

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2977 SCOMM 131: HOUSE SPECIAL COMMITTEE ON FISHERIES, 2003-04



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STAFF DEVELOPMENT

GOAL 4

- Recruit, develop, empower, and retain a diverse, dedicated, motivated, empowered, and effective workforce.

DESIRED OUTCOMES

- A workforce that exemplifies a diversity of skills, gender, ethnic background, age, and viewpoints.
- Staff that understand and appreciate the importance of their individual contributions to the department and division mission.
- A productive and empowered workforce capable of making and implementing effective decisions.
- A high level of job satisfaction among all staff within a positive and supportive work environment.

Through various outreach efforts, strive to achieve demographic distributions within job classes so that our workforce better reflects Alaska's population.

KEY STRATEGIES:

- At a regional level, develop outreach programs to provide information and education on job types and career opportunities within the division, targeting high school and early college levels in both rural and urban communities.
- Consider using local hires for project support when appropriate, particularly for projects in rural areas.
- Fund and award a minimum of four annual American Fisheries Society Hutton Junior Fisheries Scholarships⁸, at least one of which will be from a community other than Fairbanks, Anchorage, and Juneau.
- Assign regional or area staff to attend local job fairs and career days.
- Consider, where appropriate, job class series outside those historically used by the division to classify a position prior to recruiting.

Increase the number of highly qualified applicants to at least five candidates for each job recruited.

KEY STRATEGIES:

- Promote the merits and quality of work conducted by division employees and the potential for personal and professional accomplishments and contributions.
- Assign staff at the regional level to act as recruiters with college and university faculty and student organizations to identify opportunities for student contact, employment, and involvement in projects of joint interest.
- Assign staff at the regional level to act as liaisons with high schools, career centers, technical schools, and community programs and to identify opportunities for student contact, employment, and involvement in projects of joint interest.
- Utilize graduate, undergraduate, and student intern positions for project support where appropriate to expose college and high school students to the division and develop skills necessary for employment with the division.
- Assign regional or area staff to attend local job fairs and career days.
- Provide work experience and training opportunities for staff in seasonal and temporary positions, where appropriate, so they can excel in their current positions and develop their ability to compete for more advanced permanent full-time positions.
- Fund at least three graduate-level fishery positions at universities.
- Utilize the media⁹ to announce current and upcoming recruiting activities to fill vacant positions.
- In out-of-state job recruitment announcements, include community information through Internet links.
- Advertise in recruitment announcements that moving expenses will be paid for successful candidates.

⁸ An annual scholarship sponsored by the American Fisheries Society targeting minority and female high school students.

⁹ Media includes newspapers, radio, television, community bulletin boards, out-of-state and local university bulletin boards, professional meetings, web sites, and publications sponsored by professional societies.

OBJECTIVE 2:

Provide each staff member with opportunities for professional development to enable them to perform competently and excel in their current position and to prepare qualified employees to be competitive candidates for more advanced jobs.

KEY STRATEGIES:

- Develop a Training Policy.
- Create a division training program to coordinate the identification of training needs and scheduling of opportunities for training.
- Evaluate the performance of each employee on a regularly scheduled basis and provide each employee with the opportunity to provide feedback on supervision, understanding of their responsibilities, and their job-related needs.
- Provide each staff member with the opportunity to prepare a Professional Development Plan.
- Integrate mentoring, training, and job assignments with new challenges into a leadership program.
- Reinstate an in-house training program of short courses on technical, administrative, and managerial subjects relative to job success.
- Develop an orientation manual for new employees.
- Conduct a confidential survey every three years to evaluate staff perceptions on the efficacy of these strategies.

OBJECTIVE 3:

Ensure continuation and development of divisional services by planning for anticipated and unanticipated vacancies.

KEY STRATEGIES:

- Develop and cross-train individual staff with diverse and comprehensive knowledge, skills, and abilities to provide flexibility when balancing workloads among staff.
- Program managers will develop plans to address anticipated vacancies and staffing needs for program growth and development.



OBJECTIVE 4:

Manage our workforce so that the running five year average annual turnover rate is less than 5% of full-time permanent staff leaving divisional employment for employment with other divisions, agencies or the private sector.

KEY STRATEGIES:

- Continually and actively promote a competitive monetary compensation package comparable to other government agencies and private industry and communicate their efforts at improving the compensation package annually with staff.
- Develop policies for non-monetary compensation incentives.
- Communication tools and procedures will be developed and evaluated to inform staff of issues, projects, activities, and personnel actions outside and within their immediate work environment.
- Establish guidelines and criteria for recognizing achievements by individual staff.
- Develop guidelines concerning options for sharing work location.
- Review and provide input to the Division of Administration to ensure that a career ladder exists entirely within the division for all job class series including the administrative series.

- Review and provide input to the Division of Administration to ensure that minimum qualifications for all job classes are appropriate without being overly restrictive.
- Ask all employees leaving divisional employment to fill out a confidential "debriefing" questionnaire that will address reasons the employee is leaving.



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Foster an effective, productive, and open work environment.

KEY STRATEGIES:

- Encourage professional conduct in interpersonal communications.
- Develop an efficient, vertically integrated budgetary system that meets the needs of area, regional, and headquarters staff.
- Foster a work environment where decision-making skills are developed and recognized, authorities are clearly defined, and staff have the appropriate level of involvement in decisions that affect their work environment, assigned duties, and effectiveness.
- Conduct a confidential survey every three years to evaluate staff perceptions on work environment to measure the efficacy of these strategies.



Photo by Don Curfew

Ensure a physically safe and well-equipped work environment.

KEY STRATEGIES:

- Identify procedures for staff to request needed office and field equipment and supplies during the budgetary process.
- Ensure adequate office and storage space and adequate building facilities are provided.
- Review current building leases to determine if needs of staff and of the division are being met and recommend any remedies needed to remove any shortcomings to the Division of Administration.
- Conduct a confidential survey every three years, evaluating staff perceptions on work environment to be used to measure the efficacy of these strategies.



Photo by AD



The Division of Sport Fish began the planning process by gathering staff and public input in October of 2001. The public and staff identified issues during meetings held in Fairbanks, Anchorage, and Juneau. Many who were unable to attend meetings provided input through the mail, email, phone, and our web site. Meetings and other methods of involvement were advertised through media, the division's web site, and through direct mail postcards to known stakeholders.

The Division Leadership Team relied heavily on this input as it defined plan elements for dealing with identified issues. As a part of this process, the team also developed some initial goals, which they sent back out to staff and the public for comment. The team communicated their expectations by describing desired outcomes for each goal. Staff then fleshed out each plan section with objectives and strategies. The initial draft document was thus developed.

The draft was widely distributed through the web site, tackle shops, advisory committees, ADF&G offices and through direct mail to interested parties for further comment. Many varied and insightful comments were received from individuals, groups, and advisory committees. The plan was further modified based on these comments resulting in this final document. "Final" is a bit of a misnomer, since we expect to further refine this plan over time as conditions change and we gain experience in using this document.



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House Special Committee on Fisheries

AGENDA-February 19, 2003

Rm#124; 8:30-10:00 a.m.

- 1) +*HCR 6 Extension of the Joint Legislative Salmon Industry Task Force.
- 2) Overview of the Alaska Department of Fish and Game **Subsistence Division**, Director Mary C. Pete presenting.

Questions and Answers.

Thank you. If you have any questions you can contact my committee staff person, Cameron Yourkowski, at 465-3306

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Division of Subsistence Program Review

FY03 Management Plan Funding

General Funds	224.1
AIDEA Dividend Receipts	1,000.0
Inter-Agency Receipts	538.1
Program Receipts	70.1
Federal Receipts	2,253.5
EVOS	369.2
TOTAL	4,455.0

Mission, Goals & Strategies

Mission

The mission of the Division of Subsistence is to gather, quantify, evaluate, and report data about uses, users, and methods of subsistence hunting and fishing; and make recommendations on the impacts of federal and state laws and regulations on subsistence uses and users.

Goals and Strategies

1. Provide comprehensive, accurate information on subsistence uses of fish and game in selected communities throughout the state. The division was created by the legislature because successful implementation of the state subsistence law would require a reliable database for making subsistence allocation decisions. Research goals are to document and analyze subsistence uses in Alaska, and to provide information to the general public and to a variety of public agencies, organizations, and decision-making bodies. This is the primary function of the division and will be maintained to the maximum extent possible given available funding.
2. Implement the state subsistence law. The division has responsibility for implementing the state subsistence law through close coordination with the Department of Law. This involves following and understanding the legal framework for subsistence implementation, advising the commissioner and other department staff on necessary implementation steps, and guiding the Boards of Fisheries and Game through the implementation process. Key elements in the implementation process include action by the boards in making customary and traditional use findings, determining the amount reasonably necessary to meet subsistence needs and promulgating regulations that provide a reasonable subsistence harvest opportunity.

Organizational Structure

The subsistence section was established by law in 1978 and accrued division status in 1980. Currently the division has 28 full-time, 10 part-time and 62 non-permanent positions. The management team consists of the division director, the assistant director, the research director, two regional program managers, and database program coordinator. The assistant director serves as the department's liaison to the federal Office of Subsistence Management.

The division maintains a Headquarters Office in Juneau, regional offices in Douglas, Anchorage and Fairbanks, and field offices in Kotzebue, Bethel, Dillingham, and Kodiak. In the past year, division researchers conducted studies in 147 communities.

Performance Measures

1. Number and percentage of Alaskan communities in each region for which fisheries harvest data are collected and reported.

	<u>Total Communities</u>	<u>Number Collected</u>	<u>Percentage</u>
• Southeast	34	3	9%
• Southcentral	34	28	82%
• Southwest	41	30	73%
• Interior	43	40	93%
• Western	50	40	80%
• Northwest	26	18	69%
• Arctic	7	3	43%

Subsistence salmon fisheries harvest data are collected annually in certain regions of the state (Western, Interior, Southwest, Northwest) and sporadically in other parts, as funding and project schedules allow. The regions with annual assessment generally are those with the greatest dependence on key species, such as salmon. Harvest information for other regions is collected as multiple purpose projects are activated. The division maintains a statewide subsistence harvest assessment report that contributes to the statewide harvest report of all uses.

2. Numbers and percentage of Alaska communities in each region for which wildlife harvest data and subsistence use information are collected and reported.

	<u>Total Communities</u>	<u>Number Collected</u>	<u>Percentage</u>
• Southeast	34	0	0%
• Southcentral	34	5	15%
• Southwest	41	17	41%
• Interior	43	17	40%
• Western	50	0	0%
• Northwest	26	5	19%
• Arctic	7	3	43%

Subsistence wildlife harvest data are collected annually in certain regions of the state (Southwest, Interior, and Arctic) and sporadically in other parts, as funding and project schedules allow. The regions with annual assessment generally are those for which funding is available due to controversial or allocation concerns, such as big game in the Interior. The aim is to develop a schedule of regional updates of harvest data, as resources are available. Harvest information for other regions is collected as multiple purpose projects are activated.

3. Number and percentage of subsistence proposals at meetings of the Board of Fisheries and the Board of Game for which subsistence data are assessed and recommendations are made.

Fisheries Region on Agenda	Total Proposals	Subs. Proposals	Percentage
• Lower Cook Inlet	43	1	2%
• Upper Cook Inlet	111	15	16%
• Kodiak/Chignik	110	4	4%
• Statewide King & Tanner Crab	96	4	4%

Game Region on the Agenda	Total Proposals	Subs. Proposals	Percentage
• Western & Arctic	39	34	87%
• Interior	175	130	74%
• Statewide	62	30	48%

Subsistence data from harvest assessment projects are used to analyze impacts of subsistence proposals to the Boards of Fisheries and Game. There are some areas or issues for which the division has not collected data or the data is outdated due to regulatory changes in the intervening years or uses are known to have changed but details are unknown. The division attempts to anticipate information needs of the boards and public through extensive public contacts such as local fish and game advisory committees and local harvest monitors. This information is useful to plan research priorities and schedules to address these issues as each board responds to public proposals. The goal is to have current subsistence information for every proposal that comes before each board.

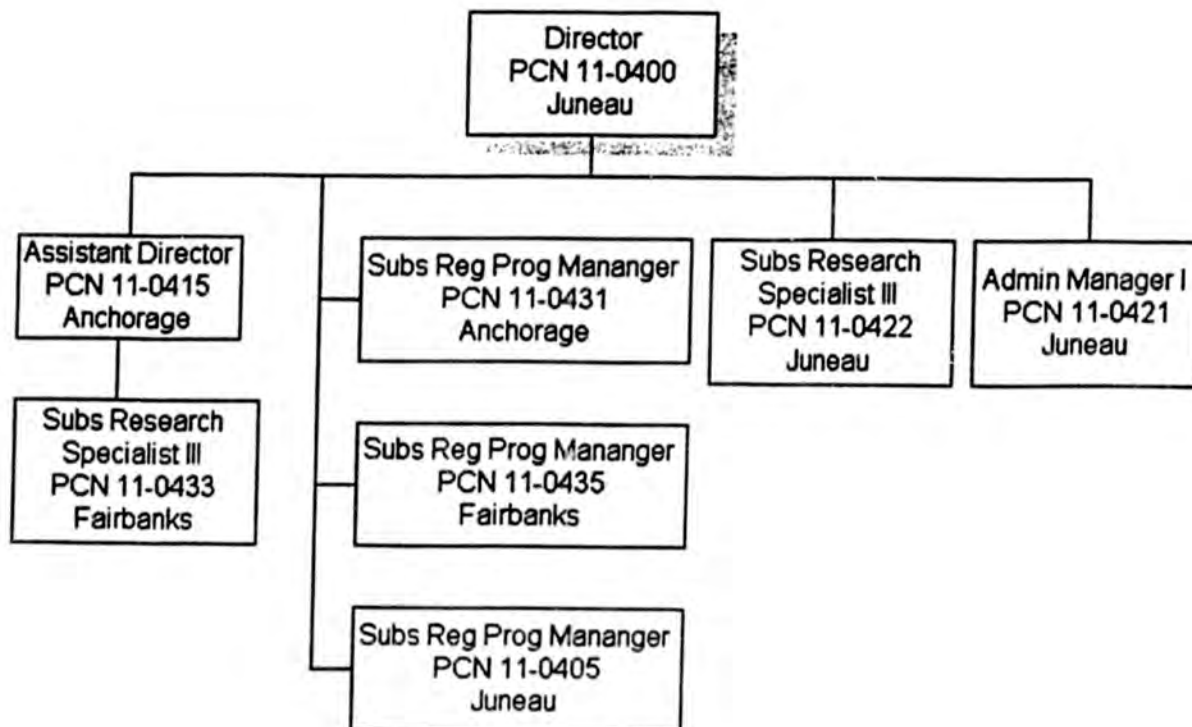
4. Number of proposed statutory and regulatory changes by federal and other state entities for which subsistence data are assessed and recommendations are made.

For state regulatory proposal and changes, see previous measure. Resolution of the state's subsistence dilemma in the form of a proposed constitutional amendment allowing a rural preference for the subsistence priority was the only statutory proposal for which subsistence data were used. In the most recent regulatory cycle, there were 46 wildlife proposals and 44 fisheries proposals to the Federal Subsistence Board for regulatory change. Subsistence data were used in analysis and comments on all the proposals to the federal program. The federal program does not conduct research; it relies on the state's subsistence information.

Program Administration

The division had a statewide staff meeting in May 2002 to review its work over the past two decades and explore future direction and priorities within its mandate. Some administrative and operational practices were reviewed for change and improvement, such as contracting with partner agencies to hire local subsistence monitors to reduce division personnel duties and allow principal investigators to focus on substantive oversight of projects. Other ideas were to develop procedures for harvest assessment monitoring programs that are more efficient with standard measures and information to automatically incorporate into division databases. Increased on-line accessibility of division databases was a high priority, which will reduce staff time in responding to information requests.

DIVISION OF SUBSISTENCE



Division of Subsistence General Information

STATUTORY BASIS

AS 16.05.090; AS 16.05.094; AS 16.05.258

OVERVIEW

Subsistence hunting and fishing are economically and culturally important for many Alaskan families and communities. The division's main responsibilities are to conduct research to document subsistence uses, estimate subsistence harvest levels, and evaluate potential impacts to subsistence users from other uses. Research findings are compiled and analyzed to address fish and wildlife management and regulatory issues and to provide information for state and federal land use planning.

DUTIES

Compile existing data and conduct studies to gather existing information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state.

Quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing.

Make information gathered available to the public, appropriate agencies, and other organized bodies. Assist the department, the Board of Fisheries and the Board of Game in determining which uses of fish and game, as well as what users and what methods, should be termed subsistence users, uses, and methods.

Evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department.

Make recommendations to the boards of fisheries and game regarding adoption, amendment, and repeal of regulations affecting subsistence fishing and hunting.

Participate with other divisions in the preparation of statewide and regional management plans so that those plans recognize and incorporate the needs of subsistence users of fish and game.

MAJOR ISSUES

Dual Subsistence Management. Although both the Alaska National Interest Lands Conservation Act (ANILCA) and the State of Alaska subsistence law recognize subsistence uses, dual management has increasingly led to different regulatory situations on state and federal land. In FY97 the division assumed lead department coordination and liaison functions with the Federal Subsistence Management program. This work entails tracking the federal board process to comment on proposals, filing requests for reconsideration when federal decisions are counter to factual analysis; or protection of the state's subsistence uses and ensuring sustained yield; and providing department information throughout the process, including litigation.

Subsistence Resolution. Resolution of the dual management situation and resumption of state management of fish and wildlife on federal lands are certain to be important issues in FY98. Efforts by the administration or the legislature to regain state management, and/or potential legal decisions would likely change the present management landscape. Private sector groups, such as chambers of commerce and fishing groups have also expressed interest in providing forums for discussion of the issue. Division data and expertise will be called upon to provide the factual basis and the necessary analysis that may contribute to a lasting resolution of the present management impasse.

State Subsistence Law Implementation. The present state subsistence law may be examined in the coming legislative session. The Legislature will rely on the Division of Subsistence to provide a factual basis and analysis of fishing and hunting patterns to support legislative action on this law. Implementing the present law requires major work in two main areas: determining customary and traditional uses and providing reasonable opportunity for subsistence harvests, and secondly, developing and administering Tier II hunting procedures.

Resource Allocation. Allocation disputes between user groups continue. Division data provide the basis for Boards of Fisheries and Game customary and traditional use determinations and for the promulgation of subsistence regulations.

SUBSISTENCE RESEARCH

Harvest Monitoring and Species-Specific Studies. A number of division projects in FY98 will document levels of subsistence salmon harvest in fisheries where accurate yearly harvest data are essential for management. Assessment projects are planned in Northwest Alaska, the Kuskokwim River drainage, Bristol Bay, the Chignik area, Cook Inlet, and Copper River. Research in Southeast Alaska will examine harvest and use of king and coho salmon in the area's smaller communities. Research on subsistence fisheries along the Aniak, Kisaralik, and Kwethluk rivers, and further monitoring of Nelson Island herring harvests are also scheduled. The division will update data on subsistence use of deer in Southeast Alaska, and examine moose hunting practices in Yukon River drainage communities. Several proposed projects in the Interior and northern Alaska as well as one completed in the Bristol Bay region will develop models for harvest assessment of large game through partnership with regional Native organizations.

Community Profiles. Subsistence harvest survey data, maintained in the Community Profile Database, provide the quantitative factual basis for regulatory decisions on subsistence issues as well as provide information for land use planning. In FY98 the division will continue to update community profiles by conducting household surveys in northern Southeast and Interior communities. Available data for these regions has become dated. Other regions of the state will be resurveyed in subsequent years, following a five-year research cycle.

Collaborative Research. The efficient collection of accurate subsistence harvest and use data in small communities in Alaska increasingly requires the active participation of local communities in this work. The division will continue its practice of working closely with local communities in field research projects. Many research projects will take place through cooperative agreements with community and regional organizations.

Marine Mammal Studies. Certain marine mammal species are being evaluated for possible Endangered Species Act protection; final decisions have yet to be made. The division has undertaken studies of subsistence use of harbor seals and sea lions under contract with the National Marine Fisheries Services (NMFS). These studies have documented the importance of subsistence harvests and demonstrated that these harvests are not the cause of declines of marine mammal populations.



[Subsistence Home Page](#)

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Subsistence

MISSION STATEMENT

The Division of Subsistence is the research branch of the Alaska Department of Fish and Game responsible for providing comprehensive information on the customary and traditional use of wild resources in Alaska. We furnish this information to meet resource management goals, aid in regulation development, facilitate collaborative agreements, assess environmental impacts, and to describe the unique role of wild resources in the lives, communities, and cultures of Alaskans.

Background

In 1978, the Alaska Legislature passed the Alaska subsistence law requiring that subsistence uses of fish and game be authorized and protected, and established the legal basis for the Division of Subsistence within the Department of Fish and Game. The division's main duty lies in the area of human dimensions research which focuses on understanding human systems, that is, people and their ways of living, using systematic methods of gathering and analyzing information developed for the social sciences, including interviews, mapping, surveys, direct observation, and participant observation. We maintain the public's trust by adhering to high ethical standards in carrying out our research, obtaining community approval before beginning research, including local residents directly in the research process, providing proper confidentiality, and presenting study results to community representatives before publication. The division's professional staff is a combination of social scientists, biologists, and local subsistence experts who study and report on:

- wild resource harvests and uses,
- seasonality of fishing, hunting, and gathering,
- methods of harvesting and processing,
- harvest levels,
- sharing and trading subsistence foods,
- geographic areas used,
- cultural and economic values attached to subsistence,
- types of groups that work and share together,
- trends in resource use patterns, and
- resource issues that need resolution.



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Subsistence in Alaska: A Year 2000 Update

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Introduction

Subsistence fishing and hunting are important for the economies and cultures of many families and communities in Alaska. Subsistence exists alongside other important uses of fish and game in Alaska, including commercial fishing, sport fishing, personal use fishing, and general hunting. This report provides an update on subsistence in Alaska, including the dual state-federal management system.

What is Subsistence?

State and federal law define subsistence as the "customary and traditional uses" of wild resources for food, clothing, fuel, transportation, construction, art, crafts, sharing, and customary trade. Subsistence uses are central to the customs and traditions of many cultural groups in Alaska, including Aleut, Athabaskan, Alutiiq, Euroamerican, Haida, Inupiat, Tlingit, Tsimshian, and Yup'ik. Subsistence fishing and hunting are important sources of employment and nutrition in almost all rural communities.

Commercial fishing differs from subsistence fishing, as it is fishing for sale on commercial markets. Subsistence fish and game cannot be commercially sold. Personal use

fishing is similar to subsistence fishing, except that it is fishing with nets for food in areas generally closed to subsistence, particularly by residents of urbanized areas. Sport fishing and sport hunting differ from subsistence in that, although food is one product, they are conducted primarily for recreational values, following principles of "fair chase". While subsistence is productive economic activity which is part of a normal routine of work in rural areas, sport fishing and sport hunting usually are scheduled as recreational breaks from a normal work routine.

Who Qualifies for Subsistence?

Federal and state laws currently differ in who qualifies for subsistence. Rural Alaska residents qualify for subsistence under federal law. About 20% of Alaska's population (123,118 people in 270 communities) lived in rural areas in 1999 (see Fig. 1). Of the rural population, 62,646 (51%) were Alaska Native and 60,472 (49 %) were not Alaska Native. Of Alaska's urban population (498,882 people), about 35,243 (7%) were Alaska Native and 463,639 (93%) were not Alaska Native. Under state law, rural residents qualified for subsistence from 1978-1989. Since 1989, all state residents have qualified under state law.

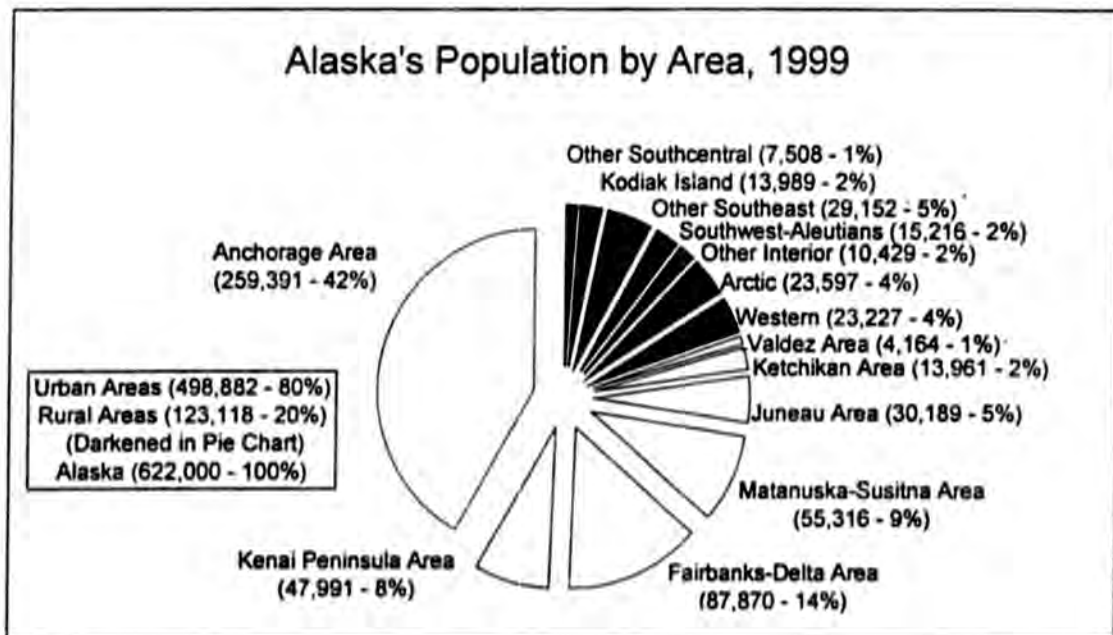


Figure 1

Percent of Households Participating in Subsistence Activities in Rural Areas

Area	Harvesting Game	Using Game	Harvesting Fish	Using Fish
Ardic	63%	92%	78%	96%
Interior	69%	88%	75%	92%
Southcentral	55%	79%	80%	94%
Southeast	48%	79%	80%	95%
Southwest	65%	90%	86%	94%
Western	70%	90%	98%	100%
Total Rural	60%	86%	83%	95%

Figure 2

Composition of Subsistence Harvest by Rural Residents

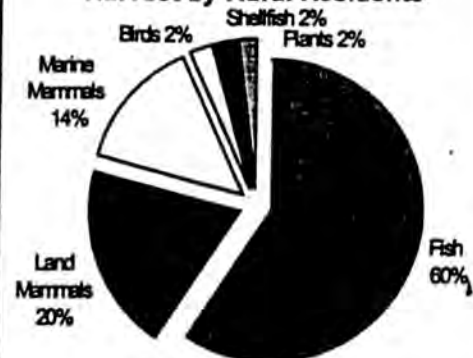


Figure 3

Who Participates in Subsistence?

Most rural families in Alaska depend on subsistence fishing and hunting. A substantial proportion of rural households harvest and use wild foods (see Fig. 2). For surveyed communities in different rural areas, from 92%-100% of sampled households used fish, 79%-92% used wildlife, 75%-98% harvested fish, and 48%-70% harvested wildlife. Because subsistence foods are widely shared, most residents of rural communities make use of subsistence foods during the course of the year.

What is the Rural Food Harvest?

Most of the wild food harvested by rural families is composed of fish (about 60% by weight), along with land mammals (20%), marine mammals (14%), birds (2%), shellfish (2%), and plants (2%) (see Fig. 3). Fish varieties include salmon, halibut, herring, and whitefish. Seals, sea lion, walrus, beluga, and bowhead whale comprise the marine mammal harvest. Moose, caribou, deer, bear, Dall

sheep, mountain goat, and beaver are commonly used land mammals depending on the community and area.

How Large is the Subsistence Harvest?

The subsistence food harvest in rural areas represents about 2% of the fish and game harvested annually in Alaska (see Fig. 4). Commercial fisheries harvest about 97% of the statewide harvest (about 2.0 billion lbs annually), while sport fishing and hunting take about 1% (18.0 million lbs).

Though relatively small in the statewide picture, subsistence fishing and hunting provide a major part of the food supply of rural Alaska (see Figs. 5 and 6). Our best estimate is about 43.7 million lbs (usable weight) of wild foods are harvested annually by residents of rural areas of the state, and 9.8 million lbs by urban residents (see Fig. 6). On a per person basis, the annual wild food harvest is about 375 lbs per person per year for residents of rural areas (about a pound a day per person), and 22 lbs per person per year for urban areas (see Fig. 5).

Who Harvests Fish and Game? Resource Harvests by Use in Alaska

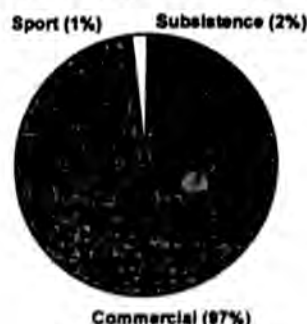


Figure 4

Wild Food Harvests in Alaska by Area, 1990s (Lbs Per Person Per Year)

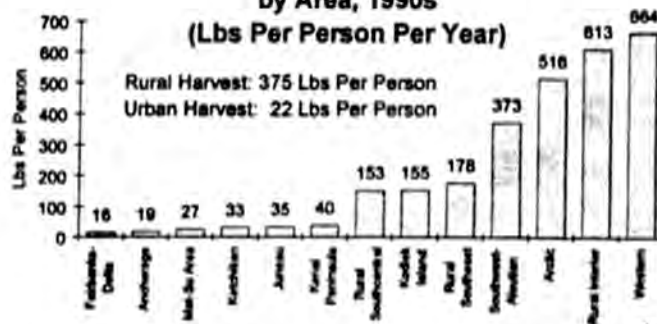


Figure 5

Nutritional Value of Subsistence

The subsistence food harvest provides a major part of the nutritional requirements of Alaska's population. The annual rural harvest of 375 lbs per person contains 242% of the protein requirements of the rural population (that is, it contains about 118 grams of protein per person per day; about 49 grams is the mean daily requirement) (see Fig. 6). The subsistence harvest contains 35% of the caloric requirements of the rural population (that is, it contains about 840 Kcal daily, assuming a 2,400 Kcal/day mean daily requirement). The urban wild food harvests contain 15% of the protein requirements and 2% of the caloric requirements of the urban population (see Fig. 6).

Wild Food Harvests in Alaska: Nutritional and Replacement Values

	Annual Wild Food Harvest (Lbs Per Person)	Annual Wild Food Harvest (Total Lbs)	Percent of Population's Required		Estimated Wild Food Replacement Value @ \$3/lb	Estimated Wild Food Replacement Value @ \$5/lb
			Protein (49 g/day)	Calories (2400 C/day)		
Rural Areas						
Southcentral	153	1,688,467	99%	14%	\$5,065,401	\$8,442,335
Kodiak Island	155	2,061,807	100%	14%	\$6,184,821	\$10,308,035
Southeast	178	5,064,509	115%	17%	\$15,193,527	\$25,322,545
Southwest-Aleutian	373	5,114,522	241%	35%	\$15,343,566	\$25,572,610
Interior	613	6,359,597	398%	57%	\$19,078,791	\$31,797,985
Arctic	516	10,507,255	333%	48%	\$31,521,765	\$52,536,275
Western	664	12,918,649	429%	62%	\$38,755,947	\$64,593,245
Total Rural	375	43,714,606	242%	35%	\$131,143,818	\$218,573,030
Urban Areas						
Ketchikan Area	33	461,855	22%	3%	\$1,385,566	\$2,309,276
Juneau Area	35	922,910	22%	3%	\$2,768,729	\$4,614,548
Matsu Area	27	1,056,322	17%	2%	\$3,168,966	\$5,281,610
Fairbanks-Delta	16	1,307,648	10%	1%	\$3,922,944	\$6,538,240
Kenai Peninsula	40	1,600,320	26%	4%	\$4,800,960	\$8,001,600
Anchorage Area	19	4,390,957	13%	2%	\$13,172,872	\$21,954,786
Total Urban	23	9,740,012	15%	2%	\$29,220,036	\$48,700,060
Alaska Total	100	53,454,618	65%	9%	\$160,363,854	\$267,273,090

Figure 6

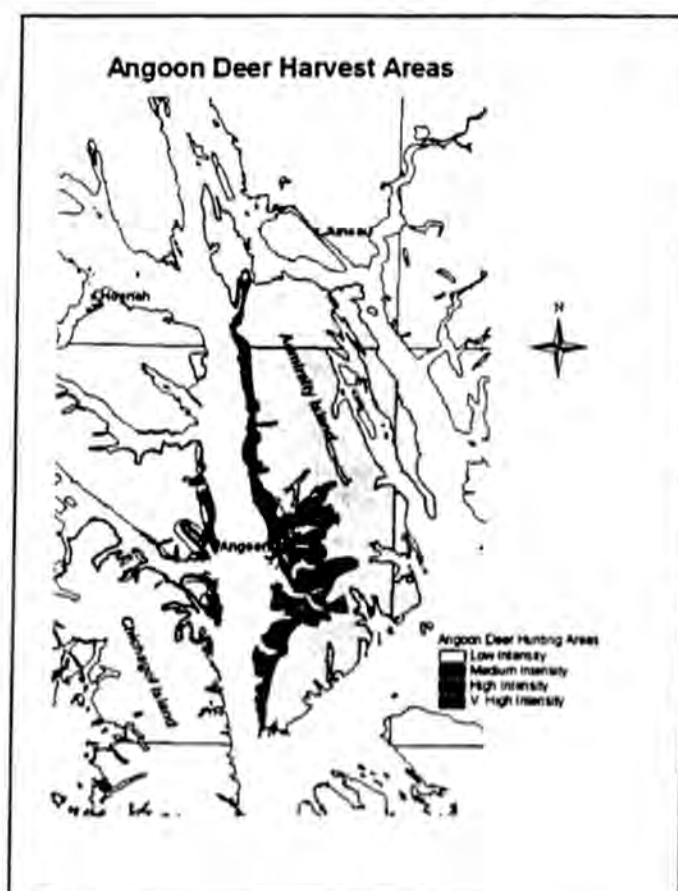


Figure 7

Traditional Harvest Areas

Studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. Subsistence harvest areas are accessible from the community, although seasonal camps are used to access some species. Subsistence harvest areas for communities are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (see Fig. 7).

The Monetary Value of Subsistence Harvests

Subsistence fishing and hunting are important to the rural economy. Attaching a dollar value to wild food harvests is difficult, as subsistence products do not circulate in markets. However, if families did not have subsistence foods, substitutes would have to be purchased. If one assumes a replacement expense of \$3 - \$5 per pound, the simple "replacement value" of the wild food harvests in rural Alaska may be estimated at \$131.1 - \$218.6 million dollars annually (see Fig. 6).

Subsistence and Money

Subsistence is part of a rural economic system, called a "mixed, subsistence-market" economy. Families invest

money into small-scale, efficient technologies to harvest wild foods, such as fishwheels, gill nets, motorized skiffs, and snowmachines. Subsistence food production is directed toward meeting the self-limited needs of families and small communities, not market sale or accumulated profit as in commercial market production. Families follow a prudent economic strategy of using a portion of the household monetary earnings to capitalize in subsistence technologies for producing food. This combination of money from paid employment and subsistence food production is what characterizes the mixed, subsistence-market economies of rural areas. Successful families in rural areas combine jobs with subsistence activities and share wild food harvests with cash-poor households who cannot fish or hunt, such as elders, the disabled, and single mothers with small children.

Dual Subsistence Management

Subsistence fishing and hunting in Alaska are regulated by the State of Alaska and the federal government, depending upon where the harvests occur. This system is called a "dual management system" because there are overlapping state-federal jurisdictions in many areas. The federal government regulates federal subsistence fisheries and hunts on federal public lands and federally-reserved waters in Alaska. The State of Alaska regulates state subsistence fisheries and hunts on all Alaskan lands and waters. A harvester should consult both the federal subsistence regulation booklet and the state subsistence regulation booklet, to be apprised of the complete set of hunting or fishing regulations in a particular area.

The Alaska Board of Fisheries and the Alaska Board of Game create regulations for state subsistence fisheries or hunts. The Federal Subsistence Board creates regulations for federal subsistence fisheries or hunts. In creating regulations, each board follows procedures for obtaining information and comment on proposed regulations from the public, agencies, and other interests.

Hunting of marine mammals is managed by the federal government through the National Marine Fisheries Service (seals, sea lions, and whales) or the U.S. Fish and Wildlife Service (polar bear, sea otters, and walrus). There is an exemption in the federal Marine Mammal Protection Act to allow for the traditional harvest and use of marine mammals by coastal Alaska Natives.

Subsistence hunting and fishing are closed in non-rural areas of Alaska by the federal and state programs. Federal law recognizes subsistence harvests only by residents of rural areas. State law recognizes subsistence harvests in subsistence areas outside the boundaries of "nonsubsistence areas". The Federal Subsistence Board and the Alaska

Joint Board of Fisheries and Game have determined that the areas around Anchorage-Matsu-Kenai, Fairbanks, Juneau, Ketchikan, and Valdez are non-rural areas, where fish and game harvests may be allowed under sport, personal use, or commercial regulations, but not under subsistence regulations.

The Subsistence Priority

Subsistence uses of fish and land mammals are given a priority over commercial fishing and recreational fishing and hunting in state and federal law. This means that when the harvestable portion of a fish stock or game population is not sufficient for all public uses, that subsistence uses are restricted last by regulation.

By and large, urban fishers and hunters have not experienced major changes in harvest opportunity due to the subsistence priority. General hunting and sport fishing regulations continue to provide opportunities for residents and non-residents. Personal use net fisheries provide for established food fisheries of urban residents in areas closed to subsistence fishing.

For example, during the eleven-year period when the rural priority was being implemented under state management (1978-1989), general resident hunting seasons for caribou increased by 36% (from 5,505 days to 7,500 days), moose hunting days decreased by 10% (from 2,961 days to 2,671 days), and Dall sheep hunting days increased by 2% (from 1,855 days to 1,900 days) – comparing the 1978-79 resident season with the 1989-90 resident season. That is, during this period, hunting days by urban hunters for caribou, moose, and sheep were not significantly changed by the rural subsistence priority.

The greatest effect of state and federal subsistence laws has been to legally recognize customary and traditional harvest practices and uses in rural areas. Because of the law, the Alaska Boards of Fisheries and Game and the Federal Subsistence Board have created subsistence regulations designed to provide opportunity for the continued harvest of the rural food supply. While impacts on urban residents have been relatively small, the impacts on rural areas have been great. Rural residents have a legally protected opportunity to fish and hunt to feed families following long-term customs and traditions.

*Robert J. Wolfe, Research Director, Division of
Subsistence, ADF&G, Juneau, March 2000*

SCOMM

131:8

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM

February 26, 2003

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

TO: Representative Paul Seaton
Attn: Cameron Yourkowski

FROM: George Utermohle *GU*
Legislative Counsel

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

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

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

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

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

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

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

SPECIFIC QUESTIONS. You have asked a number of questions regarding the effect of EO 107 on the role of the Department of Fish and Game in issuing permits for fishways (AS 16.05.840) and anadromous fish streams (AS 16.05.870) and in regard to forest resources and forest practices under the proposed amendments to AS 41.17. The best way to address your questions is to answer each one separately.

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

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

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

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

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

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

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

The answer to all three questions is no. The Department of Natural Resources is not required to consult with the Department of Fish and Game regarding anadromous fish stream and fishway permits. The Department of Fish and Game may still provide advice to the deputy commissioner of natural resources, regardless of whether it is solicited or not by the deputy commissioner, but the deputy commissioner is not required to follow that advice. There is no provision of the executive order that requires the Department of Natural Resources to inform the Department of Fish and Game of applications for or the issuance of anadromous fish stream permits or fishway permits, though the Department of Natural Resources could provide such information to the Department of Fish and Game if it chose to do so.

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

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

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

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

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

An appeal of the decision of the commissioner of fish and game in regard to an application for an anadromous fish stream permit under AS 16.05.870 is subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 which provides for appeal procedures, a hearing before a hearing officer, and judicial review of the agency decision. An appeal of the decision of the deputy commissioner of natural resources in regard to an anadromous fish stream permit would be made to the commissioner of natural resources under AS 44.37.011(b). An appeal of the decision of the commissioner is then reviewable in the courts. Section 41 of the executive order provides that functions of the Department of Natural Resources relating to the protection of fish and game under AS 41.14.870 (anadromous fish stream permits) are subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630. An appeal of a decision to the commissioner of natural resources under AS 44.37.011 would also be subject to administrative adjudication procedures of AS 44.62.330 - 44.62.630.

There are no formally established appeal procedures regarding fishway permits under AS 16.05.840. Appeals under AS 16.05.840 are not subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 and the commissioner of fish and game has not adopted any regulation specifically relating to such appeals. Upon the transfer of responsibility for fishway permits to the Department of Natural Resources, an appeal of the decision of the deputy commissioner may be made to the commissioner, and then to the courts under AS 44.37.011(b). The department may adopt appeal procedures that it considers necessary by regulation.

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

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

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

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

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

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

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

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

When EO 107 takes effect the Department of Natural Resources will be responsible for issuing anadromous fish stream permits and fishway permits. The requirements for these permits will apply throughout the state on state, private, and other government land¹.

¹ The applicability of the permit requirements of the current AS 16.05.840 and 16.05.870 and the proposed AS 41.14.840 and 41.14.870 to federal land depends on the nature of the federal land involved. In some cases, the state will not be able to require the federal government or its agents or contractors to comply with the permits if the requirements interferes with a federal program. The supremacy clause of the federal constitution

One of the major responsibilities of the Department of Natural Resources is for the management of state lands. There is no conflict between the responsibilities of the department for the management of state lands and the regulation of private, state, or other government activities in the waters of the state. The legislature may assign any functions it considers appropriate to the Department of Natural Resources. Likewise, the governor by executive order may transfer any function currently assigned to another state agency to the Department of Natural Resources. There are virtually no constitutional limits on the types of functions that can be assigned to the department. If, for policy reasons, the legislature determines that the scope of the Department of Natural Resources should be limited to matters directly related to state lands then it can limit the functions of the department accordingly by law.

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

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

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

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

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

When EO 107 takes effect, the expertise and views of the Department of Fish and Game are no longer entitled to deference under AS 41.17. Section 23 of the executive order provides that the deputy commissioner of natural resources is the expert on fish and

protects the federal government from having to comply with state regulations that interfere with the mission of federal agencies.

wildlife habitat for purposes of AS 41.17. All deference formerly accorded to the Department of Fish and Game in regard to the effects of timber operations on fish habitat must now be accorded to the expertise of the deputy commissioner of natural resources. Responsibility for identifying anadromous fish streams will also pass to the deputy commissioner of natural resources.

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

Due deference accorded to the Department of Fish and Game under AS 41.17 is completely separate and distinct from the authority of the department to issue anadromous fish stream permits. The due deference requirement provides that the Department of Natural Resources is to defer to the advice given by the Department of Fish and Game in regard to the effect of timber operations on fish habitat. The due deference provisions give the Department of Fish and Game much more input into the timber management process than does the anadromous fish stream permits. The anadromous fish stream permits relate mostly to activities occurring in the stream bed, while the due deference provision gives the department an opportunity to address timber operations occurring above the stream that may affect fish habitat.

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

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

An opportunity to consult would provide the Department of Fish and Game with the ability to provide advice and insight into fish and wildlife habitat issues, but the responsibility for matters affecting fish and wildlife habitat under AS 41.17 would lie solely with the Department of Natural Resources.

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

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

* * *

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

First, in sec. 5 of the executive order, a new sec. 41.14.165 is added to provide that a peace officer may issue a citation for violations of the requirements of the fish passage and anadromous fish stream permits. Included in the new sec. 41.14.165 is a requirement that the Alaska Supreme Court determine which misdemeanors under the new AS 41.14 are appropriate for disposition without court appearance. Also included in that section is a requirement that the court establish an advisory committee consisting of certain members, including judges and the chairs of the House and Senate judiciary committees. The governor's executive order authority is a limited authority to restructure the executive branch of state government. That authority does not allow the governor to place duties on either the legislative or judicial branch of government. In this case, both the Alaska Supreme Court and the legislature could completely ignore the requirements imposed by this section because the governor does not have the authority to impose any duty on them through an executive order.

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

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

* * *

Representative Paul Seaton
February 26, 2003
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EO 107 makes a number of technical conforming amendments to the numerous statutes that must be changed to conform to the transfer of responsibility from the commissioner of fish and game under AS 16.05.870 to the deputy commissioner of natural resources under AS 41.14.870. However, the executive order fails to contain two statutes that should be amended to eliminate soon to be obsolete references to AS 16.05.870. AS 46.15.035(c) and 46.15.037(c) provide for the reservation of a volume of water necessary to protect fish habitat in anadromous fish streams identified by the Department of Fish and Game under AS 16.05.870 when the state approves the transfer of water from one hydrologic unit to another, or when the state sells water from a hydrologic unit. Both of these statutes should be amended to replace the reference to "AS 16.05.870" with "AS 41.14.870". The executive order cannot be amended, so these changes must be made in a separate bill.

* * *

If I may be of further assistance, please advise.

GU:lmb
03-046.lmb

Habitat move

*Governor will get his way;
it's time to hold him accountable*

The Republican-dominated House apparently plans to let Gov. Murkowski have his way and strip the Department of Fish and Game of responsibility for habitat protection permits. Friday, the House voted not to expedite a resolution rejecting the governor's controversial reorganization. It was almost a straight party-line vote, with only Republican Paul Seaton of Homer breaking ranks.

The deadline to reject the governor's move is fast approaching, and four more committees would have to clear the repeal measure before the House could vote on it. As a result, the habitat permit job will almost certainly be moved to the development-oriented Department of Natural Resources.

The Legislature's refusal to block the move comes as no surprise. It's an item of faith with the governor and his legislative acolytes that obstructionist greenie bureaucrats are thwarting Alaska's economic progress. It's a myth, but it's a powerful one. In the case of habitat permits, the myth has survived repeated, heavy doses of fact.

When the Alaska Constitution was being drafted, the founders considered using a single resource agency to both regulate and promote development. They decided against it. The founders were not a bunch of greenie lock-up types. They wanted to stimulate development. They knew the state didn't have a lot of money to spend on unnecessary bureaucrats. But they also knew Alaska had to carefully balance development with protection of the state's world-class fish and wildlife.

Attempts to speed up development with environmental shortcuts will almost certainly backfire. Take the Lower Cook Inlet oil and gas lease sale. The Department of Natural Resources insisted on including sensitive habitat areas and declined to include other mitigation measures. The state was sued and lost. In another case, Gov. Wally Hickel tried to ram through the Copper River Highway without doing the necessary environmental homework. Ten years later, the state is finishing the last of four costly remediation projects required to clean up the environmental and legal messes.

Alaska now has a Republican governor and Republican Legislature, so there's no room for political buck-passing. Gov. Murkowski has repeatedly said he wants Alaskans to hold him accountable. When projects are held up because of legal problems that could have been avoided, Alaskans will know who to blame.

EO 107

February 25, 2003

The Honorable Les Gara
Alaska State Legislature
State Capitol, Room 422
Juneau, AK 99801

Dear Representative Gara:

You asked for my perspective on the effect of Governor Frank Murkowski's Executive Order 107 on Alaska's fish resources. This order transfers responsibility for protection of fish habitat, specifically in-stream permitting authority for anadromous and resident fish habitat and joint authority on logging within the 66-foot riparian buffers on private timberland in the coastal forest, from the commissioner of the Alaska Department of Fish and Game (ADF&G) to a deputy commissioner in the Department of Natural Resources (DNR).

My perspective on this issue may be unique. I worked as a resource manager and supervisor in DNR for nine years, was Habitat Director at ADF&G for seven years, and served as Commissioner of Fish and Game for eight years. I know and understand the statutory missions of both departments, and have worked with and appreciate the capable, professional staff in both departments.

I believe that moving ADF&G's in-stream permitting authority and ADF&G's responsibility for stream buffers to DNR will be bad for fish and for Alaskans who depend on wild fish for their jobs, recreation, or subsistence.

Executive Order 107 proposes a radical change to the way Alaska's wild fish have been managed since before statehood. At statehood, the Alaska Legislature decided to create two separate resource agencies, and purposefully assigned ADF&G responsibility for managing Alaska's fish and wildlife and protecting its habitat. The continued strength of Alaska's wild fish resources is testament that ADF&G has done its job well for the past 43 years.

In 1989, the legislature amended the state's Forest Resources and Practices Act, and after numerous hearings and vigorous debate and analysis, it once again decided to maintain authority for in-stream permitting within ADF&G despite pressure from the timber industry to move that authority to DNR. The legislature even went further and gave ADF&G deference on whether or not DNR should allow logging within the 66-foot buffers along salmon streams on private land in the coastal forest of Alaska. The order transfers ADF&G's responsibilities for

buffers to DNR. As a result, salmon streams in the coastal forest will now be at far greater risk of harm.

You asked: ***"Why will implementation of the Anadromous Fish Act, the Fishway Act, and the Forest Resources and Practices Act be less protective of salmon and trout if they are housed in DNR?"***

Anadromous Fish Act

First, and most important, the Anadromous Fish Act gives broad discretion to the commissioner of ADF&G. The commissioner, and now the deputy commissioner of DNR, can be either rigorous or lax in the implementation of this broad discretion.

For example, the Anadromous Fish Act presently requires the ADF&G commissioner to **"determine the waters in the state that are important for the rearing, spawning and migration of anadromous fish."** Under the order, this discretion will move from the agency with the scientific expertise to make the determination, to a deputy commissioner of DNR who now will decide what constitutes **"important habitat."** If DNR decides a stream is not **"important"** it will not receive protection under the Anadromous Fish Act. People will be able to mine, drive equipment through, or dig up spawning beds without a permit.

The Anadromous Fish Act also gives the ADF&G commissioner broad discretion to determine what constitutes **"proper protection"** for the rearing, spawning and migration of anadromous fish in **"important"** streams. Again, implementation can be either lax or rigorous. The level of rigor and care will now be in the hands of a deputy commissioner in DNR, not the commissioner of ADF&G.

There are no hard and fast standards of protection in the Anadromous Fish Act. It made sense to Alaska's first legislature to give ADF&G biologists the broad discretion and flexibility to decide what is important habitat using their expertise and professional judgment, and to make field determinations of what protections are needed given the fish resources present and the proposed development. That system has worked successfully to protect Alaska's fish habitat even as Alaska developed its lands and resources over the last four decades.

Fishway Act

The Fishway Act also gives broad discretion to the commissioner of ADF&G. It says: **"if the commissioner considers it necessary, every dam or other obstruction built by any person across a stream frequented by salmon or other fish**

shall be provided by that person with a durable and efficient fishway...." Since statehood it has been the responsibility of the commissioner of ADF&G to determine when it is necessary to provide fish passage. Under this order, a deputy commissioner in DNR will judge when it is necessary to provide fish passage. Again, there is no definitive standard of protection; protection depends on the expertise and commitment of the responsible agency.

Frankly, I do not believe a DNR deputy commissioner will implement this statutory discretion over the fate of anadromous and resident fish species with the same expertise and commitment that commissioners of ADF&G have exercised for the last 43 years. DNR statutes say nothing about managing, protecting, maintaining, enhancing and extending the fish and wildlife of Alaska. Their mission is not to protect and manage these stocks for the commercial, recreational, and subsistence needs of Alaskans; it is to develop Alaska's other natural resources.

I have been part of cabinet-level decisions, both as the director of the Habitat Division and as commissioner of ADF&G, that would have resulted in the unnecessary loss of salmon and trout if ADF&G had not been present as the agency with the statutory authority to protect fish habitat. Without ADF&G commissioner level responsibility the fish, and people dependent on them, will suffer--plain and simple.

Second, location of habitat biologists in DNR will effectively sever their daily access to other ADF&G staff and expertise. Permit decisions are not made in isolation by the Habitat Division. Professional biologists in the Sport Fish, Commercial Fisheries, and Wildlife divisions of ADF&G also bring their expertise to permit decisions. Habitat division staff rely on their knowledge about what fish live in a stretch of stream, and the life stage and sensitivity of a species at the time of proposed development. This collaboration will not occur as easily, if at all, between departments.

Third, I understand the administration has indicated that only between eight and 12 of the 20 habitat permitters will move to DNR. If this is correct, fewer habitat biologists will mean project reviews will either be slower, made with less knowledge of field conditions, or merely a rubber stamp of whatever is proposed.

Currently most projects, and all major projects, get a pre- and post-construction site visit by ADF&G staff. This allows ADF&G to work directly with developers to design project-specific steps to address the needs of the specific species and habitat. Grayling over-wintering habitat in a North Slope oil field requires different approaches to habitat protection than bank stabilization to protect a private home on the Kenai River. Good decisions about such diverse development

in such diverse fish habitat cannot be made from a desk with a rubber stamp. And while each individual decision may appear insignificant, it is the cumulative impact of all these decisions over 43 years that has protected the integrity of Alaska's fish habitat.

You asked for: *"an example that illustrates the difference between the ADF&G and DNR approaches to in-stream fish habitat protection."*

One example that illustrates the different approach I think you will see to in-stream salmon and trout habitat permitting involved the Unuk River near Ketchikan.

The Unuk River produces great king and coho salmon runs valued by sport and commercial users. It also supports other salmon species, char and trout. Years ago, DNR approved a log salvage operation that allowed an amphibious vehicle to operate in the streambed to remove trees that had washed into the river. At the time, ADF&G was concerned about the loss of wood in the river, but did not have good enough information about its role as fish habitat to support an objection.

ADF&G researched the fish habitat function of trees that wash into the Unuk River and found that deep scour pools form along the huge trunks and provide critical over-wintering habitat for thousands of juvenile king and coho salmon as well as trout. The trees form logjams that, in turn, form pools that aid adult salmon migration and provide summer rearing habitat for juvenile king and coho salmon. Logs that jam side channels of this glacial river turn turbid channels into clear water rearing areas for juvenile coho.

When the log salvage license came up for renewal it was denied, because the ADF&G commissioner had good science to support his strong objections to the operation. These logs were, and still are, more valuable in the river. If not for ADF&G's authority, science, and adamant opposition, DNR would have again allowed logging in the Unuk River, thus destroying valuable fish habitat. **The executive order effectively removes ADF&G from these types of decisions.** Next time, only the DNR State Forester and deputy commissioner will have authority over the outcome of logs and fish in the Unuk and every other river in Alaska.

Stream Buffers

Executive Order 107 removes any role for ADF&G in approving or denying the harvest of trees from within the 66-foot stream buffers along salmon streams on private land in the coastal forest of Alaska. These trees are critical

to the health of salmon streams. Research done by the National Marine Fisheries Service, Auke Bay Lab, and others throughout the northwest, has shown that fish streams need a minimum of 100-foot buffers to protect fish habitat. That is why Alaska law requires mandatory 100-foot no cut buffers on public lands in the coastal forest. The politics of creating buffers on private lands required compromising this 100-foot standard and adopting a 66-foot standard on private lands. The 66-foot buffer is not a "no cut" buffer. Trees can be removed if the DNR forester agrees. ADF&G is supposed to get deference, but not a veto, on whether to cut in the buffer.

DNR has ignored ADF&G on many occasions and allowed cutting in the 66-foot buffers. In fact, DNR accepted a "formula variation" request from Koncor Forest Products on Afognak Island that proposed removing every tree larger than a certain diameter from the buffer, regardless of their value for fish habitat protection. ADF&G objected and eventually its objection and public pressure forced DNR to deny the request.

ADF&G currently has some influence over DNR's decision on whether to cut trees in the buffers. That will change under the order. The DNR State Forester will now make the decision whether to log the buffers after giving due deference to his deputy commissioner. **ADF&G will have no voice in whether these trees stay in the buffer and continue to provide fish habitat.** Far more trees will be removed from these protective buffers without ADF&G participating in the decision.

Under Executive Order 107, habitat biologists and the many Alaskans who depend on salmon, trout, char, and grayling won't have the weight and stature of the commissioner of ADF&G looking out for the health of the habitat that produces these fish. Instead, the care of Alaska's fish will be relegated to a deputy commissioner in DNR. Anyone who believes this will lead to equivalent protection for Alaska's salmon and trout is sadly mistaken.

Lastly, I question why some feel this order is necessary. ADF&G routinely reviews some 2,000 permit requests every year (38,000 in the last twenty years) and 99 percent are granted within 15 days. Sure, some developers complain. Any agency that brings the fish and wildlife issues to the table when mining, oil and gas, roads, timber and other development projects are reviewed is bound to have its critics. I don't believe this warrants having ADF&G's authority to protect salmon and trout streams stripped and permitting development with no input from the department that knows best what is needed for fish and has the courage to say it.

If you look closely into the concerns Governor Murkowski has raised you will find ADF&G staff are doing their job. Are Alaska's oil, transportation, mining, and timber resources being developed? Yes. Does the public trust that a permit issued by ADF&G will protect fish? Yes. Will this same trust exist if DNR is issuing the permit? No. Are well-designed projects unreasonably delayed by the in-stream permitting requirements of ADF&G? No. Are poorly designed projects improved by having ADF&G approve their in-stream components? Yes. And are the fish and wildlife of Alaska still the envy of the world in large part because ADF&G has consistently brought good science and a strong commitment to fish and wildlife resources to the table? A resounding Yes.

If this or any future administration thinks the policies of ADF&G are unnecessarily protective of fish habitat for certain development projects, it can adopt different implementation policies without destroying the checks and balances that have served Alaska well for 43 years.

The executive order is bad public policy and will be bad for Alaska's fish and wildlife. The process for making this radical change denies Alaskans the chance to understand its meaning and voice their opinion. I hope the legislature will hold enough hearings to understand the long-term effects of this move and listen to the people of Alaska. I hope the administration allows biologists to be heard without fear of reprisal.

I have not addressed the impact of Executive Order 106, however, this too will lead to great loss of Alaska's fish and wildlife. I hope the legislature takes the time to listen to all sides on these issues and seriously considers the long-term ramifications of these proposals. The health of Alaska's world-class fish resources deserve the time and attention of the legislature.

If you have further questions please don't hesitate to ask.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Rue", with a long horizontal flourish extending to the right.

Frank Rue

cc: Representative Paul Seaton, Chair, Fisheries Committee

Alaska State Legislature

no objection

Chair
Seaton

Vice Chair
Wilson

Members
Berkowitz
Guttenberg
Heinze
Kott
Samuels



State Capitol
Juneau, AK 99801
(907) 465-3306
(907) 465-3472

House Special Committee on Fisheries

MEMORANDUM

TO: House Fisheries Committee Members

FM: Representative Paul Seaton, Chair
House Fisheries Committee

DATE: March 28th, 2003

RE: Waiving HSCR 1 From Fisheries Committee

HSCR 1 is sponsored by Rep. Gara and is intended to reject Executive Order 107. EO 107 transfers the Department of Fish and Game Habitat Division to the Department of Natural Resources.

I support the waiving HSCR 1 from the House Special Committee on Fisheries.

Cheryl M. Brown Heinze
Representative Heinze

[Signature]
Representative Samuels

[Signature]
Representative Ogg

[Signature]
Representative Berkowitz

[Signature]
Representative Guttenberg

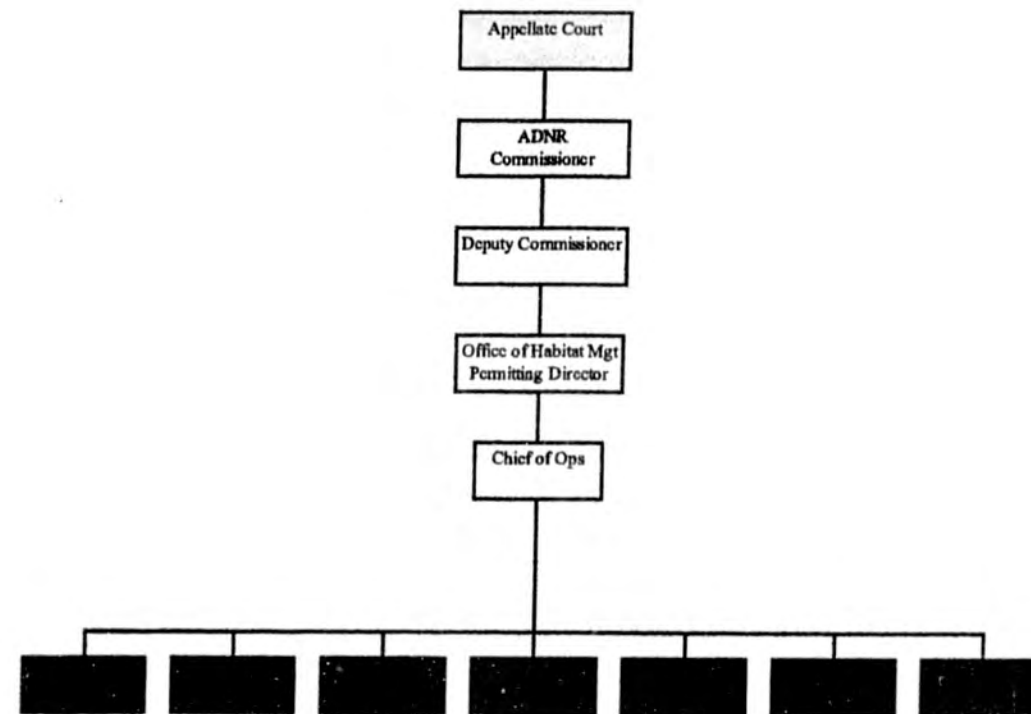
Beggy Wilson
Vice-Chair Wilson

Paul R. Seaton
Chair Seaton

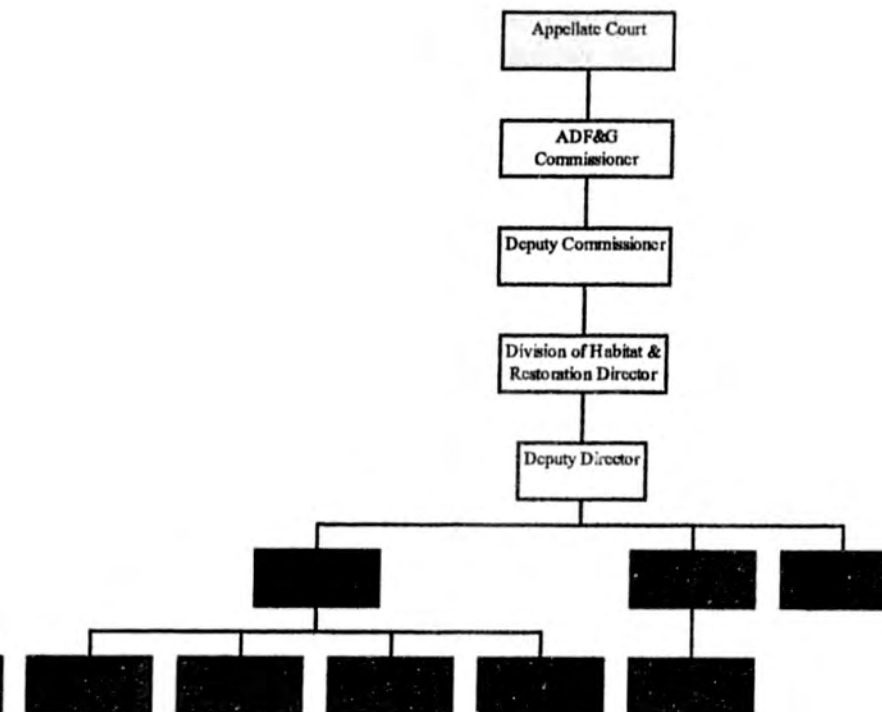
Please feel free to contact me with questions anytime x2689, or you can contact my Committee Aide, Cameron Yourkowski, x3306. Thank you.

.840 Permits -- Appeal Procedures

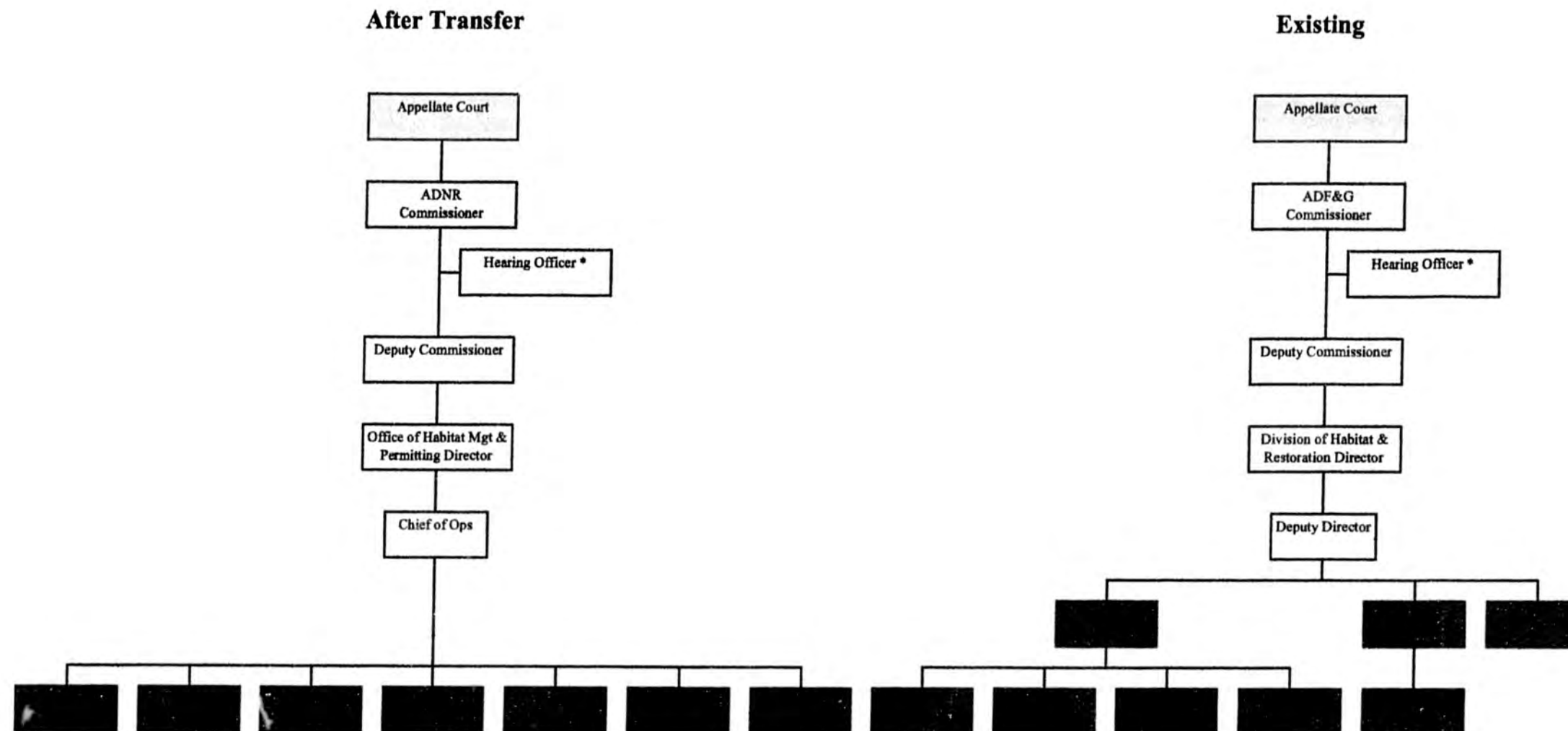
After Transfer



Existing



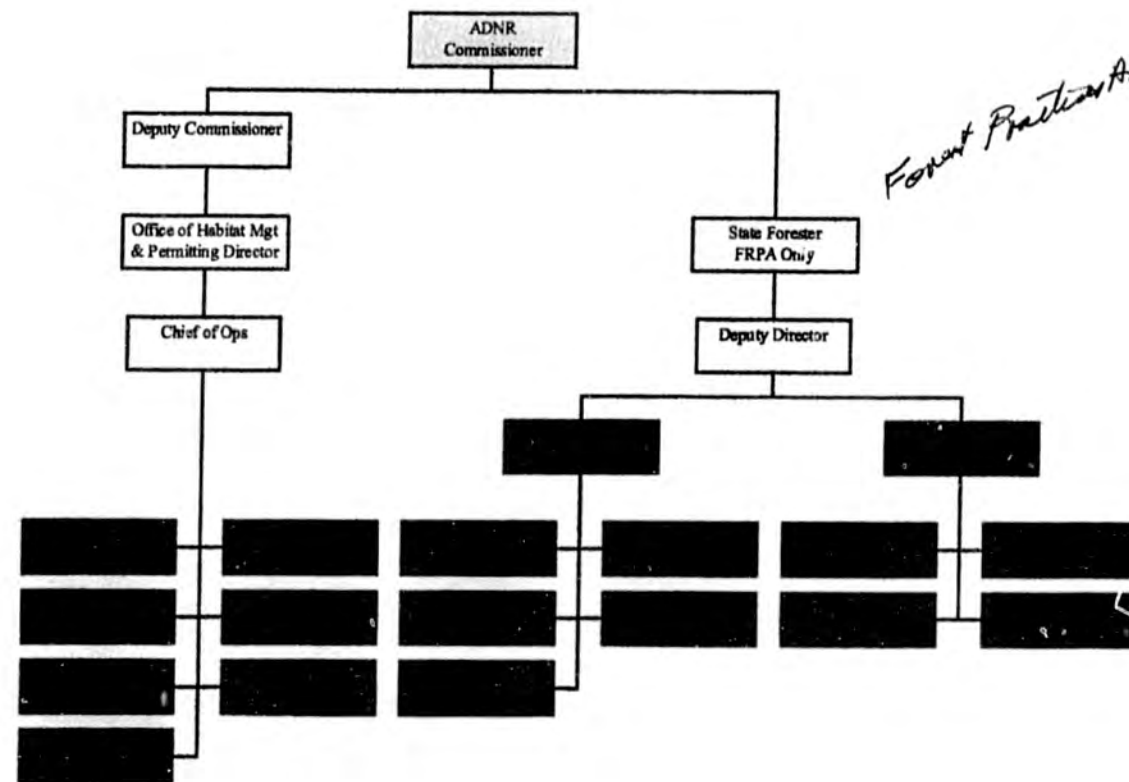
.870 Permits -- APA Appeal Procedures
AS 44.62.330-.630



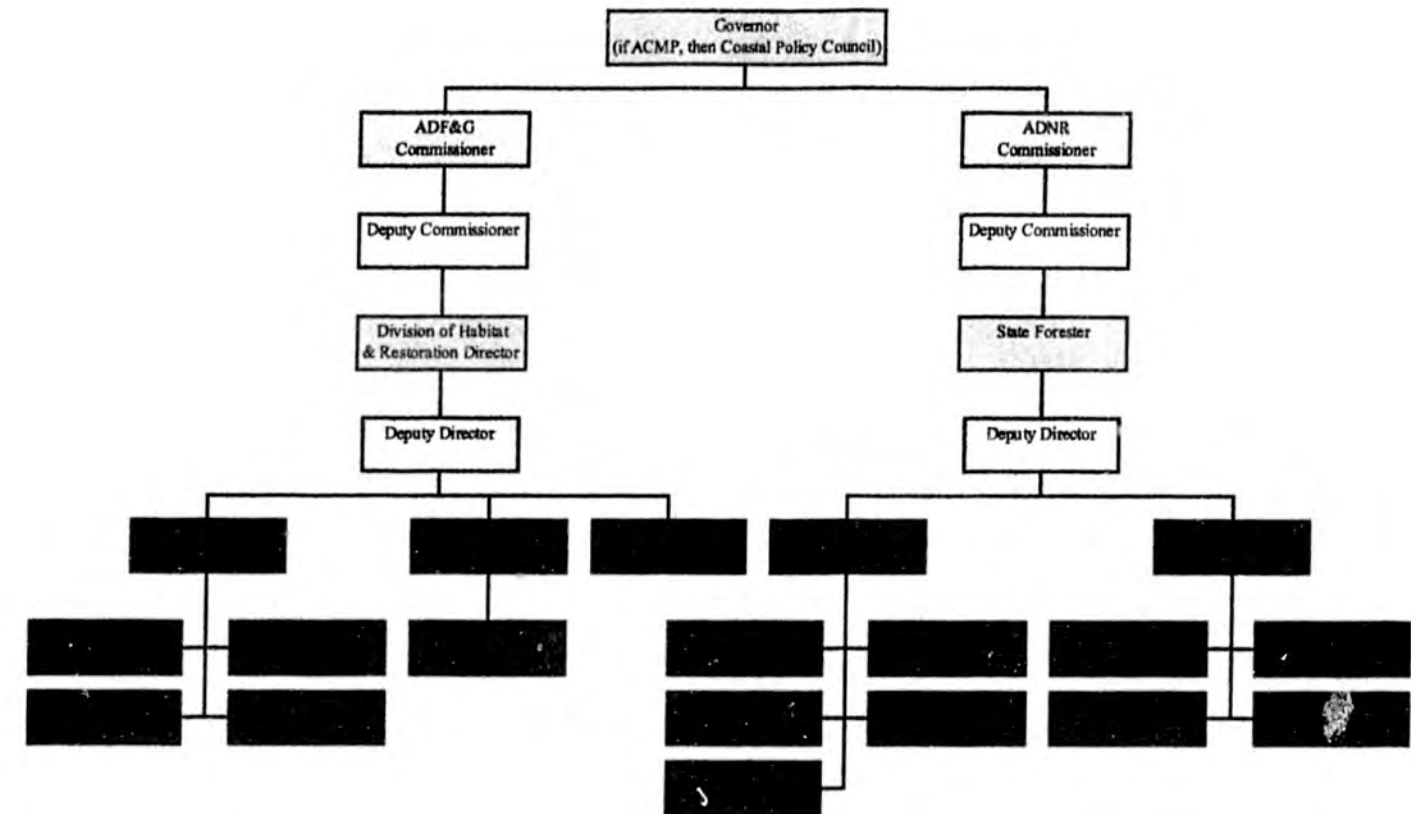
* **Hearing Officers** are not permanent positions within these two departments. Instead, when a hearing is requested, either a department employee is tasked, or a professional services contract secures a 3rd party hearing officer, or funds are RSA'd to another department for an employee to conduct the hearing. After conducting the hearing and reviewing all the facts, a **Hearing Officer** makes a recommendation to the Commissioner. The final decision of the department, however, is made by the Commissioner.

Conflict Resolution Between Forestry and Habitat
(Forest Resource Practices Act Only)

After Transfer



Existing



Department of Fish and Game

Division of Habitat and Restoration

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

Effective Date: April 15, 2003

27 Biol.

Functions Moving to DNR (36 positions)

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

14.5 Biol.

Functions Moving to Sport Fish (19.5 positions)

- Fish stream surveys and database
- Various research and restoration projects (e.g., stream bank restoration manuals and assistance, ATV study and mapping)
- Oil spill contingency plan reviews
- ACMP support to DFG Commissioner
- Special Areas Permitting
- • Kachemak Bay National Estuarine Research Reserve (10.5 positions)

3 Biol

Functions Moving to Wildlife Conservation (4.5 positions)

- Access Defense
- CARA/SWG
- North Slope Grizzly Project

3 Biol

Functions Moving to Comm Fish (3 positions)

- LTF Dive Survey
- Mariculture Leases
- Invasive Species

EVOS (1 position)

- ARLIS Librarian

30 full time
23 currently full time
Added area in Mat Su
Kos. + Sitka

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting

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

s = lead biologist/supervisor

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

Job Class		HB IV	HB III	HB II	HB I	Cart II	Admin Mgr	AP II-IV	Totals
Range		20	18	16	14	15	15	16-20	
	Anchorage	1 ^s	5	2		1	1	1	11
	Fairbanks		1						1
	Juneau		1						1
	SSF		2	1	1.5			2	6.5
Totals		1	9	3	1.5	1	1	3	19.5

Kachemak Bay Research Reserve

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

Wildlife Component

Job Class		HB III	HB II	HB 1	Cart II	FWT III			
Range		18	16	14	15	11			Totals
Anchorage		1		1	1	0.5			3.5
Fairbanks		1							1
Totals	0	2	0	1	1	0.5	0	0	4.5

Comm Fish, EVOS Component

Job Class	HB IV	HB III	Libr II						
Range	20	18	17						Totals
Anchorage	1	1	1						3
Juneau		1							1
Totals	1	2	1	0	0	0	0	0	4

Habitat Division Layoffs and Position Deletions

ANTICIPATED LAYOFFS

Anchorage -
 11-6029 Regional Supervisor
 11-6041 Habitat Biologist II
 11-6054 Habitat Biologist II
 11-6149 Cartographer I
 11-6053 Administrative Clerk
 11-6066 Administrative Clerk
 Non-Perm Administrative Clerk
 Non-Perm F&W Technician II
 Non-Perm Fisheries Biologist III
 Non-Perm Natural Resource Mgr I

Fairbanks
 11-6010 Regional Supervisor

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

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

Ketchikan
 11-6069 Habitat Biologist III

Craig
 11-6083 Habitat Biologist II

VACANT POSITIONS TO BE DELETED

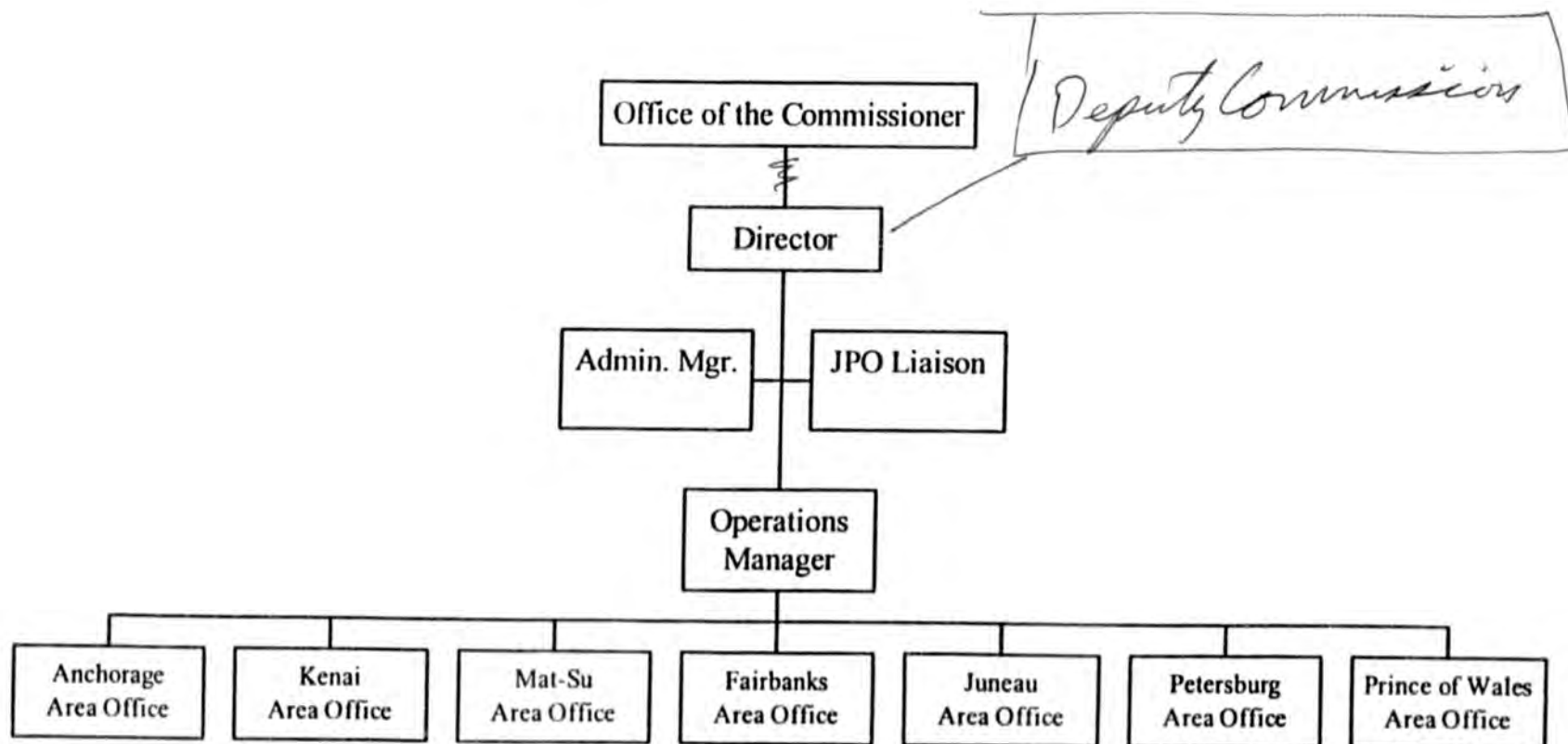
Anchorage
 11-135X Pipeline Liaison
 11-6146 Habitat Biologist III
 11-7716 Habitat Biologist III
 11-7717 Habitat Biologist III
 11-7600 Habitat Biologist I
 11-7090 F&W Technician III

Fairbanks
 11-6061 Habitat Biologist I

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

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

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting



**Director
Sport Fish**

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



**Alaska Department of
Fish and Game**

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



**Alaska Department of
Natural Resources**

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

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

News For Immediate Release

March 7, 2003

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

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

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

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

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

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

-More-

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

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

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

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

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

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Southeast Alaska Conservation Council

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www.seacc.org • info@seacc.org

Testimony on Executive Order 107

Before the

Alaska House Special Committee on Fisheries, March 26, 2003

by

Bruce Baker, President, Board of Directors, Southeast Alaska Conservation Council

I'm Bruce Baker and am testifying on behalf of the Southeast Alaska Conservation Council (SEACC), a coalition of 18 volunteer conservation groups in fourteen communities across Southeast Alaska from Yakutat to Ketchikan. SEACC is dedicated to safeguarding the integrity of the region's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources.

Ten years ago I retired from ADF&G after serving 11 years as Deputy Director of its Habitat Division. SEACC agrees with much of the previous legislative testimony against Executive Order (EO) 107. My primary question tonight is why the legislature would acquiesce to the relinquishment of the authority you've retained over fish and game habitat protection since statehood.

We urge you to carefully consider the following points:

1. EO 107 reduces the authority and right of the legislature to influence executive management of the state's fish and wildlife by shifting the core statutory responsibilities of the ADF&G (Alaska Department of Fish and Game) Commissioner, an executive officer appointed by the Governor and subject to legislative confirmation, to a deputy commissioner of DNR (Department of Natural Resources) appointed by the DNR Commissioner and not subject to legislative confirmation.

Under the Alaska Constitution and existing law, the legislature enjoys the power to exercise direct influence over the Governor's management of fish and wildlife resources by exercising its authority to confirm the Commissioner of ADF&G and members of the Boards of Fisheries and Game, appointed by the Governor. (See Article III, Sec. 25 of Alaska Constitution; AS 44.39.030; AS 16.05.221(a), (b)). The Alaska Constitution (Article III, sec. 25) states: "The head of each principal department shall be a single executive . . . He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session . . ."

The power of Governor Murkowski to amend statutes as required to reorganize the executive branch is a legislative power conferred expressly upon the executive in the Constitution (Article III, sec. 23).

- EO Section 5 transfers the Commissioner of Fish and Game's authority to protect fish passage (AS 16.05.840) and fish and game habitat (AS 16.05.870) to the DNR deputy commissioner.
- EO Section 23 transfers ADF&G's authority to protect fish habitat from the effects of logging operations under the Forest Practices Act (AS 41.17.098(c)) to the DNR deputy commissioner.

The first Alaska Legislature specifically assigned accountability for core ADF&G functions to the Commissioner of Fish and Game. The law permits the legislature to retain influence over the executive branch's management of fish and game by making the state official directly responsible for fish passage (AS 16.05.840) and fish and game habitat protection (AS 16.05.870), the ADF&G Commissioner, subject to the legislature's constitutional power to confirm. However, EO 107 assigns these core fish and game responsibilities to a deputy commissioner, a position not directly accountable to the legislature. The Commissioner of DNR will not have any direct authority or responsibility for these functions. We contend that the Governor lacks the constitutional authority to reassign critical fish and game functions, specifically delegated by the legislature to a commissioner-level officer, to a lesser official such as the DNR deputy commissioner. EO 107 is, therefore, constitutionally impermissible because it does not simply reorganize the functions of the executive branch but significantly alters those functions by assigning them to an executive official who is not the head of the department.

Under Section 40 of the EO, the DNR Commissioner is given the authority to appoint the deputy commissioner. Although the legislature has the authority to confirm the DNR Commissioner, the executive order transfers the responsibility and accountability for fish passage and the protection of fish and game not to a DNR Commissioner but rather to a deputy commissioner that he or she appoints. Although the legislature has provided the DNR Commissioner with the authority to assign functions within the department (AS 44.17.010), the executive order does not assign the fish passage and protection of fish and game functions to the Commissioner of DNR or to the department itself. Instead, the order assigns these critical functions to a deputy commissioner. Under EO 107, the Commissioner of DNR will not have any direct authority or responsibility for these functions.

2. EO 107 Fails to Specify any Minimum Qualifications for the DNR deputy commissioner.

Section 23 of the EO directs the State Forester to "recognize the expertise of the deputy commissioner with regard to fish and wildlife habitat." However, Section 40 does not require the DNR Commissioner to appoint a person with any expertise related to

protection of fish and wildlife habitat as deputy commissioner. In comparison, the ADF&G Commissioner must be a "qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state." (AS 16.05.010). In addition, anyone appointed Fish and Game Commissioner by the Governor must come "from a list of qualified persons nominated by the Board of Fisheries and Board of Game ... [and] confirmed by a majority of the members of the legislature in joint session." (AS 44.39.030)

The Executive Order has transferred responsibility for protection of the State's fish and game resources from a "qualified executive with knowledge of the requirements for the protection ... of the fish and game resources of the state" to a person with unspecified qualifications and unknown abilities. This approach to fish and game management is little more than a throw of the dice. Continued good health of Alaska's salmon will be subject to capricious judgment of a single individual instead of the collective wisdom of all those currently responsible for the sustained maintenance of a most incredible renewable Alaska resource.

3. No person with supervisory authority over the deputy commissioner is required to possess any knowledge or experience regarding protection of fish and game habitat.

There is no statutory requirement for the DNR Commissioner to have any knowledge or experience regarding fish and wildlife habitat protection. Executive Order 107 transfers the authority of the DNR Commissioner under Alaska's Forest Practices Act to the state forester. Under AS 41.17.020, the state forester must have "(1) a bachelor's or higher degree in forest management and at least three years of field experience in forestry; or (2) at least eight years of professional work experience a forester." Consequently, no official with supervisory or management authority above or equivalent to the deputy commissioner is required to have any knowledge or experience regarding fish and habitat protection.

In conclusion, unless a majority of the legislature in joint session disapproves of this executive order, it will:

- Reduce this and future legislatures' control over the state's fish and game resources by placing the core responsibilities for fish passage and habitat protection into the hands of a state official not directly accountable to the legislature and it will
- Transfer responsibility for the protection of the state's fish and game resources from a "qualified executive with the knowledge of the requirements for the protection . . . of the fish and game resources of the state" to a person with unspecified qualifications and unknown abilities.

We urge the legislature to put the long-term health of Alaska's fish and game, and welfare of all the Alaskans who depend upon these renewable resources, ahead of any short-term political objectives. Thank you for allowing me to testify.

Testimony of Frank Rue regarding EO 107
Special House Committee on Fisheries
March 26, 2003

Good evening and thank you for this opportunity to testify on EO 107.

For the record my name is Frank Rue. I served as the commissioner of ADF&G for the past eight years. Before that I was the ADF&G Habitat director for seven years and for nine years before that I was a resource manager for the DNR.

I do not support EO 107 and urge you to disapprove it and instead work with the administration and the public to address any real or perceived problems with the ADF&G administration of the Anadromous Fish Act, the Fishways Act and the Forest Resources and Practices Act.

I am submitting, for the record, two letters, one signed by the last five commissioners of Fish and Game to Governor Murkowski and one from me to Representative Gara. I believe they are both relevant to your deliberations.

Tonight I will limit my remarks to the two reasons the administration has given to justify this move.

First, that this restructuring will lead to a more efficient and streamlined permitting process; and second, that DNR will maintain the same level of protection as ADF&G.

If this move is about efficiency, or removing layers of the bureaucracy, I don't see it. You could reduce three regional supervisors to one operations manager in the name of efficiency and leave the function in ADF&G. You can cut deputy directors and biologists in the name of efficiency and leave the function in ADF&G.

The fact is that the vast majority of projects that require an anadromous fish habitat permit or a fishway permit are single-permit projects and require no other authorization. Those permits are issued in an average of just 14 days, so what layers of bureaucracy are being removed and what timelines are being sped up by moving the function to DNR? NONE.

Projects that do require more than an ADF&G permit seldom require a DNR permit too. The Corps of Engineers and ADF&G are far more likely to issue permits for the same project, so what duplication is being removed? NONE.

Forest practices-related culverts do not require a permit from DNR. The timber industry was very adamant that there be no FRPA permits. The only permit needed by a timber company for a culvert is an ADF&G permit. Here again, no duplication is removed by putting DNR in charge of fish habitat.

If the level of protection is to be the same under DNR as it is under ADF&G, then why make the move? In fact, this move is about weakening the standard of protection for Alaska's salmon, trout and other fish.

There are several reasons I believe the level of protection will be lower under DNR than it has been under ADF&G.

Start with the different missions of the two departments. DNR is focused primarily on developing renewable and non-renewable resources on state lands -- oil and gas; minerals; timber; agriculture and parks. It is expressly not responsible for management of Alaska's wildlife or development of its fisheries.

Fish and Game is responsible for managing fish and wildlife for the sustainable use and enjoyment of Alaskans.

What this means in reality is the commissioner of DNR gets out the cut and the commissioner of fish and game gets out the catch.

The ADF&G commissioner goes to work every day, responsible for Alaska's commercial, sport, subsistence and personal use fisheries. These are fisheries people need to feed themselves and their families and they generate close to a billion dollars in income each year. They employ more Alaskans than any other sector of the economy.

When faced with a development project that could impact important fish habitat, who do you think will have greater concern and determination to make sure that habitat is protected?

The commissioner of ADF&G, who is responsible for all the fisheries in the state; who knows that habitat protection is one of the foundations of sustainable fish and wildlife management; who knows that he or she will fail the fishermen of Alaska if habitat is lost?

Or -- under the scheme of EO 107 -- a deputy commissioner in DNR, who has no responsibility to the fishermen of Alaska?

The level of protection will also be lower because a deputy commissioner in DNR, not the commissioner of ADF&G who is confirmed by the legislature, is the last administrative stop for anadromous and resident fish habitat decisions.

A deputy commissioner in DNR, and not the commissioner of ADF&G, will decide what is "important habitat," what is "proper protection" and when fish passage is "necessary."

In-stream habitat of king salmon, steelhead and rainbow trout will have less stature in DNR than a potato! A potato at least has a cabinet-level DNR commissioner responsible for its well being.

A deputy commissioner at DNR does not have equal standing with the commissioner of DOT or his own boss or the Regional Forester of the US Forest Service to bring issues to their attention and effectively argue for fish habitat protection. **Fish habitat will lose out.**

I have 23 years of experience at DNR and ADF&G negotiating the Forest Resources and Practices Act; negotiating with DOT as transportation projects are built to protect fish habitat; negotiating oil and gas stipulations on state and federal leases; working to keep trees important to stream habitat in buffers; and working to protect critical wildlife and fish habitat in state and federal forest plans.

I can guarantee you, from my experience, that ADF&G commissioners will care more and have a higher standard of protection for fish than will a deputy commissioner at DNR.

The level of protection will be lower because 22 people have been cut from the Habitat Division. The workload has not gone down; time in the field will.

Will the remaining positions that go to DNR be biologists now and in the future? They don't have to be under the order; they could be resource managers, foresters, or hydrologists rather than trained fish habitat biologists.

The level of protection will be lower because the biologists who are left at DNR will be isolated from their peers at ADF&G Commercial Fisheries and Sport Fish divisions. One operations manager, instead of three knowledgeable regional supervisors, will be responsible for the biologists and issues from Barrow to Ketchikan.

It is curious that the Governor wants less and not more supervision and support for these same biologists he accused of having personal agendas.

None of this makes sense unless you want less protection for Alaska's fish and easier, cheaper development of timber, roads and mines that will impact salmon and trout.

There is an alternative.

If you want the same standard of protection, leave the function of fish habitat protection in ADF&G. If the legislature agrees that positions should be cut from the Habitat Division, you can do that and keep the function in ADF&G.

If the legislature feels that the policies ADF&G uses to implement the Anadromous Fish Act and the Fishways Act need to be changed that can be done by working with the administration and the public to implement regulations. That way Alaskans will have more say about how much or how little protection they want for Alaska's salmon and trout habitat than they will if EO 107 is allowed to go into effect.

I do not think there is a way for the legislature to make a silk purse out of a sow's ear. EO 107 is a sow's ear for Alaska's fish despite the best intentions of the current commissioner of DNR. Please work to reject EO 107.

Thank you for holding this hearing, and for your attention. I would be happy to answer any questions you might have.

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.

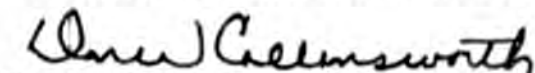
You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

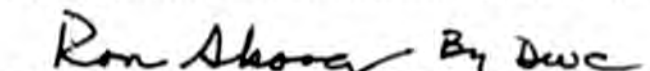
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

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

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House Special Committee on Fisheries

MEMORANDUM

TO: The House Fisheries Committee

FM: Representative Paul Seaton, Chair
House Fisheries Committee

DATE: March 14th, 2003

RE: EO 107 Hearing

The purpose for this hearing is for the House Special Committee on Fisheries to gain information to help determine if the structure and function of Executive Order (EO 107) will continue to protect the State's fish habitat, thereby insuring the best opportunity for sustainable fisheries, and maximizing benefit for the people of the State.

To accomplish this goal, the Fisheries Committee has submitted a series of detailed questions for the Department of Natural Resources (DNR) to respond to at the hearing.

To date, the Senate Resource Committee held a four-hour hearing and the House State Affairs Committee held two hearings, each lasting 2.5 hours. The format of these hearings promoted public testimony and were beneficial in getting the breadth of public comment and sentiment, but testimonies limited to 2-minutes did not allow for in-depth follow-up questions by the Committee members.

To accomplish the purpose of the hearing, the Fisheries Committee will follow an invitational panel format, like the one used by the US Senate and House Committees. Before the weekend, the Committee will receive written testimony from the House State Affairs Committee (with permission from STA Chair Weyhrauch), as well as the comments that have been submitted to the Fisheries Committee. This will allow time for the Committee members to review the individual concerns raised by Alaskans.

- 1] The first panel will be composed of DNR and other members of the administration to respond to the submitted questions. There will also be time for Committee member's questions.
- 2] There will be two or three public / industry panels, each with a 5 minute presentation and time for follow-up questioning.
- 3] DNR will return for a final round of Committee questions.

The purpose of this format is to shed the most possible light on EO 107's effects on habitat. All people testifying, including Committee members, are reminded to focus on EO 107 impacts, not on past disputes, which range from justification or non-justification of EO's to the validity of press releases. Please keep in mind that this hearing is about the ability of EO 107 to protect the State's fish habitats.

Panelists (subject to change)

Department of Natural Resources

Commissioner Irwin and Staff
Nancy Welch, Div. of Mining and Water

Department of Fish and Game

Kevin Duffy, Commissioner
Kevin Brooks, Director of Administrative Services
Kerry Howard, Habitat Division

Industry

Alaska Trollers Assoc; Dale Kelley
Kenai Peninsula Fishermen's Assoc; Paul Shadura (Anch. LIO)

ERROL CHAMPION; INDUSTRY CONSULTANT

*Kenai
Silver Bay
Loggery*

Former State Officials and Experts

Frank Rue, Former ADF&G Commissioner
Catherine Pohl, Habitat Biologist
Steve Albert, Habitat Biologist (Anch. LIO)
~~Bob Churchill,~~
Clem Tillion, (off-net)

Public Interest Groups

Trout Unlimited; Jeff Parker, Jan Konigsberg (Anch. LIO)
AK Marine Conservation Council; Paula Terrel
AK Center for the Environment; Seth Little (Anch. LIO)
SE AK Conservation Council, Bruce Baker, President

*not on line yet
maybe no show.*

Please feel free to contact me with questions anytime x2689, or you can contact my Committee Aide, Cameron Yourkowski, x3306. Thank you.

Alaska State Legislature



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Seaton Wilson

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House Special Committee on Fisheries

MEMORANDUM

TO: All House Fisheries Committee Members

FM: Representative Paul Seaton, Chair
House Fisheries Committee

DATE: March 18th, 2003

RE: Add to EO 107 Packet

➔ Please replace the questions submitted to DNR from the House Fisheries Committee (March 15, 2003) with this revised version. Some questions have been added, but more importantly some have been deleted.

It is the purpose of this hearing on Executive Order 107 to determine how the proposed habitat permitting structure under DNR will sufficiently protect fisheries habitat and will increase permitting efficiency. The House Fisheries Committee supports both of these efforts.

Throughout the hearings on EO 107 in the Senate Resource and House State Affairs Committees, the public, industry, interest groups, Representatives and Senators have raised many questions and concerns in regards to how this new permitting structure will work. The House Fisheries Committee has compiled these questions into the attached letter submitted to DNR. These questions come from a broad range of concerned citizens.

In compiling these questions, the Fisheries Committee has worked to make sure that submitted questions stuck to the focus of this hearing. **Inadvertently, the opinions of some individuals were included in the previous version of this document. Specifically, comments referring to the ADF&G Sport Fish Division were slanderous and completely inappropriate for this hearing. In no way should any of these statements be considered fact, and in no way should they be considered the official opinion of the House Fisheries Committee or any of its members.**

The Fisheries Committee apologizes for any incorrect information or accusations inadvertently disseminated by the Committee.

If you have any questions please contact the Committee Aide, Cameron Yourkowski, 465-3306.

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House Special Committee on Fisheries

March 15, 2003

Tom Irwin, Commissioner
Department of Natural Resources
400 Willoughby Ave. 5th Flr
Juneau, Ak 99801-1724

Dear Commissioner Irwin,

The House Special Committee on Fisheries will be holding a hearing on EO 107 on Wednesday, March 26th, 2003, in Room #519, from 6:30P.M. to 10:00P.M.

The purpose of this hearing will be to determine, in detail, how the new DNR Division of Habitat Management and Permitting (DHMP) will provide sufficient protection to fisheries habitat and will increase permitting efficiency.

The House Fisheries Committee respectfully requests the presence of DNR Commissioner Irwin, the Deputy Commissioner of the Division of Habitat Management and Permitting, and any assistants necessary for answering detailed questions (Chris Kennedy, Nancy Welch). The Committee asks that these public servants be available to answer questions for the duration of the meeting.

Specific questions that we will focus on in the Committee are listed below; Most of these questions refer to the structure, mission, and regulations of the new DHMP. Please come prepared to answer these questions to the best of the Departments ability.

Sincerely,
(email)

Rep. Paul Seaton, Chair
House Fisheries Committee

QUESTIONS TO DNR FROM THE HOUSE FISHERIES COMMITTEE

Who will the Deputy Commissioner be?

Dick LeFever

✓ How many Habitat biologists are being lost. How will the remaining biologists be organized around the state?

✓ Specifically, how will permitting be expedited and maintain standards with less biologists? Will biologists visit each stream site before permitting Title 16 permits? Is there a commitment by the Department of Natural Resources that there would continue to be the same level of permit monitoring, compliance and enforcement as previously existed under ADF&G?

✓ How does funding for the new DHMP compare to past Habitat Div. Funding levels?

4.36 → 8.1
4-6.1 spent
2 mil

✓ Commissioner Irwin has stated that agencies work together more efficiently when they are housed under the same departmental structure. Specifically, how will the DHMP issue permits more efficiently? How will this intra-agency efficiency between DNR and DHMP be superior to the efficiencies experienced between DNR, ADF&G, and the Habitat and Restoration Division?

✓ There has been a great deal of talk about the slow turnover time for permits when multiple agencies are involved. Can you explain the different procedural approach DNR will take with respect to the permitting of single-agency and multiple-agency projects?

Large
Mining
Permitting
process.

Temp water rights - 20 days - outside CZ right 60 days
Why is there such a time delay in issuing water usage permits by DNR? Specifically, what procedures will ensure that Title 16 permits are free from similar delays?

No notice periods etc

Will the new DHMP and the Deputy Commissioner have a separate and different mission statement than the Department of Natural resources? What is the mission statement?

Will be the same

9 AS 16.05.870 says the Department of Fish and Game must provide for "proper protection" of fish streams. Will the Deputy Commissioner define "proper protection?" If so, how?

No regulatory definition in ADF&G or will be in DNR

Considering the mission statements of DNR and the new DHMP, will federal agencies (EPA, Dep. Of Interior) accept the DHMP permits without additional federal permitting?

What is the legal relationship between the Deputy Director and the Commissioner in reference to the permit appeals process? Will DNR develop appeals regulations with respect to in-stream permits? What will those regulations include?

Considering the potential passage of HB 86, would there be any appeals process without "new scientific information or newly recognized local traditional knowledge."

Since the Commissioner is a part of the appeals process for permits issued by the Deputy Commissioner, is the commissioner effectively eliminated as arbitrator between DHMP and the Chief Forester?

OK

Will public notices be required for all of the new permits now issued by DNR? Will DNR include the in-stream permits under the public notice provisions of AS 38.05.945?

840 + 810 yes if associated with major permits
Because the Forest Practices Act only applies to state lands, will there continue to be any authority for salmon stream buffers on federal lands? *Fed. Resource Practice Act* 700

Not yet done
What is the Memorandum of Understanding between DNR-DHMP and ADF&G? 

Yes
Would the DNR Commissioner continue the historical practice of the Fish and Game Commissioner to delegate the authority for making the initial permitting decisions to the habitat biologists? Would these decisions therefore become subject to the process for appeals to the DNR Commissioner?

Under EO 107, the DNR Commissioner or the Deputy Commissioner would have broad discretion to interpret the Anadromous Fish Act. For example, the Commissioner/Deputy Commissioner would "determine the waters in the state that are important for the rearing, spawning, and migration of anadromous fish," and the DNR Commissioner/Deputy Commissioner would decide what constitutes "important habitat," and what constitutes "proper protection" for the rearing, spawning, and migration of anadromous fish in "important" streams. Similar discretion is afforded under the Fishway Act. Given the differing mandates of the Department of Natural Resources and the Department of Fish and Game, what safeguards would prevent this discretion from becoming unduly conflicted or compromised because it would now reside with the DNR Commissioner/Deputy Commissioner? *Conservation police mission*

19 new species inquiry with
The National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce has a similar structure as is being proposed by EO 107. For example, NOAA Fisheries is responsible for both the promotion of fisheries in federal waters and the protection of fisheries resources. It has been suggested that this has caused increased litigation, introduced costly delays, and contributed to agency gridlock. How would DNR avoid similar problems?

The Governor and the ~~Acting~~ Commissioner of Fish and Game and the Commissioner of the Department of Natural Resources have assured the public on several occasions that "the same level of environmental protection will continue to be provided for Alaska's fish and wildlife." Under EO 107, the Habitat Division authority for issuing permits and for the monitoring, compliance and enforcement of these permits would now be the responsibility of DNR, with fewer biologists. Is there a commitment by the Governor that the habitat biologists who are being transferred from the Alaska Department of Fish and Game would be "housed" in the newly formed Office of Habitat Management and Permitting?

see 23
yes
Is there a commitment by the Department of Natural Resources to require the State Forester to grant "due deference" under the Forest Practices Act to the Office of Habitat Management and Permitting on issues relating to the harvest of trees from within the 66 foot stream buffers on salmon streams on private land? 

OK
Can DNR use federal Dingle-Johnson monies or only Fish and Game? *16.777*

Within DNR, how will positions be filled once a biologist leaves the position and how do we guarantee that biologist will be hired to fill vacant positions? Presently, personnel in ADF&G have Position Control Numbers (PCN) and Personnel Description Questionnaires (PDQ) that define the requirements for the position and the duties of the job. When a vacant position becomes available

the PCN hiring requirements and PDQ responsibilities can be rewritten. Therefore, DNR can, after a period of time, rewrite these positions to have non-biologist (environmental engineers, foresters, or water quality backgrounds) fill them. After a period of time, biologist could represent a small group in DNR as opposed to the 20-30 some biologist who are being transferred today. What assurances can we have that prohibits this long-term reduction in force of people who care about the resources and are knowledgeable about them?

Mission + Measures defined by legislature.

How will the structure of DNR be formed to avoid targeted budget reductions? Next year the Governor could eliminate the whole DNR budget for biologists if Executive Order 107 creates a separate layoff structure in DNR. Again, biologist would be reduced in number and after a number of years duties could be transferred to people in other Divisions of DNR who are less qualified.

Thank you for your attention to these important questions. If you have any questions, please feel free to contact my Committee Aide, Cameron Yourkowski, 465-3306.

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House Special Committee on Fisheries

AGENDA-March 18th, 2003

Rm#519; 7:00-10:00 pm

1) EXECUTIVE ORDER 107 TRANSFER OF HABITAT DIV. TO DNR

TESTIMONY, EO 107

Thank you. If you have any questions you can contact my committee staff person, Cameron Yourkowski, at 465-3306

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House Special Committee on Fisheries

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- 2) Sponsor Statement EO 107; Gov. Murkowski.
- 3) Press Release, ADF&G / DNR; Functions of transferred, new structure.
- 4) Executive Order 107.
- 5) Fiscal Note, EO 107.

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House Special Committee on Fisheries

March 12, 2003

Tom Irwin, Commissioner
Department of Natural Resources
400 Willoughby Ave. 5th Flr
Juneau, Ak 99801-1724

Dear Commissioner Irwin,

The House Special Committee on Fisheries will be holding a hearing on EO 107 on Tuesday, March 18th, 2003, in Room #519, from 7:00P.M. to 10:00P.M.

The purpose of this hearing will be to determine, in detail, how the new DNR Division of Habitat Management and Permitting (DHMP) will provide sufficient protection to fisheries habitat and will increase permitting efficiency.

The House Fisheries Committee respectfully requests the presence of DNR Commissioner Erwin, the Deputy Commissioner of the Division of Habitat Management and Permitting, and any assistants necessary for answering detailed questions (Chris Kennedy, Nancy Welsh). The Committee asks that these public servants be available to answer questions for the duration of the meeting.

Specific questions that we will focus on in the Committee are listed below; Most of these questions refer to the structure, mission, and regulations of the new DHMP. Please come prepared to answer these questions to the best of the Departments ability.

Sincerely,

Rep. Paul Seaton, Chair
House Fisheries Committee

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House Special Committee on Fisheries

QUESTIONS TO DNR FROM THE HOUSE FISHERIES COMMITTEE

Who will the Deputy Director be?

How many Habitat biologists are being lost. How will the remaining biologists be organized around the state?

Specifically, how will permitting be expedited and maintain standards with less biologists? Will biologists visit each stream site before permitting Title 16 permits?

How does funding for the new DHMP compare to past Habitat Div. Funding levels?

Commissioner Irwin has stated that agencies work together more efficiently when they are housed under the same departmental structure. Specifically, how will the DHMP issue permits more efficiently? How will this intra-agency efficiency between DNR and DHMP be superior to the efficiencies experienced between DNR, ADF&G, and the Habitat and Restoration Division?

There has been a great deal of talk about the slow turnover time for permits when multiple agencies are involved. Can you explain the different procedural approach DNR will take with respect to single agency and multiple-agency projects?

Why is there such a time delay in issuing water usage permits by DNR? Specifically, what procedures will ensure that Title 16 permits are free from similar delays?

Will the new DHMP and the Deputy Director have a separate and different mission statement than the Department of Natural resources? What is the mission statement?

AS 16.05.870 says the Department of Fish and Game must provide for "proper protection" of fish streams. Will the Deputy Commissioner define "proper protection?" If so, how?

Considering the mission statements of DNR and the new DHMP, will federal agencies (EPA, Dep. Of Interior) accept the DHMP permits without additional federal permitting?

Alaska State Legislature

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House Special Committee on Fisheries

What is the legal relationship between the Deputy Director and the Commissioner in reference to the permit appeals process? Will DNR develop appeals regulations with respect to in-stream permits? What will those regulations include?

Considering the potential passage of HB 86 (see attached) would there be any appeals process without "new scientific information or newly recognized local traditional knowledge."

Since the Commissioner is a part of the appeals process for permits issued by the Deputy Commissioner, is the commissioner effectively eliminated as arbitrator between DHMP and the Chief Forester?

Will public notices be required for all of the new permits now issued by DNR? Will DNR include the in-stream permits under the public notice provisions of AS 38.05.945?

Because the Forest Practices Act only applies to state lands, will there continue to be any authority for salmon stream buffers on federal lands?

Thank you for your attention to these important questions. If you have any questions, please feel free to contact my Committee Aide, Cameron Yourkowski, 465-3306.

EO 107

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



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OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
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WWW.GOV.STATE.AK.US

February 10, 2003

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

Dear Speaker Kott:

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

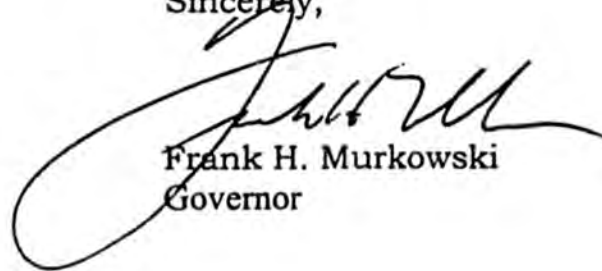
Currently, the division of habitat and restoration in the Department of Fish and Game oversees the requirements of AS 16.05.840, relating to maintaining fish passage whenever a stream frequented by fish is obstructed. The same division oversees the permitting function laid out in AS 16.05.870, which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

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

The Honorable Pete Kott
February 10, 2003
Page 2

These changes will help us achieve efficient, fair, and balanced review of projects that seek to tap our state's natural resources.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Frank H. Murkowski', is written over the typed name and title.

Frank H. Murkowski
Governor

EO 107

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



**Alaska Department of
Fish and Game**

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



**Alaska Department of
Natural Resources**

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

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

News For Immediate Release

March 7, 2003

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

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

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

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

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

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

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