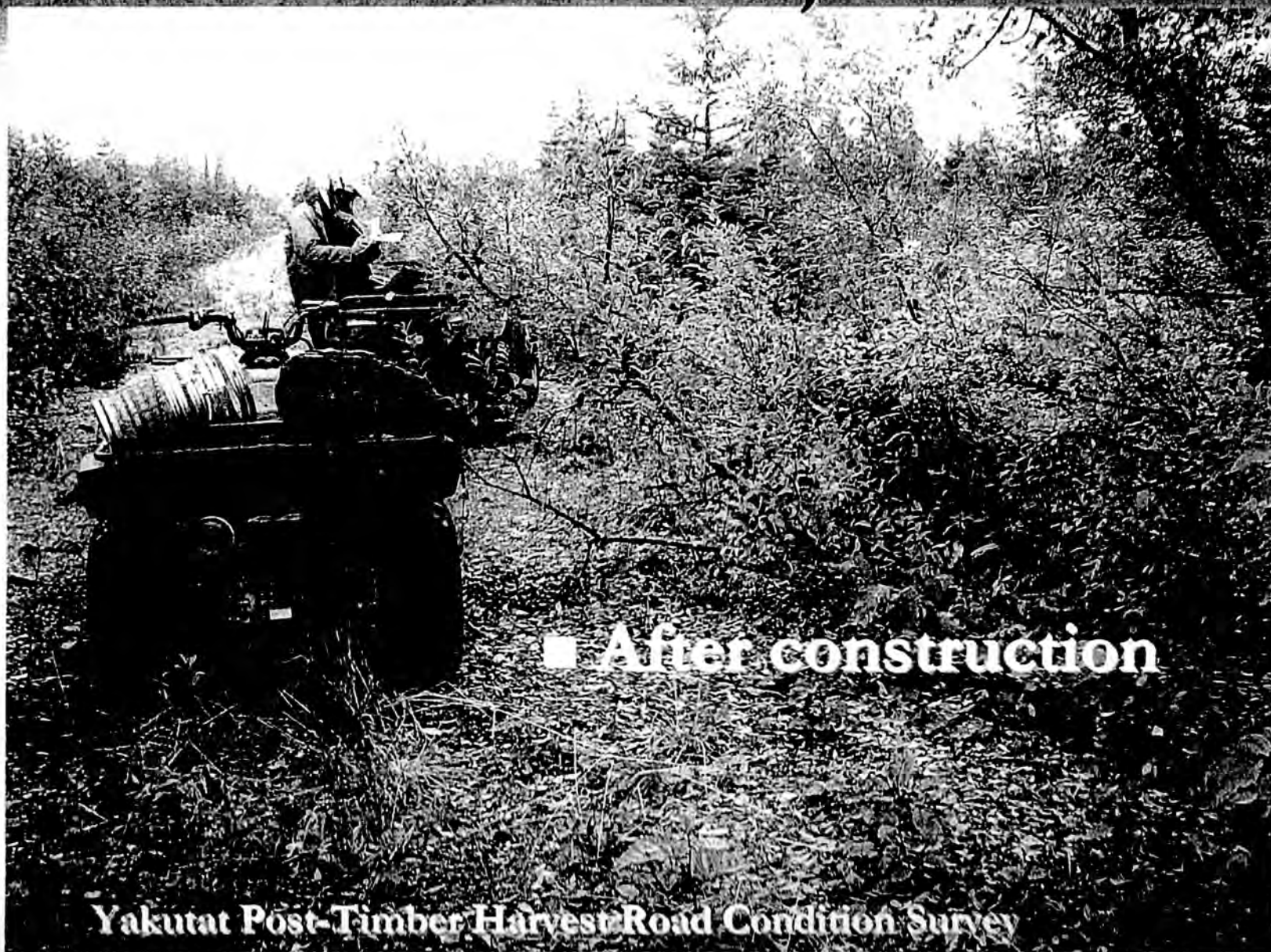
Research

- Conduct fish and wildlife studies when information is needed for permitting decisions

Grayling studies
Bons Reservoir
Northwest Alaska

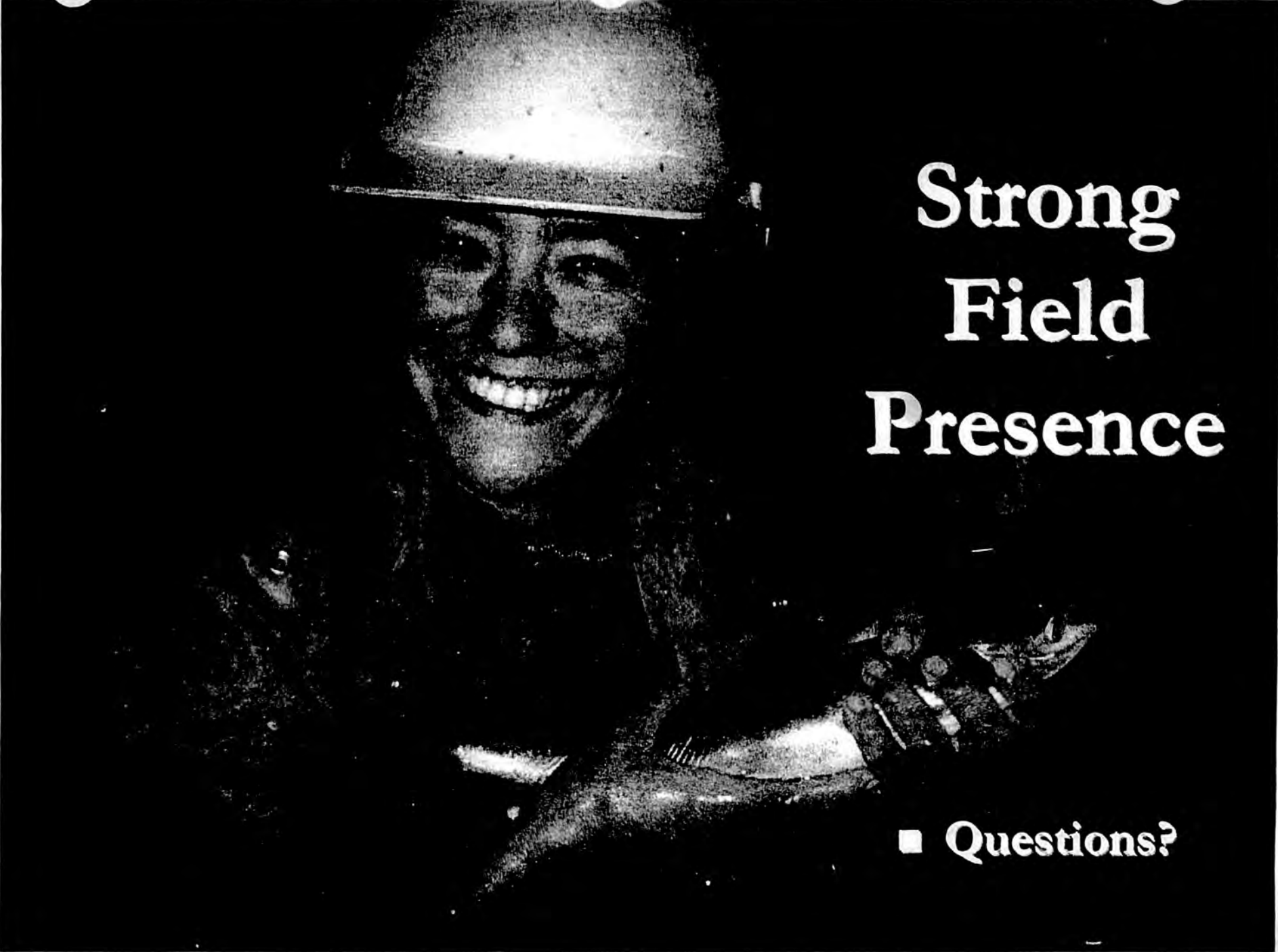


Monitor Projects



■ After construction

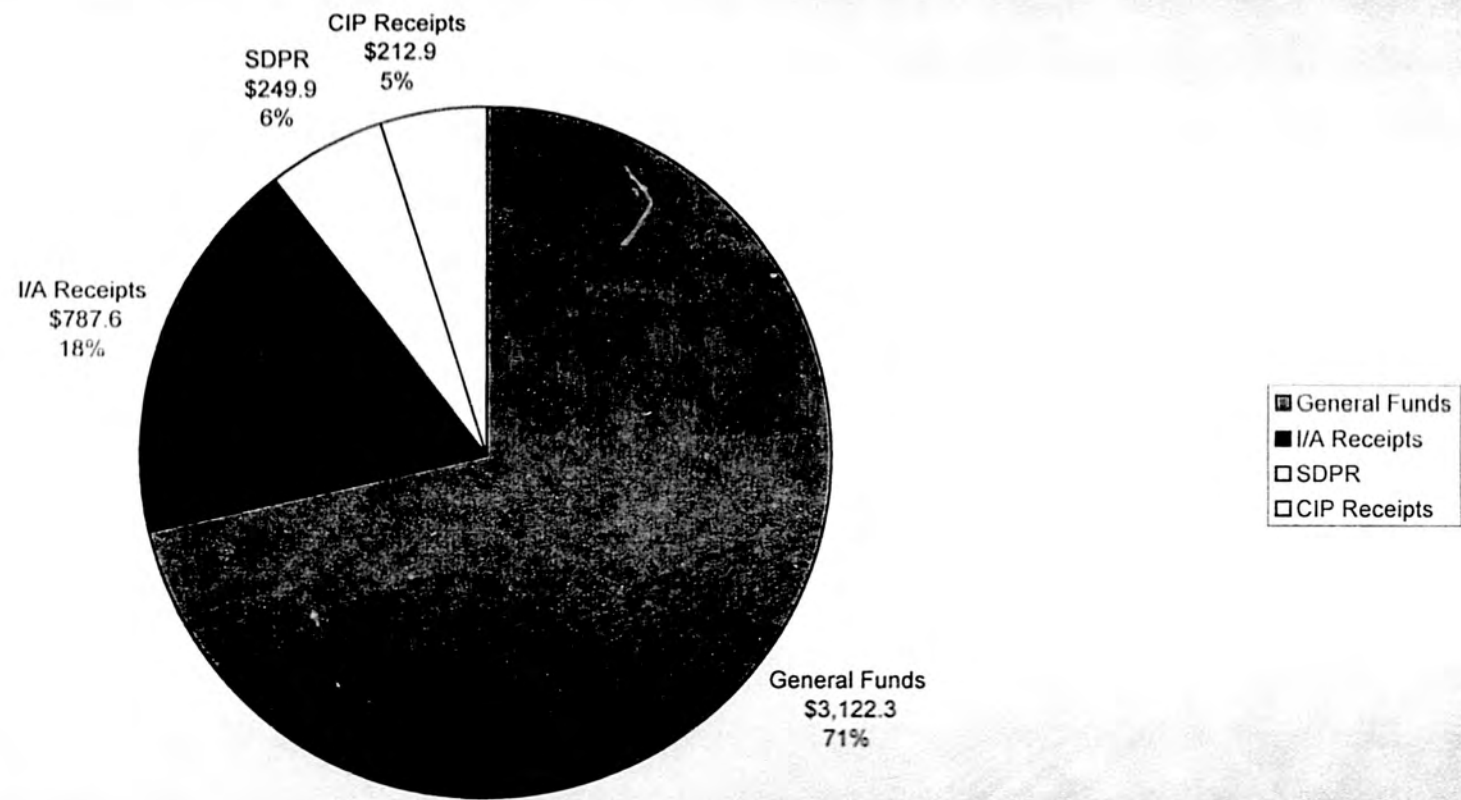
Yakutat Post-Timber Harvest Road Condition Survey

A black and white photograph of a woman wearing a hard hat and a safety vest, smiling. She is holding a tool, possibly a wrench, in her right hand. The background is dark and textured.

Strong Field Presence

■ Questions?

Department of Natural Resources
Office of Habitat Management and Permitting
FY08 Funding Sources



Missions & Measures

State of Alaska > Governor > OMB > Missions & Measures > Agency List > Habitat Mgt & Permitting

Department of Natural Resources

Office of Habitat Management & Permitting

Results Summary | **Details** | Questions/Comments

Mission

- Protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.

Core Services

- Review applications and issue permits for activities in anadromous waterbodies and fish-bearing waters (Title 41); provide expertise to protect important fish and wildlife habitat; monitor authorized projects.
- Review proposed timber harvest activities; conduct field inspections; work cooperatively with timber operators and other governmental agencies.
- Maintain and revise the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes.
- Review development projects (e.g., oil and gas, hard-rock mining, roads, T41 elements of hydropower projects) authorized under other agencies' authorities.
- Conduct research on ways to minimize impacts of development projects on fish and wildlife resources.

End Result:

>>> Strategies to Achieve End Result

A: Protect Alaska's valuable fish and wildlife resources and their habitats during resource development activities. [Details >](#)

- **TARGET #1:** 100% of resource developers meet agency requirements for protection of fish, wildlife, and their habitats.
- **MEASURE #1:** Percentage of developers in compliance with their approved permit.

A1: Enhance our Title 41 review process by adding appropriate conditions to protect resources, reviewing projects in a timely manner, and monitoring, as needed. [Details >](#)

- **TARGET #1:** 100% of Fish Habitat (Title 41) permit applications are approved as is or modified with appropriate conditions to protect resources.
- **MEASURE #1:** Percentage of Fish Habitat (Title 41) permits approved as is or modified with appropriate conditions.
- **TARGET #2:** 10-day average permit review timeframe.
- **MEASURE #2:** Average number of days to complete Fish Habitat (Title 41) permit reviews.

A2: Enhance our participation in project reviews coordinated by other agencies by adding conditions to protect important habitat and by reviewing projects in a timely manner. [Details >](#)

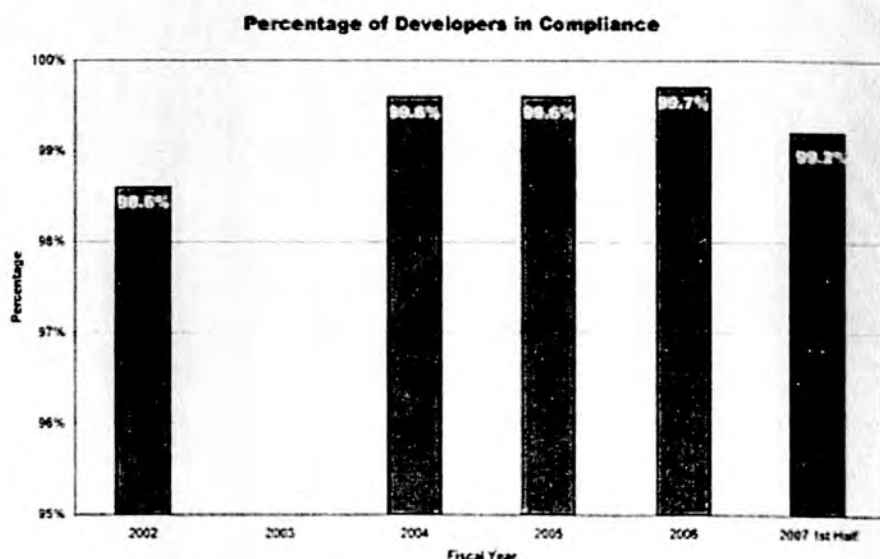
- **TARGET #1:** 93.5% of coordinated reviews include appropriate conditions to protect important habitat.
- **MEASURE #1:** Percentage of coordinated reviews where appropriate conditions are included to protect important habitat.
- **TARGET #2:** 14-day average review timeframe.
- **MEASURE #2:** Average number of days to complete reviews for projects in a coordinated review process.

Performance Measure Detail

A: Result - Protect Alaska's valuable fish and wildlife resources and their habitats during resource development activities.

Target #1: 100% of resource developers meet agency requirements for protection of fish, wildlife, and their habitats.

Measure #1: Percentage of developers in compliance with their approved permit.



of Title 41 permit applications reviews

Fiscal Year	YTD Total
FY 2004	1,597
FY 2005	2,397
FY 2006	2,648
FY 2007	877

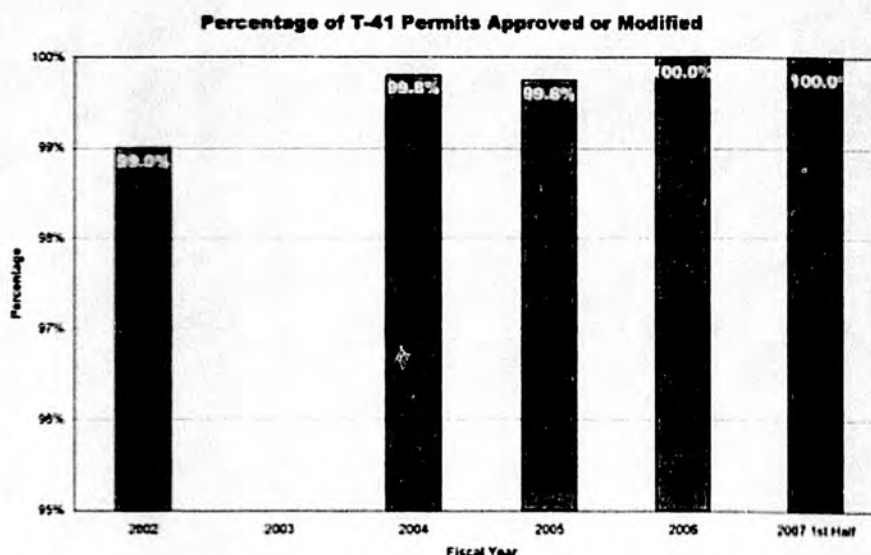
Analysis of results and challenges: 99.7% of all developers are in compliance with Fish Habitat permits (Title 41). The above percentage reflects projects where permits have been successfully issued and the developer is in compliance with their approved permit conditions. This percentage is an indication of our success in protecting fish, wildlife, and their habitats, while allowing approvable development activities to proceed. Data are not available for FY 2003, the year the Office of Habitat Management and Permitting (OHMP) moved to the Department of Natural Resources (DNR). Further, the number of Title 41 permit applications reviews continues to increase. For FY 04, 05, and 06, the numbers were 1597, 2397, and 2648, respectively, or an increase of almost 66% in 3 years. Trend-wise, this data indicates that OHMP continues to consistently achieve a high level of habitat protection simultaneous with an increase in permitted development activity.

A1: Strategy - Enhance our Title 41 review process by adding appropriate conditions to protect resources, reviewing projects in a timely manner, and monitoring, as needed.

Target #1: 100% of Fish Habitat (Title 41) permit applications are approved as is or modified with appropriate

conditions to protect resources.

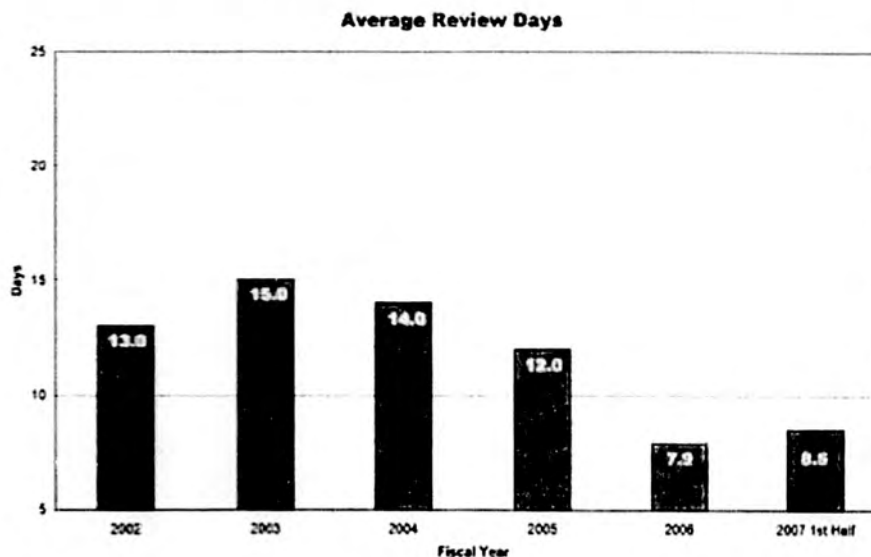
Measure #1: Percentage of Fish Habitat (Title 41) permits approved as is or modified with appropriate conditions.



Analysis of results and challenges: The Office of Habitat Management and Permitting's (OHMP) top priority is the review of Fish Habitat (Title 41) permit applications. 100% of Fish Habitat permits applications are approved as is, or modified with appropriate conditions to protect resources. This measure is an indication of the quality of our review. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to achieve high level results. Typically less than 1% of permits are denied or withdrawn, which means that OHMP is successful in reviewing and authorizing appropriate development activities while simultaneously protecting fish and fish habitat. Data are not available for FY 2003, the year that OHMP moved to the Department of Natural Resources (DNR). Trend-wise, this data indicates that OHMP consistently is able to approve permits while protecting the natural resources we manage.

Target #2: 10-day average permit review timeframe.

Measure #2: Average number of days to complete Fish Habitat (Title 41) permit reviews.



Average number of days to complete Title 41 permit reviews.

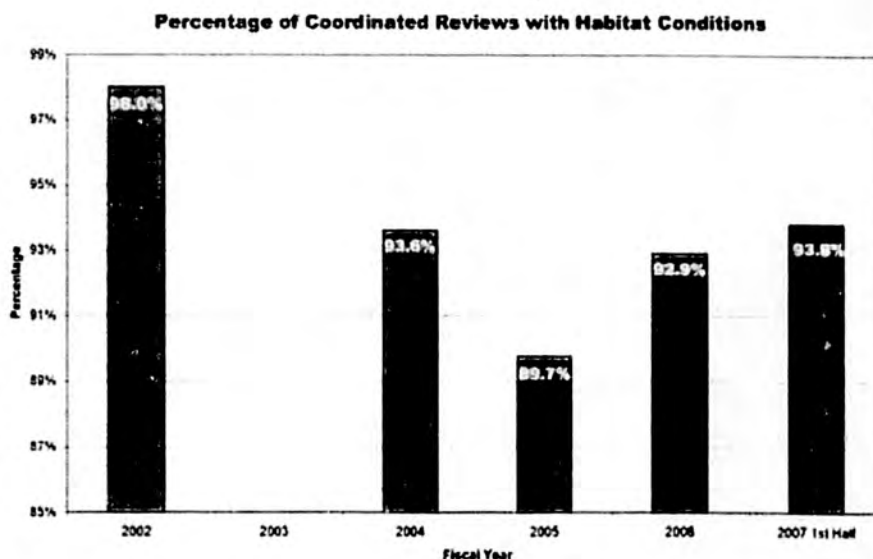
Year	YTD Total
2002	13.0
2003	15.0
2004	14.0
2005	12.0
2006	7.9
2007	8.5

Analysis of results and challenges: The Office of Habitat Management and Permitting (OHMP) quickly processes permit applications and our application review timeframe continues to decrease. This measure is an indicator of the timeliness of our reviews. Trend-wise, in spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to improve on this timeline, with an FY 06 average of just 7.9 days. This means that our permits are timely issued and appropriate development activities are not held up. Further, the number of T41 applications reviewed continues to increase. For FY 04, 05, and 06, the numbers were 1597, 2397, and 2648, respectively, or an increase of almost 66% in 3 years. For FY 07, we have increased our target to reduce our average permit review timeframe to 10 days (less than the 5-year performance average).

A2: Strategy - Enhance our participation in project reviews coordinated by other agencies by adding conditions to protect important habitat and by reviewing projects in a timely manner.

Target #1: 93.5% of coordinated reviews include appropriate conditions to protect important habitat.

Measure #1: Percentage of coordinated reviews where appropriate conditions are included to protect important habitat.

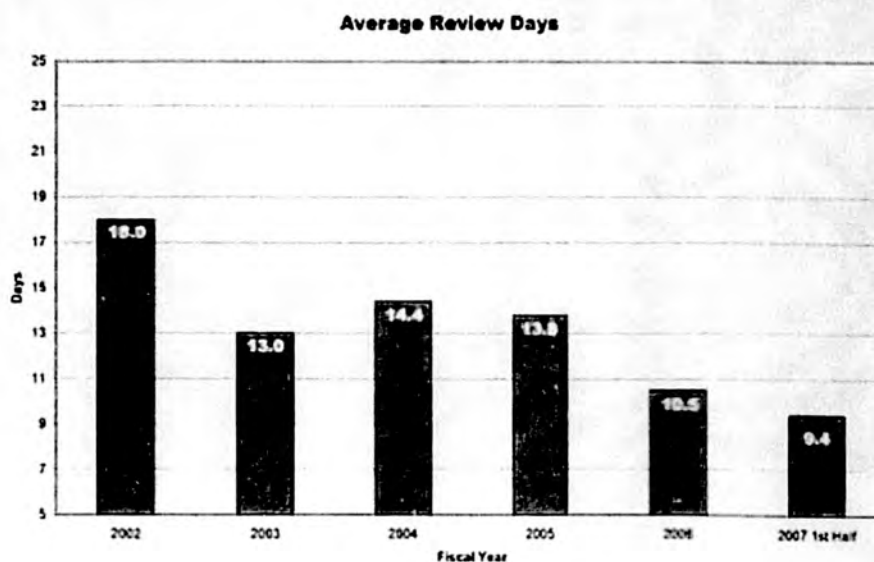


Analysis of results and challenges: The Office of Habitat Management and Permitting (OHMP) also participates in the coordinated review of other proposed resource development activities, and adds appropriate conditions to protect habitat. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to exceed our targets; FY 06's result was 92.9%. This means that appropriate development activities are authorized to proceed while habitat is

protected. For FY 07, we are increasing our target to 93.5% (the previous 4-year average; data are not available for FY 03, the year the Office moved to the Department of Natural Resources) to ensure continued participation at a very high level.

Target #2: 14-day average review timeframe.

Measure #2: Average number of days to complete reviews for projects in a coordinated review process.



Average number of days to complete reviews for projects in a coordinated review process.

Year	YTD Total
2002	18.0
2003	13.0
2004	14.4
2005	13.8
2006	10.5
2007	9.4

Analysis of results and challenges: The Office Habitat Management and Permitting (OHMP) quickly reviews projects in a multi-agency, coordinated review process, and our review timelines are decreasing. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to improve on our review timelines. The FY 06 average review time for this activity was 10.5 days. This statistic means that permits are timely issued and conditioned, and that appropriate development is not held up. Further, the number of projects reviewed continues to increase. For FY 04, 05, and 06, the numbers were 751, 831, and 1048, respectively, or an increase of almost 40% in 3 years. For FY 07, we are increasing our target to ensure our review timelines remain at no more than 14 days (the 5-year performance average).

[< Return to Agency list](#)

[OMB Home](#) [Governor](#) [Webmaster](#)

Office of Habitat Management and Permitting White Paper

Background:

- On April 15, 2003 Governor Murkowski moved the former division of Habitat and Restoration (H&R) from the Alaska Department of Fish & Game (DFG) to the Department of Natural Resources (DNR) via Executive Order (EO) 107. The goal of EO 107 was to "improve permitting efficiency." The EO moved .840 and .870 Fish Habitat permitting and Forest and Resources Practices Act (FRPA) review from DFG to DNR. The EO also envisioned that other review functions performed by the former Habitat and Restoration Division (H&R) (e.g., participation in consistency/NEPA/large project reviews, etc.) would move to the new Office of Habitat Management and Permitting (OHMP). The Habitat reorganization took effect on 5/1/2003. EO 107 did not move special area permitting to OHMP.
- As a result of EO 107 and the reorganization, 37 positions were transferred to OHMP, and 37 positions remained at DFG, most within the Sport Fish Division.
- Of the former H&R Habitat Biologists whose primary jobs were .840/.870 permitting, FRPA, and review of resource development activities and permits, twenty-six positions were transferred to DNR and 6 were eliminated. All the H&R management positions were eliminated. Two area offices—Sitka and Ketchikan—were closed.
- A lot of effort was spent on the reorganization including: discussions about space, budgetary matters, filling vacant positions, and drafting a Memorandum of Understanding (MOU) to detail the spread of duties with DFG. The MOU first went into effect on 10/16/03, and has been amended 4 times since then.

Accomplishments:

- In spite of an initial 18% cut in staff, 11% cut in budget, significant position vacancies, and numerous organizational issues, OHMP has continued to do an outstanding job of meeting its mission: Protecting Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand. Specific accomplishments are detailed in OHMP's Mission and Measures.
- In FY 06:
 - 99.7% of all developers were in compliance with Fish Habitat permits.
 - 100% of Fish Habitat permit applications were approved as is, or were modified with appropriate conditions to protect resources.
 - Average Fish Habitat permit review times were 7.9 days, even though the number of permit applications reviewed has gone up almost 66% in 3 years.
 - OHMP participated in 92.9% of coordinated reviews of proposed resource development activities.

- Average review times for projects in a multi-agency coordinated review were 10.5 days.
- To ensure their mission is met, OHMP management re-focused the Office's reduced staff on 4 work priorities:
 - T41 permitting, including updating the Anadromous Waters Catalog and Atlas.
 - ACMP consistency reviews, with emphasis on those with T41 permits or important habitat issues not addressed by other authorities.
 - Large projects of importance to the State.
 - Forest Resources and Practices Act implementation.
- OHMP Permittees and Management jointly developed "Draft Working Guidelines" to ensure that: statewide permitting and project review efforts were conducted consistently; our emphasis was directed at statutory responsibilities; and we did not duplicate responsibilities and authorities vested with other state or federal agencies.

Originally Signed October 16, 2003

Amended January 15, 2004

Amended January 18, 2005

Amended January 26, 2006

Amended September 22, 2006

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ALASKA DEPARTMENT OF NATURAL RESOURCES
AND THE
ALASKA DEPARTMENT OF FISH AND GAME
REGARDING REVIEWS OF LAND AND WATER USE ACTIVITIES**

This Memorandum of Understanding (MOU) is established and entered into by and between the Alaska Department of Natural Resources, hereinafter referred to as DNR, and the Alaska Department of Fish and Game, hereinafter referred to as ADF&G.

PURPOSE

This MOU is intended to establish a coordinated relationship between DNR and ADF&G to address continued protection of fish and wildlife and their habitats during the review of land and water use activities, and outlines the roles and responsibilities of both departments with respect to general policy guidelines and operational procedures. This MOU is limited solely to land and water use activities subject to project review, and does not alter or modify other statutory responsibilities of the parties. This cooperation serves the mutual interest of DNR, ADF&G and the public.

DNR and ADF&G commit to work together to the fullest extent possible to share and use fish and wildlife resource information, expertise, data bases and files that are essential for evaluating project impacts and ensuring the proper protection of fish and wildlife resources in Alaska (e.g., anadromous catalog and atlas, GIS mapped data sets, fish escapement/survey data, etc.).

AUTHORITIES

Pursuant to Executive Order 107, the Office of Habitat Management and Permitting (OHMP) within the DNR is responsible for issuance of Fishway Permits and Fish Habitat Permits under AS 41.14.840 and AS 41.14.870, respectively, and certain responsibilities under the Forest Resources and Practices Act (AS 41.17). The ADF&G is responsible for issuance of Special Areas Permits under AS 16.20 and project review under the Fish and Wildlife Coordination Act, the Endangered Species Act, and other related acts of the U.S. Congress. Both agencies have responsibilities under other applicable state laws and regulations.

With regard to the Fish and Wildlife Coordination Act, ADF&G agrees that this comment authority will be exercised only for projects where direct and significant impacts¹ to fish and wildlife resources could result and where the DNR and ADF&G Deputy Commissioners have been unable to reach concurrence. If concurrence on final comments cannot be reached, the ADF&G Commissioner will determine whether ADF&G will submit comments directly, under his signature, to the relevant federal agency under the Fish and Wildlife Coordination Act.

TYPES OF REVIEWS

OHMP Lead

OHMP is the point of contact for the following permits and actions, including the associated Alaska Coastal Management Program (ACMP) consistency review:

- All Fishway Permits and Fish Habitat Permits (AS 41.14.840 and AS 41.14.870);
- *Other State Actions and Authorizations:*
 - DNR: Material Sales, Oil and Gas Lease Sales, Timber Sales, including Forest Land Use Plans, Five-Year Sale Schedules², Forest Resources and Practices Act (AS 41.17) reviews (OHMP implements certain responsibilities under this Act, including review of private Forest Practices notifications), Land Use Permits and Leases, Right-of-Way Authorizations, Water Use Permits, Lease Operations Permits for oil and gas, Mill Site Leases, Placer Mining and Hardrock Exploration Permits, and Parks Permits, unless the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G³;
 - Department of Environmental Conservation (DEC): Contaminated Site Clean-up, Solid Waste Permits, and Wastewater Permits/401 Certifications; Pesticide Permit;
 - Department of Transportation and Public Facilities (DOT&PF): Plan Reviews;
 - *Federal Action and Authorizations:* Federal Environmental Impact Statements (associated with major resource development projects), U.S. Forest Service Federal Timber Sales⁴ and other projects, Minerals Management Service actions, Corp of Engineers Civil projects and permits (404, Section 10), Natural Resource Conservation projects, Bureau of Land Management (BLM) projects, United States Fish and Wildlife Service projects, Federal Highway Administration projects, Federal Aviation Administration projects, Bureau of Indian Affairs projects, Department of Defense (Army, Navy, Air Force,

¹ "Direct and significant" means a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

² For these activities, other divisions at DNR have the lead and OHMP provides comments directly to them for consideration.

³ "Parks Permits" includes "Park Use Permits" and "Non-competitive Commercial Use Permits"

⁴ The review of federal timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identified in the Forest Plan.

Marine Corps) projects⁵; Coast Guard projects, other federal agency projects, and Environmental Protection Agency Permits (e.g., NPDES, including TMDL evaluations);

- *Other Entities*: Plan review and/or EA scoping for Alaska Native Tribal Health Consortium, Alaska Village and Regional Corporation (including subsidiary profit and non-profit corporations), and local city, village, borough, and tribal government projects; Borrower's Electric Environmental Reports; and US/Canada transboundary mining projects.

Should any of the above actions be within or significantly affecting a legislatively designated state game refuge, sanctuary, critical habitat area, or range (collectively referred to as "Special Areas"), ADF&G would be the point of contact.⁶

ADF&G Lead

ADF&G is the point of contact for the following permits and actions, including the associated ACMP consistency review; ADF&G is also responsible for reviewing noted land management actions that affect the public's ability to access public lands and waters related to the use of fish and wildlife resources:

- Special Areas permits issued under AS 16.20;
- *Other State Actions and Authorizations*:
 - ADF&G: Mariculture Permits and Plans, Fish Resource Permits, Private Non-profit Salmon Hatchery permits and plans, and Hazing Permits;
 - DNR: Land Disposals (e.g., ILMAs, trade/exchange, mineral closures, agriculture, grazing, municipal entitlements and selections, etc.), State Land Management Plans (other than those related to timber)⁷; Instream Flow Reservations⁸, water rights and use permits pending or issued to ADF&G; Parks Permits where the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G.
 - DEC: Oil Spill Contingency Plans;
 - DOT&PF: Plan Reviews (inside or significantly affecting Special Areas);

⁵ DOD projects include, for example, Defense Environmental Restoration Projects and Formerly Used Defense Site Clean-ups.

⁶ Once notified of projects within or significantly affecting a Special Area, OHMP and ADF&G staff will confer to determine whether potentially significant effects to a Special Area are a primary project consideration. If so determined, ADF&G will be the point of contact and OHMP will have the lead for Title 41 permits only (e.g., Juneau Airport expansion project).

⁷ For these activities, DNR/DMLW has the lead and ADF&G provides comments directly to them for consideration.

⁸ ADF&G will continue to work with DNR/DMLW under an existing MOU to collect and analyze fisheries, wildlife, and hydrologic data to quantify the amount of water needed for fish and wildlife and their uses.

- *Federal Actions and Authorizations:* Federal Land Management Plans⁹, Federal Energy Regulatory Commission Licenses (ADF&G makes recommendations under the Federal Power Act directly to FERC)¹⁰, and Department of Defense (Army, Navy, Air Force, Marine Corps) Integrated Natural Resource Management Plans, which require Sikes Act consultation with ADF&G;
- *Municipal Actions:* Land and Water Use Plans¹¹, Comprehensive Plans and Classifications, Land Disposals; Municipal Planning and Zoning Actions (including Conditional Use Permits and Variance Reviews).
- *Access/Defense Reviews:* ADF&G also reviews proposed projects in the following categories that may affect the public's ability to access public lands and water, and monitors land use actions to assure that the public continues to have the ability to use and enjoy the fish and wildlife resources of the State. For these actions, ADF&G will provide advisory comments on access issues directly to the following entities for their consideration: DNR Division of Mining Land and Water (for the noted State Actions), the affected federal agency (for the noted Federal Actions), and the affected municipal agency (for the noted Municipal Actions):
 - State Actions: Land Use Permits and Land Leases; Rights-of-Way/Easement Authorizations (excluding those established under AS 38.35), Easement vacations and platting reviews within unorganized boroughs;
 - Federal Actions: Federal Land Conveyances under the Alaska Native Claims Settlement Act and the Native Allotment Act;
 - Municipal Actions: Platting review, creation or vacation of public Easements or Rights-of-Way.

Comments will be timely submitted in advance of the comment deadline.

- *Miscellaneous Actions:* Any actions or authorizations where OHMP would normally be the point of contact, but where a Legislatively Designated Special Area could be significantly affected.

ALASKA COASTAL MANAGEMENT PROGRAM

Both OHMP and ADF&G have responsibilities for participating in ACMP consistency reviews, as delineated under the "Lead" responsibilities, described previously. As such, both OHMP and ADF&G also review and comment directly to OPMP on new or revised ACMP Coastal District Management Plans.

⁹ For Federal Conservation System Unit (FCSU) Plans, ADF&G provides comments to the state's ANILCA coordinator, located within DNR/OPMP, or to staff in the Governor's Washington, D.C. office for consideration in development of a state position; for non-FCSU USFS plans, ADF&G provides comments to the DNR Office of Project Management and Permitting, for consideration in development of a state position.

¹⁰ OHMP would comment only on AS 41.14.840/.870 permits associated with FERC hydroelectric projects.

¹¹ For municipal land use plans, ADF&G has the lead on both access and habitat issues, but ADF&G will seek input from OHMP on habitat issues when plans may affect AS 41.14 permits.

ANADROMOUS FISH WATERS

OHMP and ADF&G have agreed to jointly share the responsibilities for updates to the *Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Catalog) and its associated atlas, *An Atlas to the Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Atlas). The Catalog and Atlas are based upon data contained within ADF&G's Fish Distribution Database (FDD). Nominations to the Atlas and Catalog will be reviewed and approved by both OHMP and ADF&G. Printing of the Atlas and Catalog will be done by ADF&G, with OHMP providing financial support. Specifically:

- OHMP is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to DNR area and field offices;
- ADF&G is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to ADF&G area and field offices; and
- OHMP and ADF&G jointly responsible for the duplication and distribution of all additional copies of the Atlas maps and Catalog that are produced, with costs prorated per copy required by each agency.

SPAWNING AREAS

Fish spawning areas are essential to maintain viable fish populations and must be properly protected. For purposes of permitting various types of activities, OHMP and ADF&G define "freshwater fish spawning areas" as areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas, the agencies consider the temporal and spatial aspects of spawning habitats and activity, the proposed activity, and potential impacts in such a manner that the continued long-term use and availability of spawning habitat is properly protected.

COORDINATION PROCESS AND REVIEW CATEGORIES¹²:

Both agencies continue to have a role in the review of land and water use activities based on the statutory authorities and review responsibilities described above. For both OHMP and ADF&G, it is the lead agency's responsibility to incorporate or attach the comments received, as they deem appropriate, subject to the dispute resolution process. Each agency may continue to interact directly with applicants regarding their statutory permit authorities. To promote effective cooperation regarding habitat management and permitting in such a manner as to avoid duplicative activities, the ADF&G and DNR agree to consult and coordinate as follows:

¹² See Attachment 1 for additional explanation and examples.

When OHMP is the point of contact, the following three categories apply:

1. OHMP need not coordinate with ADF&G on AS 41.14.840/.870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits;
2. OHMP will coordinate directly with area biologists and other staff within ADF&G divisions to determine if significant impacts to fish and wildlife habitat exist when there is a need for area or resource specific information or when there is a known interest in a particular project by an affected division¹³. It is expected that most resource development activities will be in categories 1 and 2; and,
3. OHMP will coordinate through the designated ADF&G contact when there is a need for an ADF&G coordinated response because a proposed land or water use activity will have a significant net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.¹⁴

The OHMP Operations Manager will make the determination as to whether a project is a Category 3, seeking input from ADF&G, as needed, and will inform the ADF&G Program Manager of our decision. If ADF&G disagrees, the decision can be elevated under the Dispute Resolution procedures.

When ADF&G is the point of contact:

1. ADF&G need not coordinate with DNR/OHMP on AS 16.20 reviews or projects/activities in Special Areas requiring a permit covered by General Concurrences, Nationwide Permits, or other General Permits.
2. For all other activities, as detailed in the TYPES OF REVIEWS section of this MOU, ADF&G will coordinate directly with the affected State or Federal agency and, to ensure that the State has a coordinated response, with OHMP biologists, when AS 41.14.840/.870 permits are also required.

DISPUTE RESOLUTION

After receipt and evaluation of agency comments for projects/activities that could have a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest, each

¹³ OHMP will notify the designated ADF&G contact when we plan to proceed under Category 2 for selected high interest projects if contacting more than one ADF&G division is anticipated.

¹⁴ The proposed Pebble Gold-Copper Project is the one exception to the Tier III project scheme delineation. For this project, both OHMP and ADF&G will fully participate in the review process and comment directly to the DNR Large Mine Project Team.

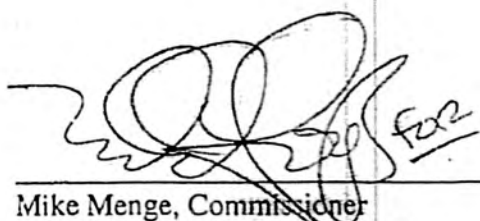
agency will provide the other agency's contact with its draft-consolidated comments. If the commenting agency disagrees with the review agency's draft comments, and staff cannot resolve differences, management staff will consider and resolve concerns in the following order:

1. OHMP Operations Manager and ADF&G Sport Fish Region V Regional Supervisor.
2. OHMP Executive Director and appropriate ADF&G Director.
3. DNR Deputy Commissioner and ADF&G Deputy Commissioner.

The intent of the section allowing projects/activities to be elevated is to ensure that major issues of significant impact to fish and wildlife resources and their habitat receive policy-level attention. It is envisioned, by both DNR and ADF&G, that every effort will be made to minimize the number of projects/activities that are elevated.

This MOU shall become effective on the date when last signed and shall remain in force until terminated by mutual agreement, by amendment, or by either commissioner, upon 30 days notice in writing to the other commissioner, of his/her intention to terminate upon a date indicated. Amendments to or modification of this MOU may be proposed by DNR or ADF&G at any time and shall become effective upon written approval by the commissioners of DNR & ADF&G.

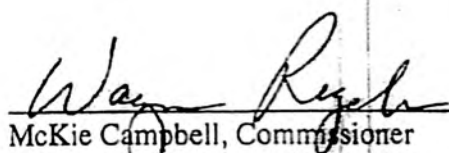
By:


Mike Menge, Commissioner
Alaska Department of Natural Resources

Date

10/27/06

By:


McKie Campbell, Commissioner
Alaska Department of Fish and Game

Date

10/27/06

AMENDMENTS

1. Amended on January 15, 2004 to: 1) Clarify that OHMP's point of contact authority for DNR timber sales includes Forest Land use Plans and Five-Year Sale Schedules; 2) Provide that ADF&G's comments to DNR on State Land Management Plans are not limited to access issues; and 3) Clarify that DNR, via the Office of Project Management and Permitting and the state's ANILCA Coordinator, are the contact for all Federal Land Management Plans and provide that ADF&G's comments on these plans are not limited to access issues. ADF&G will provide comments to DNR, for consideration, during the development of the state position.
2. Amended on January 18, 2005 to: 1) Clarify purpose language; 2) Clarify OHMP lead for the review of other State and Federal actions related to OHMP responsibilities; 3) Clarify that OHMP has the lead for the review of projects proposed by other named entities; 4) Clarify that ADF&G has the lead for the review of municipal land use plans and noted Access/Defense reviews; 5) Clarify that ADF&G has the lead for State or Federal actions or authorizations where a Legislatively Designated Special Area could be significantly affected; 6) Clarify ADF&G's Access/Defense responsibilities; 7) OHMP's and ADF&G's joint responsibilities regarding updates to the Catalog and Atlas; 8) Clarify ADF&G's coordination process for projects where they have the lead; 9) Clarify lead agency responsibility for addressing comments, 10) Clarify, in Attachment A, that some oil and gas projects could be handled as a Category 2 provided that impacts can be mitigated to an acceptable, feasible and prudent level; 11) Clarify, in Attachment A, that OHMP will not coordinate comments on changes to laws and regulations that provide protection for fish and wildlife habitats—instead, each agency will comment separately, to the proposing agency, as appropriate.
3. Amended on January 26, 2006 to: 1) Clarify the title of referenced Parks permits to ensure that both "Park Use Permits" and "Non-competitive Commercial Use Permits" are covered and clarify that ADF&G has the lead on these permits if the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G; 2) Clarify that the OHMP lead on the review of U.S. Forest Service timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identifies in the Forest Plan; 3) Clarify that the OHMP lead on the review of NPDES permits includes any associated TMDL evaluations; 4) Clarify that OHMP has the lead on US/Canada transboundary mining projects; 5) Clarify OHMP responsibilities on FERC hydroelectric projects; 6) Clarify that ADF&G has the lead on Department of Defense plans that require consultation under the Sikes Act; 7) Clarify that ADF&G has the lead on Municipal Planning and Zoning Actions; 8) Clarify that both OHMP and

ADF&G review and comment on new or revised District Coastal Management Plans; 9) Added a definition of "spawning area"; 10) Revise dispute resolution referral to reference new Region V Supervisor; and 11) Revise signatures to reflect current Commissioners.

4. Amended September 22, 2006 to: 1) Add the DEC Pesticide Permit to the list of Permits where OHMP has the lead; and 2) Clarify that the proposed Pebble Gold-Copper project is an exception to the normal project review delineation, with OHMP as the lead.

Amended January 18, 2005

ATTACHMENT A

Criteria for OHMP Coordination with ADF&G on Resource Development Activities

When OHMP is the point of contact, the following three categories apply:

- (1) OHMP need not coordinate with ADF&G on AS 41.14.840/870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits;
- (2) OHMP will coordinate directly with area biologists and other staff within ADF&G divisions to determine if significant impacts to fish and wildlife habitat exist when there is a need for area or resource specific information or when there is a known interest in a particular project by an affected division¹. We expect that most resource development activities will be in categories 1 and 2; and
- (3) OHMP will coordinate through the designated ADF&G contact when there is a need for an ADF&G coordinated response, because a proposed land or water use activity will have a significant net adverse effect on the quality or quantity of fish or wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

Criteria/Examples for Category #2: Consulting directly with ADF&G division personnel:

•During the pre-project scoping process for a project/activity in an area of known high interest to a particular division(s) (e.g., fall chum spawning area in the Tanana at Big Delta, placer mining in the Hogatza drainage, water use from lakes supporting lake trout on North Slope, Kenai River Bank Stabilization);

It is anticipated that identification of "known high interest to a particular division(s)" will be based on on-going and historic interactions with the ADF&G divisions; expression of regional ADF&G preferences; and will be subject to revision based on cumulative impacts, reevaluations of ADF&G priorities, etc. Periodic adjustments, either informally or through elevations, may be required to ensure that the identified threshold adequately protects the public interest.

¹ OHMP will notify the designated SF contact when we plan to proceed under Category 2 for selected high interest projects and where we anticipate contacting more than one ADF&G division.

- For oil and gas project/activity involving land and water use activities potentially affecting both fish and wildlife and their habitat and uses of fish and wildlife to the extent that a federal environmental assessment or federal environmental impact statement is needed (e.g., Alpine satellite developments in the Colville Delta and NPR-A)²;
- For other types of projects/activities having potential for long-term impacts (i.e., multiple years), but such impacts can be mitigated to an acceptable, feasible and prudent level (e.g., oil and gas exploration and licensing, hard rock mines, major highway construction or realignments, federal timber sales);³
- project/activity where a decision is made to not require mitigation based on a variety of factors, including economics, that may result in the minor loss of fish and wildlife; DNR will consult with ADF&G on this decision (e.g., decision not to require fencing of a tailing impoundment where some loss of animals is expected over time)⁴;
- project/activity affects a specific fish or wildlife species and we know that there is existing expertise and/or ongoing research that is important to making decisions regarding mitigation of impacts;⁵
- project/activity affects palustrine and lacustrine wetlands that are proximate to and contiguous with waters supporting high quality anadromous or resident fish species (e.g. contiguous Kenai River wetlands); and
- unauthorized projects/activities that may result in enforcement actions.

Criteria/Examples for Category #3: Requesting a coordinated ADF&G response via Sport Fish Division⁶

- Project/activity involving disposal of lands with long-term impacts to a variety of fish and wildlife species and their habitats as well as the human uses of the fish and wildlife resources (e.g., oil and gas lease sales in caribou calving areas, oil

² Our rationale for placing various oil and gas projects in this category of direct coordination is that the State's best interest finding has already been made to develop those resources with provisions in the lease to protect fish and wildlife resources and habitats. The project is in the implementation phase and may include preparation of federal EA/EIS NEPA documents or review of Project Operations Plan:

³ Projects in this category include such things as mines that are on valid existing mining claims or other projects (e.g., roads, airports, harbors, oil and gas) that have impacts of lesser duration than projects in category #3.

⁴ Coordination with ADF&G personnel would be specific to those individuals with specific species expertise and/or the area management responsibilities.

⁵ Coordination with ADF&G personnel will be specific to those individuals with the specific species expertise and/or the area management responsibilities.

⁶ In order for this coordination to work most effectively, we believe that a direct ADF&G contact (coordinator) would be highly beneficial in the Fairbanks, Anchorage, and Juneau offices.

and gas lease sales in areas of high waterfowl use, oil and gas lease sales in Bristol Bay, oil and gas lease sales in the Arctic National Wildlife Refuge)⁷;

- project/activity with a high probability for long term impacts and uncertainty with respect to rehabilitation (e.g., new hard-rock mines with acid rock drainage potential affecting downstream aquatic habitats);⁸
- project/activity that involves major changes in terms of impacts to fish and wildlife along with changes in access that affect uses of fish and wildlife.

⁷ Our rationale for placing some oil and gas proposed lease sales in this category is that the state has not yet made the State's best interest finding or developed a State position on federal sales/actions, and that some of these projects have long-term potential impacts to fish and wildlife and their habitat. In cases such as these, with major resource development issues, we believe it is essential ADF&G prepare a position that represents the department and the various divisions. Some EA/EIS projects may be covered by category 2 consultations.

⁸ Our rationale for placing specific hard-rock mines in the category of needing a coordinated ADF&G position is that some of these mines, but not all, have real long-term potential impacts to fish and wildlife resources and their habitat. Any future new mine, similar to Red Dog, would fall in this category. Conversely, the True North mine located near the existing Fort Knox mine would not fall into this category because it will not have the potential for long-term adverse impacts to fish and wildlife and their habitat.

*FVI only - you asked for a number of
testifiers in support and opposition*

Oppose HB41

Groups:

1. ROD ARNO, Executive
Director, Alaska Outdoor
Council (AOC), Governor's
Transition Team Member
2. DENNIS WATSON, Mayor of
City of Craig, Alaska

Constituents:

3. WALTER HICKEL
4. PETER METCALFE from
Juneau, self-representation

Support HB41

Groups:

1. DON BREMNER, Natural
Resource Coordinator, Southeast
Alaska Inter-Tribal Fish and
Wildlife Commission
2. CATHERINE CRAWFORD,
Executive Director, Cordova
District Fisherman United
3. KENNETH DUCKET,
Executive Director, United
Southeast Alaska Gillnetters
4. MARK KAELEKE, Director,
Southeast Alaska Projects, Trout
Unlimited
5. MATTHEW LACROIX,
Fisheries Biologist, Alaska
Department of Fish & Game
(ADF&G)
6. JAMAL MOSS, American
Fisheries Society, Alaska
Chapter
7. MARK RICHARDS, Alaska
Backcountry Hunters and
Anglers
8. KRISTIN SMITH, Copper River
Watershed Project (CRWP)
9. STEPHEN TAUFEN,
Groundswell Fisheries
Movement, Watchdog for
citizen-taxpayers and harvesters
and communities in Alaska
fisheries

10. KATE TROLL, Alaska
Conservation Alliance

Constituents:

11. BRUCE BAKER from Auke
Bay, self-representation, former
Deputy Director for ADF&G
Habitat Division
12. BARBARA CARLSON from
Anchorage, self-representation
13. HAL GEIGER, Past President of
American Fisheries Society
14. RALPH GUTHRIE from Sitka,
self-representation, commercial
fisherman
15. DOUGLAS HILL from
Anchorage, self-representation
16. ROBERT HOWARD from
Palmer, self-representation
17. DR. VI JERREL from Anchor
Point
18. BETSY MCCracken from
Anchorage, self-representation
19. MIKE MILLIGAN, Kodiak
20. JOHN MURRAY from Sitka,
self-representation
21. JEFF PARKER from Anchorage,
self-representation (attorney
practicing law relating to
fisheries)
22. THOMAS PEBLER from
Anchorage, self-representation,
retired Fish & Game
- ✓ 23. CARL ROSIER, Retired
Commissioner, Alaska
Department of Fish & Game
(ADF&G)
24. HERB SIMON from Nelchina,
self-representation
25. LANCE TRASKY from
Anchorage, self-representative
26. ED WEISS from Chugiak, self-
representation, Habitat Biologist
for OHMP

FVI

From an e-mail from the Senate Clerk

"traditionally, we get executive orders on the first day of session. Below is the Statute which says the executive orders shall be submitted to the presiding officer of each house on the day the house organizes. I've also included Article III, Sec. 23, of the Constitution. (It looks like when the Constitution was written, they didn't expect session to last much longer than 60 days!)

Sec. 24.08.210. Executive orders. An executive order proposing a change in the executive branch and requiring the force of law under art. III, Sec. 23, Constitution of the State of Alaska shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law.

The Constitution. Article III, Sec. 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set for 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."



Alaska State Legislature
Representative Bob Buch
Representative Les Gara
Representative Bryce Edgmon
Official Business, State Capitol, Juneau, Alaska, 99801

October 30, 2007

Commissioner Tom Irwin
Department of Natural Resources
550 W. 7th Ave Ste 1400
Anchorage, AK 99501-3561

Deputy Commissioner Dick Lefebvre
Department of Natural Resources
550 W. 7th Ave Ste 1400
Anchorage, AK 99501-3561

Deputy Commissioner Ken Taylor
Department of Fish and Game
333 Raspberry Rd.
Anchorage, AK 99518

Re: Letter of Support for Reversing Governor Murkowski's Habitat Division Transfer.

Dear Commissioner Irwin and Deputy Commissioners Lefebvre and Taylor:

Thank you for agreeing to look at whether the State should reverse former Governor Frank Murkowski's controversial Habitat Division transfer. As you likely know, we feel strongly that the state's fishing waters will be best protected in the future by reversing Governor Murkowski's Habitat Division order. We believe the long-term protection of our fisheries will be best achieved by a return of the Habitat Division to the Department of Fish and Game. And, as Commissioner Irwin knows, while we feel the Division is protected well under his watch as DNR Commissioner, we fear that a future Commissioner would have the statutory ability to undermine the Habitat Division's mandate to protect our fisheries. In contrast, if Habitat were returned to the Department of Fish and Game, that Commissioner would statutorily not have the discretion to undermine the Division's mandate. That is the issue we face – and why we strongly recommend a decision by Governor Palin to return the Habitat Division back to the Alaska Department of Fish and Game (ADF&G). It is our hope that this will be the Governor's position.

While we will keep pushing HB 41, our legislation to require Habitat's return to ADF&G, we appreciate that you are looking into this. In the best of worlds, an executive decision on this issue is preferable to legislation. We also appreciate DNR's good stewardship over the Habitat Division under Commissioner Irwin as you consider this issue. While we would be satisfied if the move were made in the next year or so, we would agree that the move requires some deliberation, and perhaps a consciously slow transfer rather than one made in an artificially short timeframe.

Alaska has a proud history of fishing stream protection. Only in recent years, because of a series of decisions by former Governor Murkowski (cutting Habitat staff; relaxing our Mixing Zone anti-pollution measures) has this state taken a direction that threatens to damage our unparalleled fisheries in the future. Our legacy should be one that includes the protection of the waters our subsistence, sport, and commercial fishermen rely upon. There's a reason you can't catch a 30-inch trout, a 30-inch steelhead, a 60-pound King salmon, or even a two pound Arctic Grayling, almost anywhere else in the world, and that you still can in Alaska. This state's record of fisheries protection is a strong one.

The Habitat Division is charged with protecting our fishing streams from damaging development. From Statehood until 2003, Habitat had been located under the Commissioner of Fish and Game. At the time of the move, every former Commissioner from the Department of Fish and Game (Republicans, Democrats, and Independents alike) opposed the transfer of that Division to the Department of Natural Resources.

Under Alaska law, the Commissioner of the Department of Fish and Game has no discretion to take action that would damage our fishing streams. The mandate of that Department is to: ***"manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state,"*** (AS 16.05.020).

In contrast, under our statutes, the Commissioner of the Department of Natural Resources can decide to favor either fisheries protection *or* development. While Commissioner Irwin has read this mandate in a manner that, we believe, favors responsible development, a future commissioner will have the discretion, by statute, to favor damaging development over fisheries protection. The DNR statutes provide: ***"The Department of Natural Resources shall administer the state program for the conservation and development of natural resources"*** (AS 44.37.020). This language leaves room for a future commissioner to favor questionable development projects over the interest of fisheries protection.

In recent hearings held by the Fisheries Committee in Bristol Bay as well as hearings on HB 41, the public has spoken loudly that it supports a move of Habitat back to the Department of Fish and Game. A transfer of this division makes sense, is the prudent thing to do, and is supported by the vast majority of Alaskans. More people testified on HB 41 last session, and during subsequent fisheries hearings, than on almost any other bill the Legislature considered in the past year.

We would be happy to sit down with you to talk about this further, and, in the meantime, hope you will decide to return the Division back to the Department of Fish and Game. Feel free to contact us if you have any questions.

R. L. Buch

Rep. Bob Buch

Sincerely,

Les Gara

Rep. Les Gara

Bryce Edgmon

Rep. Bryce Edgmon

cc: Governor Sarah Palin

Protecting the integrity & biological diversity of the Anchorage Coastal Wildlife Refuge....



**FRIENDS OF
THE
ANCHORAGE
COASTAL
WILDLIFE
REFUGE**

**PO Box 220196
Anchorage, AK
99522-0196**

**E-mail:
carlson1@gci.net
Phone: 907-248-2503
Fax: 907-248-3159**

The Honorable Paul Seaton,
The Honorable Bill Thomas,
The Honorable Kyle Johansen,
The Honorable Gabrielle LeDoux,
The Honorable Peggy Wilson,
The Honorable Bryce Edgmon,
The Honorable Lindsey Holmes,
The Honorable Les Gara,
The Honorable Harry Crawford,
The Honorable Beth Kerttula,
The Honorable Bob Buch
Alaska State House of Representatives
Juneau, Alaska (Sent by email to all of the above)

January 03, 2008

Dear Representatives Seaton, Thomas, Fisheries Committee Members and
HB41 Sponsors:

Please return the function of the Habitat Division from the Alaska Department of Natural Resources (ADNR) to the Alaska Department of Fish and Game (ADF&G). It is the right thing to do. The transfer of ADF&G's fish habitat protection statutes to the ADNR has significantly reduced the level of protection for this vital and renewable resource. This was testified to during a Legislative hearing in 2006 by both the Alaska Miner's Association and biologists who have worked under ADF&G & ADNR. The

ethical solution is to return the Anadromous Fish Act and the Fish Ways Act with their statutory protections back to the ADF&G. It is also critical to see that this includes the funding of biologists & staff is adequate to meet the needs of this return. Professional biologists and the Alaska public need to recover from the wrongful removal of checks and balances that occurred during Governor Murkowski's tenure.

I write today on behalf of Friends of the Anchorage Coastal Wildlife Refuge (FAR), which is a registered 501(c-3) non-profit in good standing with the State of Alaska. FAR is an organization of citizens and professionals whose mission is " to preserve the integrity and biological diversity of the Anchorage Coastal Wildlife Refuge. " We believe that good stewardship and wise development go hand in glove when it comes to taking care of the land, waters and air upon which we all depend. I know this well as I am an *Unangan* (Aleutian Aleut) who grew up in Unalaska, where most of my family still lives and depends on wise development and good stewardship. Growing up we were taught that it is our responsibility to not foul our nests—that we must judiciously take care of the resources that we have the opportunity to use while we are on this earth. First and foremost, we must ensure that any development we undertake, preserves resources for future generations. The belief systems of Alaska Native peoples are built around living the right ways as human beings; doing the things we know are right.

Similarly, the first Alaska Legislature enacted the Anadromous Fish Act and the Fish Ways Act setting in place formative regulations which were part of Title 16 of the Alaska Statutes from 1959 until 2003. The statutes mandated the ADF&G Commissioner to " manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state. " Alaskans had every reason to believe that care would be taken of our valuable resources when development projects were being considered and undertaken. Every ADF&G Commissioner served under the aforementioned mandate, however, when Governor Murkowski set into motion Executive Orders 106 and 107, with their transfer of authority to ADNR this assurance effectively evaporated. This is because the Deputy Commissioner of ADNR serves under no such mandate and has complete discretion as to the level of protection given fish and habitat for any given project.

Furthermore, along with the concerted effort to expedite permitting for resource development, Governor Murkowski transferred the Alaska Coastal Management Plan (ACMP) into the ADNR,

making a convoluted mess of the regulatory process which had long served Alaska well. We believe that these executive orders were in error, and that they place future generations of Alaskans at risk. We believe that these actions must be reversed.

As part of your responsibilities as committee members you will want to review a report that was due in December of 2007. The deputy commissioner of both ADF&G and ADNR were charged with evaluating the effects of EO 107 and reporting back to the commissioners so that they could make a joint recommendation to the Governor.

We urge you, as leaders with enormous responsibility, to consider, that while the well-being of the citizens of Alaska depends upon the wise development of our resources, it equally depends on the careful and diligent stewardship of that which sustains us. As our population grows and we build continue to build this great land, *Alax̄s̄x̄āx̄*, it is important to remember these valuable rules for living which are shown side by side in the two extant dialects of *Unangam tunuu*, the language of the *Unangax̄*, and English.

- *Tuman tanāx̄ agliisaāx̄tan*. E / *Tanāx̄ agliisada*. W / Take care of the land.
- *Tuman alāgūx̄ agliisaāx̄tan*. E / *Alāgūx̄ agliisada*. W / Take care of the sea/ocean.
- *Tuman taangāx̄ agliisaāx̄txin*. E / *Taangāx̄ haqayaasada*. W / Take care of the water.

We urge you to move of the functions of the Habitat Division back to the ADF&G and insure its supportive funding. Properly, this will require fully restored coordination functions within the department on ALL issues affecting fish and wildlife and their habitats (not just select involvement per the existing ADFG/DNR MOU) .

Qāgaasakung, we thank you, for your time and consideration.

Sincerely,

Barbara Svarny Carlson
President & Executive Director

Friends of the Anchorage Coastal Wildlife Refuge (FAR) is a non-profit organization of citizens and professionals whose mission is *To preserve the integrity and biological diversity of the Anchorage Coastal Wildlife Refuge*. This easily damaged subarctic saltmarsh system supports an unusual diversity of plants, birds, mammals and invertebrates, and is of continental conservation importance. The proximity of the refuge to Alaska's largest city makes it important for public education and enjoyment but also makes it highly vulnerable. Among the refuge's residents and migratory visitors are the lesser sandhill cranes, the lesser snow geese, rock sandpipers and the Cook Inlet beluga.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 25, 2008

SUBJECT: Comparison of HB 41 and The Fisheries Habitat Protection Initiative (Work Order No. 25-LS0225\C)

TO: Representative Les Gara
Attn: James Feldman

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have requested a comparison between HB 41 and the Fisheries Habitat Protection Initiative. In short, these two documents are nearly identical. I will highlight for you below the few differences between the bill and the initiative.

(1) The organization of the two documents is slightly different. HB 41 organizes the bill sections by statute number, starting with AS 16.05.871. The initiative begins with a "purpose" section, which HB 41 does not have, and then secs. 2 and 3 come next, which correspond to secs. 3 and 4 in HB 41.

(2) Both documents add multiple new sections to AS 16.05. The title and text of all of these sections (sec. 4 in the initiative, secs. 1 - 2 in HB 41) is the exact same. However, the statutory section numbers chosen for these added sections is different. For example, the initiative lists the "Fishway required" section as AS 16.05.840, but HB 41 lists that same section as AS 16.05.871. Also, some internal references throughout the two documents are different based on these different numbering schemes.

(3) The following sections appear in the initiative but not in HB 41: sec. 10 amending AS 41.17.090(d); sec. 15 amending AS 41.17.098(e); sec. 17 amending AS 41.17.120; and sec. 26 setting out severability clause for the initiative. The only section that appears in HB 41 but not in the initiative is sec. 19 of HB 41, which amends the duties of the deputy commissioner of natural resources. The thrust of the above differences is that the initiative eliminates the role of the deputy commissioner of natural resources all together. HB 41 only removes the deputy commissioner from any duties relating to habitat. Hence, a section such as sec. 19 of HB 41 allows for the deputy commissioner to retain any duties not related to habitat. Further, the initiative repeals four current statutes not repealed by HB 41 (AS 41.17.905, 41.17.950(23), AS 44.37.055, 44.37.060). All of these statutes involve the deputy commissioner but do not necessarily involve habitat activities, and so these sections were not repealed in HB 41.

Representative Les Gara
January 25, 2008
Page 2

(4) The transition sections of each bill (sec. 25 of the initiative, sec. 23 of HB 41) are slightly different. Both essentially make the same statements, only the sections are organized differently.

BJK:med
08-047.med



October 30, 2007

The Honorable Sarah Palin
Office of the Governor
Post Office Box 110001
State Capitol
Juneau, Alaska 99801

Dear Governor Palin:

Members of the Pebble Partnership team have spent a significant amount of time in Southwest Alaska, listening to residents' hopes and concerns.

Through individual discussions, stakeholder engagements, and a number of recent public meetings and forums in the region and around Alaska, the members of the Pebble Partnership have heard a repeated concern from Alaskans about the state regulatory structure. Specifically, there is a perception that Governor Murkowski weakened state regulatory oversight when he moved the Habitat Division out of the Department of Fish & Game and into the Department of Natural Resources.

The Partnership is not in a position to comment on appropriate state administrative structures. However, we want to make clear as a mining company and investor in Alaska that we are fully committed to a rigorous, open and transparent state and federal permitting process for projects such as Pebble. The current public perception that the Habitat Division is somehow compromised by its position in the current regulatory structure is therefore of concern to us. The partnership believes that the Pebble Project, as well as resource development projects generally, would benefit from a resolution to this controversy and is committed to working constructively with whatever structures your administration decides to put in place.

Sincerely,

Pebble Limited Partnership, by its General Partner
Pebble Mines Corp.

Bruce W. Jenkins
General Manager (Interim)

January 23, 1991

The presence of Senator Shultz was noted.

CERTIFICATION

Senator Halford moved and asked unanimous consent that the journal for the second legislative day and Senate and House Joint Journal Supplement No. 1 be approved as certified by the Secretary. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

January 23, 1991

Dear Mr. President:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting to you Executive Order No. 80, renaming the Department of Commerce and Economic Development the Department of Trade and Economic Development. I believe the change in name for the department is both desirable and necessary in carrying out my goal of strengthening and expanding the state's private sector economy. The name change is more in keeping with what I view as the primary mission of that department -- the development and advancement of trade and other business activity within the state.

Although, under AS 24.08.210, Executive Orders are to be submitted to each house of the legislature on the day each house organizes, the Department of Law has for years advised governors that the statute cannot restrict the governor's ability under the constitution to adopt and submit Executive Orders to the Legislature. Since this Executive Order is being submitted on the second legislative day of what can be expected to be a full, 120-day session, the legislature will still have 60 legislative days in which to consider this Order, as provided by the constitution.

I urge your support for this Executive Order.

Sincerely,

/s/
Walter J. Mickel
Governor

Info
from
Legal

L
January 23, 1991

noted.

January 23, 1991

SENATE JOURNAL

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President Eliason requested the Senate Secretary to read the following letter:

January 23, 1991

Dear Governor Hickel:

We are returning to you today Executive Order No. 80, which purports to change the name of the Department of Commerce and Economic Development.

Under art. III, sec. 23 of the Alaska Constitution, an executive order is the appropriate vehicle by which a governor "may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration."

Because it appears to us that the attached executive order makes no changes in the type contemplated by art. III, sec. 23, of the Alaska Constitution, we must respectfully decline to accept it for consideration by the House and Senate.

We encourage you to submit the matter to the Legislature, in the form of a bill, for introduction by the respective Rules Committees. Such a measure would receive expeditious consideration in each house, and would, in our judgement, receive little opposition when considered for passage by the respective bodies.

Sincerely,

/s/
Representative Ben Grussendorf
Speaker of the House

/s/
Senator Dick Eliason
President of the Senate

Senator Halford moved and asked unanimous consent that the letter from the President of the Senate and Speaker of the House be spread in the journal. Without objection, it was so ordered.

MESSAGES FROM THE HOUSE

Message of January 22 was read, stating the Speaker has made the following appointments:

LEGISLATIVE BUDGET AND AUDIT
Representative Larson, Chair
Representative Carney
Representative Ulmer
Representative MacLean
Representative Martin
Representative Brown, Alternate

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Trade and Economic
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trade and other business

Executive Orders are to be
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this Executive Order is
relative day of what can be
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er J. Hickel
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