

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1881 SRES HABITAT REGS. 3/25/81 ✓✓✓

TO: [Don Kelly  
Habitat  
Ketchikan  
Dept. of Fish and Game

DATE: September 10, 1979

FILE NO:

TELEPHONE NO:

FROM: Donald L. Siedelman  
Sport Fish *USA*  
Ketchikan  
Dept. of Fish and Game

SUBJECT: Staney Creek Fish Kill

We should to on record through the Commissioner requesting to the USFS that logging in the Staney Creek drainage should be stopped in view of the fish kills that have taken place in this stream during the past two out of three years.

The next USFS's 5-Year Plan proposes further logging for this drainage.

Seems that the USFS should get their heads out of the sand and realize that continued logging in this drainage is not aiding the salmon that are utilizing this system. Logging has to be perpetuating the incidence of fish kills due to the excessive large track of logged areas in the upper stream areas with no revegetative cover.

To use an excuse that someone has to prove that this is not the case is asinine. If a problem exists lets face a fact and solve it through positive action instead of waiting 10 years to prove that it was or was not the problem based on field work. In the meantime, the problem continues at the expense of our resources.

If the USFS's guide states the USFS is logging within its guidelines then the guide needs change or updated - or does the USFS staff need to be changed.

It is about time the USFS spoke to temp. sensitive streams in a more positive fashion than saying "prove it".

CC: R. Reed  
...K. Hofmeister  
J. Valentine  
A. Schmidt

# MEMORANDUM

TO: [

DATE: 12 October 79

Randy Bayliss  
SERO/Supervisor

FILE NO.

Thru:

Ron Flinn  
District Coordinator

TELEPHONE NO.

FROM:

Bruce H. Hoffman  
EFO/Ketchikan

SUBJECT: Staney Creek Meeting

On October 12, 1979, a joint meeting with the USFS, ADF&G and ADEC was held at the Ketchikan Federal Office Bldg.

Those in attendance were the following:

NAME	TITLE
Ed Johnson	Forester (USFS)
Mike Pease	Fisheries Biologist (USFS)
Pete Mondich	Timber Program Manager (USFS)
Louie Bartos	Hydrologist (USFS)
Don Kelly	Area Habitat Biologist (ADF&G/Ktn)
Don Siedelman	Sport Fisheries Area Management Biologist (ADF&G/Ktn)
Bruce Hoffman	Environmental Field Officer (ADEC/Ktn)

The purpose of the meeting was to address problems associated with Staney Creek located on the west side of Prince of Wales Island.

Ed Johnson discussed the IDT review of Staney Creek, objections to additional cutting of timber in this watershed were made by Steve Haavig, ADF&G Habitat Biologist and by USFS fisheries biologists. Due to timber harvest quota's and new guidelines to be used for harvesting of timber, units in the Staney Creek watershed were included in the 1979-1984 harvest.

Louie Bartos, USFS Hydrologist, discussed his input on the Staney Creek IDT review. The Staney Creek watershed was divided up into 7 or 8 sub watersheds. Each watershed was analyzed separately, the amount of vegetation removed (acres) and the evapotranspiration ration were included in the computer model. The computer program used addressed the volume of water affected in the watershed, and was described as a "black-box" model due to lack of a complete understanding of the ground water or subsurface flow. Temperature was not addressed in this report on Staney Creek's hydrology. The warming effect of groundwater due to the removal of vegetative cover is of major concern in this watershed.

Present status of timber harvest units are as follows:

1. Total number of acres scheduled to be cut in 1979-1984 five year contract in the Staney Creek watershed are 1283 acres, consisting of 24 units.
2. 431 acres are released to date. Activity in released areas range from access roads built to units, felled units & felled and yarded units.

3. An additional 99 acres of blowdown timber ~~will~~ also be harvested.
4. 743 acres of timber have not yet been released for harvest.

Discussion of possible alternatives on what corrective actions if any that could reduce impacts on the Staney Creek watershed followed. Options that were aired were the following.

1. Drop some or all of the units in the Staney Creek watershed scheduled for harvesting in the 1979-84 5 year contract. Contractual lawsuit possible
2. Reschedule cutting of units in the Staney Creek watershed to the end of the 5 year contract. This would buy 2-3 years of additional growth in the watershed before another impact. It would also 2-3 years to do additional research in this area. \*
3. Plant alders along the stream bank to provide shading during summer months. This would not have much affect for the next couple of years but could reduce the effects of another draught in five or ten years from now. A closer look to this alternative is warrented.
4. Possible intensive fisheries management of the Staney creek system, including special openings to reduce numbers of fish from entering the stream to spawn.
5. Removal of dead fish from stream by hand to reduce dissolved oxygen demand.
6. Involve various State and Federal agencies to study problem and make recommendations. If this is done the task force should be formed immediately so a plan of attack is ready by next spring. This also presents a good chance to form an intensive research study. Industry should also be included as they are the ones who demand the resource; they should help share the responsibilities and be kept informed of problems and their impacts.

\* Appears to be the only avenue actively pursued by the Forest Service at this time minus the research.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH D - JUNEAU 99877

October 12, 1979

Mr. Max Peterson, Chief  
United States Forest Service  
South Building  
12th Street & Independence Avenue S. W.  
Washington, D. C. 20013

Dear Mr. Peterson:

On August 24, 1979, representatives of the Alaska Attorney General's Office and the Alaska Department of Environmental Conservation met with representatives of the U. S. Forest Service in Sitka, Alaska, regarding a serious pollution incident which occurred on Kizhuchia Creek, in the Tongass National Forest, in April 1978. Representing the views of the Forest Service was a member of the Portland regional attorney's office--Mr. James Kauble. Also in attendance were personnel from the Tongass National Forest's Sitka Office.

One of the purposes of the August 24 meeting was to determine why Forest Service personnel did not consult State officials when it became apparent that a gravel pit placed directly adjacent to Kizhuchia Creek created an imminent potential for serious damage to the productivity of that stream. After stating that "I might as well tell you what my clients told me," Mr. Kauble indicated that Tongass National Forest personnel were unanimous in their belief that, in situations such as that presented by the Kizhuchia Creek incident, there was no need to contact State officials since, in the opinion of Forest Service personnel, State officials possessed neither the insight nor experience to aid the Forest Service in preventing or mitigating adverse impacts from logging activities. The purpose of this letter is to determine whether the views expressed by your agents accurately represent Forest Service policy.

To place Mr. Kauble's comments in their proper perspective, a brief history of the Kizhuchia Creek incident may be helpful. In 1976, the Forest Service approved the placement of a gravel

borrow pit in an active alluvial area directly adjacent to Kizhuchia Creek--a rich anadromous fish stream. The pit location lay in the path of a periodic high flow wash which descended from a steep hill area, then around the pit wall, and downhill to Kizhuchia Creek. The pit was so placed that water would eventually break through the pit wall, directly through the pit and thence unimpeded into Kizhuchia Creek. The susceptibility of anadromous streams to damage from siltation is well documented, and the ill-advised placement of this particular pit was conceded by U. S. Forest Service hydrologists at the August 24 meeting. Nonetheless, the pit site was approved. Officials at the August 24 meeting conceded that the Forest Service and the logging company involved--Alaska Lumber & Pulp Company--felt that placement of the pit at that site was warranted because it would minimize the cost of hauling extracted gravel to a nearby road. The location of the pit, it should be noted, was approved by a Forest Service employee who had no hydrological experience, and did not consult anyone schooled in the potential hazards which the pit might create.

Shortly after commencement of pit development, potential siltation problems arose. These problems worsened until a "crisis" was reached in early April 1978. By April 4, Forest Service officials recognized that the next heavy rain would cause the adjacent waterfall to break into the pit, washing substantial amounts of silt from the pit to Kizhuchia Creek. Despite this potential disaster, and a belatedly recognized need for remedial measures, State officials were not notified.

On April 24, 1978, the incident which Forest Service personnel knew was inevitable in fact occurred. A high flow from the waterfall rushed into the pit, through silt-laden settling ponds, and into Kizhuchia Creek--turning a heretofore crystal-line anadromous fish stream a murky brown, resulting in a gross violation of Alaska Water Quality Standards, as approved by the U. S. Environmental Protection Agency. Even then, Alaska Department of Fish & Game and Alaska Department of Environmental Conservation officials were not notified. Rather, quite by happenstance, a Department of Fish & Game employee flying over the area on a herring count observed the violation. This employee then notified the Forest Service of the State's concern.

The failure of the Forest Service to notify State officials regarding the imminent potential for damage to Kizhuchia Creek was broached at the August 24 meeting. In sum, Mr. Kauble stated that it was his client's view that State officials could add nothing to Forest Service efforts to control the situation, either from a hydrological or biological perspective, and that

there was simply no need to alert the State of Alaska that one of its salmon streams was on the verge of being substantially impaired. In my view, those employees' perception that they have environmental management within the Tongass "well in hand" rings hollow with regard to Kizhuchia Creek. Even Forest Service hydrologists conceded that the decision by the Forest Service to allow the gravel pit at this location was, at best, unsound. It seems likely that the Forest Service was simply not eager to let State officials know that a substantial error by the U. S. Government had exposed State resources to severe damage. Further, the nature of the resultant water quality violation is clearly contrary to Section 313 of the Clean Water Act of 1977, which imposes a mandatory duty upon Federal agencies to obey State water quality protection laws.

There are several matters which concern us regarding the Forest Service's conduct throughout this incident. Approval of the pit was apparently given for purely economic reasons, without regard to sound hydrological practice. No attempt was made to monitor construction of the pit meaningfully, your agent admitted that the Forest Service made no inquiry as to whether the pit was being placed near or below the waterfall. Apparent from these questions of fault, however, I am particularly dismayed by the apparent view of a few of your key agents that they feel no real need to cooperate effectively with the State of Alaska in preventing damage to anadromous fish streams from logging and related activities.

In recent years, the Forest Service has gone to substantial ends to seek to improve the quality of its land use decision-making. It is regrettable that, at least with respect to State coordination, this philosophy has not filtered down to some Tongass and regional personnel. I would hope that something beneficial would come from the Kizhuchia Creek incident. If nothing more, a meaningful attempt to change the rather distressing attitudes of these representatives would appear in order.

Another matter has been called to the attention of the Regional Forester in Juneau concerning rather alarming reports of unspawned adult coho, chum, and pink salmon mortality in logged portions of the Staney Creek watershed. These warrant investigation and remedial modifications to cutting plans for further operations in that area. Meetings between our Department, Alaska Department of Fish and Game, and the Forest Service have been set up to discuss the matter in Ketchikan this morning.

Staney Creek, on the west side of Prince of Wales Island, has been designated "temperature sensitive" in that destruction of stream side vegetation could allow sunlight to warm the water

October 12, 1979

and nearby earth to the extent that the marginal waterflow is heated to lethal limits. Extensive early timber harvesting in the lower portions of the Staney Creek watershed was conducted prior to the implementation of cutting guidelines for temperature sensitive watersheds.

Recent investigations by Fish & Game biologists have confirmed large fish kills, up to one-third of the returning spawning run:

Unspawned Dead Salmon

August 1977	2,000
August 1979	15,000

Concurrent investigation by Environmental Conservation field officers found simultaneous violations of the Alaska Water Quality Standards (18 AAC 70) for temperature and dissolved oxygen, both of which were unfit for salmon or trout survival.

Because of the cumulative nature of temperature effects in a stream system, proposed logging on the upper portions of the Staney Creek watershed, even if current guidelines are adhered to, will be antagonistic. The current guidelines are based upon the assumption that the same practices will be uniform throughout the watershed; this is clearly not the case in Staney Creek.

In view of these developments, two considerations deserve attention:

- (1) What measures should be undertaken to restore the lower portions of the Staney Creek watershed so that effects can be rectified; and
- (2) What modifications should be made to the existing cutting plans in the upper portions of the Staney Creek watershed so that the temperature effects do not worsen.

Meanwhile, we suggest that resource agencies coordinate to monitor this system.

Thank you for your consideration in this matter. I look forward to hearing from you.

Sincerely,



Ernst W. Mueller

bc: Congressional Delegation Commissioner  
Commissioner Skoog  
Tillinghast, Koester, Prezyna  
Cowles, Bayliss, Hoffman, Flinn

TO: Rick Reed  
Regional Habitat Protection Supervisor  
Juneau

DATE: October 15, 1979

FILE NO.

TELEPHONE NO.

FROM: Don Kelly *DK*  
Area Habitat Biologist  
Ketchikan

SUBJECT: Meeting with USFS  
regarding Staney Creek

On Friday, October 12, Don Siedelman, Area Sport Fish Biologist and I attended a meeting with representatives of the Forest Service to discuss alternatives open to us in the Staney Creek drainage on Prince of Wales Island. Also present at the meeting were: Pete Mondich, Timber Program Manager, Ed Johnson, Forester and Team Leader for the LPK 5 year plan IDT, Mike Pease, Fishery Biologist, Lou Bartos, hydrologist and Bruce Hoffman, Ketchikan Area Environmental Field Officer, ADEC.

Ed Johnson discussed the IDT process as it operated in the Staney Creek drainage. Lou Barbs then discussed the report he prepared for the IDT on Staney Creek's hydrology. The central point of this report was that he predicted logging in the drainage, within prescribed limits, would have little effect on the volume of the creek.

Temperature was not discussed in this report. Ed Johnson then gave a rundown on the status of the 79-84 units in the Staney Creek drainage. A total of 24 units (1283 Acres) in the watershed were included in the five year plan. Of these, 431 Acres have been cut or are released and partially cut. Another 99 Acres are blowdown and will be cut. There are 743 Acres that have not been cut. These are in various stages of road and unit layout, but have not been released, nor have roads been built. Mike Pease stressed that units in the 79-84 plan had been laid out with current temperature sensitivity guidelines strictly followed.

There was some discussion (again) of what we could "prove" to be the cause of fish mortality on the creek. I stated that we weren't concerned with proving anything, but that we felt that logging in the drainage would simply further worsen an already bad situation, since we felt that existing temperature sensitivity guidelines were not strict enough to make up for past excesses.

We then discussed possible options:

1. Drop some or all of the units that remain uncut. This is unlikely to be actively pursued by the Forest Service. It may, in fact, present them with legal or contractual problems, and may just mean exporting our problems to another drainage.

Rick Reed  
October 15, 1979  
Page 2

2. Defer cutting of units until the end of the 79-84 period. This is the most likely alternative at this point. Logging in all or most of these units can be put off until 83 or 84, giving us the benefit of 3-4 more years regrowth.

3. Investigate the possibility of replanting alder to provide stream-side cover. There are some questions as to the effectiveness of this technique, and I doubt Timber really wants to help get alders established. However, I think the idea still has merit and deserves a closer look, especially in areas where there are a number of tributaries.

4. There was some discussion of things that could be done at the time another low water period occurs. These may include removal of dead fish or actions by ADF&G's Comm. Fish Division to reduce the number of fish entering Staney Creek.

Also discussed were plans to assemble a group of people concerned with land resources and fisheries (ADFG, ADEC, NMFS, USFWS, USFS) to discuss modifications to the temperature sensitive guidelines and the development of a research program on these systems. This is particularly important since we have a number of systems on Prince of Wales Island (Logjam Creek, Sweetwater Lakes, Shaheen Creek) where we may have problems as severe as on Staney Creek. Both ADF&G and ADEC expressed a willingness to participate.

The meeting ended at this point, with general agreement to defer cutting on uncut units and to investigate replanting. I'll keep you informed of future developments. As we have discussed, it will be important to follow this meeting up to assure that some action is taken.

cc: D. Siedelman-ADFG-Ketchikan  
K. Francisco-ADFG-Ketchikan  
K. Hofmeister-ADFG-Ketchikan  
B. Hoffman-ADEC-Ketchikan

COWLE

DON YOUNG  
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:  
INTERIOR AND INSULAR  
AFFAIRS  
MERCHANT MARINE AND  
FISHERIES

Congress of the United States  
House of Representatives

Washington, D.C. 20515

October 19, 1979

WASHINGTON OFFICE  
1216 LONGWORTH BUILDING  
TELEPHONE 202, 223-5785

DISTRICT OFFICES  
FEDERAL BUILDING AND  
U.S. COURT HOUSE  
701 C STREET, BOX 3  
ANCHORAGE, ALASKA 99513  
TELEPHONE 907, 271-5378

FEDERAL BUILDING, ROOM 212  
101 12TH AVENUE, BOX 10  
FAIRBANKS, ALASKA 99701  
TELEPHONE 907, 456-6349

RECEIVED  
OCT 26 1979

Dr. M. Rupert Cutler  
Assistant Secy. for Conservation,  
Research & Education  
U.S. Department of Agriculture  
Washington, D.C. 20250

Dept. of  
Environmental Conservation

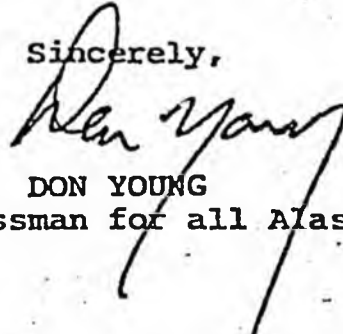
Dear Secretary Cutler:

The enclosed letter from the Alaska Department of Environmental Conservation to the Chief Forester, USDA, raises some serious concerns regarding resource management in Alaska.

Although I am not personally familiar with the situation described, it appears that Forest Service officials have refused to consult with the State of Alaska regarding potential land and water management problems. Given the complex inter-mixture of State and federal lands in Alaska and thus the continuing federal presence in the State, I am sure that you will agree with me that cooperation between State and federal resource agencies is imperative. I request that you investigate the alleged actions of Forest Service employees and inform me of what actions are being taken to preclude future occurrences of this sort.

Your assistance in this matter is appreciated.

Sincerely,



DON YOUNG  
Congressman for all Alaska

cc: Comm. Mueller  
Comm. Skoog

RECEIVED

NOV 7 1979

Dept. of Environmental Conservation  
S. E. Regional Office

United States Senate

WASHINGTON, D.C. 20510

*BB*  
*De*  
*B. L. (12/20)*  
*Hoffman*

*Sweeney*  
*Creek*  
*file*

October 29, 1979

Alaska Department of Environmental  
Conservation  
Attn: Ernst W. Mueller, Commissioner  
Pouch O  
Juneau, Alaska 99811

Dear Ernst:

Thanks for providing me with a copy of your  
October 12th letter to Max Peterson regarding the  
incident at Kizhuchia Creek.

In an effort to assist you in this matter,  
I have also contacted Mr. Peterson. As soon as a  
reply is received, we will be back in touch.

With best wishes, \_\_\_\_\_

Cordially,

*Ted Stevens*

TED STEVENS  
United States Senator

RECEIVED

RECEIVED

NOV 5 1979

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
P.O. Box 2417  
Washington, D.C. 20013

*Killing host  
Bayless  
Henkins  
Cowles 11-26  
Comm. Skog*

NOV 5 1979



Mr. Ernst W. Mueller  
Commissioner  
State of Alaska  
Department of Environmental Conservation  
Pouch 0  
Juneau, Alaska 99811

Dear Commissioner Mueller:

This acknowledges receipt of your letter of October 12 concerning the problems related to sedimentation into Kizhuchia Creek caused by construction of a gravel pit.

As you would expect, we are disturbed that an impression has been created that the Forest Service would suppress knowledge of resource damage from the State or fail to consult with the State on matters of concern to them. We are well aware of Regional Forester Sandor's desire to develop strong working relations with the State, and we certainly support his efforts to do that.

For us to respond more fully and to be sure we accurately understand the situation you have described, we have asked Regional Forester Sandor to look into the matter and provide additional information to us. We will respond further to you as soon as it is received.

With regard to the fish mortality in Stoney Creek, we are of course concerned that this has apparently taken place. We are pleased to see that you are working with Regional Forester Sandor on this matter and trust you will continue to do so in determining the necessary action to take.

You may expect to hear further from us on the Kizhuchia Creek matter by November 20. Thank you for bringing it to our attention.

Sincerely,

*J. B. Hilmon*

J. B. HILMON  
Associate Deputy Chief

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REC  
NOV 13 1979  
D  
Environmental Conservation

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

RECEIVED

NOV 20 1979  
NOV 14 1979

Honorable Don Young  
House of Representatives  
Washington, D.C. 20515

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

Dear Congressman Young:

This is in reply to your letter of October 19 enclosing a copy of a letter from Ernst W. Mueller, Commissioner of the Alaska Department of Environmental Conservation to Chief Forester Peterson.

The Chief has written the Regional Forester for additional information on this situation. The Chief and I agree with you that close cooperation between the Forest Service and the State is essential.

Regional Forester John Sandor has given the highest priority to protection of anadromous fish streams. Additionally, he has taken positive steps through development of the Tongass Land Management Plan and in other actions to coordinate closely with State officials. In our view, it would foster closer cooperation if the State Commissioners would work directly with the Regional Forester when problems arise as they apparently now are doing regarding Staney Creek.

We do appreciate knowing of potential conflicts and can assure you that we are investigating the matter. We are confident that the problems can be resolved. We will let you know what actions are being taken after the Regional Forester has checked into the matter.

Sincerely,

HUBERT CUTLER  
Assistant Secretary for  
Natural Resources and Environment

RECEIVED

Dept. of Environmental Conservation  
S. E. Regional Office

November 21, 1979

Rick Reed  
Regional Habitat Protection Supervisor  
Department of Fish and Game  
Juneau

Don Kelly  
Area Habitat Biologist  
Department of Fish and Game  
Ketchikan

Staney Creek

The purpose of this memo is to bring you up to date on what's been happening in regard to Staney Creek.

As you are aware, alternatives were discussed at a meeting with the Forest Service on October 12. At that time, there were three likely courses of action:

1. Investigate silvicultural techniques that could be employed to provide shade for the creek and its tributaries.
2. Investigate deferral of harvests in this drainage until the end of the present five year period.
3. Form an interagency review team to review guidelines for timber harvest in temperature sensitive streams.

Since the October meeting, I've spoken briefly with Mike Novy, Acting Wildlife and Fisheries Program Manager, about one particular problem on Staney Creek, the re-drawing of two small units and the relocation of a section of road. At that time, Novy stated that the Forest Service would like to wait until LPK submits their 1980 logging plan before meeting to discuss deferral of units. I think we should begin consideration of alternatives 1 and 2 as soon as possible, however, and suggest that we meet again with the Forest Service some time in the first part of December, whether or not a logging plan has been submitted. I will contact them on or about 1 December and suggest a meeting.

As we have discussed, it would be useful to have a letter sent from you to Forest Supervisor Watson inquiring about the progress of our discussions. This would serve to put more pressure on the Forest Service and prevent them from putting this on a back burner, and would also put us on the record as officially expressing concern over this and other creeks. Specifically, I think this letter should (a) refer to the October meeting and urge that further consideration of alternative (2) above take place, and (b) ask what if any action has been taken on the silvicultural alternative. The letter should also express our willingness to participate in an interagency review of temperature sensitivity guidelines. I've drafted a letter as an example. Feel free to use it or toss it as you feel necessary.

I also think it may be necessary for headquarters to write a letter to Sandor expressing concern over Staney Creek in particular and the temperature sensitive guidelines in general. This would serve to underscore our concern

Rick Reed

-2-

November 21, 1979

over these matters and add an extra voice to our request for an interagency review of existing guidelines. It would also serve to "make us official" in registering our concerns. I'd suggest something similar to the draft of the letter I wrote in September (copy attached), to be sent some time after your letter to Watson.

Call if you have any questions. Thanks.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

# STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF FISH & GAME  
Habitat Protection Section

210 Ferry Way  
Juneau, Alaska 99801

November 27, 1979

Mr. James Watson  
Forest Supervisor  
Tongass National Forest-Ketchikan Area  
Federal Building  
Ketchikan, Alaska 99901

Dear Mr. Watson:

RE: Modifications to logging plans for the Staney Creek drainage

Low water conditions, combined with high water temperatures resulted in high mortalities of salmon in Staney Creek (stream number 103-80-31) during late August of this year. Members of the Ketchikan staff of the Department of Fish and Game have expressed concern that continued timber harvest in the Staney Creek drainage may further aggravate an already critical situation.

With these concerns in mind, members of our Ketchikan staff met with members of your staff to discuss alternatives for the protection of fish in this drainage. The following options were discussed:

1. Modify unit boundaries and/or defer the harvest of remaining units until the end of the 1979-1984 operating period.
2. Have silviculturists investigate the possibility of planting alders or other species to provide shade and stream side cover.
3. Form an interagency team, consisting of representatives of the Alaska Departments of Environmental Conservation and Fish and Game, the Forest Service, the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to review existing guidelines for the protection of temperature sensitive streams. This is particularly important since there are several other systems on Prince of Wales Island (Logjam Creek, Sweetwater Lake), that may in the future experience problems similar to those encountered on Staney Creek in 1977 and 1979.

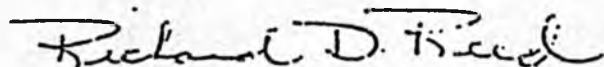
We would strongly urge that another meeting be held to discuss modifications to timber harvest plans in the Staney Creek drainage, and suggest that this meeting be conducted in a manner similar to the Interdisciplinary Team system used to develop the current five year plan. This review should take place

Mr. James Watson  
November 27, 1979  
Page 2

and be concluded well before the 1980 timber harvest begins. We also recommend that the replanting program be given full consideration.

This Department stands ready to participate in any interagency review of existing guidelines for the protection of temperature sensitive streams. We would urge that this review begin as soon as possible.

Sincerely,



Richard D. Reed  
Regional Habitat Protection Supervisor

cc: D. Logan  
D. Kelly  
W. Sheridan

STATE OF ALASKA  
DEPARTMENT OF FISH & GAME

JAY S. HAMMOND, Governor

Habitat Section  
415 Main Street  
Room 208  
Ketchikan, Alaska  
99901

November 28, 1979

Mike Novy  
Acting Wildlife and Fisheries Program Manager  
U.S. Forest Service  
Federal Building  
Ketchikan, Alaska 99901

Dear Mike:

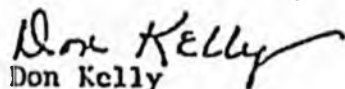
Re: Additions to units in the Staney Creek drainage

As you are aware, the Department of Fish and Game is concerned about the effects of canopy removal on stream temperatures in Staney Creek, and we have requested a review of logging plans in the drainage. At a meeting held in October and attended by representatives of the Forest Service and Fish and Game, several alternatives were discussed for lessening future impacts on the creek. The primary alternatives discussed were: 1) the modification of unit boundaries and the adoption of specific prescriptions which would permit the retention of shade-producing streamside cover, and 2) the deferral of the harvest of units in this watershed until the end of the five-year operating period.

Review of several recent stream survey reports (copies attached) indicates at least two proposed additions to units on or immediately adjacent to Staney Creek. From your comments, it appears that these have not been considered in any IDT process. We are extremely concerned that any additional harvests will contribute unfavorably to an already critical situation, and request that no unit additions be permitted without prior critical review by an Interdisciplinary Team. We also request that representatives of this Department be included in this IDT review.

I would appreciate hearing from you on these items, and urge that we meet to discuss this situation as soon as possible.

Sincerely,

  
Don Kelly  
Area Habitat Biologist

cc: R. Reed-ADFG-Juneau

Kim Turley  
 Mark Van Tassel

FRED ZEIGLER

ADIFAG

Date: 10/2/79

Fish Stream Survey Report  
 See previous report Novy & Gruber

103-90-030

Camp 1/2 Way House

Stream Name (ID) Trib. of North St

Road# \_\_\_\_\_ Station# \_\_\_\_\_

Unit# 44-71 RFD \_\_\_\_\_

Quad Map Craig D-4 Section \_\_\_\_\_

Click Map \_\_\_\_\_ Section \_\_\_\_\_

Fish Present	Yes	No
Above Road Crossing	X	_____
Below Road Crossing	X	_____
Within Unit Boundary	X	_____
Below Unit Boundary	X	_____

Species Present/Stage of Development Dolly Varden, Adults & juvenile

Type of Fish Habitat

Salmon Spawning Area _____	sq yds Describe _____
Salmon Rearing Area _____	sq yds Describe _____
Other <u>Trout</u> Area <u>X</u>	sq yds Describe _____

Stream Sketch or Map: Attach supplement if necessary:

See maps

Method(s) used to determine presence of fish: shocker

Date	#Fish	APPROX LENGTH	Gear	Length of Time Fished
10/1/79 Stream #1	1 Dolly Varden	5"	Shocker ↓	10 min ↓
	1 Dolly Varden	6"		
	2 Dolly Varden	1 1/2"		
Stream #2	1 Dolly Varden	6"	Shocker ↓	10 min ↓
	1 Dolly Varden	3"		

No future fish habitat enhancement possible? Yes \_\_\_\_\_ No X  
 If yes Describe:

II. Road and Unit boundary/fish stream intersection(s)  
 Marked with aluminum metal tags Yes X No     
 Fish stream(s) flagged with <sup>orange</sup> stripe tape Yes X No     
 Stream(s) traversed-If so attach traverse notes Yes    No X  
 Additional parameter information necessary, Yes    No X  
 If so attached completed fish stream parameter Data form

Pertinent Wildlife Information:

Fresh Beaver activity on stream #1

Comments:

This is a salvage sale to collect blowdown.

Survey Crew Members:	Signature	Date
Jim McCullough	<i>Jim McCullough</i>	10/2/79
Tom Staples	<i>Tom Staples</i>	10/2/79
Report Reviewed By	<i>Jim Ambler</i>	<u>FISH TECH.</u> 10-15
	Signature	Title Date

Recommendations: CUTTING UNIT: 1.) DIRECTIONAL FELLING & YARDING OF STANDING TREES AWAY FROM STRS #1 & #2 WHENEVER POSSIBLE; 2.) SPLIT ON STREAMS WHENEVER POSSIBLE; 3.) CLEAN-UP OF DEBRIS (LOGGING & WARDING) IN STRS #1 & #2. CONCURRENT WITH LOGGING ACTIVITY; 4.) NO LIMBING & BUCKING IN FIBBER (O/W) YARDING OF STRS. SPUR ROAD: 1.) 1 POUCH IN CROSSING ON E STR CROSSING AND FISH PASSAGES REQUIRED. CONCURRENT WITH ROAD BUILDING ON STRS #1 & #2. ROAD RELOCATION REQUIRED AT 2<sup>ND</sup> ROAD CROSSING OF STR. #1 AS TO PREVENT RAIN

MARK WARD THRELL

A.D.F.C.G.

Date: 10/1/79

Save this for or next Stanley

MEMO! NF

Fish Stream Survey Report

See previous report 9/24/79 Hopper

103-98-030

Camp 1/2 Way House

Stream Name (ID) Trib. of Stanley Cr.

Road# \_\_\_\_\_ Station# \_\_\_\_\_ Unit# 44-13 RFD \_\_\_\_\_

Quad Map Craig D-4 Section \_\_\_\_\_ Add-on \_\_\_\_\_ Chick Map \_\_\_\_\_ Section \_\_\_\_\_

Fish Present Yes X No \_\_\_\_\_

Above Road Crossing \_\_\_\_\_ X \_\_\_\_\_

Below Road Crossing X \_\_\_\_\_

Within Unit Boundary X \_\_\_\_\_

Below Unit Boundary X \_\_\_\_\_

Species Present/Stage of Development Coho - Adults & Smolt & Fry

Dolly Varden juvenile & adults

Type of Fish Habitat

Salmon Spawning Area X sq yds Describe \_\_\_\_\_

Salmon Rearing Area X sq yds Describe \_\_\_\_\_

Other Tract Area X sq yds Describe \_\_\_\_\_

Stream Sketch or Map: Attach supplement if necessary:

See maps

Method(s) used to determine presence of fish: shocker

Date	Fish	Approx Length	Gear	Length of Time Fished
10/3/79 Stream A	2 Dolly Varden	2"	Shocker	0 min
	1 Dolly Varden	3"		↓
	1 Dolly Varden	4"		↓
Stream B	1 Dolly Varden	4"	↓	10 min
	1 Dolly Varden	2"		↓
	2 Dolly Varden	1 1/2"		↓
	2 Coho	2"		↓
Stream C	1 Dolly Varden	4"	↓	10 min
	1 Dolly Varden	3"		↓
	2 Dolly Varden	2"		↓

Is future fish habitat enhancement possible? Yes \_\_\_\_\_ No X

If yes Describe:

II. Road and Unit boundary/fish stream intersection(s)

Marked with aluminum metal tags	Yes <u>X</u>	No _____
Fish stream(s) flagged with blue stripe tape	Yes <u>X</u>	No _____
Stream(s) traversed-If so attach traverse notes	Yes <u>X</u>	No _____
Additional parameter information necessary, If so attached completed fish stream parameter Data form	Yes <u>X</u>	No _____

The south portion of the unit below the road should be checked for fish streams. They are yarding this portion of the unit as of 10/4/79  
Pertinent Wildlife Information:

Bear Sign - near salmon streams

NOTE

Comments:

The timber has been felled, bucked and limbed with no consideration given to fish streams. Extensive cleanup will be necessary in orange/white flagged portions of the streams and above the flagged portions of the streams to prevent debris from washing down the streams. The SW portion of the unit will have to be checked for fish streams it is being yarded now.

Survey Crew Member

Jim McCullough

Tom Staples

Signature

*Jim McCullough*  
*Tom Staples*

Date

10/4/79

10/4/79

Report Reviewed By \_\_\_\_\_

Signature

Title

Date

NOTE

Recommendations: UNIT ADDITIONS OF THIS MAGNITUDE AFFECTING THE COMMERCIAL FISHERIES SHOULD BE COORDINATED WITH THE FISHERIES BIOLOGIST AND OTHER MEMBERS OF THE I. D. T. PRIOR TO ANY COMMITMENT TO LOG THIS AREA AS THE 1979-1984 LONG TERM APPRAISAL T.E.A.P. DOES NOT SPEAK OF THIS RO BONE ADDITION. SEE ATTACHED PAGES FOR DETAILED WRITE-UPS CONCERNING THESE STREAMS #1, #1-A, #2, #3, #4, #5. THESE ARE SALMON SPAWNING & REARING STREAMS. FULL SUSPENDED SOLIDS RECOMMENDED FOR ALL SALMON STREAMS IN THIS PROPOSED ADDITION. STREAMS #A, #B, & #C WERE NOT SURVEYED DUE TO THE CUTTING OF A PORTION OF UNIT 41-13. THIS IS NOT THE PRESCRIBED METHOD I.D.T. STREAM HABITAT EVALUATIONS & SURVEYS OF CUTTING UNIT 5. RECOMMENDATIONS FOR THESE STREAMS ARE AS FOLLOWS:

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

Tongass National Forest  
Federal Building  
Ketchikan, Alaska 99901

Ph. No. (907) 225-3101

2620

DEC 07 1979



Alaska Department of Fish and Game  
Habitat Section  
415 Main Street  
Room 208  
Ketchikan, Alaska 99901

Dear Don:

Re: Units in the Staney Creek Drainage

The LPK proposal for a 20-acre addition to the 44-13 unit mentioned in your November 28, 1979, letter is pretty much a dead issue at this time. The temperature sensitivity problems concerning Staney, the quality and quantity of spawning and rearing habitat, the poor profiles which preclude full suspension, all suggest the area be left intact at this time.

No formal IDT was formed to evaluate this proposal, as the initial survey work conducted by our fisheries crew, at the request of the RMA, indicated that inclusion was unlikely. If a serious proposal to log the area ever arises, I assure you that we will have ADF&G input.

In regards to currently approved units effecting Staney Creek, I suggest that you and I, representatives from your department, and our timber people get together prior to finalization of the 1980 logging and road building plan for Thorne Bay. I suspect LPK's proposed plan for Thorne Bay will be available after the first of the year.

That document, along with the 72-84 unit selections, will allow us to formulate some site specific measures and alternatives to mitigate the adverse effects of additional canopy removal during this period.

I will keep you informed of any developments concerning Staney and suggest you and I get together to set a firm date for the meeting.

Sincerely,

MICHAEL E. NOVY  
Acting Fish & Wildlife Program Manager

Stoney Creek file

Buce

3 copies plus  
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

P.O. Box 2417  
Washington, D.C. 20013

Dept. of Environmental Conservation  
S. E. Regional Office  
1920 (WS)

15 15 15 15 15 15

DEC 13 1979

DEC 11 1979

Mr. Ernst W. Mueller  
Commissioner  
State of Alaska  
Department of Environmental Conservation  
Pouch 0  
Juneau, Alaska 99811

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION



Dear Commissioner Mueller:

Regional Forester John Sandor has provided additional information to help us respond further to your letter of October 12.

The Regional Forester confirms that the views you believe were expressed at the August 24 meeting relative to contacts with State officials certainly do not represent Forest Service policy in the Alaska Region. He has discussed the matter further with the Forest Supervisor of the Chatham Area and learned there was no intent to convey such an impression at that meeting.

Information from the Regional Forester indicates his staff agrees with you that the rock quarry was poorly located. I'm advised that this was not evident at the time of location, and that the location was primarily dictated by the lack of available rock elsewhere. This lack of suitable rock is a fairly common problem in the northern part of Southeast Alaska.


The Regional Forester has discovered weaknesses that did result in lack of proper notification to the State in this case. We don't believe there has been a common or recurring failure in this regard. I'm assured that steps have been taken to strengthen the management process to avoid happenings of this kind. We do note that inter-agency review of this incident took place on April 28, 1978 and State of Alaska advice was incorporated into the rehabilitation plan that was developed.

Regional Forester Sandor has given the highest priority to the protection of anadromous fish streams, and thru the development of the Tongass Land Management Plan has taken positive steps to assure close coordination with State officials. He and his Forest Supervisors and their respective staffs are anxious to continue to work directly with you and other commissioners. I'm certain this is the most effective way to address and resolve land management

problems. It is most important that communication lines be kept open between his office and yours. I'm pleased with the progress that has been made and have confidence that with your good help we'll continue to move in the right direction.

Thank you again for calling this matter to our attention.

Sincerely,



R. MAX PETERSON  
Chief

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

December 13, 1979

Mr. John Sandor, Regional Forester  
Tongass National Forest  
U.S. Forest Service  
P.O. Box 1628  
Juneau, Alaska 99802

Dear John:

The purpose of this letter is to brief you on problems we have encountered during the course of timber harvest activities in the Stoney Creek drainage on the west coast of Prince of Wales Island. After noting the letter from the Department of Environmental Conservation to the chief of the Forest Service concerning Stoney Creek, I felt it appropriate to bring you up to date on our thoughts.

Stoney Creek (ADF&G stream number 103-90-30) is a relatively wide, slow-moving stream lying in a broad southeast-northwest trending valley, and is classified as temperature-sensitive. Extensive clearcutting has taken place in this watershed over the last ten to fifteen years. Early segments of this timber harvest took place before the development of guidelines for the protection of temperature-sensitive streams. Large amounts of streamside cover were removed from the main stream and its tributaries, further increasing the system's vulnerability to high temperature/low water conditions. Following the development of temperature-sensitive guidelines and their inclusion in the Southeast Alaska Area Guide, some additional harvest units were taken in this drainage. Restrictions on this later timber harvest included limitations on removal of streamside canopy and designation of leave strips along portions of the streambanks. Wind damage to leave strips and the consequent leanup of blowdown and blowdown-susceptible timber have, to some extent, limited the effectiveness of these stream-protective measures.

Heavy pre-spawning pink salmon mortalities were noted in Stoney Creek in August, 1977, and again in August of 1979. The 1977 mortality involved an estimated 2,000 fish, and was attributed to high water temperatures coupled with low levels of dissolved oxygen. Aerial surveys on August 17, 1979, indicated that 10,000 to 15,000 dead unspawned pink salmon were present in the lower and intertidal portions of the creek. On-the-ground inspection of the creek on the same date revealed temperature and dissolved oxygen concentrations to be at critical levels (temperature 17°C, D.O. 3.8-4.0 ppm).

December 13, 1979

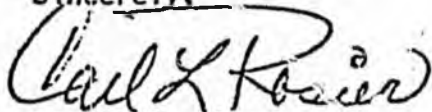
Investigations conducted on Staney Creek by Department of Environmental Conservation and Department of Fish and Game personnel between August 22 and 29 further documented these conditions, and confirmed that water conditions in Staney Creek did not comply with existing State of Alaska water quality standards for temperature and dissolved oxygen.

These conditions led us to be concerned about the long-term effects of repeated heavy mortalities on the production of pink salmon in the Staney Creek system. Consequently, we feel that a reconsideration of proposed activities in the Staney Creek watershed may be warranted. The proposed harvest units have been laid out using guidelines for the protection of temperature-sensitive streams, however, these may not provide protection from further degradation, as a considerable portion of the watershed was logged without application of the guidelines. We feel that a formal IDT review of existing plans for timber harvest in the Staney Creek watershed is warranted. This review should include a thorough evaluation of the effects of proposed logging, alternatives to the proposed units that would more adequately protect the stream, and plans for restoration and rehabilitation of damaged portions of the stream.

The review of stream protection measures should be continued during the winter of 1979-1980 to determine if new guidelines are adequate to safeguard anadromous fish-producing streams on the west coast of Prince of Wales Island. Patterns of salmon mortality in this area indicate that a number of systems may have temperature sensitivity problems similar to those we have encountered with Staney Creek. We believe that it is imperative that this be considered before timber harvest in these other drainages have proceeded to the extent that they have in Staney Creek.

John, we sincerely appreciate your concern and action on this matter, and look forward to continuing work with you on the development of measures to protect Alaska's fishery resources.

Sincerely,



Ronald O. Skoog  
Commissioner

cc: Commissioner Mueller, ADEC  
Richard Logan  
Rick Reed  
Don Kelly ✓

Atlantic Richfield Company Public Affairs  
Alaska State & Local Government Relations  
Mailing Address: Box 360  
Anchorage, Alaska 99510  
Telephone 907 277 5637



Dave Harbour  
Regional Director

March 25, 1981

The Honorable Bettje Fahrenkamp  
Alaska State Senate  
Resource Chairperson  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Dr. Tom Fink, of the Atlantic Richfield Company is unable to attend the committee meeting today and testify on Proposed Habitat Protection Regulations. In lieu of his presentation, we wish to submit his prepared comments and hope that they will be useful to you and the committee.

Sincerely,



TESTIMONY ON PROPOSED  
HABITAT PROTECTION REGULATIONS

March 25, 1981

Thomas R. Fink  
Environmental Conservation Manager  
ARCO Alaska, Inc.

Ladies and gentlemen, ARCO Alaska, Inc., a wholly owned subsidiary of the Atlantic Richfield Company, wishes to thank this Committee for an opportunity to comment on proposed regulations governing fish and game habitat protection.

As an oil and gas producer in the State of Alaska, ARCO recognizes the importance of protection for fish and game habitat that is critical to the state. Any proposed industrial activities need to be carefully examined, with due consideration to all the natural resources that may be affected by such plans.

We believe the existing system employed by the State of Alaska for oil and gas related exploration and development activities includes careful scrutiny by the Alaska Department of Fish and Game. The Alaska Department of Fish and Game reviews and comments on permit applications before the Alaska Department of Natural Resources. This allows for a decision making process which accounts for fish and game considerations along with other concerns. A careful balancing of all natural resource elements can hereby take place. This permit review process by the state includes review by other regulatory agencies, resulting in permissible activities which are consistent with state policy. The permit applicant receives a permit which is assured to be acceptable to all agencies.

We recognize that the Commissioner of Fish and Game and the Boards of Fisheries and Game have not yet reviewed nor approved these regulations. However, we feel that we must use every forum available to comment on these proposals. We feel that this Committee and the Legislature should be aware of what is being proposed.

Contrary to assurances from the Department of Fish and Game, these proposed regulations add another permitting procedure to already complex regulatory mechanisms which presently include fish and game habitat protection concerns. A "habitat protection permit" will have to be obtained where no such "permit" was required before. When procedures already exist which address a given concern, it is redundant, wasteful, and unnecessary to invent another mechanism.

The Alaska Department of Natural Resources is currently the principal agency that regulates oil and gas activities in Alaska. If the State of Alaska leases land for the purpose of exploring for oil and gas resource potential, there is an obligation that this resource be developed for the benefit of all Alaskans in an environmentally sound manner. The Department of Natural Resources has a history of carefully balancing apparent conflicts in resource development and habitat protection. We are unaware of any substantive objections to their stewardship of state lands.

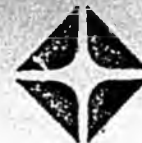
If the Department of Fish and Game is allowed to review and "endorse" Department of Natural Resources permits, this authority would create conflict over competing resource use that was supposedly resolved when the land was leased originally. This means an effective veto power over Department of Natural Resources permits.

A conflict of resource development could result in an operator being given clearance for a project on the one hand by the Department of Natural Resources, and denied a permit to the same project by the Department of Fish and Game on the other hand. Under this proposed process, there would be no mechanism for resolution of this dilemma, where presently this dilemma does not exist.

ARCO objects to the regulations as proposed, and believes that the habitat protection provisions should be restructured into guidelines. The guidelines would have the force of regulation, yet would be more flexible in applying to different and varying circumstances prevalent from one region in Alaska to another.

Attached are specific written comments made to the Department of Fish and Game on the proposed habitat regulations. Although we are commenting on the proposed regulatory language, our so doing should not be misinterpreted to mean that we agree with the concept of these proposed regulations. At the very least, such regulations should not be considered until the umbrella regulatory reform regulations are adopted and in place. To do otherwise, might conflict with the policies of the administration.

ARCO Alaska, Inc.  
Post Office Box 360  
Anchorage, Alaska 99510  
Telephone 907 277 5637



March 20, 1981

The Boards of Fisheries and Game  
Subport Building  
Juneau, Alaska 99801

Commissioner Ronald Skoog  
Alaska Department of Fish and Game  
Subport Building  
Juneau, Alaska 99801

Gentlemen:

SUBJECT: ARCO ALASKA INC. COMMENTS ON PROPOSED FISH  
AND GAME REGULATIONS

ARCO Alaska, Inc, a wholly owned subsidiary of Atlantic Richfield Company, wishes to thank the Alaska Boards of Fisheries and Game and the Alaska Department of Fish and Game for an opportunity to comment on proposed regulations governing fish and game habitat protection.

As an oil and gas producer in the state of Alaska, ARCO recognizes the importance of protection for fish and game habitat that is critical to the state. Any proposed industrial activities need to be carefully examined, with due consideration to all the natural resources that may be affected by such plans.

We believe the existing system employed by the State of Alaska for oil and gas related exploration and development activities includes careful scrutiny by the Alaska Department of Fish and Game. Inclusion of the Alaska Department of Fish and Game in review and comment on permit applications before the Alaska Department of Natural Resources, allows for a decision making process which accounts for fish and game considerations along with other concerns. A careful balancing of all natural resource elements can thereby take place. This permit review process by the state includes review by other regulatory agencies, resulting in permissible activities which are consistent with state policy. The permit applicant receives a permit which is assured to be acceptable to all agencies.

Contrary to assurances from the Department of Fish and Game, these proposed regulations add another permitting procedure to already complex regulatory mechanisms which presently include fish and game habitat protection concerns. A "habitat protection permit" will have to be obtained where no such "permit" was required before. When

The Boards of Fisheries and Game  
Commissioner Ronald Skoog  
Page Two  
March 20, 1981

procedures already exist which address a given concern, it is redundant, wasteful, and unnecessary to invent another mechanism.

The Alaska Department of Natural Resources is currently the principal agency that regulates oil and gas activities in Alaska. If the State of Alaska leases land for the purpose of exploring oil and gas resource potential, there is an obligation that this resource be developed for the benefit of all Alaskans in an environmentally sound manner.

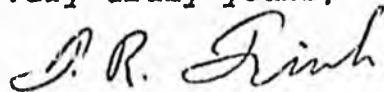
If the Department of Fish and Game is allowed to review and "endorse" Department of Natural Resources permits, this authority would create conflict over competing resource use that was supposedly resolved when the land was leased originally.

A conflict of resource development could result in an operator being given clearance for a project on the one hand by the Department of Natural Resources, and denied a permit to the same project by the Department of Fish and Game on the other hand. Under this proposed process, there would be no mechanism for resolution of this dilemma, where presently this dilemma does not exist.

ARCO objects to the regulations as proposed, and believes that the habitat protection provisions should be re-structured into guidelines. The guidelines would have the force of regulation, yet would be more flexible in applying to different and varying circumstances prevalent from one region in Alaska to another.

Enclosed are specific written comments on the proposed habitat regulations. Although we are commenting on the proposed regulatory language, our so doing should not be misinterpreted to mean that we agree with the concept of these proposed regulations.

Very truly yours,



T. R. Fink, Manager  
Environmental Conservation Department

tmw

Enclosure

COMMENTS ON PROPOSED  
FISH AND GAME REGULATIONS

5 AAC 95.020: Activities in Streams and Rivers Frequented by Fish.

This section of the proposed regulations requires the submission of plans and specifications for review and approval by the Department. Currently, the Department of Fish and Game reviews plans for activities in nonanadromous fish streams, as part of the overall review and comment process for permits already required by other agencies. This proposed approval constitutes a permit which presently does not exist. Contrary to declarations made by the Department, this proposed procedure would introduce numerous new permits for activities that are already reviewed by the Department through existing mechanisms. Protection of streams frequented by fish is already provided by the existing mechanisms of permit procurement. The phrase "frequented by fish" is very broadly defined, such that an applicant would not know beforehand if a stream that may be affected by activities is "frequented by fish" or not. The regulation does not "increase the predictability of departmental decisions", nor does it "establish statewide consistency", nor does it "increase efficiency of operations", nor "eliminate permit requirements for certain activities." In fact, this proposed section expands the number of permits required.

5 AAC 95.020(1): The proposed regulation in this subsection calls for a permit to be needed when snow and ice bridges are to be used. Construction of snow and ice bridges have no impact on fish in the winter. For the past several years, ice roads and bridges have been built for exploration, crossings on numerous creeks. No impact to the fisheries has been observed in any of these instances. The Department proposes to require permits for activities that have no basis on fish impact mitigation. This unnecessary requirement should be eliminated.

5 AAC 95.030: Activities in or Affecting Anadromous Fish Streams.

Subsection (6) of this proposed regulation would require a permit for construction of snow ramps. Construction of a snow ramp does not impact fish in a stream in winter. See comments on 5 AAC 95.020(1) above. This unnecessary requirement should be eliminated.

5 AAC 95.060: Habitat Protection Permit Required.

This proposed regulation sets a limit for a "habitat protection permit" at a maximum term of five years. A permit through the Department of Natural Resources for lease operations approved, as referenced in 5 AAC 95.065, may not be subject to this short a time limit, as a lease operations approved activity may extend beyond five years. Where lease operations approval extends beyond five years, a "habitat protection permit" should also be extended for this period.

5 AAC 95.065: Adoption of Department of Natural Resource Authorizations.

This section of the proposed regulations states that a "habitat protection permit" need not be separately applied for if the activity for which a permit is required under 5 AAC 95.040(b) or (c) is approved under a plan of operations approval through the Division of Minerals and Energy Management. 5 AAC 95.040 concerns only activities in State of Alaska critical habitat areas, sanctuaries, and refuges. Stopping short of including adoption of all Department of Natural Resource authorizations for activities in the state, including activities which occur in anadromous fish streams and activities in streams and rivers frequented by fish in Sections 5 AAC 95.020 and 95.030, essentially creates a separate permitting process for those activities. The Department is creating more permits where it has a genuine opportunity to exercise regulatory reform. By adopting authorizations for all activities requiring Department of Natural Resource approval, the Department would still "allow public critique of procedures and standards used in issuing permits, increase predictability of departmental decisions involving issuance of permits, establish statewide consistency in the Department's habitat protection permitting program, avoid litigation over matters of interpretation, increase efficiency of operations and eliminate permit requirements for certain activities."

If "endorsed", as used in 5 AAC 95.065(2), means separate departmental approval, a conflict may exist between the agencies. Endorsement will more likely occur prior to the Department of Natural Resources authorizing the activity pursuant to 11 AAC 65. This procedure should be continued.

5 AAC 95.120: Amendments to the Permit.

Section (b) of the proposed regulations should include a clause, where if the applicant for an amendment does not receive approval or denial of the amendment within 30 days

after submittal of all required information, the project may proceed as set forth in the amendment application. It is inherent that an applicant for an amendment receive a timely response. Also, amendments should be allowed to be approved verbally by the Department, with later confirmation in writing.

5 AAC 95.200: Culvert Installation Standards.

The standards included for culvert velocities would be almost impossible to attain, and are very restrictive compared to current Department guidelines. The standards are unrealistic and are generally not achievable on the North Slope. Groups II and V in the table on page 15 are species most prevalent on the North Slope. These groups would require for a 60 foot long culvert, a 2.3 cfs velocity at a Q2.33 flood and a 1.6 cfs velocity at normal summer flows. Comparing these proposed values to current Department of Fish and Game guidelines, shows that culverts would require 4 cfs at Q5 discharge.

Literal implementation of these proposed regulations in streams which may naturally exceed these velocities, makes these standards unrealistic. The velocities presented on the table should be used as guidelines only, and each project in a stream should be examined on a case by case basis to establish criteria tailored to that instance, as is currently done by the Department.

5 AAC 95.990: Definitions (8).

As stated in specific comments on the proposed regulations, the definition of "frequented by fish" does not allow for any predictability by departmental decisions involving issuance of permits. The definition does not help clarify consistency in permitting programs, nor does it necessarily eliminate permit requirements for certain activities. The definition is overly broad, and shows no guidance for Department involvement.

# Alaska State Legislature

DETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

March 25, 1981  
1:30 p.m.

Butro Room  
207 - Capitol

---

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

---

Meeting regarding proposed Alaska Boards of Fisheries and Game and Alaska Department of Fish and Game regulations governing fish and game habitat protection.

Dick Logan, Chief Habitat Protection, Department of Fish and Game, stated the proposed regulations have been in the drafting stage for about a year. The proposed regulations are scheduled for public hearing in Anchorage April 2nd before the Boards of Fisheries and Game.

In response to the question, have you asked for or received an Attorney General's opinion on the Department's authority to draft these regulations? Mr. Logan, stated, yes, they have received a draft opinion which states in part the Department has such authority and he will provide the Committee with a copy of it.

Mr. Logan, stated these draft regulations are a part of the regulatory reform effort. One benefit of issuing regulations through the Boards of Fisheries and Game is because these regulations can be revised annually. The Department is also trying to provide for multiple use via the permitting process.

In response to the question, what is the percentage of streams that will not require a permit? Mr. Logan, stated that in the coastal areas 100% of the streams would require a permit because they have or had fish in them. In the interior, a permit would be required on only 30-40% of the streams. 90% of the placer miners will not need a permit.

In response to the question, has the absence of regulations pose any problems? Mr. Logan, stated that while there have been a few complaints due to a lack of uniform policy, there have been no serious problems.

Jim Clark, Alaska Loggers Association and Bob Loescher, Resource Director, Sealaska Corporation were the next to testify. Mr. Clark, stated that the proposed regulations are not needed because they are a classic example of the theory "if it ain't broke don't fix it." The draft regulations go well beyond the authority granted to the Department by the legislature and would require countless new state employees to administer. He suggested that the proposed regulations should be held in abeyance pending the completion of the Governor's Regulatory Reform Study currently underway. The proposed regulations are an attempt to standardize fish and game habitat policies for which no regulations presently exist. Presently habitat problems or policies are resolved with department biologists on site specific basis. It is impractical to write prescriptive regulations to cover all habitat conflicts.

Mr. Loescher, stated that he would like to see the regulations held up until the question of whether the Department or the Boards have the statutory authority to draft these regulations.

Fahrenheit Camp

# Southeast Alaska Conservation Council

BOX 1692, JUNEAU, ALASKA 99802 907-586-6942

Rec 5/27/81



## SEACC

LYNN CANAL  
CONSERVATION  
Haines, Alaska

JUNEAU GROUP  
SIERRA CLUB  
Juneau, Alaska

SITKA GROUP  
SIERRA CLUB  
Sitka, Alaska

PETERSBURG  
CONSERVATION  
SOCIETY  
Petersburg, Alaska

SITKA  
CONSERVATION  
SOCIETY  
Sitka, Alaska

STIKINE  
CONSERVATION  
SOCIETY  
Wrangell, Alaska

TAKU CHAPTER ACS  
Juneau, Alaska

LONGASS  
CONSERVATION  
SOCIETY  
Ketchikan, Alaska

Before the Senate Resources Committee  
Thursday, March 26, 1981, 10:00 am.

RE: Alaska Dept. of Fish and Game Habitat Regulations  
=====

My name is Jim Stratton. I am the Executive Director of the Southeast Alaska Conservation Council, Inc. We'd like to thank you for the opportunity to appear before you today and speak to these habitat regulations. We appreciate you running late yesterday, you quadrupled our time to get prepared. We found out about this hearing yesterday at 9:00. Also, Madam Chairman, you pointed out to Fish and Game yesterday that they have scheduled their public hearing in Anchorage at the same time as the Miners' Conference in Fairbanks. This hearing was scheduled at the same time as the Board of Fish and Game meeting in Anchorage. That is why there are not more fishermen here today.

We support Fish and Game in their regulation promulgating role. These regulations, while they may be a burden for one industry, are vital to the survival of several others. It is something we have needed for a long time. They aren't burdensome - they are merely asking that activities that affect anadromous fish streams be cleared with Fish and Game through the permit process so they can give their input on mitigating measures to protect anadromous fish and to weed out the projects that are totally destructive. We agree with the other speakers that these regulations aren't perfect. But they can be changed at the public hearing next week and through yearly reviews by the Board of Fish. As for the authority - that's not up to us or Jim Clark, it's the Attorney General's determination.

Times have changed. In years gone by, there was enough land base to go around. But, like what has happened to the rest of the country, Alaska is shrinking. The competition for the land use is expanding. Not only between

commercial fisheries, loggers and miners, but sportfishing, subsistence fishing, primitive recreation and not so primitive tours. They all have a stake in the land, but, until now, several of these uses have been slighted for the short term benefit of others.

These fisheries protection regulations are aimed at protecting the fisheries that are left. Every logging operation and every mining operation has an impact. While some of these impacts are small, they all add up to a serious depletion of the stocks. These regulations are essential for the protection of the fishing industries. They are not meant to shut down any loggers or miners. We aren't against logging, however we want logging done in such a manner that it doesn't have on the other resources. These regulations are insurance against any activity destroying valuable habitat. Without them, the loggers and miners will continue to destroy habitat and the fishing industry will continue to get the shaft.

We are concerned about the loggers' arguments that given the standards and guidelines, let them figure out a way to meet them. This is unrealistic. It's like asking the fox to design the security system for the chicken house. Not only do they lack the expertise, they don't care. Fish and Game experts know what is needed for anadromous fish protection and passage. By developing a list of prescriptive methods, the guy on the D-9 making the road will know exactly what to do to protect the fisheries instead of making an uneducated guess. He knows how to make roads, but he doesn't necessarily know how to protect fish. With these regulations, Fish and Game is insuring that habitat will be protected. And just exactly what regulations do the loggers follow now? They really aren't that regulated. The Forest Practices Act type of a cookbook and Best Management Practices are nothing more than a suggestion list of how to do it. As Jim Clark said yesterday, "You can't manage resources with a cookbook." There are no mandatory BMPs, no monitoring, no enforcement. "there is nothing to enforce in the Forest Practices Act. I would be scared to place these regulations and, as such, the future of Alaska's sport and commercial fisheries into this document.

Let's look at the fishing industry — just how important is it?

-It is the largest private employer in Alaska.

-It is a renewable resource. Old growth forests are not renewable because the Forest Managers are not letting them grow back long enough, mining definitely is not renewable.

-There are 171,281 sport fishing licenses issued in this state

according to the Alaska Department of Revenue. They generate \$1,400,747.75 per year in (fishing only) license revenues, not counting poles, reels, beer, transportation, lodging, guide fees.

These regulations are aimed at protecting the stock that come with having the best fishing in the world for sport fishers and subsistence users also. When the oil is depleted, the hard rock all mined, the forest turned into monoculture ... fishing will be the bread and butter of Alaska and we'd better start protecting it now.

I'm not sure what the end product of this hearing is supposed to be. I'm unaware of any resolution or bill currently in the hopper relating to these regulations. But if anything is developed, it should be in total support of Dick Logan, Fish and Game and these regulations. I can't imagine this committee giving away the renewable fisheries industry of this state for the short term profit of a few miners and the convenience in the permitting and mitigating process for the loggers.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
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## Senate

### Committee on Resources

March 26, 1981  
10:00 a.m.

Beltz Room  
211 - Capitol

---

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer

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Meeting regarding proposed Alaska Boards of Fisheries and Game and Alaska Department of Fish and Game regulations governing fish and game habitat protection.

J. P. Tangen, Alaska Miners Association, stated his main objections to the proposed regulations are: (1) they are lengthy and difficult to understand; (2) they were drafted without taking into consideration for the user groups' ability to comply; (3) they were apparently drafted without consideration for the engineering problems they will create; (4) they exceed the authority of either the Department or the Boards; (5) they were apparently written in a vacuum and do not take into consideration regulations of other agencies; (6) there is no need to extend, expand or enhance the authority of the Department; and, (7) the Department is not prepared to police or enforce the regulations as written.

Geron Bruce, Secretary-Treasurer, United Fishermen of Alaska, stated that the salmon habitat has been suffering incremental losses for a long time. He said that the question has arisen as to the Department's authority to write these regulations and he believes that what the Department is trying to do through these regulations, is obtain that needed authority. There have been sacrifices by the fishermen to rebuild the salmon runs through taxing themselves 2-3%. These funds are used to build hatcheries.

Earl Krygler, Alaska Trollers Association, stated that he supports the draft regulations because without adequate regulations that can be read and understood there will be damage to the habitats. The draft regulations take into consideration the difference of the various stream sites in the state.

Roland Shanks, Alaska Environmental Lobby, stated that the

SENATE RESOURCES COMMITTEE

March 26, 1981

Page: 2

Department is mandated to write these regulations because their authority is in the state constitution and law. It is in everyone's best interest to resolve the habitat problems as fast as possible.

Jim Stratton, Southeast Alaska Conservation Council, stated that the permitting system in the draft regulations is important to eliminate the potentially damaging projects. The proposed regulations insure that the habitats will be protected.

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March 25, 1981

The Honorable Bettye Fahrenkamp  
Chairman Senate Natural Resources Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

This is written in behalf of the Alaska Loggers' Association (ALA) and Sealaska Corporation. We recommend that you consider making certain changes to the Alaska Forest Practices Act and the authority of the Alaska Department of Fish and Game (ADF&G) under AS 16.05.970. The proposed changes would effect the regulation of timber harvest, activities upland of the natural flow and beds of streams, lakes and rivers.

The issue arises as a result of ADF&G's on-going attempt to promulgate habitat regulations, which are presently in draft. These regulations would require a habitat permit for activities along the shoreline of, and within the flood plain of, rivers, lakes and streams frequented by fish as well as the tributaries of such streams. In attempting to regulate tributaries and riparian land upland of "the natural flow or bed" of "specified" streams, lakes and rivers, ADF&G is exceeding its authority under the law.

ADF&G's authority to regulate timber harvest or other activities is limited to that set forth AS 16.05.370(b) which provides as follows:

"If a person or governmental agency desires to construct a hydraulic project or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake or stream, or to use wheels, tracked, or excavating equipment or log dragging equipment in the bed of a specified river, lake, or stream, the person or governmental agency shall notify the commissioner of this intention before the beginning of the construction or use."

As can be seen, ADF&G's authority is limited to streams specified under AS 16.05.870(a). There is no authority to regulate tributaries of a specified river, lake or stream; nor, except in limited circumstances is there authority to regulate streams "frequented by fish" as ADF&G is seeking to do. ADF&G's authority is further limited to situations where a person or governmental agency "desires" to "use, divert, obstruct, pollute or change" the "natural flow or bed" of a "specified river, lake, or stream." As can be seen, no authority whatsoever has been given to ADF&G to regulate upland of the "natural flow or bed" of a specified river, lake or stream.

Not only do these regulations exceed the authority of the Statute upon which they are based, they are in direct conflict with the direction set for State management of forest practices designed by the Legislature in the Forest Practices Act. The Alaska Legislature specifically rejected the prior approval system originally proposed for Forest Practices Act in favor of a notification system. In other words, under the Legislature's approach, an operator simply has to notify DNR 30 days in advance of his or her operations in order to undertake them. Under the habitat regulations, a habitat permit will be required of an operator when he or she seeks to harvest timber in Southeast Alaska, since so much of this area is within the flood plain. This habitat permit requires prior approval by ADF&G before operations can begin. Accordingly, contrary to the intent of the Legislature to create a notification system in the Alaska Forest Practices Act, ADF&G, through its regulatory authority alone, is creating a prior approval system.

We accept the proposition that ADF&G should have authority to protect fish and game from problems which may be caused by timber harvest activities. Using a professional management approach, which maximizes use of the expertise of our operators, ADF&G's biologists and other experts, we have done a good job of resource protection.

What we object to is the change in management direction which the habitat regulations reflects. For reasons which we do not understand, ADF&G is seeking to move to a highly prescriptive approach designed to spell out in cookbook-fashion, how each aspect of industrial activities should take place on lands extending to the flood plain. We object to this change and to the unnecessary bureaucratic

requirement that we obtain a habitat permit from ADF&G for each aspect of our operations. Such an approach by ADF&G runs directly counter to the Governor's regulatory reform effort. ADF&G lacks the funds and personnel to carry out this program in an expeditious manner and therefore the formal permit process will cause delays to ours and other industries, with no benefit to the environment.

It has been a cardinal principle of the ALA to create one comprehensive set of regulations such that an operator will have to look at only one set of regulations to know what is required of him or her. DNR and DEC have cooperated with us in this regard by jointly promulgating regulations with respect to timber harvest. The Coastal Management Act regulations regarding forestry have been preempted by DNR's forest practice regulations as is required by the Forest Practices Act. Thus, ADF&G by its regulations will be the only non-cooperating agency. A situation which requires the timber operator to look at several sets of regulations to determine what the requirements are will only create confusion as to what is required and will in fact prevent us all from obtaining the protection we want for the various other resources.

We recommend that there be changes made to AS 41.17.010 et. seq. (the Forest Practices Act) and to AS 16.05.870 (ADF&G's authority) which would, on the one hand, give ADF&G the authority to protect fish and game habitat. On the other hand, to the extent its regulations impact timber harvest activities, ADF&G should be required to coordinate its regulations into one comprehensive set of regulations (as the other State regulatory agencies have done in response to the legislative mandate set forth in the Forest Practices Act).

To effect this compromise we propose the following changes to the law:

1. AS 16.05.870(b) would be amended to read as follows: "With the exception of a person or governmental agency subject to AS 41.17.010 et. seq. ..." (everything else in subsection (b) would remain the same).

This change would except those involved in the forest industry from whatever rulemaking authority ADF&G might have under AS 16.05.870. The following changes in AS 41.17.010 would be designed to allow regulation of the

forest industry by ADF&G through the provisions of the Forest Practices Act. This will cause all regulations concerning timber harvest to be put into one comprehensive set of regulations.

2. A new subsection to AS 41.17.010 "Declaration of Intent" would be put in as subsection 5 and present subsections 5 and 6 would be renumbered as subsections 6 and 7 respectively. The new subsection would read as follows:

"Government administration of timber harvest activities should combine the regulatory measures of all agencies concerned with timber harvest activities into one comprehensive regulatory scheme which includes regulations under this chapter, Title 16, Title 46 and other agency authorizing statutes as provided herein;"

This states as purpose the desirability of having only one comprehensive set of regulations for the forest industry.

3. AS 41.17.020. "Division of Forest Land and Water Management Established" would be amended to include a new subsection (h) and present subsection (h), (j), (k), and (l) would be relettered as subsections (i), (j), (k) and (l) respectively. The new subsection (h) would read as follows:

"The commissioner, the Commissioner of the Alaska Department of Fish and Game, and the Commissioner of Alaska Department of Environmental Conservation, in accordance with his authority under AS 16.10.010, and AS 46.03.070, shall work cooperatively to protect the fish resources of the state and the game resources of the state on public lands in accordance with the economic and general well being of the state from any adverse consequences which may occur as a result of activities under this chapter. Protection of game on private lands shall be undertaken pursuant to a cooperative agreement or understanding by and between the private landowner and the appropriate agency or agencies of the state. All regulations concerning the protection of fish and game shall be based upon the concept of professional management, as opposed to management by prescription, and shall be promulgated under and in accordance with the provisions of this chapter.

This provides authority for joint promulgation of fish and game standards in accordance with the authority of all the agencies involved.

4. The present subsection (j) (which shall be relettered as subsection (k) in accordance with the change requested in number 3) shall be amended to read as follows:

"Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Zone Management Act, (2) regulations protecting fish and game prepared in cooperation with the Commissioner of the Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation, and (3) if authorized by the commissioner of Environmental Conservation, regulations relating to control of non-point source pollution."

The underlined section is a technical conforming amendment consistent with the change made in Paragraphs 2 and 3.

5. AS 41.17.080 would be amended by adding a new paragraph (a)(7) which would read as follows:

"Protection of fish and game as determined in cooperation with the commissioners of the Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation."

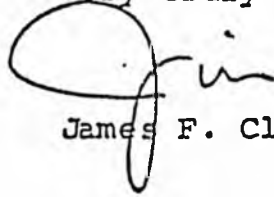
This authorizes regulations to be promulgated to protect fish and game resources. The authority is broader than that which ADF&G presently enjoys. However, the Commissioner of DNR and DEC would have to agree to it before it could be promulgated.

#### Conclusion.

Thank you very much for the ALA and Sealaska Corporation having the opportunity to offer these amendments. We intend to use all lawful measures to prevent implementation of the habitat regulations promulgated by ADF&G under AS 16.05.970 for the reasons set forth in the attached letter to Mr. Dick Logan. However, we join with

the habitat section of ADF&G in seeking to assure that there is adequate protection for fish and game resources of the State. We think the proposals for compromise made herein will allow reasonable coordination of the two activities within a single comprehensive set of regulations for forestry. We would like to meet with you on this as soon as possible.

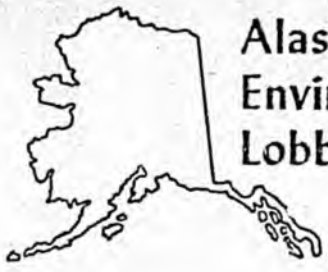
Very truly yours,

A handwritten signature in cursive script, appearing to read 'J. Clark', written in dark ink.

James F. Clark

JFC:sd

3/26



Alaska  
Environmental  
Lobby

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586-2345

TESTIMONY BEFORE THE SENATE RESOURCES  
COMMITTEE REGARDING THE HABITAT PROTECTION  
REGULATIONS BY ROLAND SHANKS

I am really at a lack as to how to start this testimony. Since the Public hearing was going to be in Anchorage next week I'm not really prepared to testify on the substance of the Regs. A couple of the groups I represent did submit written comments and I'm sure someone will testify next week in Anchorage. But there are a few points I'd like to make quickly.

There was a lot of discussion yesterday about Alaska Department of Fish and Game's mandate to control these issues. Well it seems to me there is a clause in the constitution that "The State will hold all resources for the common good." And I've seen the Department of Fish & Game mandate described as to protect and enhance the Fish & Game resources of the State. Those doctrine plus the authorities cited in the regs. seem to make it clear that the department does have the authority to regulate activities in fish streams. And under existing laws Alaska Department of Fish & Game can arrest a person for wasting fish; I can't believe they don't have the power to arrest someone for wasting a whole creek.

Now that brings us to an interesting issue what is the stream? Now when the State asserts ownership to a stream under the submerged lands act, they claim the entire riverbed

from vegetated bank to vegetated bank and that's the way it's conveyed. And if that's not enough reason there is a biological reason too. Leaving berms and potholes can cause fishtraps where fish are trapped after the annual flood. A good example of this is Nome Creek north of Fairbanks where mining in the past has left lots of potholes that trap fish. I think that under the mandate to protect fish and game, ADF&G has a responsibility to protect the thermal regime of fish stream by maintaining streamside cover. This also protects the stream banks, it cuts down on erosion, and it cuts down on stream sedimentation.

There was also a lot of discussion yesterday about vehicles operating on ice. 2500 pounds might be too a low a limit, but it is important to control equipment operation. Another example from Fairbanks. A couple of years ago we had a guy try and take a Cat up the Salcha River. The Salcha has a nice run of King Salmon, that are heavily utilized by the sport fishermen in Fairbanks. Well to make a long story short, the Cat broke through. It took a couple of weeks to get that Cat out. This time we were lucky, but what if he had been dragging a trailer of diesel. This accident would have had serious impacts on that river.

This brings us to another problem. Why are we worried about fish anyway. This brings us to another interesting statistic. The fishing industry in Alaska directly employs more people than any other industry. We also have more

fishing licenses per capita than any other state. It seems like fish are very important to both our economy and our recreation. It seems imperative that we protect our fish and to do that we must protect our streams.

The House Resources committee just spent two days reviewing the fisheries rehabilitation and enhancement programs of ADF&G. They were discussing millions of dollars to recreate fish habitats that were destroyed because regulations like this were not in place. To put off implementing these regs now only shifts the burden to future generations to recreate the habitat we destroy in the future.

There was also a lot of talk about timing of comments and hearings and about when these regs will take effect. It seems like its in everybodys best interest to get these regs in place. If there aren't any regs, no permits can be issued and if no permits can be issued we would have massive noncompliance. This could lead to legal problems. I think it's in everybody's best interest to resolve this problem.

Some of the discussion during these hearings would lead one to believe the industries have a right to destroy these streams. Well I'd like to know how the rights of the 30,000 people involved in the fishing industry, the 172,000 Alaskans who own sport fishing licences, and the recreationalists who use th streams are being protected. The constitution guarantees equal protection, well I'd like to see some equal protection for other stream users.

So in conclusion I call on this committee to allow Fish & Game to complete the procedures necessary to issue these regs. The hearing of the Fish Board go forward and comments submitted and the regulations issued.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
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## Senate

### Committee on Resources

#### MEMORANDUM

TO: SENATE RESOURCES COMMITTEE MEMBERS

FROM: SENATE RESOURCES COMMITTEE STAFF

RE: PROPOSED FISH AND GAME REGULATIONS GOVERNING FISH AND GAME HABITAT PROTECTION

DATE: MARCH 25, 1981  
-----

During the Senate Resources Committee meeting today, testimony will be received from Mr. Richard Logan from the Dept. of Fish and Game, Mr. James Clark representing the Alaska Loggers Association and Mr. J.P. Tangen who will represent the Alaska Miners Association.

You have received a copy of the proposed regulations. Attached for your information is a letter written to Mr. Logan from Jim Clark on the proposed regulations.

The Committee staff has been in contact with numerous groups to ascertain their views on these regulations. With some exceptions notably the United Fishermen of Alaska, there seems to be general agreement with Mr. Clark's main points.

Mr. Clark makes six main points in his memorandum:

- (1) Regulations such as these should be part of a comprehensive set of regulations coordinated through one state agency. As a policy matter, these regulations should be integrated with the Forest Practices Act regulations promulgated by DNR.
- (2) These regulations violate the Forest Practices Act.
- (3) These regulations go far beyond the authority which the Legislature gave the Alaska Dept. of Fish and Game and the Boards of Fish and Game in Title 16.
- (4) These regulations are too long and complex.
- (5) The Dept. of Fish and Game does not have the personnel to administer these intricate regulations.
- (6) It is inappropriate for these regulations to be promulgated prior to the time that the regulatory reform regulations are completed.

Mr. Clark has also compiled a sectional critique which starts on page 6.

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March 24, 1981

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Chief Richard Logan  
Habitat Protection Section  
Alaska Department of Fish & Game  
Support Building  
Juneau, Alaska 99801

Dear Dick:

This is in behalf of the Alaska Loggers Association (ALA) in response to the proposed regulations governing fish and game habitat protection. We are extremely disappointed with the draft regulations. For years we have had a good working relationship with you, have maintained high environmental standards in our industry, and have protected other resources by relying upon the application of professional management (yours, ours and others) of on the ground decisions. You are now assaulting this working system with a complete turn-about in management philosophy: you are seeking to replace professional management with a new system of complex and burdensome prescriptions. Why? We feel that these regulations as applied to timber harvesting violate the Forest Practices Act and in any event go far beyond the authority which the Legislature gave the Alaska Department of Fish and Game (ADF&G) and the Boards of Fish and Game in Title 16.

As we mentioned to you in our letter of January 6, 1981, in response to the preliminary draft, it is ALA policy that forest practice regulations, such as these, be one comprehensive set of regulations coordinated through one state agency. This principle was recognized in the State Forest Practices Act wherein Coastal Zone Management Act regulations impacting forestry and the non-point pollution authority of the Department of Environmental Conservation (DEC) as found in Section 208 of the Federal Water Pollution Control Act, were integrated into the rulemaking process which resulted in State Forest Practice Act regu-

lations. We believe that as a policy matter these regulations should also be integrated with the Forest Practices Act regulations promulgated by the Department of Natural Resources (DNR). This will provide timber operators, regulating agencies and the public with only one set of regulations regarding forest practices. In this way, the timber operator, the regulating agency and the public will know what is required of the operator. Such integration can be accomplished either through cooperation with the Department of Environmental Conservation (DEC), in utilizing the provisions of Section 208(b) of the Water Pollution Control Act discussed below, or through amendments to the State Forest Practices Act attached hereto as Exhibit A.

Secondly, these regulations, as written, violate the Forest Practices Act. The Forest Practices Act as originally proposed by the Governor was a prior approval system, i.e., DNR had to approve the timber harvest plan before operations could commence. The Legislature specifically changed this to a notification system, i.e., the operator merely had to notify DNR that it would begin operations in thirty days. The law provides standards and guidelines which anyone desiring to harvest timber has to obey, but as stated, the Legislature specifically rejected the permit approach.

There is no way under these draft regulations that timber harvesting activities could be undertaken without obtaining a habitat protection permit. Such a permit requires ADF&G approval. Accordingly, by converting the notification system into a prior approval system, the proposed regulations are contrary to the letter and spirit of the Forest Practices Act.

The primary authority upon which ADF&G is relying (notwithstanding the overly extensive citation of sections of Title 16 as authority for the various regulations) is AS 16.05.870(b) and (c). These sections call for a modified notification, rather than a prior approval, system. Subsection (b) states that if a person or governmental agency desires to undertake certain activities with respect to a "specified river, lake or stream", the person or government agency "shall notify the Commissioner of this intention before the beginning of the construction or use." (emphasis added). Subsection (c) provides that the Commissioner should acknowledge receipt of the notice and

can require submittal of full plans and specifications and written approval "if the Commissioner determines to do so." In other words, the statutory scheme requires notice in the first instance, with the Commissioner having authority to require prior approval for certain projects. The statute certainly did not contemplate the requirement of obtaining a habitat protection permit in every instance as the regulations have done. It seems to us that further clarification of AS 16.05.870(c), specifying in what specific cases prior approval needs to be obtained, would help clarify the original and obvious statutory scheme which the Legislature sought to implement.

Since the legislative intent of the Forest Practices Act clearly favors a notification, not a prior approval system; and since the Forest Practices Act came after ADF&G's Title 16 authority; and since the Legislature is presumed to have been aware of Title 16 when it passed the Forest Practices Act (and thus is presumed to have believed that the Forest Practices Act and Title 16 are consistent); and since Title 16 as described above is itself a modified notification system; it follows that the proposed regulations violate the Forest Practices Act. We therefore ask that these regulations be withdrawn and redone in cooperation with DEC through DEC's Section 203 authority or pursuant to the attached legislation which we are proposing.

Assuming for purposes of argument that the proposed regulations do not violate the Forest Practices Act, they clearly exceed ADF&G's authority under AS 16.05.870 - the only arguable authority ADF&G has with respect to non-point pollution under Title 16. AS 16.05.870(b) only requires notice with respect to actions in "a specified river, lake or stream." (emphasis added). Thus, the authority extends only to rivers, lakes, or streams specified under AS 16.05.870(a). The habitat regulations purport to also extend this authority to unspecified tributaries of a specified stream (5 AAC 95.970).

Furthermore, the regulations purport to control activities upon the banks of rivers, lakes and streams as well as land based activities beyond them. AS 16.05.870(b) only requires notice to ADF&G where one "desires to construct a hydraulic project, or use, divert, obstruct, pollute or change the natural flow or bed of a specified river, lake, and stream. There is no authority in ADF&G

under this section to regulate the "desire" to use, divert, obstruct, pollute or change" beyond the "natural flow or bed" of a specified river, lake or stream. The Legislature simply did not provide for ADF&G to regulate the banks or land based activities beyond them. These regulations are therefore ultra vires to the extent they seek to regulate such activity.

Authority does exist for the State to regulate non-point pollution of streams. It is found in Section 208(b)(2)(F) of the Federal Water Pollution Control Act which is administered by DEC. We have no philosophic problem with ADF&G seeking to protect streams by protect banks and land based activities beyond the banks. ( objective is to cause the state agencies concerned about forest practices to coordinate forest management through one comprehensive set of regulations. If ADF&G will cooperate with DEC and exercise its regulatory actions through Section 208, there will be only one set of comprehensive regulations because DEC has coordinated its Section 208 authority with DNR through a Memorandum of Understanding.

It is also clear to us that the Boards of Fish & Game should not have authority to promulgate habitat regulations. The boards lack the expertise to write regulations concerning forest habitat. Accordingly, we will be seeking to delete whatever authority they may have under AS 16.05.251(a)(7) to write regulations regarding habitat.

Furthermore, the Boards' statutory authority simply does not extend to making regulations of the type promulgated here. Whereas the Commissioner of ADF&G is given authority to require written approval of plans and specifications, the authority of the Board of Fisheries in AS 16.05.251(a)(7) and the Board of Game in AS 16.05.255(a)(7) is limited to regulations "for engaging in ... watershed and habitat improvement". Notice that this is not watershed and habitat protection, but rather watershed and habitat improvement. Thus, what this section contemplates are regulations leading to watershed and habitat enhancement programs. Given the vast difference in the authority afforded the Commissioner in AS 16.05.870(b) and the very limited type of authority given to the Boards of Fish and Game in AS 16.05.251(a)(7) and 255(a)(7), it is clear that they lack authority to participate in the promulgation of these habitat regulations.

We have raised a series of legal objections to the regulations. We hope that you will submit these issues to the Department of Law for its consideration.

Third, these regulations are too long and complex. When it is considered that the timber operator must also comply with DNR's forest practice regulations (which incorporate DEC's best management practices), it will be most difficult to meet the detailed, cookbook-type prescriptions set forth in these regulations. Thus, the complexity of the regulations in conjunction with other regulations will be confusing to both operator and regulator alike.

What is needed is a written description of the system under which we have been operating. Field biologists have been using their professional discretion to insure stream protection. We submit that the detailed prescriptions which comprise these regulations, particularly Sections 190 through 260, will hinder ADF&G's professional biologists as they seek to deal with site specific problems. It would be simpler and wiser to set forth goals in the forest practice regulations and allow timber operators and biologists to find ways to meet those goals on the ground. This is the permit by regulation technique which we have discussed with you orally.

Fourth, ADF&G does not now have the personnel to administer these intricate regulations. How many additional positions will be needed to administer and interpret them on the ground? How many people will be needed to deal with the administrative appeals and litigation which are likely to follow in the wake of this most complicated set of regulations?

Fifth. Please be advised of our most strenuous objection to Section 250, which in effect calls for buffer strips on all streams. This is environmentally indefensible and will place an incredible burden on timber harvest operations. Its impact on the potential yield of the Tongass National Forest and state and private forest is incalculable given the intermesh of streams on the best timber growing lands. We believe it is safe to say that ADF&G has no notion whatsoever of the adverse job impact of this particular section.

Sixth. We believe it inappropriate for these regulations to be promulgated prior to the time that the regulatory reform regulations are completed. The regulatory reform regulations (which are presently in draft and upon which public comment is still being received) are the umbrella regulations under which the habitat regulations will be included. To attempt to draft these subordinate regulations before the umbrella regulations are completed will simply mean that ADF&G will have to go back later and amend these regulations to conform to the regulatory reform regulations. To make the process work in an orderly manner, we recommend that you suspend this rulemaking process until such time as the regulatory reform regulations are completed.

We have the following specific comments regarding the various sections of the proposed regulations:

1. 5 AAC 95.001. Findings.

A. Subsection (b) states that the Legislature has set aside "various land and water areas of the State" where fish and game is entitled to a higher degree of protection than afforded other areas. The next sentence states that among legislatively designated areas are "specified fish streams." AS 16.05.870(a) provides for specification by the Commissioner of ADF&G of "the various rivers, lakes and streams or parts of them that are important for the spawning or migration of anadromous fish." Thus, it is incorrect to say that specified streams are legislatively designated: the Legislature has set up a mechanism by which the Commissioner may designate streams.

More important, the authority with respect to specified streams is limited in AS 16.05.870(b) to activities within the "natural flow or bed" of a specified river, lake or stream. Accordingly, the findings are incorrect in stating that the Legislature has set aside land areas by providing for the specification of fish streams. Therefore, we challenge every attempt in the habitat regulations to prescribe ADF&G management of banks and land based activities beyond the banks whether or not we have made specific reference to the Sections in which the prescriptions appear.

B. We challenge the statement of subsection (f) of .001 that "the susceptibility of fish and game to damage requires the promulgation of uniform standards." The very next sentence states that "because of the wide variation in habitats, there must be a means for accommodating unique individual circumstances." We agree with the latter sentence and disagree with the former. What should be maintained is maximum flexibility for ADF&G professionals to determine what is needed on the ground.

Even though ADF&G does not have the authority to require anything on the banks or surrounding riparian land, we in the timber industry have always reached agreement with ADF&G with respect to activities in these areas. This clearly shows that there is no need for uniform procedures - we have been working with the fish and game managers on banks and riparian lands without any requirement that we do so for a long time. What is needed is professionally determined site specific determinations of how operations could best take place with minimum impact on the surrounding environment. Accordingly, we recommend striking the first sentence of subsection (f).

C. We disagree entirely with the last sentence of subsection (g) of .001 which makes the Orwellian statement that a permit system is best for providing flexibility. As stated, without ADF&G having any authority whatsoever, we have worked with the department to protect site specific environments as requested by ADF&G biologists. It is my understanding that your department thinks that we have done a good job in protecting the environment. Accordingly, this belies the statement that a permit system is needed at all. It boggles the mind to read that a permit system would provide flexibility. The long and complicated regulations set forth in this chapter make it clear that that is not the case. These regulations will make it impossible for operators and biologists to know what to do. We submit that these regulations will therefore harm, not help, the environment.

D. Subsection (h) is a hive of inconsistencies. On the one hand, the first sentence talks about minor impacts and the second sentence talks about general permits to accommodate and minor impacts. On the other hand, the third sentence seems to take the opportunity to obtain general permits by calling for individual permits on a case-by-case basis. We recommend the deletion of subsection (h) entirely.

2. 5 AAC 95.002. Purposes.

A. We object to the use of the phrase "land and water use" as found in subsections 1 and 2. As previously stated, ADF&G does not have such extensive authority.

B. Subsection 2(A) says that the regulations must provide for "unobstructed passage of fish". Use of absolute words like "unobstructed" are unwise, since theoretically anything could be considered an obstruction. The word should be deleted.

C. Subsections 2(B) and (D) state that there should be uniform standards dealing with certain land-based activities. Again, ADF&G does not have authority to make regulations in this regard.

3. 5AAC 95.020. Activities in Streams and Rivers Frequented by Fish.

A. This subsection and .030 require plans to be approved by the department if certain listed activities are undertaken. It is a mechanical system: the sole issue being whether or not the proposed activity is covered in the lists of activities set forth in the subsections.

In fact, AS 16.05.870(c) states that "[I]f the Commissioner determines to do so, he shall in the letter of acknowledgement, require the person or governmental agency to submit to him full plans and specifications of the proposed construction or work ... ." Accordingly, it is appropriate to use a mechanical system. The regulations should contain a section describing under what circumstances the commissioner will "determine" that the plans and specifications for the activities listed in this subsection and subsection .030 are needed. It is all right to have a mechanical system to describe what activities will trigger the notice requirement. However, these regulations are insufficient and illegal to the extent they seek to make mechanical a situation in which the law requires the commissioner to exercise his discretion.

B. This section provides that certain activities in streams or rivers "frequented by fish" cannot take place without plan approval. In 5 AAC 95.990(8), "frequented by fish" is defined to mean "at any time in the determination

of the department, containing resident or migratory fish." A stream must be specified under AS 16.05.870(a), in order for it to be subject to AS 16.05.870(b) and thus subject, to these regulations. It is our recommendation, therefore, that the term "frequented by fish" be stricken and that the words "specified" be placed in front of the word "stream or river" in the third line of this section.

C. This section also states that activities cannot take place in "portion of the flood plain which is covered by the mean annual flood." Again, the Department does not have authority under the cited statutes to control land based activity.

Even if there were such authority, how is a timber operator on the ground to determine what portion of the flood plain is covered by the mean annual flood? Viewed from this perspective, the regulation simply is impractical.

D. Subparagraph 2 of 95.020 states that plans need to be submitted in order to build certain cross channel structures. We submit that a Corps of Engineers permit would be needed for any of these structures in navigable waters. ADF&G would have a right to comment upon the proposed plans within the Corps of Engineers permitting process and could certainly disapprove them if they were unsatisfactory. What thought has been given to coordinating the need for Corps permits with these requirements in order to eliminate duplication? This issue would be easier to address if consideration of the draft of these regulations were held off until such time as the regulatory reform regulations were promulgated.

4. 5 AAC 95.030. Activities in or Affecting Anadromous Fish Streams.

A. This section precludes certain activities from taking place without a permit "in water specified as important to anadromous fish." Does this mean waters specified in accordance with AS 16.05.870(a)? We would submit that the only legal way to bring waters within the regulations is to specify them as required by AS 16.05.870(a).

Furthermore, to do otherwise would leave it to the timber operator to determine what streams are important to

anadromous fish and which are not. There is no way that this burden should or can legally be shifted to the timber operator inasmuch as he or she does not have the expertise to make this determination as AS 16.05.870(b) only authorizes regulation of specified streams.

B. This section includes tributaries of anadromous fish streams within the definition of waters important to anadromous fish. There is no authority whatsoever in Title 16 to require a timber operator to guess which streams are tributary to an anadromous fish stream. Under AS 16.05.870(a), ADF&G has the right to specify tributaries as waters important for the spawning or migration of anadromous fish. Such designation causes tributaries to become specified streams and thus, subject to your regulatory authority. Anything short of specification as provided in AS 16.05.870(a) would fail to make that stream subject to these regulations.

C. Section 95.030 provides that certain activities in waters important to anadromous fish cannot take place without a permit if those activities "may result in pollution or a change in the natural flow or bed of the anadromous fish stream." The addition of the word "may" goes far beyond the authorization of the regulatory power found in AS 16.05.870(b). That section states that notification must be given if a person "desires to pollute." In other words, it requires a much closer nexus between the activity and pollution than the word "may" provides. Use of the word "may" requires the timber operator to speculate as to what may or may not result from a particular activity.

Usually such determinations are made by biologists on the ground who work with the operators to make certain that their activities do not have adverse consequences. This is the existing situation which we are trying to maintain. We do not intend to allow the ADF&G to switch the burden of making such determinations to the timber operators who lack the necessary expertise. Determining under what circumstances pollution may or may not occur, is simply not within their ability to do. It is ADF&G's job and can only be carried out by professional managers making on the ground decisions.

D. Under subsection 2, a permit is needed if activities are going to take place within the annual flood plane. As previously stated, ADF&G lack the authority under the law to regulate land based activities.

Furthermore, the state has certification authority under section 404 of the Federal Water Pollution Control Act to control such dredging and filling. Accordingly, it appears that this provision will result in duplication of regulatory control.

E. Subsection 5 requires submission of plans and specifications for "use of any log dragging equipment." As written, this would seem to mean that any time an operator intended to use log dragging equipment anywhere on the operation, submission of plans would have to be submitted. Again, this is a land based activity outside ADF&G's legal authority to regulate.

F. Subsection 7 requires submission of plans and specifications for construction "at the bank of the stream, river or lake." Again, you do not have authority to regulate activity on the bank of the stream, river or lake. Furthermore, even if you did have such authority, the word "bank" is an extremely vague term. It could, theoretically, extend to all riparian uplands. Would it not be better to specify a zone alongside the stream in which activity would be regulated?

G. Subsections 9, 10, 11, 12, 13 and 14 are objected to as attempts to regulate land based activity which ADF&G is not authorized to do under AS 15.05.970 or any of the other listed statutes.

5. 5 AAC 95.070. General Permits.

This section provides for general permits with respect to certain named areas. However, the criteria for obtaining a general permit is not spelled out. It would seem that general permits could be issued on a "logging show" basis. This would save biologists the necessity of stream by stream analysis for habitat protection. Instead, a series of rules for an area could be decided upon and set forth in a general permit. Where special streams need special protection, they could be looked at by ADF&G biologists apart from the general permit. We believe that this section should be written to so provide.

6. 5 AAC 95.90. Uniform Application Procedures.

A. This section provides that if the notice provided to DNR by a timber operator under AS 41.17.090 contains certain information which is specified in subsection (b) of this section, then a timber operator does

not also need to provide notice. As written, this would require the operator to compare the DNR form to subsection (b) of this section in order to make sure that all of the subsection (b) information were included. This results in no time saving for a timber operator at all, and in fact, subjects him or her to sufficient risk that all the important information is not included such that a prudent operator would simply use both forms to apply. The responsibility for making sure that the information provided on each form is sufficient lies with the agencies themselves and not with the timber operator.

B. Subsection 90 is in conflict with sections 20 through 40. The latter subsections state that the proposed activity cannot be undertaken unless there has been prior approval by ADF&G of plans for the proposed activity. Section 90 says that in addition to obtaining plan approval, one must have a permit. Can one assume that by obtaining plan approval, one can receive a permit? Or, are there other things that must be done in addition to submitting the plans and obtaining approval which are necessary to obtain a permit?

7. 5 AAC 95.100. Permit Conditions and Assignments.

This section allows the deciding officer to put terms and conditions which he believes are necessary into the permit. At a minimum, the deciding officer should provide written reasons for adding any such conditions. Otherwise, one could not effectively appeal such a decision.

8. 5 AAC 95.110. Reconsideration of Denials.

This section provides that reconsideration would be allowed if the applicant provides new factual information. We suggest that reconsideration also be allowed where legal reasons are advanced by the applicant.

9. 5 AAC 95.120. Amendments to the Permit.

A. Subsection (a) does not explain when a change is sufficient to require an amendment. There should be language explaining this.

B. The second sentence of subsection (b) is poorly worded. It states that the "Department will require a

maximum of 30 days to review a request for amendment after receipt of all necessary information in the appropriate regional office." This sentence should be changed to read "The Department will review a request for amendment within 30 days of receipt of all necessary information in the appropriate regional office."

What is all necessary information? It would seem that all necessary information would be provided in a completed application described in 5 AAC 95.90(b).

10. 5 AAC 95.170. Application of Standards.

Subsection (a) makes the standards of Sections 180 through 260 applicable to "rivers, lakes and streams frequented by fish." As stated in our response to 5 AAC 95.020, as found in paragraph 3(a) of our response, "frequented by fish" as defined would have to mean streams specified under AS 16.05.870(a). Since AS 16.05.870(b) limits the authority of the Department to specified streams, if the term "frequented by fish" does not mean what we say, then the Department simply has no authority to extend the regulations as provided in 95.170. In other words, unless "frequented by fish" is defined to mean "specified under AS 16.05.870(a)", then there is no authority in the Department to regulate. For this reason, we would again suggest that the term "frequented by fish" be stricken and that the word "specified" be placed in front of the words "rivers, lakes and streams" in the third line of this section.

11. 5 AAC 95.180. Adherence to Standards.

Subsection (b) as a practical matter, requires the permittee to remove installations not in accordance with the provisions of the permit or this chapter which pre-existed the permit and the chapter. The impact of these regulations should only apply prospectively. We should not be required to remove installations, which although once legal, do not now comply with the regulations. A grandfather clause should be written in.

12. 5 AAC 95.190. Standards for Free Passage and Protection of Fish.

A. Subsection (a) calls for "free passage" and movement of fish. What is the difference between free passage and free movement? "Movement" seems to be simply an added word conveying no discreet meaning. Accordingly, we recommend that it be stricken.

B. Subsection (b) provides for scheduling of certain "instream" activities. Our experience has been that the building of bridges -- even during spawning periods -- can be accomplished without undue disturbance to the fish. Once a structure such as a bridge, or a wide culvert is in place, we have observed that fish seem to pay very little attention to it.

C. Subsection (c) says that blasting is prohibited within one-eighth of a mile of the water line of any river, lake or stream, unless otherwise permitted in the permit. Section 95.030(8) says that blasting cannot be undertaken unless plans and specifications have been submitted to and approved by the Department. Why is this matter covered twice?

Furthermore, industry experience shows that techniques such as sequential blasting substantially reduce concussion. The Du Pont Company has demonstrated that good practice can reduce the distance between the blasting area and the water. Accordingly, we urge you to reconsider the one-eighth mile distance in favor of result oriented goal statement.

13. 5 AAC 95.200. Culvert Installation Standards.

A. The requirement for the burying of culverts as set forth in Subsection (a) is unnecessary. It is not the present practice to bury culverts to a six inch depth. Such a practice could result in adversely affecting fish habitat. At present, an operator considers the size of the stream bed and specifies a culvert of length and size sufficient for fish passage to occur at a water velocity acceptable except for periods of peak flow. In addition, culverts are presently placed to match natural river or stream flow.

B. Subsection (b) specifies a table to be followed by the field operator. The maximum allowable culvert velocities are much too low, especially when one considers that there are peak flow periods when such velocities are naturally exceeded.

C. Subsection (c) provides that no realignment may occur, even if a stream is not a fish stream. All tributaries and feeder streams should be available for realignment to accommodate installation. In these cases, the water quality is of the highest concern and such realignment, usually, enhances water quality.

D. Subsection (e) simply states that installation of a culvert may not occur if there is a spawning or rearing site through which a road has been designed. Certainly there are situations where such culvert installations would result only in a diminimous reduction of fish habitat. Accordingly, we believe that this section should be qualified.

14. 5 AAC 95.220. Stream, River and Lake Banks Stabilization Standards.

A. Subsection (a) precludes any activities which "may affect" the banks of streams, rivers and lakes. Again, ADF&G does not have authority under AS 16.05.870(b) to regulate activity on banks of streams, rivers, or lakes; particularly on banks of unspecified streams, rivers or lakes.

Furthermore, anything may affect the banks of streams, rivers and lakes. Accordingly, this phrase is overly broad and simply should be deleted.

B. Subsection (d) states that only rocks, cribbing, or material provided by the Department could be used for stream bank stabilization. What about grass seed or vegetation? Why should they not be specified in this section?

15. 5 AAC 95.230. Stream, River and Lake Bed Stabilization Standards.

A. Subsection (a)(2) states that a person has to be in compliance with terms specified in the permit "which the department considers necessary for free passage and protection of fish ..." The underlined phrase should be changed to "which are reasonably necessary." While we have no doubt that the department will act within reason, there is no reason to broaden its discretion beyond that.

B. Subsection (b) flatly states that no person may channelize a stream frequented by fish. Again, to solve a particularly difficult engineering problem, this may be the wisest thing to do. This, of course assumes that environmental standards can be met.

C. Subsection (d) states that no person may conduct activities which can act to create potential fish entrapment basins within portions of the flood plain. As previously stated, ADF&G lacks the land based authority under AS 16.05.870(b) to regulate actions within the flood plain. Furthermore, even if such authority did exist, this section is too vague and requires too much speculation to be practical.

E. Subsection (e) states "each berm created in an anadromous fish stream must be contoured to the natural slope as it existed prior to the creation of the berm." It is difficult to understand precisely what this means. 5 AAC 95.990(3) defines berm to mean "an artificially raised margin, bar or other deposit composed of earthen materials, which interrupts the natural configuration of the adjacent terrain." Accordingly, it would appear that to the extent there is any raised deposit of material of any kind, whether detrimental or non-detrimental, it must be changed to the pre-existing contours. This, in turn, means that those contours must be charted by a baseline study before operations begin. This is an absurd make-work type result which is simply unconnected to any environmental protection whatsoever. This section should be rewritten to require berms to be eliminated where necessary to protect the environment. Returning to natural contours has been rejected in every rulemaking and legislative process of which we are aware. The reason is that the expense is not related at all to the environmental benefits to be derived.

F. Subsection (g) requires that bridge pilings be cut off level with stream bottoms upon removal. When culverts are removed, channels are to be restored to original configurations. Both of these costly requirements may be necessary in individual instances. However, the goal should be that when an area is left, there will be no environmental damage to the fish. We can foresee any number of instances where meeting the requirements of Subsection (g) would cause more environmental damage than doing nothing. Furthermore, it is impossible to restore a channel to its "original configuration." How is the original configuration to be determined? It may well be that returning to its original configuration provides no environmental advantage whatsoever, yet the operator would still be required to undertake the cost of meeting this requirement.

16. 5 AAC 95.240. Water Quality Standards.

There is no reason for ADF&G to address itself to water quality standards since this is a function of DEC. Accordingly, we believe this entire section should be deleted.

17. 5 AAC 95.250. Shoreline Standards.

Notwithstanding its confusing language, this section seems to provide for buffer strips along all streams. As a policy matter, the ALA opposes such a standard. We certainly recognize in particular cases buffer strips may be required. However, to require them in all cases is regulatory overkill and cannot be supported on environmental grounds. We think it far better to follow the forest service approach of setting up streamside management zones within which there would be special protection. Therefore, we believe that this section should be rewritten to accord with the Southeast Area Guides.

18. 5 AAC 95.910. Waiver or Alteration of Procedure Standards and Permit Conditions.

Subsection 3 of this section provides that waivers may be granted where the standards set forth in a regulation are not applicable due to unique individual stream or land features. This leaves it up to the operator to prove that the stream or land features are unique. It will be far better to employ the type of system we have talked about throughout this response to the regulations. The biologists and the operators should work out standards which will provide environmental safeguards to specific, on-the-ground situations.

19. 5 AAC 95.930. Retention of Permit for Inspection and Inspection of Permit Sites.

Subsection (b) requires that a permittee must give law enforcement officers free and unobstructed access "at all times" to the permit site. We believe it inappropriate for there to be such access except where the timber operator or its designated representative is available to accompany law enforcement officers around the site.

20. 5 AAC 95.970. Waters Important to Anadromous Fish.

The last sentence of this section attempts to extend the provisions of the chapter to tributaries of anadromous fish streams. As previously stated, there is insufficient authority in law for such an extension to be made. ADF&G is only allowed to regulate streams specified under AS 16.05.870(a). Accordingly, we recommend that the last sentence of this section be deleted.

21. 5 AAC 95.990.

A. Subsection 2 defines an anadromous fish stream as a stream which is or "may at any time be important to the spawning, rearing or migration of anadromous fish, and includes all sloughs and backwaters adjoining the listed waters, and that portion of the flood plain which is covered by the mean annual flood." Section 870(a) makes no provision whatsoever for streams which may become important to spawning, rearing or migration of anadromous fish. The 870(a) list only applies to streams "that are important to the spawning or migration of anadromous fish." (See AS 16.05.870(a)). Thus, the phrase "may at any time" should be deleted as exceeding ADF&G's authority under the law.

Again, the inclusion of sloughs, backwaters, listed waters and the flood plain go way past the legal authority set forth in 870(b) and should therefore be eliminated.

B. Subsection 3 defines "berm" to mean an artificially raised margin, bar, or other deposit composed of earthen materials which interrupts the natural configuration of the adjacent terrain." This definition is going to be truly difficult to apply. What does artificially raised mean? What does interrupts a natural configuration mean? We recommend that this definition be eliminated. (See our other objections to this issue in Paragraph 15 E. of this response.)

C. Completed application is defined to mean "all of the information necessary for the department to issue, condition, or deny permit". How much information this will be or how many exchanges of correspondence or meetings it will take to provide it are anyone's guess. Accordingly, the use of this phrase which puts the burden on the operator

to determine the information needed, is totally unfair. In the first place, it gives the department the opportunity to hold up processing of any permit for as long as it can conjure up a need for additional information. Furthermore, in 5 AAC 95.090, it stated that "each applicant for habitat protection permit must submit a completed application on a form or in a manner approved by the department. The notion that one can submit all of the information that must be ultimately required is nonsensical. We recommend that the term completed application be defined as "the form provided by the department which is fully answered to the best of the applicant's knowledge." This definition puts the burden on the department to ask the right questions in the first place and provides that the form will be considered to be completed if the applicant has answered all the questions asked.

D. Subsection 8 defines "frequented by fish" to mean "that any time in the determination of the department, containing resident or migratory fish." As we see it, this phrase should only be used in connection with regulations designed to implement AS 16.05.840 which requires construction of fishways where a dam or other structure is built across a stream frequented by salmon or other fish.

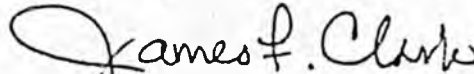
#### CONCLUSION.

Thank you for the opportunity to respond to the habitat permit regulations. As stated, our major concern is that for no apparent reason, ADF&G is, by these regulations, attempting to exchange a working management system based upon use of professional management for a prescriptive system that is universally opposed by industry and probably by a number of your own biologists. The regulations in their present form violate the Forest Practices Act and go beyond the authority which the legislature gave ADF&G and the Boards of Fish and Game in Title 16. Finally, we believe it inappropriate to promulgate these regulations prior to completion of the umbrella regulations which are

Chief Richard Logan  
March 24, 1981  
Page Twenty

now in draft in connection with regulatory reform. For all these reasons, we urge you to withdraw these regulations. We will work with you to help obtain the authority and budget you need to protect fish and game resources, but this is not the way to do it.

Very truly yours,

A handwritten signature in cursive script that reads "James F. Clark". The signature is written in dark ink and is positioned above the typed name.

James F. Clark

JFC:sd

TO: Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

DATE: March 10, 1981

FILE NO:

TELEPHONE NO:

FROM: Captain Wayne A. Fleek <sup>WAF</sup>  
Captain Frank W. Sharp <sup>FWS</sup>  
Div. of Fish & Wildlife Protection  
Department of Public Safety  
P.O. Box 6188 Annex  
Anchorage, Alaska 99502

SUBJECT: Habitat Proposals

BOARDS OF FISHERIES & GAME

RECEIVED

MAR 13 1981

DEPARTMENT OF FISH & GAME

The following are our comments on the proposed habitat protection regulations which you are scheduled to consider in April 1981.

Page 3, Article 2, Section 5AAC 95.020:

We suggest the first paragraph of this proposal be amended by adding the word "lakes" after rivers in line 1 and the word "lake" after river in line 3.

In our habitat enforcement efforts we frequently encounter construction or other activities along lake shores which we believe are equally valuable to fish as spawning or general use habitat. In order to pursue any legal action against activities in these areas we request these amendments be included. They do appear in related proposed regulations which appear later in the pamphlet.

Page 4, Article 2, Section 5AAC 95.040(a)(1):

We suggest this section be amended to include "floating houses" and "permanent tent frames" specifically if it is your intent to include all types of construction generally encountered in critical habitat areas. Other agencies have encountered confusion and enforcement difficulties in covering these type of structures in restricted areas as courts have held that these type of structures are not included in the meaning of "buildings and cabins".

Since we currently have a considerable amount of use of these types of structures in Alaska already, we wish to anticipate possible future enforcement problems.

Page 7, Article 2, Section 5AAC 95.065(b):

We suggest the end of the last line of this paragraph be amended to include the words "and to the Department of Public Safety".

While we're not sure what all the DNR benefits are at this point we believe that since the word "department" is defined as the Department

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Board of Fisheries and Game  
March 10, 1981  
Page 2

of Fish and Game and that since we are charged with the enforcement of the "departments" regulations that we should also have the same "right of inspection, reporting or entry" as the "department".

By specifically adding this amendment we will avoid any legal argument of the necessity of our having to acquire a search warrant prior to accompanying habitat personnel or solely "inspecting" or "entering" premises covered by this section.

Page 8, Article 2, Section 5AAC 95.080:

We suggest amending the end of this section by adding "or State law enforcement".

Our department occasionally must cross some waters covered by this section in emergency or routine enforcement activities and we wish to be exempted from the permit requirements to avoid possible legal entanglements that could arise thus compromising our position/operation. These crossings are generally rare and are done with a great deal of care and common sense.

This completes our comments on these proposals. Thank you for your consideration.

WAF:FWS:kdr

cc: Colonel Stickles  
Captain Sharp  
Greg Cook, Executive Director —

PC/2

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

JAY S. HAMMOND, GOVERNOR

BOARDS OF FISHERIES & GAME  
**RECEIVED**

SOUTHCENTRAL REGION

P.O. BOX 507  
VALDEZ, ALASKA 99686  
PHONE: 835-4322  
242S-2211

MAR 11 1981

March 9, 1981

DEPARTMENT OF FISH & GAME

Alaska Department of Fish and Game  
Boards of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Re: Draft Habitat Protection  
Regulations

Gentlemen:

In response to your solicitation of comments on the referenced draft regulations, I would like to submit the following points for consideration:

1) Page 3, 5AAC 95.020 - The title to this section is misleading for two reasons. First, it implies that this section only applies to streams, when the intent, according to the preceding Section 002 (Purposes), is to apply the section to streams, rivers, and lakes. Second, the title to the section implies that it covers all waters frequented by fish, when in fact the section only applies to waters other than those important to anadromous fish.

To clarify the situation, the title could be changed to read "Activities In Waters Frequented By Fish Other Than Waters Listed Pursuant To Section 970 Of This Chapter."

Also, to be consistent with Section 190(c), blasting within 1/8 mile of the water should be listed in Section 020 under the activities requiring approval.

2) Page 4, 5AAC 95.030 - The title to this section also erroneously refers only to streams, and fails to refer to the definition of anadromous waters found in Section 970. To resolve these shortcomings, the title could read "Activities In Or Affecting Anadromous Waters As Defined By Section 970 Of This Chapter."

3) Page 6, 5AAC 95.060(a) - This section should specify that the term "plans and specifications" is defined in Section 90(b). Otherwise, some people will read only as far as Section 60(a) before assuming that a set of plans will suffice for a permit application.

4) Page 6, 5AAC 95.060(d)(1) - Some provision should be made to allow mitigative measures, which are designed to alleviate unforeseen adverse impacts, to proceed without requiring another permit to implement them. This could be a field level decision by an ADF&G biologist.

5) Page 10, 5AAC 95.120 - This section should contain a clause allowing an ADF&G field biologist to orally amend a permit on site provided a written amendment is procured later within a specified time.

6) Page 14, 5AAC 95.200(a) - The way this now reads, a culvert would have to have a 0 or reverse slope. It should be reworded to read "Each culvert placed in a river or stream frequented by fish must be installed so that at least one-fifth of the diameter of each round culvert and at least 6 inches of the vertical span of each elliptical or arch type culvert is placed below the stream bed at both inlet and outlet."

200(b) - Some provision should be made for allowing culvert velocities in excess of those found in the tables when such velocities do not exceed natural velocities by more than 10% or so. It is a paradox to request an agency to install a culvert so that velocities are below natural velocities.

7) Page 15, Culvert Velocity Tables - Rainbow and Cutthroat trout are not represented in these tables.

8) Page 16, 5AAC 95.200(b)(4) - This requirement should be altered to allow the use of baffled culverts in lieu of standard culverts if the recommended velocities cannot be achieved.

200(c) - This requirement is counterproductive in that it dictates longer culverts despite the fact that longer culverts hinder fish passage. In many cases this will result in unrealistic demands to actually slow down the natural stream velocities within the culvert.

9) Page 19, 5AAC 95.230(g) - A drainage structure is a culvert or similar structure, and removal of such has nothing to do with extracting or cutting bridge pilings. The passage could be reworded to read "During removal of temporary structures, bridge pilings...".

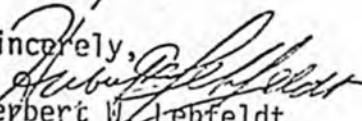
10) Page 22, 5AAC 95.910 - Delegation of authority should be distinguished here so that the ADF&G field biologist or area offices can perform this function.

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March 9, 1981

I hope these suggestions will help in the preparation of final regulations which will not only benefit the various fisheries resources but will also prove compatible with the requirements of other state agencies and the needs of the public.

Sincerely,

  
Herbert W. Lenfeldt  
Chief Engineer  
DOT/FF-Southcentral Region

HWL/MH/b

PC/5

# G.N. McDonald and Associates

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BOARDS OF FISHERIES & GAME

RECEIVED

MAR 16 1981



March 13, 1981

DEPARTMENT OF FISH & GAME

State of Alaska  
Board of Fisheries and Game  
Support Building  
Juneau, Alaska 99801

Re: Comments on Proposed Regulations Governing Fish & Game Habitat  
Protection

Gentlemen:

In these comments I'll be critical of some aspects of your regulations. However, these are certainly an improvement over the historical situation. I sincerely believe that eventually we will have sufficiently accurate guidance so that the engineering designer knows what is expected of him.

5 AAC 95.001 In paragraph (e) you talk of "consistency in regulatory activities". This is good because a planner needs to know at an early stage what the costs of meeting environmental regulations are. He needs a stationary target. However, I am disturbed with the language of paragraph (h) which sounds like we may have different strokes for different folks.

5 AAC 95.002 Purposes. I am left feeling that your aim is to stop the on going natural geologic processes of erosion and to remove natural obstructions to fish passage. I think paragraph (3) sounds much more realistic in that it specifically addresses the effects of man made alteration.

5 AAC 95.002 The word 'stream' needs defining. How much of the tidal mouth do you consider? Do you consider intermittent streams (grayling pasture)? What about the streams which, although not utilized by fish can provide a source of unwanted sediment. What about groundwater flow to overwintering areas?

5 AAC 95.020 The definition of 'mean annual flood' provided is very loose. The vegetation limits do, in humid temperate areas, provide a general guidance as to the mean annual flood level. However, in Alaska the vegetation line, if one can be found, can range widely. I believe reliance on vegetation opens up a wide area for argument. A better definition might be the mathematical one, "A flood stage which on the average is exceeded during one half of the years. Note that I have said 'stage', meaning height, not discharge. That is because in many of our streams the maximum stage is controlled by ice and ice jams, not open water floods. If you are concerned with open water discharge conditions and not ice you should substitute 'discharge' for 'stage'.

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*[Handwritten signature]*

In any event, you will find that estimating mean annual flood stage or discharge is no easy job. You should be prepared to assist the applicants. Since the Federal agencies are required to use the methods promulgated in Technical Bulletin 17A, I suggest the State adopt the same procedures. Perhaps ADF&G could develop their own 'cook book' using these procedures for small, ungedged streams.

If you are still intent on shortcutting the statistical approach and tying the mean annual flood to a morphological feature you will find the tops of the point bars a better estimator of mean annual flood than the vegetation line.

5 AAC 95.020 This paragraph seems to allow structures that do not cross streams but may increase velocity such as levees, dikes and groins.

5 AAC 95.030(2) Annual floodplain is not defined.

5 AAC 95.080 This section waives regulations for firefighting activities. Perhaps a similar waiver, or coordination procedure, is necessary for flood fighting activities when life and property are at stake. Note that many of the flood fighting activities conducted in Fairbanks during the 1967 flood would have been in technical violation of these regulations. Perhaps what is needed is an emergency coordinator to the State Disaster Office with the authority to advise and waive regulations.

5 AAC 95.90 The application procedures should provide for a method of a binding conceptual approval of preliminary plans. This would, for the applicant, allow firm conceptual approval without the cost of preparing detailed plans. For the State it would provide a way of guiding the applicants work at an early and flexible stage.

5 AAC 95.100 The permit conditions should specifically address provision for maintenance and eventual abandonment of instream works. For instance, consider Alyeska's spur dikes. At some future date, when the oil is gone, they will want to abandon their works and go out of business. At that time the stream will have adjusted to the river training. How will you propose either to remove or maintain the works? A commitment should have been part of the original permit consideration.

5 AAC 95.200 The term, "Maximum Allowable Culvert Velocity" needs defining. In most culvert cases you will encounter the point water velocity varies substantially, both along the length of the culvert and through any cross section. The extreme point velocity may be several times the mathematical average of all points within the culvert. I think you need to go back into the experimental data and see what the investigator was calling 'average velocity'. I expect you will find most experiments were done with full pipes which is not a realistic case.

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State of Alaska  
March 13, 1981  
Page Three

Computing the average velocity in a culvert, regardless of the definitions, is no easy chore. The existing engineering methods are designed for the case of larger floods with higher flows and are not usually applicable to your low flows. Another problem is the lost area and change in average roughness caused by the required burial depth. What is needed is a task force to develop a workable engineering procedure to develop the numbers you need. Since you created the regulations you should create the procedures. They should be simple enough so that any reasonably intelligent dirt stiff can apply them. As an alternative, you might provide your technical service to evaluate designs for the applicants.

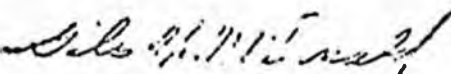
The table of swimming velocitys provides seasonal need data. Procedures for estimating the seasonal flood frequency should be developed. Note that a mean annual flood has a return period of 2.33 years only with certain population distributions. For the federally mandated distribution, the distribution would be extremely skewed to have a 2.33 year return period. I suggest the term ( $Q = 2.33$ ) be struck.

The manuals referenced in paragraph 5 do not by themselves provide sufficient data to design a fish culvert meeting your regulations. Further guidance and procedures are required.

5 AAC 95.210 The design dimensions of diversion channels should reflect the period of use intended, and the consequent risk considering the erodeability of the materials through which it is excavated. Such terms as 'bed and banks that will not significantly erode' are meaningless. All material in alluvial stream beds will, by definition erode. Any hydraulic criteria for diversions should consider the slope of the channel. For instance a diversion across a meander neck may have a slope about twice that of the natural channel it replaces.

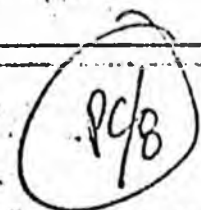
Stream power is often considered to be one of the best indicators of the likelihood and rate of erosion. Perhaps an allowable change in stream power at the design flood for the diversion period may provide a meaningful criteria. Stream power is defined as the sheer stress acting on the bed times the average velocity. This value is quite easily calculated. It has the dimensions of foot pounds per second per square foot and is an indicator of the rate at which work is being done on the stream bed.

Sincerely,

  
Giles N. McDnald P.E.

cc: Carl Yanagawa  
ADF&C  
333 Raspberry Rd.  
Anchorage AK 99502

GNM/jan



3-13-81

DEAR SIR:

THE KENAI SOLDOTNA FISH AND GAME  
ADVISORY COMMITTEE HAS LOOKED AT THE  
PROPOSED REGULATIONS GOVERNING  
FISH AND GAME HABITAT PROTECTION.

WE AGREE WITH THE CONCEPT BUT  
THINK THEY ARE TOO RESTRICTIVE &  
CERTAIN PARTS ARE UNNECESSARY.

IF PASSED EACH CASE SHOULD BE LOOKED  
AT CASE BY CASE.

THANK YOU  
J.D. Hinkle  
CHAIRMAN  
KENAI SOLDOTNA  
FISH & GAME COM. M.

PC/9

Juneau Ready-Mix

P.O. BOX 270  
JUNEAU, ALASKA 99802

Hildre Sand & Gravel Co.

907-586-3412  
907-586-1313

March 18, 1981

Board of Fisheries  
Support Building  
Juneau, Ak

Re: Proposals for Title 5,  
Part 6 - Chapter 95

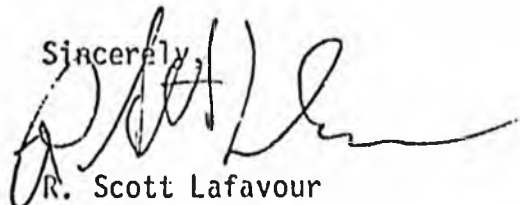
Gentlemen,

It is very exasperating to try to keep up with ever increasing regulatory policies. With reference to the proposals above, many concerns are already covered by Dept. of Environmental Concern - Coastal Zone Regulations, local government regulations and Corps of Engineers as well as Federal E.P.A.,

Our suggestion is to have "Habitat" submit proposals not covered by other agencies, and then coordinate a permit with the above agencies.

Right now we are operating with a Corps of Engineers Permit - Federal E.P.A. Permit - Fish & Game approval and pending D.E.C. approval. It would seem that enough is enough!

Sincerely,



R. Scott Lafavour  
Assistant Manager

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