

AK LEGISLATURE SPECIAL COMMITTEE FILES SCOMM 147 3182

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

March 10, 2006

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

Scott Maclean, ADNR, Anchorage

AGO/ago



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources
Office of Habitat Management and Permitting

TO: Sadie Wright
Office of Project Management and Permitting
Anchorage

DATE: January 24, 2007

FILE NO: AK 0612-12J

SUBJECT: Re-issue of Placer GP 88-02

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

TELEPHONE NO: 907-459-7281

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

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

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

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

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

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

Consistency Assessment:

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

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

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

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

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

Proposed Alternative Measures:

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

Issue 1: Minimizing the area of disturbance.

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

Issue 2: Minimizing the impact of individual mining activities.

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

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

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

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

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

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

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

Issue 3: Maximizing the effectiveness of reclamation.

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

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

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

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

Advisories

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

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

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

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

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

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

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

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

CC: by email

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

Mac,

Per our phone discussion:

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

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

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

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

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

I hope this summarizes our discussion.

Mark

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

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

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

To: mark_fink@fishgame.state.ak.us

Subject: DRAFT COE Placer GP Response

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

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

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

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

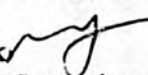
Division of Sport Fish

SARAH PALIN, GOVERNOR

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MEMORANDUM

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

FROM: Mark Fink 
Permitting Supervisor
Sport Fish Division

DATE: January 22, 2007

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

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

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

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



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

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

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

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

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

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

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

Consistency Assessment:

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

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

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

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

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

Proposed Alternative Measures:

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

Issue 1: Minimizing the area of disturbance.

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

Issue 2: Minimizing the impact of individual mining activities.

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

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

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

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

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

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

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

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

Issue 3: Addressing cumulative impacts.

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

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

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

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

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

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

Issue 4: Maximizing the effectiveness of reclamation.

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

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

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

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

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

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

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

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

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

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

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

Reference:

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

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

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

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

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

To: 'Kate Persons'

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

Subject: RE: rock creek mine

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To: Mclean, Robert F (DNR)

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

Subject: FW: rock creek mine

Hi Mac,

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

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

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

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

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

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

Fear not,

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

Mac's phone is 459-7281.

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

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

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

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

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

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

Steve,

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

Mark

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

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

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

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

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

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

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

Hi Steve,

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

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



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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 2007

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

Dear Mr. Morris:

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

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

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

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

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

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

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

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

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

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

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

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

Thank you again.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sarah Palin", with a stylized, flowing script.

Sarah Palin
Governor



Cordova District Fishermen United

P.O. Box 939 | Cordova AK 99574

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

Email: cdfu@ak.net

February 8, 2007

Representative Paul Seaton, Chairman

Members of the House Special Committee on Fisheries

Alaska State Legislature

State Capitol Room 102

Juneau AK 99801-1182

Representative Les Gara, Sponsor

State Capitol Room 500

Juneau AK 99801-1182

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

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

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

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

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

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

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

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

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

February 8, 2007

Yours Sincerely,

Catherine Crawford
Executive Director, CDFU

Cc. Senator Albert Kookesh
Representative Bill Thomas

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

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

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

February 14, 2007

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

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

Subject: Support for HB41

Dear Representative Seaton and Committee Members:

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

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

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

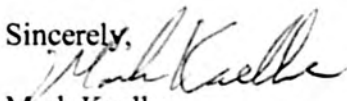
I spent 12 years in the sport fishing industry prior to my work with Trout Unlimited. Doing so gave me an opportunity to see firsthand not only the great wealth of fish and game resources we have been blessed with, but also the great wealth of knowledge our fish and game employees possess. Were it not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

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

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

Thank you.

Sincerely,



Mark Kaelke

House Bill 41 Testimony - February 12, 2007

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

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

Thank you very much for your attention.



Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515



Alaska State Legislature

Please enter into the record my testimony to the

House Fish

Committee name

Committee on

HB41

Bill/Subject

dated

2/14/07

Signed:

Matthew LaCroix

Testifier

Self

Representing (Optional)

7362 W. Parks Highway #453, Wasilla, 99654

Address

373-3748

Phone number

malacroix

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2/14/2007

Testimony in support of HB 41

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

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

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

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

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

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

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

malacroix

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

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

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

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

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

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

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

malacroix

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

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

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

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

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

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

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

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

malacroix

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

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

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

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

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

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

Thank you for providing this opportunity to comment.

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

February 10, 2007

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

Subject: Support for HB41

Dear Representative Seaton and Committee Members:

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

Such an action will accomplish two things. First, it will help to restore public confidence in the states' regulatory system which was badly eroded during the Murkowski administration. Secondly, it will place the authority to protect our socially, economically, and culturally valuable fisheries resources back in the hands of Department of Fish and Game fisheries biologists with a statutory mandate and the expertise to protect, preserve, maintain and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state, as the founding fathers of this state intended.

Alaska's founders witnessed decades of fisheries and fisheries habitat mismanagement when other interests trumped conservation. The founders also witnessed the final demise of the once great salmon fisheries of the Pacific Northwest in the 1950's and predicted that the loss of habitat as a result would be the biggest long-term threat facing Alaska's fisheries as well as the subsistence, commercial and sport fishers who depend upon them. As the framework of state government was taking shape, a heated debate ensued between Alaskan fishermen and those involved in mining, logging, and hydropower development regarding how state government would be organized in addition to deciding what functions various agencies would have. Miners and loggers wanted a traditional system with a Department of Natural Resources and a simple fish and game management division having no authority in critical habitat decisions. Fish interests wanted a separate Department of Fish and Game. They also wanted this department to have an equal voice in state resource management decisions, a constitutional mandate for sustained yield, and the statutory authority to prevent the destruction of anadromous fish habitat on public and

private lands, as well as to prevent blockage of fish passage from dams and other obstructions. Fisheries interest won out and for 43 years this was the law of the land.

Unfortunately in 2003, Governor Murkowski was able to do what our founding fathers feared most. By transferring the Anadromous Fish Act and the Fish Ways Act to the Alaska Department of Natural Resources (ADNR) and implementing a Memorandum of Agreement granting ADNR oversight of the Federal Fish and Wildlife Coordination Act, and radically changing the Alaska Coastal Management Program; Governor Murkowski was able to funnel all of the authority to approve development projects into the ADNR. He also appointed managers who shared his views to implement his vision. He set Alaska on the same dead-end road that the former salmon producing western states followed.

The transfer of these statutory authorities and programs has directly affected the consideration that fish habitat and subsistence, commercial, and sport fishermen receive in state resource development and permitting decisions in several ways:

1. ADF&G and ADNR have very different missions. ADF&G has the statutory mandate to protect and maintain fish resources, while ADNR has the mandate to develop the states' renewable and non-renewable resources. Removing the responsibility to protect fish habitat from ADF&G makes it much easier for ADNR to inappropriately sacrifice fish habitat to facilitate non-renewable resource development.
2. The balance that state founders sought in resource development decisions has been lost. Some people have tried to make the argument that ADNR employees would protect fish as diligently as they did at ADF&G. These people must not have heard of corporate culture. The transfer of staff and authorities is akin to moving the Mercedes design team to Hyundai and then expecting that they will still be building Mercedes.
3. Over my career I was involved with many different development projects where the Department of Fish and Game and ADNR had very different positions on ADNR projects and activities affecting fish, wildlife and public use. Examples include:
 - One example was the issue of requiring logging operations on state and private lands to follow the law and submit plans for stream crossing structures to ADF&G for review for adequacy before construction. Loggers and ADNR did not want ADF&G's Habitat Division to require loggers to obtain permits from ADF&G to build roads across fish streams. ADF&G asserted its authority under the Anadromous Fish Act and Fish Ways Acts and continued to require loggers to get permits.
 - A second example is mixing zones in spawning areas. The Alaska Department of Environmental Conservation (ADEC) proposed to change their regulation's to allow mixing zones for harmful substances in fish spawning areas during both the Hickel and Knowles Administrations. Habitat Division led the ADF&G's opposition to the change and it was withdrawn both times. After the Habitat and Restoration (H&R) Division was transferred to ADNR

ADEC change to allow mixing zones in fish spawning areas was supported by ADNR, and no one in ADF&G fought it.

- A third example was the attempt by an ADNR Commissioner and the Division of Forestry in the 1990's to transfer management of all of the state-owned forest land in the Matanuska Valley to a Finnish timber company under a 50-year Forest Management Agreement developed by the ADNR Commissioner's ex-husband. After reviewing the ADNR proposal, Habitat Division found the agreement to be inconsistent with the Alaska Coastal Management Program and with ADF&G statutes because it would not protect fish habitat or public access to this heavily used public recreation area. There was a heated internal debate between ADF&G and ADNR over the agreement until the public became aware of the terms of the agreement and the public outcry ended ADNR's attempts to sign the agreement.
4. One question which comes up often is how has permitting changed now that it is administered by ADNR? Because there is no public notice requirement for the thousands of ADNR fish habitat permits issued annually, the only people who know if these permits effectively protect fish habitat are the ADNR person issuing the permit and the applicant. The same is true for violations of these permits. I do not have access to these permits but asked this question of a number of state, federal, and private biologists who have experience in ADF&G fish habitat permitting and are knowledgeable about fish habitat permitting before and after the transfer of ADF&G's permit authority to ADNR. I won't disclose their names or positions because of concerns about retaliation. However, here is what I was told about the differences:

A. Comments from Federal Biologists:

1. I review federal projects affecting fish and wildlife and do not see ADF&G or ADNR-Office of Habitat Management and Permitting (OHMP) as a player in projects any more. Often no one from ADF&G or OHMP even attends project meetings.
2. My agency has no relationship with ADF&G or ADNR-OHMP any more. Staff at one OHMP office does not even return calls.
3. The policy at OHMP seems to be to narrowly interpret their responsibilities to permitting within the banks of anadromous streams and stream blockages. Overshadowing issues such as activities which may impact a watershed seem to be ignored. There is little interest in wildlife issues.
4. The few former ADF&G H&R staff that remains at OHMP seems to be trying to do a good job. The new hires that attend project meetings rarely open their mouths. Most of them do not seem to know much about the issues that they are dealing with.
5. Consultants have asked me why ADF&G and OHMP no longer asks any tough questions related to environmental documents for the road, oil and gas, and mining projects they are working on.

6. Some of the best biologists have left OHMP when they had an opportunity to return to ADF&G or retire.

B. Comments from State Biologists:

1. OHMP staff has lost the close working relationship with ADF&G staff and the information that they provided on projects. There is no priority in OHMP to solicit ADF&G input on projects, particularly projects that that ADF&G may not like.
2. Regional OHMP staff does not receive any support on enforcement actions.
3. The permits that the OHMP leadership wants us to write do not contain project specific conditions and are largely unenforceable. The emphasis is on reducing review time and increasing permit numbers, not a high level of fish habitat protection.
4. For a fisheries or wildlife biologist, working at ADNR is a dead end. For career advancement they will need to go elsewhere.
5. A number of experienced habitat biologists left ADNR when the opportunity arose. They were replaced with people with little or no experience.
6. ADNR-OHMP biologists are discouraged from participating in multi-agency working groups which are working on means to avoid impacts on fish and wildlife and from attending project meetings. Biologists don't do coastal reviews, or review subdivision plats that the Borough sends over even though the development would affect a salmon stream.
7. Biologists are told to act as facilitators for applicants, not regulators protecting the public's interest in fish or wildlife habitat.
8. Biologists are told not to put stipulations such as timing windows on permits, and to accept damage from projects which would cause sedimentation and/or water pollution that only lasts a few days or weeks.
9. OHMP ignored a violation on Wasilla Creek where a developer worked in an anadromous stream without a permit.
10. The close coordination and exchange of information that existed between the fisheries, wildlife, and subsistence divisions and the project reviewers in the Habitat and Restoration Division when they worked in the same building for the same Department is largely gone.
11. ADF&G does not have the staff or the expertise to review the fish and wildlife impacts of large mines. ADNR is now by law the states expert on fish habitat protection and restoration. ADNR won't fund ADF&G to hire staff with expertise that ADNR has, or review decisions that ADNR makes.
12. All ADF&G has now is management biologists who have information on harvest and escapement. This information has little value in determining if projects such as a large mine should be permitted.

13. ADF&G isn't a real player in the large mines process. These are very complex project's which requires very technical analyses that can't be done by a fisheries management biologist.

In summary I believe that the changes that former Governor Murkowski made during his administration substantially reduced the protection that fish habitat receives both at the policy level and the issuance of permits for individual projects. It also increases the risk that large projects will be approved. Projects that will have very significant short and long-term impacts on fish and wildlife resources as well as commercial, subsistence and sport fishermen who depend on these resources. I urge you to restore the balance in state resource decisions and pass HB 41. Thank you.

Sincerely,

Lance Trasky

Louie Flora

From: doug hill [deeryard2001@yahoo.com]
Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
Subject: Please support HB 41 - TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Re: House Bill 41
TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Representative Lynn,

I want to thank Representatives Gara and Crawford for the wisdom and foresight they have exhibited by sponsoring HB 41.

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I believe the wisdom of the states founders should be heeded and we should return to the "check and balance" type system where, prior to EO 107, the following responsibilities resided outside of ADNR (the states lead resource extraction agency) and within ADF&G:

- Title 16 fish passage and anadromous fish stream permitting;
- the Anadromous Waters Catalog;
- Project-related research and compliance monitoring;
- Forest Resources and Practices Act permitting, monitoring and compliance.

With potential projects such as the Pebble Gold Mine on the horizon - a mine which will affect two of the worlds largest remaining wild salmon and rainbow trout watersheds - I don't believe that state's lead mineral extraction agency should be in the business of Title 16 fish habitat and passage protection, Title 16 monitoring and compliance activities, or determining which streams are anadromous and which are not. As result of EO 107 ADNR is responsible for determining which streams are cataloged as anadromous fish streams and which streams are not. As many of you know non-anadromous fish streams are not afforded the same protection as anadromous fish streams. I strongly encourage the Governor and the legislature to think about the future and support HB 41. Please "transfer the Habitat Division out of ADNR and back to ADF&G.

Anadromous fish populations are one of Alaska's true potential "permanent funds".

I am currently an ADF&G - DWC employee with 14 years of service. I have fished commercially and subsistence in Alaska. In addition, I have worked as a carpenter/maintenance worker in bush and urban Alaska. I am a hunter/fisher, skier, and moving water canoer.

Thanks for your time and service,

Douglas D. Hill
PO Box 220236
Anchorage, Alaska 99522
907-348-8519
deeryard2001@yahoo.com

Louie Flora

From: Stephen Taufen [staufen@seanet.com]
Sent: Tuesday, February 13, 2007 8:58 AM
To: Sen. Gary Stevens; Rep. Paul Seaton; Rep. Gabrielle LeDoux; Rep. Les Gara
Subject: Endorse HABITAT Move back to ADF&G

Dear Senator Stevens, and Representatives Gara, LeDoux and Seaton:

We support the return of the HABITAT division to the ADFG. The state functions much like a doctor over these resources, and **we must have an unbreakable code of "do no harm."**

Recent news indicates that such protections are often in Natural Resource departments in other states, and working well. We dispute that assumption - just by looking around at the problems in other states - and argue that **this is what made Alaska so special.** It is important to have a **strong agency function** akin to **"the huck stops here"** so that in cases where the fisheries cannot speak for themselves, mankind does so with a **firm protective stance.**

Thank you for your efforts to ensure Habitat gets moved back under the ADF&G.

Stephen Taufen - Groundswell Fisheries Movement
Watchdog for citizen-taxpayers and harvesters and communities in Alaska fisheries.

February 13, 2007

FROM:

Bruce H. Baker
P.O. Box 211384
Auke Bay, AK 99821
Phone: (907) 789-9354

TO:

Representative Paul Seaton, Chair
House Fisheries Committee
Alaska House of Representatives
State Capital, Room 102
Juneau, AK 99801

SUBJECT: HB41 – Reassignment of the Authority for the Anadromous Fish Act & Fishways Act from ADNR to ADF&G

Dear Chairman Seaton and Committee Members:

My name is Bruce Baker and I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to support and promote passage of HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

During your February 12 hearing on this bill, Mr. Lance Trasky, retired ADF&G Fisheries Biologist, Habitat Biologist, and Habitat Division Regional Supervisor, discussed his February 10 letter to your committee. I had the privilege of working with Mr. Trasky for 15 years, first during the years I worked as a Natural Resource Policy Specialist in the Office of the Governor during the Hammond administration and later when he and I both worked in ADF&G's Habitat Division. As you consider the well researched points made in Mr. Trasky's letter to you, I hope you'll keep in mind that he is the most knowledgeable, responsible, diligent, and, above all, effective leader in protecting the state's fish and wildlife habitats that I have ever met in state government. Many professional biologists and users of the state's fishery resources will tell you the same thing. You are very fortunate to have the benefit of the analysis his February 10 letter and February 12 testimony provide you with.

That said, here are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they are with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.

3. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

4. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During your committee's February 12 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be a smooth-running and effective administration of these functions. It would have been helpful if she had presented your committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

5. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that has worked so effectively to resolve these conflicts in a mutually beneficial way ever since Statehood.

6. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before your committee is neither a substitute nor a prerequisite to passing HB41, and I encourage the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkoswki fixed something that most Alaskans did not consider broken. Now, the Legislature and Governor Palin have an opportunity to fix what is.

Sincerely,

/s/ Bruce Baker

House Bill 41 Testimony - February 12, 2007

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

1. It is necessary and appropriate that the "Habitat Division" be returned to its proper place within the Alaska Department of Fish and Game. As we all know, the Board of Fisheries has given its unanimous support to this intention.
2. The Departments of Natural Resources and Fish and Game have previously performed separate roles for the sake of balancing the resource needs of Alaska. It is critically important that these separate roles maintain an equal status of integrity.
3. The consequences of Governor Murkowski's Executive Order 107 would only be realized after many years of cumulative effect. Evaluating a 3 ¾ year track record for permitting projects that are so typically long-term is an inadequate measure of confidence.
4. Governor Palin has stated that it is important to conduct stakeholder outreach in order to assure the public that departments are working cooperatively and effectively to manage Alaska's habitat resources and consistent with public interest. Having understood Governor Palin and knowing that the public's desire is to restore the Habitat Division to its proper place, we must do so by means of legislative action as necessary. The public could then be assured that the departments are correct without the effort of stakeholder outreach.
5. It is understandable that there is apprehension at the expense and effort of, again, moving this office. It is not convenient that we should have to fix the mistake of a previous administration however, long-term benefits would appreciate as resources could be accurately managed.
6. May the Governor and Officers and Employees of the State of Alaska be respectfully reminded that the foundations of our state and of our country have not been achieved by convenient means and this is our revered patriotic tradition.

Thank you very much for your attention.



Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515

57-43-204

Let's call the meeting to order

Let the record reflect that it is 8:30 a.m. on Monday, February 11th, 2007

Present are:

Representative Johnson ✓

Representative LeDoux *Late*

Representative Wilson

Representative Johansen ✓

Representative Holmes *Late*

Representative Edgmon ✓

And myself, Representative Seaton ✓

At this time I would like to remind everyone to turn off their cell phones and address questions through the chair.

Today we will hear

**HB 74 BAN MIXING ZONES IN
SPAWNING AREAS**

And

**HB 41 TRANSFER HABITAT DIV FROM
DNR TO F&G**

February 13, 2007

FROM:

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Phone: (907) 789-9354

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Louie Flora

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Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
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Anadromous fish populations are one of Alaska's true potential "permanent funds".

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Thanks for your time and service,

Douglas D. Hill
PO Box 220236
Anchorage, Alaska 99522
907-348-8519
deeryard2001@yahoo.com

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Sent: Tuesday, February 13, 2007 8:58 AM
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Stephen Taufen - Groundswell Fisheries Movement
Watchdog for citizen-taxpayers and harvesters and communities in Alaska fisheries.



MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Office of Habitat Management and
Permitting

TO: Rep. Paul Seaton
Chair
House Special Committee on Fisheries

DATE: February 22, 2007

TELEPHONE: 465-3176

FROM: Kerry Howard *KH*
Executive Director

SUBJECT: Response regarding
Projects

During last Wednesday's House Special Committee on Fisheries hearing, numerous testifiers mentioned projects where they alleged inappropriate actions on behalf of the Office of Habitat Management and Permitting (OHMP). At the end of the hearing, you verbally requested that I provide additional information about these projects. After the hearing, DNR's legislative liaison, Melanie Lesh, contacted your staff, Mr. Flora, to determine which projects, in particular, you wanted me to respond to. Given other duties, Mr. Flora did not provide a specific list.

As such, I referred to notes I took during the hearing, and have responded to projects I made notes on. This list is not meant to be all-inclusive. However, if there are additional projects the Committee wants additional information on, please let me know which specific ones, and I will gladly respond. For ease of referencing earlier testimony, I have identified the testifier and the project they discussed by name, followed by a paraphrasing of their concern, and then OHMP's response.

I'd appreciate you making this response available to committee members and the bill sponsor, Representative Gara. If you need additional information, please feel free to contact me through DNR's legislative liaison.

Enclosure

**Response to the House Special Committee on Fisheries
Office of Habitat Management and Permitting (OHMP)/DNR
Re: Additional Information regarding projects
Discussed in other testimony**

As requested by Chair Seaton, OHMP has prepared the following brief comments regarding projects that were specifically discussed in testimony from other parties. The responses are denoted by the testifier, followed by the project name. Our response is intended to provide clarifying information to members of the House Special Committee on Fisheries.

- **Mr. Herb Simon; Sheep Mountain Disposal:** *Mr. Simon expressed concerns that DNR did not consult with ADF&G before making disposals.* **Response:** Pursuant to the Memorandum of Understanding (MOU) between the Department of Natural Resources (DNR) and the Alaska Department of Fish and Game (ADF&G), ADF&G not OHMP is responsible to provide comments to the DNR Division of Mining Land and Water (DMLW) on land disposals. Further questions on what actions were or were not taken by the State should be directed to ADF&G or the DMLW.
- **Dr. Hal Geiger, Chilkat Jet Boat:** *Mr. Geiger disagreed with the DNR/Division of Parks (DOP) decision to allow a tourist operation using jet boats in the Chilkat Bald Eagle Preserve.* **Response:** The DOP initially requested that OHMP recommend conditions that would protect salmon in a DOP Parks Permit for a jet boat tourist operation proposed in the Chilkat Bald Eagle Preserve. OHMP staff analyzed two Chilkat River studies by Dr. David Hill of Penn State University that describe the effects of erosion, turbidity and turbulence on juvenile salmonids, both in the field and in the lab. In addition, OHMP evaluated a literature review and the recommendations of a former ADF&G Habitat biologist on the effects of jet boats on fish eggs and fry. OHMP provided recommendations to the DOP that were identical to the conclusions in Dr. Hill's study and the recommendations of the former ADF&G Habitat biologist. OHMP and the DOP then discovered that the implementing statutes for this Preserve require the DOP to seek comments from ADF&G on parks permits. As such, OHMP immediately closed our file, informed the DOP, and passed along all information to ADF&G.¹ ADF&G reviewed the same studies, and their Commissioner wrote a memo stating that sufficient scientific evidence did not exist to disallow the requested permitted use.
- **Mr. Matthew LaCroix, Pebble Wildlife Studies:** *Mr. LaCroix alleged that OHMP did not forward an ADF&G memo on wildlife research needs to the State's Large Mine Project Team (LMPT).* **Response:** Initial state and federal agency review of the proposed Pebble Gold Copper Prospect project, as proposed by Northern Dynasty Minerals (NDM) Inc., began in early 2004. In April 2004,

¹ The MOU was also amended on January 26, 2006 to clarify that ADF&G shall always have the lead on these projects.

the State's LMPT signed a funding MOU with NDM. Both OHMP and ADF&G were included in this MOU, and both agencies had staff participate in all LMPT meetings and in meetings with NDM.

NDM also initiated environmental baseline field studies in the summer of 2004, and these studies, including wildlife work, continued through the summer of 2006. In February 2006, ADF&G submitted recommendations for wildlife studies to OHMP, including a request that these recommendations be forwarded, via the State's Large Mine Project Team (LMPT), to NDM.

The recommendations made by ADF&G encompassed three areas of concern-- moose, brown bear, and trace elements-- with proposed scopes of work and associated cost estimates of about \$1.78 million dollars. OHMP was charged with the responsibility to either forward the recommendations, as written, or make a determination that the proposed studies and associated scope and costs were not justified. Specifically, OHMP's responsibility was to forward what we believed to be solid and defensible recommendations, based mainly on relevancy to permitting or mitigation, that can be considered in making permitting decisions.

To help us make this decision, in March 2006, OHMP requested that ADF&G provide additional clarification on why these studies were needed for the environmental assessment, but more importantly how these studies would be used to directly support major permit decisions. In May 2006, ADF&G responded to OHMP's request, by reiterating their initial recommendations and expanding the proposed study scope. OHMP then forwarded ADF&G's May 2006 recommendations to the State's LMPT coordinator who, in turn, provided them to NDM. OHMP did not take a position on the ADF&G recommendations. In addition, in September 2006, DNR and ADF&G mutually agreed to amend our MOU to clarify that both OHMP and ADF&G would fully participate in the State's review process and each agency would comment directly to the DNR LMPT.

Finally, in early December 2005, OHMP recommended to the State's LMPT that small technical work groups be formed as a good way to make progress on a number of topics pertinent to the Pebble Gold Copper Prospect. Although letters have since been exchanged between NDM and the State's LMPT agreeing to this approach, no technical work groups have yet been formed nor meetings held. OHMP has stated on more than one occasion that such topics as wildlife studies would be an excellent subject matter for such a technical work group, which would include NDM, their consultants, OHMP, ADF&G, and other appropriate state and federal agencies.

- **Mr. Matthew LaCroix, Rock Creek:** *Mr. LaCroix alleged that OHMP did not "contact or solicit input from ADF&G".* **Response:** The Rock Creek Mine was under pre-permitting development for over a decade. In the 1990s and early 2000-2001, while Habitat was still at ADF&G, Habitat staff coordinated the

review of this project with ADF&G Nome staff (Wildlife, Sport Fish, and Commercial Fish), to ensure that we understood and incorporated issues of concern to them. Subsequently, both before and after Habitat was moved to DNR, OHMP worked with the applicant and other state and federal agencies to ensure that ADF&G's issues were fully addressed. The current mining proposal addresses concerns previously raised by ADF&G.

In the later stages of project development, specifically for the new access road up Big Hurrah Creek, OHMP coordinated with Mr. Charlie Lean (former Commercial Fisheries (CF) Area Management Biologist, who we initially coordinated with and who is now retired but working on fisheries issues in Nome for Norton Sound Economic Development). This decision to continue coordinating with Mr. Lean was intentional, as he had lived in Nome most of his life and had more knowledge about Big Hurrah Creek than the new CF Area Biologist. The CF Area Biologist was aware both that we were coordinating with Mr. Lean and conducting pre-mine permitting fisheries investigations in the Big Hurrah drainage.

Finally, the OHMP staff person who coordinated OHMP's review of this project has almost 22 years of direct work experience in the Nome Area, far more than any current ADF&G biologist.

- **Mr. Matthew LaCroix, Coal Exploration Matanuska Valley Moose Range:** *Mr. LaCroix alleged that ADF&G was not initially given the opportunity to comment on the application and that OHMP conducted a review that did not meet standards established in a cooperative agreement.* **Response:** Full Metals Minerals, Inc. recently submitted a proposal to the DMLW to drill 30 initial, and up to 100 secondary test holes, and to dig one small test pit to determine the feasibility of mining high grade coal. OHMP reviewed the aspects of the project related to our authorities under AS 41.14.840 and .870. On approximately February 6, OHMP learned from ADF&G Sport Fish Division that a portion of the lease would be on the Matanuska Valley Moose Range. Pursuant to our MOU, which states that ADF&G has the lead for activities within legislatively designated special areas, we immediately agreed that ADF&G should have the lead for the review. A public meeting was held in Chickaloon on February 7, and representatives from both ADF&G and OHMP attended. OHMP is not a signator to the cooperative agreement mentioned by Mr. LaCroix, as it was signed before we were moved to DNR. ADF&G is a signator and, as such, could have independently asserted that they should have a lead role, which they now have.
- **Mr. Matthew LaCroix, ADF&G Permit Denial, Use of Explosives to Remove Beaver Dams:** *Mr. LaCroix alleged that OHMP authorized similar work conducted by the U.S. Forest Service (USFS), but denied a permit to ADF&G.* **Response:** On February 2, 2006, OHMP denied a Fish Habitat Permit to ADF&G for the removal of beaver jams with nitroglycerin explosives on the Trinity and Shell Lake systems in the Susitna River drainage. Denial of this permit was based

on our belief that using explosives to remove beaver dams would be unnecessarily destructive to valuable fish habitat and existing populations of resident and anadromous fishes. We believe that non-destructive hand removal techniques represent a viable alternative to the use of explosives. The ADF&G proposal to remove beaver dams did not adequately address alternative removal techniques, it did not address population control measures for surviving beaver populations, nor did it include provisions for the proper protection of fish and game as provided for under AS 41.14.870.

The use of explosives to remove beaver dams on Trinity and Shell Creeks significantly differs from a research project designed to evaluate the use of explosives for removal of culverts on USFS lands in Southeast Alaska. The beaver dams on Trinity and Shell Creeks represent natural barriers to fish passage in a fully mature and stable ecosystem. Beaver dams are a natural habitat component in these systems and provide high value habitat for a variety of fish other than coho salmon. In contrast, the use of explosives to remove culverts in Southeast Alaska was a component of a research project designed to evaluate removal of artificial barriers to fish passage (culverts) in remote locations where no practical alternatives existed. Specifically, the USFS Sitka Ranger District proposed to remove 11 dilapidated log stringer bridges and culverts on the Duffield Peninsula of Northwestern Baranof Island. The purpose of the project was to improve fish habitat and restore fish passage in approximately 3.5 miles of stream. The collapsed and failing structures on forest road were restricting fish passage and re-routing stream channels in the area. Due to the remote location and forest regeneration in the area the USFS proposed a pilot project using explosives for the removal of the first 11 of 45 structures. OHMP issued concurrences (5 under .870, 4 under .840, and 2 structures didn't require concurrence) and agreed to accompany Sitka Ranger District staff during the project to observe impacts and assess the efficacy of the project.

In most cases explosives were placed in road fill or to the underside of sill logs above the stream. Due to site specific logistics and safety concerns, explosives were placed on the streambed in 3 instances when no surface flow was present in non-anadromous streams and drainages, and on the streambed 1 anadromous stream with extremely low flow. OHMP staff observed juvenile salmonids in close proximity to the structures prior to and after blasts at six sites. There were no observed juvenile mortalities. After removing the structures, adult pink salmon were observed upstream of the road. Large woody debris from the structures created new habitat for juveniles.

In 2006, OHMP issued 11 more concurrences for the removal of structures along the same road system. OHMP staff monitored blasting activities and began data collection for a comprehensive study on the effects of underwater pressures created by blasting log stringer and box log culverts. We will continue our research this summer of 2007 by collecting more detailed information during blasts on the Duffield Peninsula and in Fish Bay.



Cordova District Fishermen United

P.O. Box 939 | Cordova AK 99574

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

Email: cdfu@ak.net

February 8, 2007

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

Representative Les Gara, Sponsor
State Capitol Room 500
Juneau AK 99801-1182

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

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

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

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

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

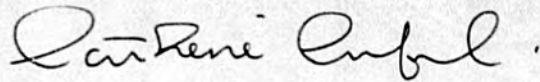
The CDFU supports House Bill 41, and supports the rescinding of Executive Order 107.

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

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

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

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Crawford".

Catherine Crawford
Executive Director, CDFU

Cc. Senator Albert Kookesh
Representative Bill Thomas

Louie Flora

From: Carlson Family [carlson1@gci.net]
Sent: Tuesday, February 13, 2007 11:22 PM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Subject: Support for HB 41

Representative Paul Seaton, Chair
 House Fisheries Committee

Dear Representative Seaton and Committee:

My name is Barbara Carlson. I am an educator & a citizen who cares deeply about stewardship of the great land of Alaska, what we *Unangan* (Aleutian Aleut) call *Alaxsxa*. This stewardship extends naturally to the water & sea. Some of our most profound traditional rules for living are these:

1. *Tuman tana' agliisaa'tan. E / Tana' agliisada. W / Take care of the land.*
2. *Tuman ala'u' agliisaa'tan. E / Ala'u' agliisada. W / Take care of the sea/ocean.*
3. *Tuman taanga' agliisaa'txin. E / Taanga' haqayaasada. W / Take care of the water.*

Their simplicity belies their importance. We believe that it is everyone's responsibility to live the way we know that we should live. That includes taking care of renewable resources in such a way that they can be given back to ourselves & future generations. What we Alaskans have is uniquely precious. I write to urge you to pass HB 41 restoring the Habitat Division to the Alaska Department of Fish & Game where the authority belongs. In 2003 Executive Orders 106 & 107 were passed without much fuss. They were bad ideas then & leaving them in place is a bad idea now. How could such catastrophic negative changes have been allowed to be put into place? I wrote each & every Senator & Representative asking them to oppose the orders. I remember feeling physically ill to learn how quickly the orders were a done deal. Like I said then, I absolutely agree that we need development, but we must have wise development. The balance of careful conservation will allow us to prosper AND to not foul our proverbial nests.

HB 41 is a chance to not only begin to repair the mess that was made of the protections that served the diverse renewable resource constituencies well since statehood, but will also help prevent future damage to the unparalleled sustainable yields of Alaska. We must do this, not only for ourselves, but for future generations; for our citizens & the tourists that come with money to spend as they appreciate what has already been destroyed in other states who once had similar resources. We must make these restorations for the nation &, indeed, the rest of the world who value & depend upon Alaska's renewable resource products that grow more precious as each year goes by.

As a serious steward I took it upon myself to laboriously review & comment upon changes made to the Coastal Management Program until I became totally frustrated with the ridiculousity. When I repeatedly checked back for the appearance online of appropriate agency comments they have never been forthcoming, despite the fact that they should have been posted, at the latest, more than a year ago. Said misguided executive orders have caused a great deal of unnecessary work & have opened up the opportunity for the unrestrained destruction of invaluable habitats everywhere in the state. Please do pass HB 41 so that we may get back to the business of doing things we know are right, echewing the haste of expediency for its own sake.

Thank you for your time & consideration.

Yours truly,
 Barbara Carlson
 6050 W Dimond Blvd.
 Anchorage, AK 99502
 248-2503

Louie Flora

From: Jeff Parker [gparker@alaska.net]
Sent: Wednesday, February 14, 2007 12:32 AM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Cc: sarah_palin@gov.state.ak.us; denby_lloyd@fishgame.state.ak.us; Rep. Les Gara; Lance Trasky; tom_irwin@dnr.state.ak.us
Subject: HB 41

I am a 27-year Alaskan, practice law related to fisheries, guided for many years in the Bristol Bay drainages and elsewhere, am a former outdoor writer, and represent several clients in opposition to matters related to Pebble Mine. I am writing in my individual capacity.

Representative Gara is doing the state a great service by sponsoring HB 41. As an occasional angling companion, I have every respect for his understanding of the importance of fisheries and transferring the statutes and the personnel of the former Habitat Division of ADF&G back to ADF&G.

Matters of fishery conservation belong in an agency, ADF&G, whose statutory mission IS conservation. They do not belong in an agency, DNR, whose statutory mission is conflicted by a combination of development and conservation missions.

The statutes in question, chiefly the Anadromous Fish Act, AS 41.14.870, and the Fish Ways Act, AS 41.14.840, and related sections of the Alaska Code, have been with ADF&G since statehood. Before that, during the territorial days, the precursors of these statutes were with the precursor of ADF&G. More recently, certain review functions under the Forest Practices Act were also assigned to ADF&G. They, too, were transferred to DNR to mute ADF&G. Nevertheless, there is huge history in this issue and it reflects importance of fisheries in this state. History means something and in this instance reflects wisdom.

I appreciate the reports that Governor Palin may take another look at the issues. I hope that she will conclude that her initial rationale for declining to restore the Habitat Division and its functions -- i.e., that although the move of Habitat functions to DNR may not have been right in the first place, it would be "disruptive" to move the staff and statutory authority back to ADF&G -- does not appear supportable by the facts. As I understand the facts, except for about 3 or 4 staff in Anchorage, the staff that were "transferred" to DNR in fact physically remained at their offices in ADF&G even though they were "transferred" to DNR authority.

Please support HB 41.

Thank you.
Jeff Parker
907-222-6859 wk
residence: 7431 Huckleberry Cir., Anchorage, AK 99502

Louie Flora

From: Carlson Family [carlson1@gci.net]
Sent: Tuesday, February 13, 2007 11:22 PM
To: Rep. Paul Seaton; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Subject: Support for HB 41

Representative Paul Seaton, Chair
 House Fisheries Committee

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Their simplicity belies their importance. We believe that it is everyone's responsibility to live the way we know that we should live. That includes taking care of renewable resources in such a way that they can be given back to ourselves & future generations. What we Alaskans have is uniquely precious. I write to urge you to pass HB 41 restoring the Habitat Division to the Alaska Department of Fish & Game where the authority belongs. In 2003 Executive Orders 106 & 107 were passed without much fuss. They were bad ideas then & leaving them in place is a bad idea now. How could such catastrophic negative changes have been allowed to be put into place? I wrote each & every Senator & Representative asking them to oppose the orders. I remember feeling physically ill to learn how quickly the orders were a done deal. Like I said then, I absolutely agree that we need development, but we must have wise development. The balance of careful conservation will allow us to prosper AND to not foul our proverbial nests.

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Thank you for your time & consideration.

Yours truly,
 Barbara Carlson
 6050 W Dimond Blvd.
 Anchorage, AK 99502
 248-2503



American Fisheries Society

ALASKA CHAPTER

January 5, 2007

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

Dear Governor Palin,

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

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

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

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

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

Sincerely,

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

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

Enclosures (2)

February 13, 2007

FROM:

Bruce H. Baker
P.O. Box 211384
Auke Bay, AK 99821
Phone: (907) 789-9354

TO:

Representative Paul Seaton, Chair
House Fisheries Committee
Alaska House of Representatives
State Capital, Room 102
Juneau, AK 99801

SUBJECT: HB41 – Reassignment of the Authority for the Anadromous Fish Act & Fishways Act from ADNR to ADF&G

Dear Chairman Seaton and Committee Members:

My name is Bruce Baker and I served as Deputy Director of the Alaska Department of Fish & Game's (ADF&G) Habitat Division for 11 years, from 1981 to 1992. I encourage you to support and promote passage of HB41 which would restore authority for implementing the Anadromous Fish Act (formerly AS16.05.870; now AS 41.14.870) and the Fishways Act (formerly AS16.05.840; now AS 41.14.840) from the Alaska Department of Natural Resources (ADNR) back to ADF&G where it rightfully belongs.

During your February 12 hearing on this bill, Mr. Lance Trasky, retired ADF&G Fisheries Biologist, Habitat Biologist, and Habitat Division Regional Supervisor, discussed his February 10 letter to your committee. I had the privilege of working with Mr. Trasky for 15 years, first during the years I worked as a Natural Resource Policy Specialist in the Office of the Governor during the Hammond administration and later when he and I both worked in ADF&G's Habitat Division. As you consider the well researched points made in Mr. Trasky's letter to you, I hope you'll keep in mind that he is the most knowledgeable, responsible, diligent, and, above all, effective leader in protecting the state's fish and wildlife habitats that I have ever met in state government. Many professional biologists and users of the state's fishery resources will tell you the same thing. You are very fortunate to have the benefit of the analysis his February 10 letter and February 12 testimony provide you with.

That said, here are some of the overall reasons that I urge you to support restoration of fish habitat functions in ADF&G:

1. The Anadromous Fish Act and Fishways Act more closely correspond with the overall statutory mission in ADF&G's Title 16 authority than they are with ADNR's overall statutory mission. As Alaska's founding fathers intended, ADF&G's mission is to protect, preserve, maintain, and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state.
2. The expertise of fisheries biologists is more readily available to administrators of the Anadromous Fish Act and the Fishways Act if all of these personnel are physically located within ADF&G and are answerable to the Commissioner of that department.

3. The restoration of fish habitat functions to ADF&G can be achieved through a very manageable reassignment of state employees which can be done over a short period of time with minimum disruption of day-to-day permitting functions. A few public officials have argued that this restoration of ADF&G authorities and responsibilities would somehow be a cumbersome exercise. It is human nature to resist change, and the restoration of these functions could be quite seamless under good leadership. In any event, the long-term importance and protection of Alaska's world-class fisheries resources should trump any short-term organizational inconveniences that might result for any individual employees who find it difficult to make the adjustment.

4. Restoration of ADF&G's statutory fish habitat statutes would restore a very serious loss of public confidence in the state's fish habitat protection program that has occurred ever since Governor Murkowski put the program's administrators under the thumb of the ADNR Commissioner. During your committee's February 12 hearing on this bill, Ms. Kerry Howard of ADNR devoted much of her testimony to defending what she considered to be a smooth-running and effective administration of these functions. It would have been helpful if she had presented your committee with an even-handed description of how well the state's fish habitat protection program functioned from Statehood in 1959 right up until 2003 when Governor Murkowski effectively dismantled it.

5. Restoration of habitat functions to ADF&G would maximize the likelihood that employees responsible for administering them would be diligent in future years and decades. Again, Ms. Howard went to great length to describe what she perceives to be a system in ADNR that is working. Even if that were true, and many in the public and in state and federal government would disagree with her, there is absolutely no assurance that things would go that well in the future. The reason is that future state officials would need to be loyal to ADNR's overarching statutory mission - one that addresses the management and utilization of natural resources other than fish or wildlife. The utilization of these resources is often in conflict with the management of fish and wildlife habitats, and HB 41 will restore the essential check and balance between ADF&G and ADNR commissioners that has worked so effectively to resolve these conflicts in a mutually beneficial way ever since Statehood.

6. The revisiting of the ADNR/ADF&G Memorandum of Understanding that Ms. Howard referred to in her testimony before your committee is neither a substitute nor a prerequisite to passing HB41, and I encourage the Legislature not to treat it as such. The statutory reassignment of duties and an MOU are not mutually exclusive. In fact, once the Anadromous Fish Act and the Fishways Act are restored to ADF&G, there will still need to be an MOU that ensures efficient cooperation between the departments. It will simply reflect the fact that these two acts and the entire staff administering them are located in ADF&G.

In Closing. By moving fish habitat functions from ADF&G to ADNR through Executive Order 107 and by requesting that the Legislature reassign the Anadromous Fish Act and Fishways Act from ADF&G to ADNR, Governor Murkoswki fixed something that most Alaskans did not consider broken. Now, the Legislature and Governor Palin have an opportunity to fix what is.

Sincerely,

/s/ Bruce Baker

Louie Flora

From: doug hill [deeryard2001@yahoo.com]
Sent: Monday, February 12, 2007 11:20 PM
To: Rep. Carl Gatto; Rep. Gabrielle LeDoux; Rep. Jim Elkins; Rep. Kurt Olson; Rep. Mary Nelson; Rep. Paul Seaton
Subject: Please support HB 41 - TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Re: House Bill 41
TRANSFER HABITAT DIV FROM ADNR TO ADF&G

Representative Lynn,

I want to thank Representatives Gara and Crawford for the wisdom and foresight they have exhibited by sponsoring HB 41.

From the start and from the standpoint of anadromous fish and habitat protection I don't believe there was any basis in reason or fact for moving key Title 16 responsibilities from AD&G to ADNR. I listened to and read Frank Murkowski's first "State of the State" address where he announced his desire to move anadromous fish habitat protection functions and other responsibilities to ADNR via Executive Order 107. Allegations made against ADF&G-Habitat Division in the "State of the State" address were easily refuted and evidence was provided to the legislature. Further Habitat Division damaging spin came from ex-large scale mine manager and the then current ADNR Commission Tom Irwin. For example, whether Irwin was aware of it or not, he erroneously conveyed information from Canada's Fraser Institutes mining report (the "Fraser Report") to support the anti ADF&G-Habitat campaign. ADF&G - Habitat Division had no support from conveniently "acting" Commissioner Kevin Duffy and the balance of power in the legislature at the time favored supporting nearly anything the Governor or Jim Clark wanted.

I believe the wisdom of the states founders should be heeded and we should return to the "check and balance" type system where, prior to EO 107, the following responsibilities resided outside of ADNR (the states lead resource extraction agency) and within ADF&G:

- Title 16 fish passage and anadromous fish stream permitting;
- the Anadromous Waters Catalog;
- Project-related research and compliance monitoring;
- Forest Resources and Practices Act permitting, monitoring and compliance.

With potential projects such as the Pebble Gold Mine on the horizon - a mine which will affect two of the worlds largest remaining wild salmon and rainbow trout watersheds - I don't believe that state's lead mineral extraction agency should be in the business of Title 16 fish habitat and passage protection, Title 16 monitoring and compliance activities, or determining which streams are anadromous and which are not. As result of EO 107 ADNR is responsible for determining which streams are cataloged as anadromous fish streams and which streams are not. As many of you know non-anadromous fish streams are not afforded the same protection as anadromous fish streams. I strongly encourage the Governor and the legislature to think about the future and support HB 41. Please "transfer the Habitat Division out of ADNR and back to ADF&G.

Anadromous fish populations are one of Alaska's true potential "permanent funds".

I am currently an ADF&G - DWC employee with 14 years of service. I have fished commercially and subsistence in Alaska. In addition, I have worked as a carpenter/maintenance worker in bush and urban Alaska. I am a hunter/fisher, skier, and moving water canoer.

Thanks for your time and service,

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