

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10982 HOUSE RESOURCES

"The Alberta refiners will make the fuel for Canadian markets. They're on the same track of moving to low-sulphur fuel as we are," he said. "They said they'd be happy to sell it to us, at a price of course."

If there's enough volume involved, shipping by rail to Vancouver, B.C. and by barge to Anchorage might be less costly than trucking up the Alaska Highway, King said.

For now the new fuel requirement applies to diesel used on highways, in trucks and buses. But the EPA is now extending the requirement to off-road mobile diesel engines, such as in heavy equipment used in construction or portable generators, King said. Those regulations will probably be in place by 2007 or 2008, he said.

What is likely to follow is an EPA regulation covering stationary diesel engines, such as those used in power generation, King said.

From a practical point of view, power plant operators in many small Alaska communities will be affected at the same time truckers are, according to Meera Kohler, president of Alaska Village Electric Cooperative.

That's because the engines in village power plants are essentially truck engines, she said. After 2005 engine manufacturers will only be making engines that need the ultra-low sulphur fuel.

As rural utilities replace engines in village power plants they will need the new fuel no matter what the EPA does, Kohler said.

The formidable problem faced by Kohler and other rural utility managers is getting the fuel to the communities. Kohler said she has heard cost estimates for the new fuel ranging from 10 cents to \$1 in added costs, but her best guess now is that it will add 25 cents per gallon to AVEC's fuel costs, which averaged \$1.50 per gallon last year.

Fuel is now delivered in two ways to rural Alaska. Yukon Fuel Co. ships fuel by barge to villages along the Yukon River from Nenana, which is on the Alaska Railroad, according to Shane Tarter, vice president of petroleum and freight services for Yukon Fuel. The company also ships fuel by barge from Anchorage to Bethel, Bristol Bay and points west, Tarter said.

If the company has to get the special Arctic blend of ultra-low sulfur fuel from Edmonton refineries instead of the Tesoro refinery near Kenai, its current supplier, it would add more transportation costs even before the costs of shipping from Nenana or Cook Inlet are added, he said.

What's even more of a challenge, however, is the special handling and segregated tanks needed for the fuel. "It's very sensitive to contamination and this could create a large problem for us," Tarter said.

Tanks carrying the fuel would either have to be dedicated to that fuel or washed carefully if a different fuel is carried, he said. Barges now serving rural communities typically have only a few separate tanks that allow different fuel products to be carried.

If there is enough volume a solution will be found, but if only small quantities of the fuel is needed the separate storage will add costs.

Yukon Fuels also faces a different problem than that faced by utilities like AVEC, Tarter said. The utilities have their own separate tanks which, once cleaned, can be kept clean to store the new fuel. Yukon Fuels, like other fuel distributors in the region, operates large bulk storage tanks where diesel for all uses is stored. The company operates a bulk fuel storage facility in Bethel capable of holding 10 million gallons, he said.

If all diesel users in the region are using the fuel, the large tanks can be cleaned and used. This won't be the case if there are just a few using the fuel, however.

Transportation may be the largest cost, but King said the EPA estimates that refiners in the Lower 48 states should be able to manufacture the new fuel for five cents per gallon more than it costs to make diesel now being sold.

A ConocoPhillips Inc. refinery near Bellingham, Wash. that is making 15 parts-per-million diesel in a test program for school bus fleets in the Seattle area told King their costs are now running 7 cents per gallon more than conventional diesel, and that if larger volumes are made the cost can be lowered.

However, the Alberta refineries who make Arctic-grade diesel could charge more than that, King said.

The EPA established the regulations requiring engines that need the new fuel after an extensive national research program found that sulphur from diesel fuel is a major contributor to air pollution and health problems in major cities. Because the regulation apply to engines rather than the use of fuel, there's no way Alaska can be exempted from the rule, King said.

Currently the EPA has a national rule requiring use of diesel with 500 parts-per-million sulphur from which Alaska is exempted, King said.

"Diesel with 500 ppm sulphur is actually used in many parts of Alaska, like Southeast, because the fuel is purchased from Seattle, where it is the only diesel available," King said.

However, because the new regulation is linked to engines, which will be in Alaska when new trucks and buses are purchased, the fuel will be needed in Alaska.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

**Alaska Power & Telephone  
Comments on Ultra Low Sulfur Fuel  
March 5, 2002**

Alaska Power & Telephone supports any controls that have a clear human health or environmental benefit. However, while studies indicate that pollutants caused by high sulfur fuel may contribute to respiratory disease, the impact of these pollutants in isolated remote Alaskan communities is negligible. Where is the justification in mandating Ultra Low Sulfur Diesel Fuel by 2010 in rural Alaska?

The financial impact on the consumers from these same communities will be of such proportion to adversely affect virtually every aspect of community life. In addition to the direct impacts this mandate will cause, such as increased fuel costs, compatibility with existing equipment, and storage concerns during the transition period, this mandate will increase an already high electric kilowatt-hour rate.

- Rural Alaska is heavily dependant on diesel generation.
- Fuel cost is estimated to increase approximately 23 cents per gallon.
- The BTU rating will be decreased by 14%, increasing fuel consumption.
- Dual fuel storage and dual delivery and metering systems will be required.

Electric consumers, whose kilowatt-hour rates are as much as 45 cents today could expect an increase of up to 5% if these costs are passed on to the consumer. These increased costs will also place an additional burden on the state PCE program.

Alaska Power Company (APC) currently provides electric service to 24 rural communities throughout Southeast and Interior Alaska. Of these, 19 communities depend strictly on diesel as the primary fuel source for generation, and the remaining five are hydroelectric facilities that depend on diesel generation as a backup.

The 19 APC communities that currently use diesel-powered generation are:

- Naukati
- Coffman Cove
- Hydaburg
- Whale Pass
- Hollis
- Tok
- Tanacross
- Dot Lake
- Tetlin
- Bertles
- Evansville
- Mentasta Lake
- Chistochina

- Eagle & Eagle Village
- Healy Lake
- Northway & Northway Village
- Allakaket
- Alatna
- Alcan Border Station

The five APC hydroelectric communities that still depend on diesel generation as a back-up are:

- Craig
- Skagway
- Haines
- South Thorne Bay
- Klawock

We suggest the committee adopt a resolution with provisions that would require the DEC request the EPA to reevaluate and address the ramifications and costs to rural Alaska consumers.

Respectfully submitted,



Donald E. Mahon  
Vice President, Operations  
Alaska Power Company

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HJR 19  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DEC  
Title Federal Diesel Fuel Requirements BRU Air & Water Quality  
Component Air Quality  
Sponsor: Representative Samuels  
Requester House Resources Component No. 2061

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)  
This bill will have no known fiscal impact upon the department.

Prepared by: Tom Chapple, Director Phone (907) 465-5128  
Division Air & Water Quality Date/Time 4/11/03 11:50 AM  
Approved by: Kurt Fredriksson, Deputy Commissioner Date 4/11/2003  
Agency Department of Environmental Conservation

# Alaska State Legislature

Rep. Carl Gatto  
Rep. David Guttenberg  
Rep. Cheryll Heinze  
Rep. Beth Kerttula  
Rep. Bob Lynn  
Rep. Carl Morgan  
Rep. Kelly Wolf



State Capitol, Room 124  
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(907) 465-2338 fax: 465-3883  
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## House Resources Committee

### MEMO

To: **Committee Members**  
Fm: **Staff**  
Date: **April 3, 2003**  
Re: **Committee Schedule for Resources**

House Resources Committee Room 124

**+\*HJR 19-FEDERAL DIESEL FUEL REQUIREMENTS**

**+HB 191-COASTAL MANAGEMENT PROGRAMS (We will not be hearing this bill)**

**+HB 163-NONRES.GAME TAG FEES/WILDLIFE TOUR PASS**  
**(Please bring your packets)**

Bills Previously Heard or Scheduled

All meetings will be teleconferenced

HJR

35





# Representative Beth Kerttula

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## House Joint Resolution 35

### Sponsor Statement

#### **"Relating to mad cow disease and country-of-origin labeling for meat products."**

National attention has recently been drawn to bovine spongiform encephalopathy, "mad cow disease," because the prions that cause the disease were found in a cow from a farm in Washington state. It was later discovered that cow had been brought to Washington from Canada and had probably contracted the disease from its feed. After the discovery, the U.S. Department of Agriculture took swift steps to contain and prevent the disease. House Joint Resolution 35 supports the USDA's efforts.

Country of origin labeling (COOL) of beef and beef products would help consumers to make intelligent decisions in purchasing meat. Currently, country of origin labeling for beef has been delayed until September 30, 2006 from its original implementation date of September 30, 2004. Because of the recent mad cow scare, COOL should be implemented sooner. House Joint Resolution 35 supports any efforts by the Alaska congressional delegation to ensure more timely country of origin labeling of beef.

## **Bovine Spongiform Encephalopathy (BSE) Q & A's**

### **Q: What is the current situation regarding the bovine spongiform encephalopathy (BSE) detection?**

**A:** On the morning of December 25, 2003, the BSE World Reference Laboratory in Weybridge, England, confirmed USDA's December 23 preliminary diagnosis of BSE in a single non-ambulatory dairy cow that had been slaughtered on December 9 at Vern's Moses Lake Meats in Washington State. USDA and Canada worked together to confirm the identification of this cow through DNA testing.

On December 30, 2003, Agriculture Secretary Aron Veneman announced additional safeguards to bolster the U.S. protection systems against BSE and further protect public health. The policies will further strengthen protections against BSE by removing certain animals and specified risk material and tissues from the human food chain; requiring additional process controls for establishments using advanced meat recovery (AMR); holding meat from cattle that have been targeted for BSE surveillance testing until the test has confirmed negative; and prohibiting the air injection stunning of cattle.

The Secretary also announced that USDA will begin immediate implementation of a verifiable system of national animal identification. The development of such a system has been underway for more than a year-and-a-half to achieve uniformity, consistency and efficiency across this national system.

### **Q: What are the results of USDA's investigation so far?**

**A:** On January 6, 2003, USDA announced that DNA evidence verified, with a high degree of certainty, that the BSE positive cow found in the state of Washington did in fact originate from a dairy farm in Alberta, Canada.

The USDA's Animal and Plant Health Inspection Service (APHIS) and Canadian officials have determined that the index animal was approximately 6-1/2 years old at the time of slaughter. The age of the animal is significant because she would have been born before feed bans were implemented in North America in August 1997. The feed bans prohibit the inclusion of mammalian protein in feed intended for other ruminants to eat. This practice has been identified time and time again as the primary means by which BSE is spread.

The index cow had three calves while in the United States. The first was stillborn. The second, a yearling heifer, is among 129 animals from the index farm being depopulated. The third, a bull calf, was among the group of calves depopulated January 6. The herd the affected animal came from is under a State quarantine in Washington State. Any cattle that die on the farm will be tested for BSE.

Through its traceback investigation, the USDA's Animal and Plant Health Inspection Service (APHIS) has determined the following additional information:

- The Canadian health certificate, dated August 28, 2001, lists 82 ear tag numbers from cattle that were part of herd dispersal in Alberta, Canada. USDA has confirmed that 81 of those 82 animals crossed into the United States in September, 2001. It is believed that one of the 82 remained in Canada. To learn the latest number and locations of animal traced, please check the daily BSE update at <http://www.aphis.usda.gov/lpa/issues/bse/bse.html>
- USDA depopulated the bull calf operation that included the calf born to the cow infected with BSE on January 6. The depopulated herd contained approximately 450 head of cattle. The depopulation effort took place at a slaughter facility that currently is not in use. Animal care veterinarians were on hand at both the farm where the calves were loaded and at the slaughter facility to ensure that the animals were treated in a humane manner. The animals were euthanized according to American Veterinary Medical Association animal euthanasia guidelines. No products from any of the slaughtered animals will enter the human food chain, nor will products be rendered.

### **Bovine Spongiform Encephalopathy (BSE)**

#### **Q: What is BSE?**

**A:** BSE is a degenerative neurological disease caused by an aberrant protein called a prion. It is in the family of diseases—all caused by prions—referred to as transmissible spongiform encephalopathies, or TSEs. TSEs include

scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and Creutzfeldt-Jakob disease, or CJD, in humans. It's important to note that TSEs are not communicable diseases—they do not spread easily like viruses.

**Q: How is BSE spread in cattle?**

**A:** There is no scientific evidence that shows BSE can be spread by contact between unrelated adult cattle or from cattle to other species. There is some evidence suggesting maternal transmission may occur at extremely low levels. Cattle can become infected with BSE by eating feed contaminated with the infectious BSE agent. This is why in 1997 the U.S. Food and Drug Administration prohibited the use of most mammalian protein in the manufacture of animal feed intended for cows and other ruminants. For more information on the feed ban, please visit the U.S. Food and Drug Administration's website at [www.fda.gov](http://www.fda.gov).

**Q: What steps is USDA taking in response to the detection?**

**A:** USDA's Food Safety Inspection Service (FSIS) has taken the following actions:

- USDA has banned all non-ambulatory disabled (downer) cattle from the human food chain effective immediately.
- FSIS inspectors will no longer mark cattle targeted for testing under the BSE surveillance program as "inspected and passed" until confirmation is received that the animals have, in fact, tested negative for BSE. This new policy is in the form of an interpretive rule that was published January 8, 2004 in the Federal Register. It is important to note that FSIS inspection program personnel have always — and will continue to — perform ante- and post-mortem inspection of cattle that are slaughtered in the United States. As part of the ante-mortem inspection, FSIS personnel look for signs of disease, including signs of central nervous system impairment. Animals showing signs of systemic disease, including those exhibiting signs of neurological impairment, are condemned and do not enter the food chain. Meat from all condemned animals has never been permitted for use as human food.
- Effective January 8, 2004, USDA enhanced its regulations by declaring as specified risk materials skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord and dorsal root ganglia of cattle over 30 months of age and the distal ileum of the small intestine of cattle of all ages, thus prohibiting their use in the human food supply. Tonsils from all cattle were already considered inedible and therefore do not enter the food supply. These enhancements are consistent with the actions taken by Canada after the discovery of BSE in May 2003.
- In March 2003, FSIS began a routine regulatory sampling program for beef produced from AMR systems to ensure that spinal cord tissue is not present in beef. In a new interim rule announced December 31, 2003, meat processing establishments have to ensure process control through verification testing to ensure that neither spinal cord nor dorsal root ganglia is present in the product. (For a more detailed description of AMR see below).
- In order to ensure that portions of the brain are not dislocated into tissues of the carcass as a consequence of humanely stunning cattle during the slaughter process, FSIS has issued a regulation to ban the practice of air-injection stunning.
- USDA will prohibit use of mechanically separated meat in human food. Consumers with other food safety questions can call the toll-free USDA Meat and Poultry Hotline at 1-888-MPHotline (674-6854). The hotline is available in English and Spanish and can be reached from 10 a.m. to 4 p.m. (Eastern Time), Monday through Friday. Recorded food safety messages are available 24 hours a day.

**Q: What is Advanced Meat Recovery?**

**A:** AMR is an industrial technology that removes muscle tissue from the bone of beef carcasses under high pressure without incorporating bone material when operated properly. AMR products can be labeled as "meat." FSIS has previously had regulations in place that prohibit spinal cord from being included in products labeled as "meat." An FSIS regulation published January 8, 2004, expands that prohibition to include dorsal root ganglia, and clusters of nerve cells connected to the spinal cord along the vertebrae column, in addition to spinal cord tissue. Like the spinal cord, the dorsal root ganglia may also contain BSE infectivity if the animal is infected. In addition, because the vertebral column and skull in cattle 30 months and older will be considered inedible, it cannot be used for AMR.

**Testing and Surveillance**

**Q: Given the Secretary's announcement to prohibit downer cattle from slaughter establishments, what does that mean in terms of USDA's BSE surveillance program?**

**A:** USDA has tested 20,000 animals annually for each of the last 2 years, and approximately 75 percent of these were downers at slaughter. USDA is working with industry to reposition its efforts to collect samples on-farm, at rendering facilities, and at facilities where meat products are harvested for non-edible purposes. USDA is committed—and the industry shares this commitment—to ensuring that a robust surveillance program for BSE

continues in this country. USDA will be working very closely with the rendering and animal disposal industry and other government agencies in the days and weeks to come to ensure that USDA continues to have access to the population of animals considered to be at highest risk for BSE.

**Q: Will USDA be issuing licenses for rapid diagnostic tests for BSE?**

**A:** USDA's Center for Veterinary Biologics, in Ames, Iowa will accept license and permit applications for rapid test kits. Accepting license and permit applications at this time will allow CVB to respond to submissions, test master seeds and serials and inspect facilities should a decision to license need to be made to further protect animal agriculture.

#### **BSE and its effect on U.S. trade**

**Q: What does the detection of BSE in the United States mean for the country's beef exports?**

**A:** In accordance with international trade agreements, USDA has notified the international animal health governing body, the Office of International Epizootic's (OIE), of the positive BSE detection.

USDA officials will be working to provide U.S. trading partners and international animal health officials with information regarding the steps being taken in response to the detection.

For a current list of countries that have placed BSE restrictions on the United States visit the following website:

[http://www.aphis.usda.gov/lpa/issues/bse/bse\\_trade\\_ban\\_status.html](http://www.aphis.usda.gov/lpa/issues/bse/bse_trade_ban_status.html)

#### **BSE and the U.S. Food Supply**

**Q: What are the risks to the U.S. food supply as a result of this detection?**

**A:** USDA remains confident in the safety of the U.S. food supply. The risk to human health from BSE is extremely low. As is standard practice for downer animals identified prior to slaughter, the animal's brain, spinal cord, and other related products were removed and sent to a rendering facility. These so-called "specified risk materials" present the greatest risk of carrying the BSE agent and have not entered U.S. food supply channels. The scientific community believes that there is no evidence to demonstrate that muscle cuts or whole muscle meats that come from animals infected with BSE are at risk of harboring the causative agent of the disease.

**Q: Is there a meat recall associated with the detection?**

**A:** Yes. On December 23, 2003, FSIS issued a Class II recall of approximately 10,410 pounds of raw beef that may have been exposed to tissues containing the infectious agent that causes BSE. FSIS' designation of the recall as Class II was due to the extremely low likelihood that the beef contained the infectious agent that causes BSE. According to scientific evidence, the tissues of highest infectivity are the brain, spinal cord, and distal ileum portion of the small intestine. All were removed from the rest of the carcass at slaughter. Therefore, the meat produced were cuts that would not be expected to be infected or have an adverse public health impact. The recall is being conducted out of an abundance of caution.

- FSIS has conducted an investigation and determined the points of distribution for the entire recalled product.
- All of the primary, secondary and tertiary establishments that may have received product subject to this recall have been contacted by FSIS compliance officers. All have acknowledged being contacted about the recall by their suppliers. All have confirmed securing whatever product they had upon notification of the recall and making their customers aware of the recall as well.
- FSIS will now focus its efforts toward verifying the return and destruction of the recalled products.
- Recall effectiveness checks have determined that product was sent to six states. Those states are Washington, Oregon, California, Nevada, Idaho and Montana. Alaska, Hawaii and Guam did not receive any of the products subject to recall.

**Q: What is the significance of a "Class II" designated recall?**

**A:** FSIS' designation of this recall as Class II is due to the extremely low likelihood that the beef being recalled contains the infectious agent that causes BSE.

According to scientific evidence, the tissues of highest infectivity are the brain, spinal cord, and distal ileum, which were removed from the rest of the animal's carcass at slaughter. Therefore, the meat produced would not be expected to be infected or have an adverse public health impact, but are being recalled out of an abundance of caution.

**Q: Will the recalled beef be tested to determine if it contains any central nervous system tissue and if it is positive, will it be tested for BSE?**

**A:** No. There is no BSE test for muscle tissue. Tests can only be conducted on brain tissue.

**Q: Is there a phone number consumers can call with questions about meat products?**

**A:** Consumers with other food safety questions can phone the toll-free USDA Meat and Poultry Hotline at 1-888-MPHotline. The hotline is available in English and Spanish and can be reached from 10 a.m. to 4 p.m. (Eastern Standard Time), Monday through Friday. Recorded food safety messages are available 24 hours a day.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHJR 35(L&C)  
(H) Publish Date: 2/18/2004

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Mad Cow Disease/Country of Origin Lables BRU \_\_\_\_\_  
Sponsor Rep. Kerttula Component \_\_\_\_\_  
Requester House Labor & Commerce Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact.

Prepared by: Rep. Tom Anderson Phone 465-4954  
Division: House Labor & Commerce Committee Date/Time 2/18/04 9:19 AM  
Approved by: Rep. Tom Anderson Date 2/18/2004  
Agency: House Labor & Commerce Committee

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR 35  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Mad Cow Disease/Country of Origin Lables BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Rep. Kerttula \_\_\_\_\_  
 Requester House Labor & Commerce Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact.

Prepared by: Rep. Tom Anderson  
 Division: House Labor & Commerce Committee  
 Approved by: Rep. Tom Anderson  
 Agency: House Labor & Commerce Committee

Phone 465-4954  
 Date/Time 2/17/04 2:31 PM  
 Date 2/17/2004

HJR

36

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH  
HOUSE DISTRICT 4



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
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## Sponsor Statement

### HJR 36

This Resolution asks the National Park Service to take simple steps to mitigate the adverse consequences that fishing closures in Glacier Bay have had on the folks who once participated.

Beginning in 1999, the commercial fishery has been either restricted or closed in Glacier Bay by the National Park Service. Because of the closure, the federal government identified groups who would be negatively impacted by the closures and a compensation package was developed with a one-time payment. Commercial fishermen, their crewmembers and those who supported commercial fishing operations were among those paid compensation because of the closures. However, despite the one-time payment, many of those who claimed or received compensation will continue to be economically affected in the long term by the closures, which will eventually forever prohibit commercial fishing in Glacier Bay.

In the meantime, the National Park Service will continue to procure goods and services to manage and administer the Glacier Bay National Park and Preserve. For example, the Park Service will continue to lease or purchase boats for various reasons including research, tours, maintenance or law enforcement. This resolution requests that the Park Service obtain these goods, materials or vessels that they need, use, purchase, or lease from those who have been negatively affected by commercial fishery closures and restrictions first before any other person.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HJR 36  
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title "Requesting the National Park Service BRU Legislative Council  
to mitigate the adverse economic effects of commercial..." Component: Council and Subcommittees  
 Sponsor "Representative Ogg by request..." Session Expenses  
 Requestor House Special Committee on Fisheries Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director  
 Division: Administrative Services

Phone 465-6626  
 Date/Time 2/10/04 2:58 PM

Approved by: Pamela Varni, Executive Director  
 Agency: Legislative Affairs Agency

Date 2/10/2004

HJR

41

# Representative Beth Kerttula

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Alaska State Legislature District 3

**Sponsor Statement  
House Joint Resolution 41  
Land Recreational Visitor Protection Act**

Winter recreation is an important part of most Alaskan's lives. Unfortunately, Alaska has the highest per capita avalanche death rate in the nation, but there is virtually no avalanche forecasting. The Legislature has recognized the importance of avalanche awareness and safety by designating November as Avalanche Awareness Month. However more can and should be done to reduce the threat of avalanches to Alaskans and visitors to our great state.

In April 2003, U.S. Senator Ted Stevens introduced the Federal Land Recreational Visitor Protection Act of 2003. The Federal Act would direct the Secretary of the Interior to establish an avalanche protection program that provides early identification of potential avalanches that could endanger the safety of visitors to units of the National Park System and to reduce the risks of avalanches to visitors, recreational users, neighboring communities, and transportation corridors. It also authorizes federal grants to be used for preventing, forecasting, detecting and mitigating avalanches, including the use of artillery or explosives for avalanche control; maintaining essential transportation and communications that could be affected by avalanches; and assisting public or private research on avalanche control methods.

House Joint Resolution 41 affirms our support for this important federal legislation. I would appreciate your support.

108TH CONGRESS  
1ST SESSION

# S. 931

To direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on visitors to units of the National Park System and on other recreational users of public land.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2003

Mr. STEVENS (for himself, Mr. CAMPBELL, Mr. DOMENICI, Mr. HATCH, Mr. INOUE, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on visitors to units of the National Park System and on other recreational users of public land.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Federal Land Rec-  
5 reational Visitor Protection Act of 2003".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) PROGRAM.—The term “program” means  
2           the avalanche protection program established under  
3           section 3(a).

4           (2) SECRETARY.—The term “Secretary” means  
5           the Secretary of the Interior.

6 **SEC. 3. AVALANCHE PROTECTION PROGRAM.**

7           (a) ESTABLISHMENT.—The Secretary shall establish  
8 a coordinated avalanche protection program—

9           (1) to provide early identification of the poten-  
10           tial for avalanches that could endanger the safety of  
11           visitors to units of the National Park System and  
12           recreational users of public land, including skiers,  
13           backpackers, snowboarders, and campers; and

14           (2) to reduce the risks and mitigate the effects  
15           of avalanches on visitors, recreational users, neigh-  
16           boring communities, and transportation corridors.

17           (b) COORDINATION.—

18           (1) IN GENERAL.—In developing and imple-  
19           menting the program, the Secretary shall consult  
20           with the Secretary of Agriculture, and coordinate the  
21           program, to ensure adequate levels of protection for  
22           recreational users of public land and forests under  
23           the jurisdiction of the Secretary of Agriculture, in-  
24           cluding National Recreation Areas, wilderness and  
25           backcountry areas, components of the National Wild

1 and Scenic Rivers System, and other areas that are  
2 subject to the potential threat of avalanches.

3 (2) RESOURCES.—In carrying out this section,  
4 the Secretary and the Secretary of Agriculture—

5 (A) shall, to the maximum extent prac-  
6 ticable, use the resources of the National Ava-  
7 lanche Center of the Forest Service; and

8 (B) may use such other resources as the  
9 Secretary has available in the development and  
10 implementation of the program.

11 (c) ADVISORY COMMITTEE.—

12 (1) IN GENERAL.—The Secretary and the Sec-  
13 retary of Agriculture shall jointly establish an advi-  
14 sory committee to assist in the development and im-  
15 plementation of the program.

16 (2) MEMBERSHIP.—

17 (A) IN GENERAL.—The Advisory Com-  
18 mittee shall consist of 11 members, appointed  
19 by the Secretaries, who represent authorized  
20 users of artillery, other military weapons, or  
21 weapons alternatives used for avalanche control.

22 (B) REPRESENTATIVES.—The membership  
23 of the Advisory Committee shall include rep-  
24 resentatives of—

1 (i) Federal land management agencies  
2 and concessionaires or permittees that are  
3 exposed to the threat of avalanches;

4 (ii) State departments of transpor-  
5 tation that have experience in dealing with  
6 the effects of avalanches; and

7 (iii) Federal- or State-owned railroads  
8 that have experience in dealing with the ef-  
9 fects of avalanches.

10 (d) CENTRAL DEPOSITORY.—The Secretary, the Sec-  
11 retary of Agriculture, and the Secretary of the Army shall  
12 establish a central depository for weapons, ammunition,  
13 and parts for avalanche control purposes, including an in-  
14 ventory that can be made available to Federal and non-  
15 Federal entities for avalanche control purposes under the  
16 program.

17 (e) GRANTS.—

18 (1) IN GENERAL.—The Secretary and the Sec-  
19 retary of Agriculture may make grants to carry out  
20 projects and activities under the program—

21 (A) to assist in the prevention, forecasting,  
22 detection, and mitigation of avalanches for the  
23 safety and protection of persons, property, and  
24 at-risk communities;

1 (B) to maintain essential transportation  
2 and communications affected or potentially af-  
3 fected by avalanches;

4 (C) to assist avalanche artillery users to  
5 ensure the availability of adequate supplies of  
6 artillery and other unique explosives required  
7 for avalanche control in or affecting—

8 (i) units of the National Park System;

9 and

10 (ii) other Federal land used for recre-  
11 ation purposes; and

12 (iii) adjacent communities, and essen-  
13 tial transportation corridors, that are at  
14 risk of avalanches; and

15 (D) to assist public or private persons and  
16 entities in conducting research and development  
17 activities for cost-effective and reliable alter-  
18 natives to minimize reliance on military weap-  
19 ons for avalanche control.

20 (2) APPORTIONMENT OF FUNDS.—

21 (A) IN GENERAL.—Subject to subpara-  
22 graph (B), for each fiscal year for which funds  
23 are made available under section 4, the Sec-  
24 retary shall apportion the amount of funds  
25 made available for the fiscal year among States

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1 with avalanche zones based on the ratio that  
2 the total area of avalanche zones located in  
3 each State bears to the total area of all ava-  
4 lanche zones in all States.

5 (B) PRIORITY.—In providing grants under  
6 this subsection, the Secretary shall give priority  
7 to projects and activities carried out in ava-  
8 lanche zones—

9 (i) with a high frequency or severity  
10 of avalanches; or

11 (ii) in which deaths or serious injuries  
12 to individuals, or loss or damage to public  
13 facilities and communities, have occurred  
14 or are likely to occur.

15 (f) SURPLUS ORDINANCE.—Section 549(e)(3) of title  
16 40, United States Code, is amended—

17 (1) in subparagraph (A), by striking “or” after  
18 the semicolon at the end;

19 (2) in subparagraph (B), by striking the period  
20 at the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(C) in the case of surplus artillery ordi-  
23 nance that is suitable for avalanche control pur-  
24 poses, to a user of such ordinance.”.

1 SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

2       There are authorized to be appropriated such sums  
3 as are necessary to carry out this Act.

○

# Southeast Alaska Avalanche Center

PO Box 20578, Juneau, Alaska 99802 (907) 586-5699 ph & fax e-mail: seavalanche@gci.net

An educational nonprofit corporation <http://www.avalanche.org>; click on Southeast Alaska link

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March 25, 2004

Rep. Beth Kerttula  
Alaska House of Representatives  
State Capitol, Room 430  
Juneau, Ak 99801-1182

## Letter of Support for HJR 41

Alaska loses more people to avalanches than any other state, regardless of population, yet we are the one state with no federally funded statewide program to reduce that death toll.

Senator Stevens' S.931 sets up the programs and funding that will make a concrete difference, and Representative Kerttula's HJR 41 helps support and move that bill toward passage.

S.931 directs the Secretaries of Interior and Agriculture to coordinate with the US Forest Service National Avalanche Center to develop a program of grants to governments, communities, transportation systems, and private businesses affected by avalanches to set up the safeguards they need to maintain public safety and the flow of commerce, and apportions funding by each state's area of avalanche zones, which ensures that Alaska will get the large share of the funding that it needs and deserves to address our problem.

As a nonprofit dedicated to avalanche education, we strongly support both bills.

thank you

Bill Glude  
SAAC Director & lead avalanche specialist

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: HJR 41

*Kerttue*

- 1 Page 2, line12, following "; "
- 2 Insert "Senator Pete V. Domenici, Chairman, and Senator Jeff Bingaman,
- 3 Ranking Member, US Senate Committee on Energy and Natural Resources; "

# US Avalanche Fatalities By State

The last 10 years.



Colorado Avalanche Information Center

1993/94 to 2002/03

HJR

44



Committee Assignments:

Member:

House Special Committee on Fisheries  
House Special Committee on Education  
House Transportation Committee  
House Judiciary Committee

**Dan Ogg**  
Representative

Session:  
Room 400  
Capitol Building  
Juneau, Alaska 99801  
Phone: 907-465-2487  
Toll Free: 800-865-2487  
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Interim:  
112 Mill Bay Road  
Kodiak, Alaska 99615  
Phone: 907-486-8872  
Fax: 907-486-5264

## SPONSOR STATEMENT

House Joint Resolution 44

3/22/04

### **"Relating to research into the decline of the Southwest Alaska population of the Northern Sea Otter in the western Gulf of Alaska."**

The Southwest Alaska population of Northern Sea Otters has declined as much as 65 percent since the mid-1970s. In response to this precipitous decline, the United States Fish and Wildlife Service recently proposed listing the sea otters in the Southwest region as threatened under the Endangered Species Act.

As we have witnessed with Steller sea lions, commercial fishing activity in Southwest Alaska could be curtailed if sea otters gain protected status. Our coastal communities, as well as the state as a whole, depend heavily on revenue generated by commercial fishing.

In an attempt to be proactive, this resolution asks the U.S. Fish and Wildlife Service and the U.S. Congress to provide \$5 million per year for five years for research into the abundance of Northern Sea Otters and the reasons behind their decline. Since Kodiak is uniquely situated in the Gulf of Alaska and is also a large commercial fishing port, the resolution asks that research into the sea otters' population decline be centered in Kodiak, with field stations in other western Alaska coastal communities.

Previous surveys of sea otter population levels have been sporadic and have not produced long-term reliable data. It is imperative that scientists immediately begin to consistently monitor and investigate the sea otters' decline to mitigate the potential negative effects on Alaska's commercial fishing industry.

District 36 - Kodiak Island Borough/Lake & Peninsula Borough  
Akhiok • Chiniak • Karluk • Kodiak • Larsen Bay • Old Harbor • Ouzinkie • Port Lions  
Iguigig • Iliamna • Kokhanok • Levelock • Newhalen • Nondalton • Pedro Bay • Port Alsworth

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U.S. Fish & Wildlife Service

# ESA Listing for Sea Otters in Southwest Alaska

The numbers of sea otters in southwest Alaska have declined by at least 56 to 68 percent since the mid-1980s. This population of otters occurs in nearshore waters from the Aleutian Islands to Cook Inlet, including waters adjacent to the Aleutians, the Alaska Peninsula, and the Kodiak archipelago. Recognizing the severity of the decline, the U.S. Fish and Wildlife Service is proposing to list the southwest Alaska Distinct Population Segment of northern sea otter as threatened under the Endangered Species Act. The following information was prepared to answer questions that you might have regarding this proposed listing

## When will sea otters be listed, and will they be listed as "threatened" or "endangered?"

FWS has published in the Federal Register a proposal to list the southwest Alaska DPS of the northern sea otter as threatened under the ESA. The Service expects to make a final determination on whether to list the DPS within one year of publication of the proposal, as required by the ESA. Information on how the listing process proceeds following publication of a proposal to list can be found at <http://endangered.fws.gov/listing/listing.pdf>. A threatened species (or DPS) is one that is considered likely to become endangered in the foreseeable future. An endangered species (or DPS) is one that is considered to be in danger of extinction throughout all or a significant portion of its range in the foreseeable future.

Under the ESA, a "species" is defined as including any subspecies of a plant or animal, and any distinct population segment, or DPS, of any species or vertebrate fish or wildlife. The basis for identifying a DPS is described in our DPS policy (<http://endangered.fws.gov/policy/pol005.html>), and is explained in the proposed rule.

## How can I participate in this process?

When the proposed rule is published in the Federal Register, a 120-day formal public comment period will begin. The

proposed rule provides information on how to submit written comments. The Service will hold public hearings on the proposed rule in southwest Alaska, if requested. Requests for public hearings must be received by the Service within 60 days of publication of the proposed rule.

## If the proposed listing becomes final, how will that impact human activities in southwest Alaska?

The ESA and its implementing regulations include some general requirements, prohibitions, and exceptions that apply to threatened and endangered wildlife. If the proposal to list the southwest Alaska DPS of the northern sea otter as threatened becomes final, Federal agency actions would be subject to the consultation requirements under section 7 of the ESA. Under section 7, Federal agencies are required to ensure, in consultation with the Service, that an action they "authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species," including a subspecies or a DPS.



In addition, the ESA prohibits take of listed wildlife. The Service has issued regulations (50 CFR 17.21) that generally apply these prohibitions to threatened wildlife. If the southwest Alaska DPS of the northern sea otter is listed, these prohibitions on take would come into effect. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these. However, the Endangered Species Act allows the Secretary of the Interior to issue rules that provide exceptions to the prohibition on take for threatened species. Under current regulations, a "special rule" can be tailored for a particular threatened species, so that take prohibitions would not apply. The special rule would contain the prohibitions and exemptions necessary and appropriate to conserve the species. In addition, the ESA provides for an exemption for Alaska Natives that allows them to continue to conduct traditional subsistence harvesting of sea otters if the DPS is listed.

The proposed rule seeks public comment on activities that are unlikely to result in violations of the take prohibitions of the ESA.

### Will critical habitat be proposed?

The proposed rule to list the southwest DPS of the otter as threatened does not include a proposal for designating critical habitat. As explained in the proposed rule, critical habitat is not determinable at this time. As part of the request for public comments on the proposal to list the DPS, the Service is seeking information regarding features and specific areas that the Service should consider for a critical habitat proposal, in the event that the listing becomes final. If the Service does propose critical habitat for the DPS in the future, the public would have an opportunity to comment on such a proposal.



### Would listing close commercial fishing in southwest Alaska, similar to what happened with Steller sea lions?

We do not anticipate that listing the southwest DPS of the northern sea otter would result in closure of commercial fishing in southwest Alaska. Steller sea lions are fish eaters, and they congregate in large numbers at specific sites known as haulouts and rookeries but feed in open waters. In contrast, sea otters eat primarily invertebrates that live in shallow waters; and because of the sea otter's dependence on them, sea otters spend the vast majority of their time quite close to the shore. The Alaska Department of Fish and Game recently analyzed its commercial fishing database. The results indicate that the species which otters most often prey upon have little or no commercial interest, and the areas where they live generally do not overlap with those where most commercial fishing occurs.

### Are sea otters hunted today?

Yes, to a limited extent. The Marine Mammal Protection Act of 1972 (MMPA) prohibits the "take" of marine mammals, including sea otters. Under the MMPA, take is defined as "hunt, harass, capture, or kill." The MMPA provides an exemption for Alaska Natives, who are allowed to hunt marine mammals for subsistence purposes and to create and sell authentic articles of handicraft and clothing made from marine mammal parts. As noted above, the Endangered Species Act includes a provision that allows Alaska Native residents of coastal villages to conduct subsistence harvesting of sea otters even if the DPS is listed.

### Is subsistence hunting a contributing factor in the decline?

Subsistence hunting does not appear to be contributing to the decline of the DPS. Since 1988, the Service has administered a program for monitoring the harvest of sea otters, polar bears, and Pacific walrus in Alaska. This program is known as the marine mammal Marking, Tagging, and Reporting Program (MTRP). Alaska Natives who harvest sea otters are required by law to present each skin and skull to an MTRP tagger within 30 days. Plastic, numbered tags are attached to the skin and skull, and information about the sea otter is recorded and sent to the Service's Marine Mammals Management Office in Anchorage, Alaska. Since the inception of the MTRP, the combined harvest from southwest Alaska villages has averaged fewer than 100 otters per year. For more information about the MTRP, contact Dean Cramer, Wildlife Biologist, at (907) 786-3806.

### Will subsistence hunting be affected by this action?

Both the Endangered Species Act and the MMPA have provisions that allow Alaska Natives to conduct subsistence harvesting.

### Why would killer whales be eating sea otters?

In a paper published in the October 16, 1998 issue of Science, Dr. James Estes of the U.S. Geological Survey outlined an hypothesis that killer whales may have begun eating sea otters in response to declines in other prey items, specifically harbor seals and Steller sea lions. Declines in those species are believed to be due to changes in the composition and abundance of forage fish.



### If killer whales are the cause of the decline, how does ESA listing address the problem?

Though killer whale predation has been suggested as a possible cause of sea otter declines, this is as yet only a theory and one that is not shared by all sea otter researchers. Killer whales are also protected under the Marine Mammal Protection Act. Regardless of the cause of the sea otter decline, if the DPS is listed, the Service's highest priority is to foster the recovery of the DPS. A final listing of the DPS would subsequently lead to the development of a recovery plan by Federal, State, and local agencies and private groups to describe appropriate conservation measures for the recovery of the DPS. Additionally, Alaska would be eligible for grant funds for management actions promoting the conservation and recovery of the southwest Alaska DPS of the northern sea otter.

U.S. Fish & Wildlife Service  
1 800/344 WILD  
<http://www.fws.gov>

All Photos by Dr. Randall Davis,  
Texas A&M University

February 2004

For more information please contact:  
Douglas Burn  
907/786 3807  
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U.S. Fish & Wildlife Service  
Marine Mammals Management Office  
1011 East Tudor Road  
Anchorage, AK 99503

Visit the Marine Mammals home page:  
<http://alaska.fws.gov/fisheries/mmm/index.htm>



**U.S. FISH AND WILDLIFE SERVICE**  
Region 7 - Alaska  
1011 East Tudor Road  
Anchorage, Alaska 99503  
(907)786-3309 (TDD Available)

*News*

04-03

For Immediate Release

Contact: Bruce Woods (907) 786-3695

### **U.S. FISH AND WILDLIFE SERVICE PROPOSES LISTING SOUTHWEST ALASKA SEA OTTERS AS "THREATENED" UNDER ENDANGERED SPECIES ACT**

The U.S. Fish and Wildlife Service is proposing to list the southwest Alaska Distinct Population Segment of the northern sea otter (*Enhydra lutris kenyoni*) as threatened under the Endangered Species Act (ESA.) A Proposed Rule regarding the listing was published today in the Federal Register. The Service will accept comments on the proposed rule for the next 120 days.

"We are proposing to list the sea otter population in southwest Alaska based on survey data indicating that it has declined dramatically over the last 10 to 15 years," said Rowan Gould, Regional Director of the Service's Alaska Region. "This population, which once contained more than half of the world's sea otters, has declined at least 56 to 68 percent since the mid-1980s and we have no indications that the decline has ceased."

Under the ESA, "species" is defined broadly to include species, subspecies, and also to include Distinct Population Segments, or DPS, of vertebrate species. A DPS is a portion of a vertebrate species or subspecies that is discrete from the remainder of its taxon and also is significant to that taxon. The ESA defines a "threatened" species as one that is likely to become endangered in the foreseeable future. An "endangered" species is defined as being in danger of extinction throughout all or a significant portion of its range.

The proposed rule describes the southwest Alaska DPS of the northern sea otter as occurring in nearshore waters from the Aleutian Islands to Cook Inlet, including waters adjacent to the Aleutians, the Alaska Peninsula, and the Kodiak archipelago. This corresponds to the range of the southwest stock of sea otters recognized in 2002 by the Service in accordance with provisions of the Marine Mammal Protection Act. Two other stocks of sea otters in Alaska that also were recognized in 2002, the southcentral and southeast stocks, are believed to be stable or increasing and are not included in the proposed rule published today.

Between the mid 1700s and the early 1900s, commercial hunting of sea otters brought the entire species to the brink of extinction. When they became protected from commercial harvest in 1911 under the International Fur Seal Treaty, only 13 small remnant populations were known to still exist, including six in southwest Alaska. Following this protection, otters from 11 of these populations gradually recovered and re-colonized their former range in southwest Alaska and some other portions of their historic range.

A substantial decline in the southwest Alaska otter population appears to have begun in the mid- to late 1980s. In the Aleutians, there were approximately 55,000 to 74,000 sea otters in the mid-1980s, representing almost half of the world's estimated population of sea otters at that time. Aerial surveys since that time, however, indicate a progressive decline in the number of otters in the Aleutians, where the current population is estimated to be less than 9,000 animals. Survey results also show substantial declines have occurred in the Alaska Peninsula, where the counts of otters have declined by more than 65 percent since the mid 1980s. In the Kodiak Archipelago, surveys indicate the number of otters has declined more than 55 percent since the

late 1980s. Overall, the DPS has declined an estimated 56 to 68 percent over the past 10 to 15 years, and recent surveys indicate the decline is continuing.

The cause of the population decline is not clear. Production of young does not appear to be reduced, nor is there evidence that starvation, disease, or contaminants are involved. There also is no evidence that entanglement in commercial fishing gear or competition with fishermen for prey species is playing a significant role in the decline, and annual subsistence harvest by Alaska Natives is believed to be too low to contribute significantly to the decline. Some evidence points to predation by killer whales as a possible cause of the decline in the Aleutian Island chain. However, additional research will be needed before we can confidently identify the cause of the decline.

The proposed rule to list the southwest DPS of the otter as threatened does not include a proposal for designating critical habitat. As explained in the proposed rule, critical habitat is not determinable at this time. As part of the request for public comments on the proposal to list the DPS, the Service is seeking information regarding features and specific areas that the Service should consider for a critical habitat proposal, in the event that the listing becomes final. If the Service does propose critical habitat for the DPS in the future, the public would have an opportunity to comment on such a proposal.

If the southwest Alaska DPS of the sea otter is listed as threatened under the ESA, a recovery plan would be developed for it. This plan would bring together efforts by Federal, State, Alaska Native groups, local agencies, and private entities for the conservation of the DPS.

The Service invites the public to submit data, information, and comments on the proposed rule. The Service will accept comments on the proposed rule for the next 120 days, and during that time the Service also will hold one or more public hearings where the public can obtain information and offer comments. Requests for public hearings need to be received by the Service within the next 60 days. A copy of the proposed rule and other information about the proposal is available on the Internet at <http://alaska.fws.gov/current.htm>. Comments on the proposal can be emailed to [fw7\\_swakseatotter@fws.gov](mailto:fw7_swakseatotter@fws.gov).

You can subscribe to the U.S. Fish and Wildlife Service, Alaska Region listserver to have our press releases sent to your e-mail address automatically by sending a message to: [listserv@www.fws.gov](mailto:listserv@www.fws.gov). Please indicate that you would like to subscribe to FWS-Alaska news and give your name in the body of the message.

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 542 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 64 fishery resource offices, and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

- FWS

*For more information about the U.S. Fish and Wildlife Service,  
visit our home page at <http://www.fws.gov>*

**HSCR**

**1**

# ALASKA STATE LEGISLATURE

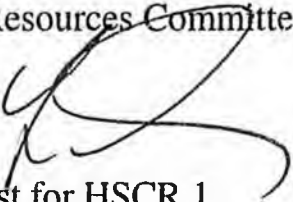


REPRESENTATIVE LES GARA

## MEMORANDUM

DATE: March 28, 2003

TO: Representative Fate  
Chair, House Resources Committee

FROM: Rep. Gara 

RE: Hearing Request for HSCR 1

---

Attached you will find a packet containing HSCR 1, which opposes the proposals put forth in E.O. 107, along with a sponsor's statement and several articles of helpful information.

I respectfully request that HSCR 1 be scheduled for hearing in the House Resources Committee at your earliest possible convenience. Please feel free to contact me with questions or thoughts at 465-2647.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## **Sponsor Statement: HSCR 1: Disapproving The Governor's Move of Department of Fish & Game Habitat Functions**

This Resolution would override the Governor's Executive Order 107, which removes the authority of the Department of Fish & Game's Habitat Division to protect Alaska's world-renowned fishing waters. To override the EO, the House and Senate will have to pass a joint resolution by April 15. The citizen testimony on this issue has been quite overwhelming this past week. To date it is believed that more people have testified against the Governor's proposal than on any other proposal heard in this Session's House or Senate Committees.

Alaska is a beacon of good fisheries management. We've done things right over the past 5 decades, and have the healthiest fisheries in the world to show for it. Giving state foresters and others without fisheries expertise the authority to make fishery protection decisions would be a step towards making the terrible mistakes most other states have made as they've degraded their fisheries.

On the Pacific Coast, for example, whole runs of salmon and steelhead have been lost. Oregon and California are great examples of why we shouldn't weaken the Habitat Division.

It has been shown that the Habitat Division processes permit applications quite quickly, contrary to the criticism of those who support the Governor's proposal. Roughly 20,000 permits have been granted in the past decade, an in 2002 permits were granted on average within 15 days.

The list of Alaskans who oppose this move is long and growing. Every Fish & Game Commissioner for the past 30 years has opposed the Governors' move, as have fishing groups such as the Alaska Chapter of Trout Unlimited; Alaska's largest active sport fishing organization, the Alaska Flyfishers Association; The Anchorage Fish & Game Advisory Committee; The Cooper Landing Fish & Game Advisory Committee; the Paxson Fish and Game Advisory Committee; The Alaska Chapter of the American Fisheries Society, and the Kenai River Special Management Advisory Board (KRSMA). Likewise, the Alaska Council of Village Presidents has opposed this move. This is a partial list of organizations that have stated their opposition to the Governor's move. Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Les Gara".

Les Gara

Mr. Layne G Adams  
13041 Hinchey Pl  
13041 Hinchey Pl  
Anchorage AK, 99516

39 of 56

3/12/2003 5:13 PM

**BILL#:**

**SUBJECT: GOVERNMENT ORGANIZATION**

**MESSAGE:** As a hunter and fisherman I ask you to overturn EO107. This measure is strictly political. Habitat Division is essential to protecting our Alaskan legacy of healthy fish and wildlife populations. There is no way that cutting staff and moving them to DNR will speed permitting.

**DISTRIBUTION: 10**

Mr. Jim A Arnesen  
1800 Shore Dr  
1800 Shore Dr  
Anchorage AK, 99515

self

Email: jarnesen@gci.net

Non Constituent

**BILL#:**

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Re: Executive Order # 107. I have reservations about placing the habitat division of F&G into DNR. I am not sure that the protections needed will occur with DNR being in charge. Checks & balances are a good thing. That balance will be diminished with this order. Thank you for listening. Jim Arnesen

**DISTRIBUTION: 61**

Jean J Blakemore  
251e Kalli Circle #4  
Po Box 2931  
Wasilla AK, 99654

Email:

Non Constituent Supports

**BILL#: HSCR 1 DISAPPROVING EXECUTIVE ORDER 107**

**SUBJECT:**

**MESSAGE:** I support HSCR1. As a former resident of Cordova the need to maintain productive fish stocks is without question. Healthy aquatic habitat is key to long term fish production. ADF&G habitat has done good work for fish resources state wide. There is no need to change!

**DISTRIBUTION: 1**

Garvan P Bucaria  
Po Box 870293  
Po Box 870298  
Wasilla AK, 99687-0298

Email:

Non Constituent Supports

**BILL#:** HSCR 1 DISAPPROVING EXECUTIVE ORDER 107

**SUBJECT:**

**MESSAGE:** Representative Gara has summarized the essential elements justifying disapproval of Executive Order 107. Rejection of EO 107 will be in the best interests of the people of Alaska and long term maintenance of aquatic resources and habitats. I urge other legislators to support HSCR1

**DISTRIBUTION:** 40

Ms. Barbara L Carlson  
6050 W Dimond Blvd

Anchorage AK, 99502

Email: carlson1@gci.net

Non Constituent

**BILL#:**

**SUBJECT:** EXECUTIVE ORDERS

**MESSAGE:** Please act swiftly to disapprove EO 107 moving permitting authority from ADF&G to ADNR. These departments have different missions. ADF&G protects fish & wildlife resources. ADNR promotes resource development. In Alaska & in America we believe in maintaining a system of checks & balances. The whole world is watching....

**DISTRIBUTION:** 61

Mr. Michael P Carlson  
6050 W Dimond Blvd

Anchorage AK, 99502

Email: carlson1@gci.net

Non Constituent

**BILL#:**

**SUBJECT:** EXECUTIVE ORDERS

**MESSAGE:** Please act swiftly to disapprove EO 107 moving permitting authority from ADF&G to ADNR. These departments have different missions. ADF&G protects fish & wildlife resources. ADNR promotes resource development. In Alaska & in America we believe in maintaining a system of checks & balances. The whole world is watching....

**DISTRIBUTION:** 61

Mrs. Carol A Barnhill  
15108 Highland Rd  
15108 Highland Rd  
Anchorage AK, 99516

Email: mccdbarnhill@gci.net

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I am concerned that if habitat permitting is moved to DNR our salmon will suffer the same fate as in the Pacific Northwest. They are spending millions and millions of dollars to restore lost habitat. Alaska can be a leader in salmon habitat protection. Please vote to disapprove EO 107.

DISTRIBUTION: 61

Khrystyne N Duddleston  
Po Box 294  
Po Box 294  
Girdwood AK, 99587

Email: kyrys.duddleston@uaa.alaska.edu

Non Constituent

BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: Please reject EO 107. The EO will dismantle the checks and balances between resource development and habitat protection recognized as important by our founding fathers. Fish are Alaska's most important resource and must be given priority. Don't allow our salmon to go the way of Oregon and Washington's. Thank you

DISTRIBUTION: 61

Terry L Cummings

9 of 56

3/12/2003 5:13 PM

6740 E 10th Ave  
6740 E 10th Ave  
Anchorage AK, 99504-1514

Email:

Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Please do not support EO 107. Our fish and wildlife habitat needs protection and this EO would lead to weaker field review and could do major permanent harm to fish and wildlife habitat. We need stronger laws to protect the environment not weaker ones.

**DISTRIBUTION:** 61

William R Dunne  
Po Box 15043  
Po Box 15043  
Homer AK, 99603-6043

Email:

Non Constituent

BILL#:

13 of 56

3/12/2003 5:13 PM

**SUBJECT: FISH & GAME (BOTH)**

**MESSAGE:** I showed up after work to testify but was told I'm not allowed to do so. I strongly oppose the transfer of habitat permitting to DNR. This proposed transfer will have long term negative effects on fisheries that provide jobs and sustenance to numerous Alaskans.

**DISTRIBUTION:** 61

Nina H Faust  
Po Box 2994  
Po Box 2994  
Homer AK, 99603-2994

Email:

Non Constituent

BILL#:

**SUBJECT: FISH & GAME (BOTH)**

**MESSAGE:** I oppose moving ADF&G Habitat Division to DNR. Protecting our fisheries and wildlife is best achieved through the present system. Please pass the resolution to disapprove EO 107 and leave the Habitat Division under ADF&G. Improving permitting process under present structure is a more effective method and safeguard checks and balances.

**DISTRIBUTION:** 61

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Mary-grace Duran  
240 Mariner Dr  
240 Mariner Dr  
Anchorage AK, 99515-3607

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** I respectfully oppose the Executive Order set fourth by Governor Murkowski and want my voice to be heard. Please review the voice of the people and respond ia a fair in equitable way.

**DISTRIBUTION:** 61

Scott Grundy

AK,

Email:

Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Legislative and Executive branches are separated for good reason. Recent EO changing statute for permitting and ACM authorities to DNR will lead to the wholesale degradation of fish and game habitat that is vital to many industries. Legislature must intervene. New ADF&G Commissioner will address all of the Governor's concerns.

**DISTRIBUTION:** 61.

Dr. William J Hauser  
3621 Hazen CIR

Anchorage AK, 99515

self and family

Email: karelbill@gci.net

Non Constituent

BILL#:

**SUBJECT: FISH & GAME (FISH)**

**MESSAGE:** We know fish are Alaska's most important natural resource to many people and ways. The EO to transfer responsibility for habitat protection from fishery scientists to a developmental agency will lead to long-term loss of fish for our children. Fishery resources are lost one culvert and project at a time.

**DISTRIBUTION:** 61

Mr. Micheal D Harper  
49835 Leisure Lake Dr  
49835 Leisure Lake Dr  
Soldotna AK, 99669

Email: harper@custompcu.com

Non Constituent

**BILL#:**

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** EO 107 -Alaska's salmon have been a state and private citizen priority since statehood. Under Governor Frank Murkowski's Executive Order salmon will no longer receive priority status. Please I urge you to DISAPPROVE EXECUTIVE ORDER 107.

**DISTRIBUTION: 61**

Eric M Hansen  
2120 Shore Dr  
2120 Shore Dr  
Anchorage AK, 99515-3141

Email: erichans@mac.com

Non Constituent

**BILL#:**

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** I am strongly pro development for Alaska's future. Alaska's vast resources should not be

Public Opinion Message System

[http://www.lcgis.state.ak.us/staffpom/poms\\_main.as](http://www.lcgis.state.ak.us/staffpom/poms_main.as)

"locked up" but should be developed responsibly without destroying the wild magnificence that makes Alaska "Alaska". However I urge the Anchorage area representatives and senators to vote in joint session to disapprove EO 107.

**DISTRIBUTION: 61**

Marybeth S Holleman  
9641 Homestead Tr  
9641 Homestead Tr  
Anchorage AK, 99507-6729

Email: nellie\_juan@yahoo.com

Non Constituent

**BILL#:**

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Please do not allow transfer of the Department of Fish and Game Habitat Division permitting authority to the Department of Natural Resources. This would undermine the democratic process of checks and balances that we need to keep our fish and wildlife populations and their habitat healthy. It's vital our wild resources remain healthy.

**DISTRIBUTION: 61**

Ms. Gail M Heineman  
2732 W 67th Ave  
2732 W 67th Ave  
Anchorage AK, 99502  
Self  
Email: gail\_heineman@yahoo.com  
Non Constituent  
BILL#:

**SUBJECT: FISH & GAME (BOTH)**

**MESSAGE:** Please stop or mitigate Executive Order 107. Keep Habitat permitting in Fish and Game. Stop the Governor's order to put it under DNR. Look what happened in Oregon and Washington with most of their salmon lost to logging and dams. Don't make the same mistake here.

**DISTRIBUTION: 61**

Ms. Mary L Humphrey  
P.o. 140903  
Po Box 140903  
Anchorage AK, 99514-0903

Email: maryis@pobox.alaska.net  
Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Vote NO on Executive Order 107. Mr. Rogers said it best. "I like to take my time I mean that when I want to do a thing I like to take my time to do it right. Don't fast track development. Let ADF&G Habitat continue their job.

**DISTRIBUTION: 61**

Ms. Gail Ito  
4300 Needle CIR

Anchorage AK, 99508

private citizen

Email:

Non Constituent

BILL#:

**SUBJECT: FISH & GAME (BOTH)**

**MESSAGE:** Please veto Gov. Murkowski's reorganization of Fish and Game with DNR within the 60 day window. DNR focus" on development F&G Habitat on protecting maintaining improving. Both are necessary and complimentary a healthy check and balance - the basis of our government. Please act within the 60 day window. Thank you.

**DISTRIBUTION: 60**

Jennifer M Norris

Po Box 90350

Po Box 90350

Anchorage AK, 99509-0350

Email:

Non Constituent

BILL#:

**SUBJECT: FISH & GAME (BOTH)**

**MESSAGE:** PLEASE vote to DISAPPROVE EO 107 to move permitting authority from Fish and Game to Natural Resources. These two departments have different missions. ADF&G protects fish and wildlife resources. ADNDR promotes resource development. Keeping permitting at ADF&G maintains the checks and balances needed for making sound decisions on resource issues.

**DISTRIBUTION: 61**

Sandra L Jones  
1640 Shore Dr  
1640 Shore Dr  
Anchorage AK, 99515-3207

Email: sljones@kumin.alaska.com

Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** Please list me among citizens opposed to combining Fish & Wildlife with DNR. I believe that these agencies require independence since there are times when their interests are competing.

**DISTRIBUTION: 61**

Joseph W Olson  
11641 Paddock Ln  
11641 Paddock Ln  
Anchorage AK, 99516

Email: mailjwo@alaska.net

Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** We are adamantly opposed to the Governor's intent to move habitat permitting from Fish & Game to DNR. It has become increasingly obvious to use that many legislators appear to think that they are to serve only one sector of the community (Business) at the expense of all other members (all citizens).

**DISTRIBUTION: 61**

Joan C Owens  
1352 M St  
1352 M St  
Anchorage AK, 99501

Email:

Non Constituent

BILL#:

**SUBJECT: EXECUTIVE ORDERS**

**MESSAGE:** I urge you to resend EO 107 relating to habitat protection. Further please continue APOC as presently constituted.

**DISTRIBUTION: 61**

Marilyn W Russell  
221 Well St  
221 Well St  
Fairbanks AK, 99701  
self  
Email: marilyn@ptialaska.net

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Dear Sirs and Mesdames Please support the idea of keeping the habitat division under the jurisdiction of the Dept. of Fish and Game. Such should be managed and preserved; not put under the auspices of a Department whose purpose is "development." Thank you Marilyn Russell

DISTRIBUTION: 20

Charles E Trowbridge  
40710 Glacier View St  
40710 Glacier View St  
Homer AK, 99603-9337

Email:

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Strongly oppose moving habitat functions to DNR. The state's ability to protect habitat hinges on the differing missions currently held by ADF&G and DNR. It fosters healthy disagreement and discussion and results in the best level of protection. It's also important to maintain habitat staff contact with other divisional biological staff.

DISTRIBUTION: 61

Patrick B Walsh  
P.o. Box 877  
Po Box 877  
Dillingham AK, 99576

Email: aawalsh@nushtel.net

Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Alaska Legislators-- Please oppose EO 107. I'm a strong supporter of Alaska's economic development but taking habitat permitting from ADFG and turning it over to DNR will do far more damage than good. Fish and wildlife are the heart and soul of the Alaskan culture itself and cannot be protected by this EO.

DISTRIBUTION: 61

Anne P Wieland  
Po Box 1395  
Po Box 1395  
Homer AK, 99603-1395

Email:  
Non Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: Please allow Representative Gara's resolution to disapprove EO 107 to be heard and urge you to pass his resolution as the Habitat Division should stay under ADF&G.

DISTRIBUTION: 61

Suzanne Strisik  
2718 Lord Baranof DR

Anchorage AK, 99517

Email:  
Non Constituent

BILL#:

SUBJECT: GOVERNOR

MESSAGE: I am disappointed by the Governor's attempt to eliminate Fish & Game habitat protection. He reinforces the unpleasant stereotype of an aging arrogant white man who drinks too much and has too little common sense. Please oppose his short-sighted and poorly considered plans.

DISTRIBUTION: 40

February 18, 2003

**Trout Unlimited's Comments to Alaska Boards of Fish and Game  
Regarding Executive Order No.107**

**What's At Stake**

Executive Order No. 107 (EO), February 12 2003, transfers Title 16 permitting authority [AS16.05.840-.860 (Fishways Act) and AS16.05.870-900 (Anadromous Fish Act)] and certain other fish and wildlife habitat oversight and protection functions to the Department of Natural Resources (DNR). This transfer ignores the wisdom and experience of Alaska's fish and wildlife managers and will make the job of fish and wildlife management even more difficult than it is now.

Other than anecdotes and accusations that the Habitat and Restoration Division is the major stumbling block to all manner of projects, the governor has released no information or analysis as justification for his initiative. Although the governor claims that this major shift in resource management is in the public interest, he has refused to engage in public dialogue. That the EO has the support of the state's major resource development industries, including the commercial fishing industry, does not necessarily engender public confidence and trust in the move. Yet, the governor is assured that the consolidation of most permitting and oversight in the Department of Natural Resources will spur economic development by streamlining the project review, permitting and approval process without sacrificing the current level of environmental protection.

The Boards of Fish and Game and the Commissioner are entrusted with the duty of conserving the state's fish and wildlife resources consistent with the *public interest*. Not only does this order virtually eliminate the Department of Fish and Game's (ADF&G) ability to manage for protection of fish and wildlife habitat within the stream and riparian zone, but also abridges the power of the Boards of Fish and Game to conserve the fish and wildlife resource to ensure sustainable yield.

Trout Unlimited (TU) believes the boards have an obligation to independently examine the veracity of the claim that the department willfully delays or blocks legitimate projects and the legitimacy of the transfer of habitat authority to DNR. TU also believes that without the power to protect fish and wildlife habitat, that the boards' power to allocate and regulate utilization of the surplus yield of fish and game, especially salmon, will pale as that yield declines over time.

## The "Public Interest"

### Historical Roots

If the executive order were in the public interest, it meets the requirements set forth in the state constitution, Article VIII, Section 1 and Section 4. Section 1 states that it is the policy of the State of Alaska "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Section 4 further qualifies the resource development policy by stipulating that renewable resources "shall be utilized, developed and maintained on the sustained yield principle." Presumably, in their assertion of a "public interest," the framers of the constitution recognized that resource development projects are not always a public good and require regulation.

The constitution's concern that the public get a square deal and a square meal is rooted in the development and use of the renewable salmon resource during the territorial era. The territorial government took note as well as offense at the salmon packers rapacious exploitation of the resource and the federal government's inept management of the fishery. To underscore its anxiety that federal fisheries managers were not doing enough to protect salmon, the 1949 territorial legislature established a Department of Fisheries and Board of Fisheries to assist in the conservation of Alaska's fish and fisheries and to develop fisheries management capacity in anticipation of statehood. Thus, the constitution is predicated upon ensuring that development does not reduce the productivity of the resource base. While the constitution is prescriptive, it is not a cookbook. Concocting and preparing the recipes that transform raw resources into profitable dishes is the job of industry; while government is there to ensure the recipes do not jeopardize sustainability of the resource base.

The constitution's sustained-yield mandate forbids any action by government or private industry that would reduce the sustained yield of any renewable resource. Whether an action would have the consequence of reducing yield can only be determined through research and analysis, which can be both time-consuming and expensive. There is no escape clause for projects seeking to avoid or otherwise short cut this determination -- there are no "ifs," no "maybes," no wiggle-room whatsoever. Neither does the subordinate clause "subject to preferences among beneficial uses" in any way condition the sustained-yield requirement. On the contrary, it presupposes sustained yield. On the other hand, Article VIII does not preclude development; presumably, economic development is intrinsic to the utilization of replenishable resources. In simplest terms, the Alaska constitution admonishes: "thou shall not harm the goose that lays the golden eggs."

Hence, to achieve sustained yield of the state's wild salmon resource and to provide for the greatest utilization of the salmon, salmon production must be maintained at the highest possible level. Salmon production depends upon the productivity of the freshwater and marine environments. In a sense, habitat is the container in which the various chemical and biological actions and reactions take place that produce salmon.

Habitat is undeniably the basis for sustained yield of salmon. Indeed, salmon habitat itself is a replenishable resource. Therefore, the responsibility of government is to ensure that the habitat conditions that maximize the yield of fish are maintained, not degraded. Moreover, this responsibility is not discretionary; not optional; and certainly not conditional on other factors, be they cultural, social, political, or economic.

Securing the Public Interest

As the impetus for statehood was to provide for the public interest in the conservation and development of salmon fisheries, the first Alaska Legislature was especially concerned that the Department of Fish and Game and the Boards of Fisheries and Game have the power to both conserve and develop the fish and wildlife resource. In so doing, the legislature affirmed the territorial Department of Fish and Game's rationale for habitat-protection authority as explained in its 1950 annual report:

While it is true that overfishing is responsible for many declines, there is evidence to show that in numerous cases it is of minor or no consequence. The actual reasons are often found to be changes in the environment of the salmon due to natural and unnatural (man-made) conditions. This is especially true of the fresh water stages of its existence. Many examples could be cited. Some of the natural ones are cyclic climatic changes, floods, droughts, freezes, earthquakes, earth-slides, beaver dams and increase in predators. On the other hand, there are such man-made, or unnatural, causes as deforestation due to logging; hydro-electric, irrigation, flood control, and navigation projects; pollution, especially from pulp mills; soil conservation and reclamation schemes; gravel washing and mining operations; road construction such as stream culverts; insect control using poisonous sprays; and many others. The listing of these does not necessarily mean that all are inimical to the continuation of our salmon fisheries. It does mean, however, that if such projects are improperly and unwisely planned, the results will be disastrous to our fisheries. Alaska needs new industries, but not at the expense of her most important resource, which if properly cared for, will produce year after year. Luckily the advance of civilization has, as yet, had but very minor adverse effects on our fisheries. It therefore seemed appropriate that the Alaska Department of Fisheries institute [a new habitat division] . . . to become a "watchdog" to ward off the evil effects of advancing civilization, it is not intended to block progress. By profiting from the mistakes of the past and by cooperation of all parties, it should be possible to have new industries and still maintain our fisheries.

The revision of the Forest Practices Act in 1989 sparked a debate over ADF&G's habitat authority to protect fish streams. The debate ended by reaffirming the rationale for the department's authority: the authority to protect habitat is the power to ensure a sustained yield of fish and wildlife, the surplus of which can be made available to the public for maximum use, as allowed by regulation and managed appropriately.

In so far as habitat is the corpus that produces wealth for the State of Alaska, the Boards of Fish and Game have a fiduciary duty to protect that corpus. This corpus is the state's

original and preeminent "Permanent Fund." The boards have a joint responsibility to contest any measure or action that would undermine their fiduciary responsibility. Consequently, it would seem incumbent upon the boards to independently assess the legitimacy of the executive order. To put the matter another way: what has changed that now justifies abandoning the logic and experience of 50 years of conserving Alaska's fish and wildlife? Apart from the recent spate of anecdotes and unsupported accusations, what body of information and analysis justifies a decision to transfer Fish and Game habitat permitting and oversight functions to DNR?

### **Practical Considerations**

Contained within the issue of the legitimacy of the executive order is the question of the practical consequence of transferring habitat permitting and oversight to DNR. The transfer of fish and wildlife habitat permitting and oversight to DNR does not alter DNR's mission, which is the conservation and development of the state's land and water resources. At first impression, providing habitat-protection authority to the agency with land and water responsibility may appear to be a good fit. Yet, on closer inspection, it is clear that DNR relegates habitat protection to a secondary concern. The reason for this is two-fold.

First, DNR's conservation and development mandate and jurisdiction extends only to state-owned land and waters, while ADFG's conservation and development mandate for fish and wildlife covers all state, federal and private lands, and all marine waters to three miles offshore. The vast majority of the 40,000 projects affecting fish habitat that the ADF&G's Habitat and Restoration Division has administered over the last 20 years are not on state land; most of these project are on privately owned land, borough land, or federal land.

Second, DNR holds oil and gas leases, sells timber, agricultural lands, leases minerals, and issues permits for activities on state owned land and water. DNR's responsibility for conservation of the state's water resource is primarily to ensure that water is 1) not over-appropriated, which would impair resource development; and 2) retained for use within the hydrologic unit. Historically, DNR has taken no responsibility to reserve instream-flow for fish and wildlife, leaving that responsibility to ADF&G, U.S. Fish and Wildlife Service and nongovernmental agencies, including The Nature Conservancy and Trout Unlimited. With respect to conservation of state lands, even though the Forest Practices Act requires the agency to enforce certain conservation restrictions on state and private lands, DNR's primary business is getting timber cut. So, when there is uncertainty about the impact of a logging plan on fish and wildlife habitat, DNR is not inclined to a precautionary approach to habitat protection. Consequently, transferring Title 16, fish-passage permitting to an agency with a land and water development mandate would seem to increase the likelihood of government mismanagement of the fish and wildlife resources in the pursuit of maximizing utilization of the land and water resource.

Due to their different missions, there have been many well-publicized disputes between ADF&G and DNR staff over stream buffers, stream buffer variations, forest plans and forest practices. The resolution of these disputes suggest the two-agency approach is more likely to ensure that decision makers and the public receive reliable information and analysis from the relevant expertise – foresters, geologists, hydrologists, and biologists. Thus, when a dispute arises between the experts, there is less likelihood that the dispute will be suppressed before it receives a public airing and the benefit of an open discussion. A few examples are illustrative:

- *Mixing zones in spawning areas:* In the mid-1990s the Department of Environmental Conservation proposed to changes to water quality regulations to allow mixing zones for toxic waste-water discharges in spawning areas. (Applications for mixing zones are allowed in less sensitive portions of salmon streams, but must receive ADF&G approval under the Anadromous Fish Act). Mixing zones in spawning areas were supported by DNR Division of Mining, but opposed by the Habitat Division. Public opposition prevented changes in the regulations.
- *Forest management:* In late 1980s, the DNR proposed to transfer management of hundreds of thousands of acres of state-owned, forest lands in the Susitna River basin to a Finnish timber company per a “forest management agreement.” DNR boosted the agreement as “streamlining” because it would allow the company to avoid the competitive timber-sale process with its associated public hearings and subsequent state oversight. Habitat Division reviewed the proposal and found it to be inconsistent with the Alaska Coastal Management Program due to lack of assurance that fish habitat would be protected or that public access for hunting and fishing would be maintained. When the public learned of these ramifications, overwhelming opposition derailed the impending agreement.
- *Oil and gas exploration:* In 1992, the DNR Division of Oil and Gas proposed to lease state lands and waters on the Kenai Peninsula for oil and gas exploration. Unfortunately the oil and gas division proposed reducing or eliminating some setbacks from water bodies for drilling rig and oil-production facilities as well as reducing or eliminating other safeguards to protect salmon streams from spills and discharges. ADF&G protested the DNR proposal. When the public became aware and involved, the stipulations that were normally required in such leases were reinstated.

The preceding examples exemplify the dynamic tension between ADF&G and DNR that stem from their different, often conflicting, but equally essential missions. These missions constitute a division of labor for the conservation and development of the state’s different resources and this division of labor has long been held to be in the public’s interest.

Therefore, if locating the fish and wildlife habitat-protection authority in DNR will not affect conservation of the fish and wildlife, then why go to the trouble of transferring it? If the argument is that the transfer will streamline the permitting process without while

maintaining the same level of environmental protection, then why not just streamline the process without transferring it? If the argument is that transferring staff to another department will improve their performance, why would that be? If the argument is about consolidating environmental permitting and authority in one agency, why is DNR the more appropriate choice than the ADF&G?

In 2002, ADF&G permitters processed about 2000 fish-passage permits; each permit averaging 14 days; with only 9 permits were denied. This doesn't include scores of other habitat appraisals by ADF&G for the Coastal Zone Management Program, Federal Energy Regulatory Commission, Forest Practices Act. ADF&G non-Title 16 reviews averaged 18 days, recognizing that many approvals for time-critical projects were provided in days and some in hours. On the other hand, DNR last year had a backlog of about 700 water rights applications – some having been in the queue for 20 years – and another 2000 miscellaneous applications yet to be processed. Moreover, in order to cope with the backlog, DNR had adopted a water-user permitting scheme that the court ruled illegal because it did not protect the public interest. Now, on top of the existing backlog, DNR will be required do ADF&G's job with less staff. Indeed, it has been announced 50 of the 85 biologists in the Habitat and Restoration Division will be eliminated. This raises the question of which ADF&G biologists would be the ones transferred to DNR. Will they be the most experienced biologists? State personnel rules and union contracts dictate that in a layoff, staff with greater seniority bumps staff in the same job class with less seniority. As a result, many permitting positions may be filled with staff from other types of projects with little or no experience in permitting.

It is difficult to understand how consolidating permitting and other habitat oversight functions in DNR will streamline permitting, spur economic development, and provide the same level of environmental protection.

### **The Price of Failure**

Even under the Department of Fish and Game management, habitat permitting has not always prevented harm to fish and habitat, particularly from bad roads and culverts. For instance, one timber company claims to have installed up to 3000 culverts without a permit. A recent studies by ADF&G found about 55% of culverts surveyed in the Matanuska-Susitna Borough and 60% of culverts on logging roads in the Kenai peninsula impeded fish passage. The very efficiency with which ADF&G has issued Title 16 permits ought to raise questions about thoroughness of the permit review prior to approval. Streamlining this permitting even more does not bode well. For instance, in the Tongass National Forest, where logging roads have been permitted under a streamlined, federal process, roads slough into streams and nearly 70% of all culverts impede or block fish passage.

Moreover, it is important to understand that AS16.05.840-.860 (the Fishways Act) and AS16.870 -.895 (Anadromous Fish Act) do not provide strict habitat protection standards. As written, both statutes provide for agency discretion when determining fish habitat

protection requirements. Since there are no standards by which to determine the "proper protection of fish and game," how might DNR staff make this determination? In the 1980s, ADF&G attempted to adopt regulatory standards for "proper protection," but development interests and DNR successfully opposed such regulations. Ironically, the special interests that blocked adoption of regulations to provide such standards continue to criticize ADF&G for arbitrary and subjective permit decisions. Just last year, for instance, the timber industry suggested eliminating ADF&G's role in permitting fish-stream crossing structures on forest roads, which DNR Division of Forestry supported.

### **Conclusion**

Alaska is the world's greatest reservoir of salmonid biodiversity. Alaska has plenty of pristine habitats, which is why Alaska still has plenty of salmon, steelhead, and trout. The major reason there is so much good habitat is that most of Alaska has been free of the sort of heavy human use that has proven inimical to fish. In those areas where people have settled in large numbers, where major industries operate, or where roads wind, fish habitat in Alaska has not fared much better than elsewhere.

Enforcement is a key ingredient to any regulatory program. In the last 20 years, the Habitat Division issued about 38,000 Title 16 permits; not surprisingly permit stipulation violations have occurred and projects that have been built without permits. The Department of Public Safety has been reluctant to investigate alleged fish habitat violations, let alone prosecute. To some extent, this reflects the fact that the Division of Fish and Wildlife protection budget priority (excluding marine enforcement) in relation to total state expenditures declined 32% between 1983 and 2003. (In 2003, the budget is 3/10<sup>th</sup> of one percent of state expenditures.) There is currently a proposal to eliminate the Division of Fish and Wildlife Protection and incorporate the staff into the state troopers. Moreover, DNR does not have a sterling record of enforcing its regulations or prosecuting violations. Consider the hundreds of trespass cabins, which have been built on state land. Trout Unlimited suggests that fish habitat permitting and enforcement ought to be strengthened if balance between development and conservation is to be achieved.

Therefore, Trout Unlimited urges the Boards of Fish and Game oppose the EO No. 107 by requesting the governor to withdraw his executive order. Should the governor refuse, the Boards of Fish and Game should then request that the legislature disapprove the executive orders. Finally, if there are outstanding concerns about the overall efficacy of state environmental permitting and habitat oversight functions, the Boards of Fish and Game ought to convene a special session/workshop to consider such concerns as well as urging the legislature to conduct an audit of state environmental permitting and habitat oversight functions.

**Frank Rue Carl Rosier Don Collinsworth Ron Skoog Jim Brooks**  
c/o 7083 Hendrickson Road  
Juneau, AK 99801

January 30, 2003

Dear Governor Murkowski:

As former commissioners of the Alaska Department of Fish and Game, with a combined experience of over 30 years managing the department, we urge you not to move the statutory authority and responsibility to protect Alaska's salmon, trout, and other fish resources from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

We served under Republican, Democratic, and Independence party governors and we all agree that ADF&G must continue to be responsible for protecting the stream habitat of Alaska's salmon and trout. We share the belief that the loss of this authority will result in unnecessary and potentially irreversible harm to these resources that are critical to Alaska commercial, sport, and subsistence users.

At Alaska's Constitutional Convention in 1955, our founding fathers debated whether the new state should have one resource agency or two. They understood the need to develop our oil, mineral, and timber resources, and build the roads and highways needed to open up our vast state, and they recognized the need to balance that development with protection of fish and wildlife by purposefully giving the responsibility and authority to protect in-stream fish habitat to ADF&G.

The two resource agency approach provides for appropriate checks and balances in development decisions and it recognizes the importance and value of both our renewable and non-renewable resources.

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.840).

We understand your administration's goal of streamlining economic development, but feel the problem you are trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, 2,000 "Title 16" permits are issued each year by ADF&G in an average time of just 15 days, with 99 percent of them approved. This achievement can be credited to a responsive, professional and experienced staff in the Habitat, Commercial Fisheries and Sport Fish divisions who have a long, laudable record of working collaboratively to maintain Alaska's fishery resources and the habitat on which they depend. We do not think it is possible to replicate this capability within another agency

and doing anything less will erode or destroy Alaska's capacity to aid development in ways that avoid or minimize threats to our fishery resources.

We know from experience that some would prefer not to worry about impacts of development on salmon, trout, and other fish. Life might be easier without having to ensure adequate culverts, bridges, and buffers around spawning streams, but this comes at a cost to those Alaskans who depend on fish for a job or a meal, and for whom the loss of fish habitat will mean an inevitable loss of opportunity.


Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper regulatory balance.


Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

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

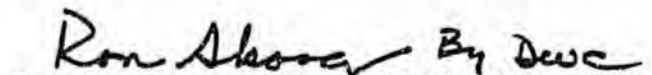
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

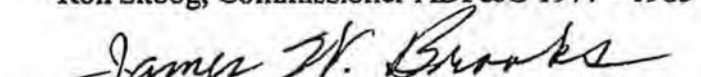
Sincerely,

  
Frank Rue, Commissioner ADF&G 1995 - 2002

  
Carl Rosier, Commissioner ADF&G 1991 - 1995

  
Don Collinsworth, Commissioner ADF&G 1983 - 1991

  
Ron Skoog, Commissioner ADF&G 1977 - 1983

  
Jim Brooks, Commissioner ADF&G 1972 - 1977

# STATE OF ALASKA

## Anchorage Fish & Game Advisory Committee

February 14, 2003

The Honorable Frank Murkowski  
PO Box 110001  
Juneau, AK 99811-0001

Dear Governor Murkowski:

The Anchorage Fish & Game Advisory Committee at its regular public meeting on February 4, 2003 voted unanimously to voice our strong opposition to the proposed move of permitting from the Department of Fish & Game to the Department of Natural Resources. This vote was based on the public testimony at our meeting, the knowledge & experience of our members, and our understanding of potential impact this change could affect. All individuals that testified were adamantly opposed to this move.

In order to put this letter in perspective, I would like to provide you with some information about our AC. The Anchorage AC has a long history of taking actions to make a positive contribution to managing Alaska's natural resources for maximum use consistent with the interest of the public. Those actions have included assisting in the development of provisions for a moose hunt in Chugach State Park which was subsequently passed by the Board of Game in March of 1999. We have also contributed to formulating and supporting predator control plans as they affected GMU 13 (as well as other GMU's). Our AC also understands that development of our natural resources also includes logging and mining when it is not inconsistent with other important uses.

The concerns expressed were focused on the permitting process and the potential negative impact on the resource. In our deliberations, specific concerns were expressed about possible impact of ineffective application of the fishways provisions (16.05.840) and provisions for the protection of fish and game (16.05.870) on populations of fish. We have examined the information available on the permitting process in order to determine if these concerns were over some individual performance failures by individuals or small groups within the habitat and restoration division or a systems wide failure. The attached charts support that if anything, it is a performance rather than a system failure. Specifically, in fiscal years 1999 through 2002 the habitat and restoration division processed an average of 1974 permits each year. The T-16 permits took an average of 15 days to review in 1999, 14 days in 2000, 17 days in 2001 and 14 days in 2002. The average days to review permits regarding fish habitat did vary with the three regions, however the longest was 19 and the shortest was 7 days. When you consider the tasks involved, it does not support a systems problem that requires a system solution, such as moving the entire permitting function.

Other factors that lead us to believe that the movement of this function is not in the best interest of the State are:

1. Improved effectiveness of this division based on new appointments to fill current and future vacancies.

Serving the Alaska Board of Fisheries and Alaska Board of Game  
Boards Support Section, P.O. Box 25526, Juneau, Alaska 99802

Anchorage Fish &amp; Game Advisory Committee

Page 2

2. By taking permitting out of this area, it reduces accountability for effective decisions from the department and division which should be held accountable for an effective process.
3. Creates an opportunity for numerous groups to make legal challenges. This is often very costly and holds up the process regardless of the outcome.
4. Issues raised by unions could tie up a smooth and effective transition.

It is clear there is concern within parts of the natural resources community (fisheries, timber, and mining) about the effectiveness of the permitting process. However these concerns appear to be issues of individual instances of performance rather than system based problems. It is our belief that the first effort to address these concerns may be best made by attempting to correct the performance issues rather than moving these functions from one agency to another. We are confident that the concerns raised can be dealt with without moving this function on a case by case basis prior to moving this function to DNR.

In addition, we have done some preliminary research regarding some of the instances that you have been advised that have caused concern and it does not appear that the Habitat and Restoration Division was the primary cause of the delays. We understand that a number of individuals and groups are in the process of researching the instances that have been cited as causing a concern to identify any specific problems. We are looking forward to reviewing the results of that research as are many other concerned members of the public.

I am confident that any problems that may exist regarding permitting can be resolved by improving the process as it exists. Your administration has demonstrated this by the public meetings and forums where you have asked the public for their ideas of how to improve our state and the agencies within the State. In those forums you combined subject matter experts with informed members of the public and came up with solutions to problem areas. This approach would be more effective than expending significant funds for such services as consultants, special task forces, etc.

Sincerely,

*(via email)*

Bob Churchill, Chair  
3415 Wentworth  
Anchorage, AK 99508

cc: House Resources Committee Members  
Senate Resources Committee Members  
House Special Committee on Fisheries Members

**ADF&G Statewide Habitat and Restoration Division  
Workload Summary, FY 99 to 02**

**Table 1. Title 16 Project Reviews**

Fiscal Year	Total # T 16 Project Reviews	# T 16 Permits Issued	# T 16 Denials	# T 16 No Permit Required
99	1831	1479	13	339
00	2141	1779	14	348
01	1999	1712	13	274
02	1926	1669	9	248

**Table 2. Other Agency Project Reviews**

Fiscal Year	Total # Reviews	Recommended Approval	Recommended Denial	Provided General Comments
99	900	530	29	341
00	1045	615	26	404
01	1267	700	49	518
02	1152	636	23	493

**Table 3. Grand Total All Reviews (T 16 + Other Agency)**

Fiscal Year	Reviews Completed	# Recommend Approval	Recommended Denial	General Comments
99	2731	2009	42	680
00	3186	2394	40	752
01	3266	2412	62	792
02	3078	2305	32	741

**Table 4. Response Efficiency**

Fiscal Year	T 16 Average # Days to Complete Review	Other Agency Average # Day to Complete Review
99	15	18
00	14	23
01	17	16
02	14	18

↑  
Time to  
issue T16  
permit

FY 02

ALASKA DEPARTMENT OF FISH AND GAME  
HABITAT AND RESTORATION DIVISION  
FY 2002 ANNUAL PERMIT SUMMARY  
GENERATED: 04-Oct-03

Table 2. GENERAL SUMMARY OF ADPS TITLE 18 AND OTHER AGENCY REVIEWS STATEWIDE

Regnl. Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Recd.	Average Review Days	Percent Within Deadline	# Pre-issued Insp.	# Post-issued Insp.	
I Fish Habitat, Special Area, Hazing Permit	248	244	0	4	14	85	545	1787	
Sub Total Reg I	248	244	0	4	14	85	545	1787	
II Fish Habitat, Special Area, Hazing Permit	744	545	5	91	19	86	538	450	
Sub Total Reg II	744	545	5	91	19	86	538	450	
III Fish Habitat, Special Area, Hazing Permit	14	14	0	0	28	78	10	10	
Sub Total Reg III	14	14	0	0	N/A	N/A	0	0	
JPO Fish Habitat, Special Area, Hazing Permit	726	594	9	142	7	89	545	460	
Sub Total Reg JPO	726	594	9	142	7	89	545	460	
Total All Regions	1928	1619	9	208	14	81	1700	2334	
Reviews Completed Recm. Recm. General									
	Completed	Approved	Denied	Comments					
I Other Agency	238	106	2	131	31	87	231	245	
II Other Agency	420	186	21	211	25	72	104	70	
III Other Agency	513	382	0	187	6	100	143	124	
JPO Other Agency	6	0	0	0	N/A	N/A	12	0	
Total Other Agency	1153	638	23	493	18	85	430	420	
I Not Reviewed	6	Withdrawn		2					
II Not Reviewed	33	Withdrawn		67					
III Not Reviewed	0	Withdrawn		3					
JPO Not Reviewed	0	Withdrawn		0					
Total Not Reviewed	38	Total Withdrawn		80					

Notes: I = Southeast, II = Southcentral/Southeast/Western, III = Arctic/Interior/Western, JPO = Joint Pipeline Office  
 2) OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews.  
 3) Virtually all project reviews in Region I, and a substantial number in Regions II and III, are coordinated by OMB under a 30 or 60 day time frame. This increases the average ADPS response time.

FY 02

ALASKA DEPARTMENT OF FISH AND GAME  
 HABITAT AND RESTORATION DIVISION  
 FY 2002 ANNUAL PERMIT SUMMARY  
 GENERATED: 04-Oct-03

Table 1. GENERAL STATEWIDE SUMMARY OF ADPS TITLE 16 AND OTHER AGENCY REVIEWS

Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Required	Average Review Days	Percent within Deadline	# Permitted Issued	# Permitted Issued
Fish Habitat	1778	1828	7	243	13	92	1652	2870
Special Area	142	135	2	8	22	82	48	54
Mooring Permits	5	8	0	0	20	67	0	0
Sub Total AS16	1925	1971	9	251	14	91	1700	2924
	Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
Other Agency	1152	636	23	483	18	88	490	420
GRAND TOTAL	3077	2607	32	734	15	90	2190	3344
Not Reviewed	38							
Withdrawn	50							

Notes:

OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews.  
 Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

FROM: STOCKWELL

FAX NO. : 907-595-1548

Feb. 17 2003 10:30PM P2

# SENATE OF ALASKA

## Cooper Landing Fish & Game Advisory Committee

Frank H. Murkowski, Governor

Bill Stockwell, Chair  
PO Box 721  
Cooper Landing, AK 99572-0721  
Phone: 595-1540

February 15, 2003

Honorable Frank Murkowski  
Governor, State of Alaska  
P.O. Box 110001  
Juneau, AK 99811-0001

SENT BY FAX 2 PAGES AND BY MAIL

SUBJECT: The transfer of habitat authority from ADF&amp;G to DNR

Dear Governor Murkowski,

At our public meeting on February 11, 2003, the Cooper Landing Fish and Game Advisory Committee discussed the transfer of habitat authority from the Department of Fish and Game to the Department of Natural Resources. The only official notice or information that we have received to date is the February 5, 2003 news release from Acting Commissioner Duffy.

As this transfer has potential impact on a very important committee function, being the local forum for fish and wildlife habitat, the committee asked me to express their concerns in this matter to you and to our Legislators, the Boards of Fisheries and Game, the Acting Commissioner of Fish and Game and the Commissioner of Natural Resources. Our concerns can be divided into two major issues, the process that this transfer took and the future protection of the habitat so vital to the sustainability of all Alaskan's common use fish and wildlife resources.

First, the process. We fully understand your constitutional authority to reorganize the executive branch and because you have already signed the executive order, we can no longer oppose the transfer of authority. However, we can ask that an open public process to assess the effects be followed before the culmination of this transfer. Process is the very backbone of public/advisory committee/board system for the management, conservation, protection, and use of fish, game and their habitat. We ask that you allow this process to be heard. The present system of fish and game habitat authority has worked for 50 years and can function successfully for a few more months. Time is not of the essence.

The Cooper Landing Advisory Committee feels that an open public process is always in the best interest of fish and wildlife

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Boards Support Section, 333 Raspberry Road, Anchorage, Alaska 99518-1590

PAGE 2 Cooper Landing Advisory Committee February 15, 2003

resources. We ask that the Board of Fisheries and Board of Game be given ample time and we ask the Boards to conduct a full and open comment and testimony period for the general public, effected organizations and advisory committees and that the Boards be allowed to make recommendations to you on the substance of this transfer. We also ask that the Alaska Legislature be given ample time to hear and consider the public's concerns on the issue and we ask our Legislators to conduct hearings for their constituents on this transfer.

Next, our other major concern is the future protection of the habitat so vital to the sustainability of our common use fish and wildlife resources and how the Cooper Landing Advisory Committee will continue to interface in the process. We believe, as do many Alaskans, that the proper management of the public's fish and wildlife resources are a vital part of the Alaska's future and that proper management must start with habitat protection and restoration.

Most issues that affect the Community of Cooper Landing deal with habitat. The residents and the advisory committee have over the years had a close working relationship with ADF&G on fish, wildlife and habitat issues of concern to our Community. This relationship has always included the advice and aid available from the Habitat Division. The Community feels that the loss of this asset could have a future negative impact on our quality of life and our economy. The Cooper Landing Advisory Committee is worried that the necessary coordination with ADF&G to function as the local forum for fish and wildlife habitat matters will be permanently lost and the vital habitat for fish and wildlife in our area will suffer.

Governor Murkowski, we thank you for your time and ask that you give our committee opinion and that of other advisory committees due deference prior to finalizing this transfer.

Sincerely,



Bill Stockwell, Chair

cc: Senator, District R  
Representative Seaton, District 35, House Fisheries Comm.  
Alaska Board Of Fisheries  
Alaska Board of Game  
Acting Commissioner Duffy, ADF&G  
Commissioner Irwin, Dept. of Natural Resources

**POSTAGE PAID**

Paxson Fish and Game Advisory Committee  
John Schandelmeier, Chair  
HC 72 Box 7193  
Paxson, Alaska 99737  
(907) 822-5424

February 6, 2003

To: all State of Alaska Legislators

The Paxson Fish and Game Advisory Committee opposes merger of the Alaska Department of Fish Game's Habitat Division with the Department of Natural Resources.

We believe that these departments are very different in both focus and objectives. They should remain so. These two separate departments contribute to an effective system of checks and balances with Alaska's state government.

Wildlife habitat is important to our states' future; both for our residents opportunity to hunt, fish and recreate and for our states' economic health in the form of tourism.

The Department of Fish and Game is the agency best suited to protect and manage these most important values.



*American Fisheries Society*

ALASKA CHAPTER

February 10, 2003



Governor Frank Murkowski  
Office of the Governor  
P.O. Box 110011  
Juneau, AK 99811-0001

Dear Governor Murkowski:

The members of the Alaska Chapter of the American Fisheries Society urge you not to transfer habitat permitting from the Department of Fish and Game to the Department of Natural Resources. We believe that this action will cause long-term, cumulative harm to Alaska's fishery resources. Fish are Alaska's most valuable renewable natural resource and have critical historical, cultural, and economic importance to Alaska's subsistence, commercial, and sport users. This valuable resource also represents additional opportunity for economic development.

The American Fisheries Society is the oldest and largest international scientific organization of professional fisheries scientists with nearly 8000 members dedicated to wise management and use of our sustainable aquatic resources and the continuing education of fishery scientists. The Alaska Chapter is one of over 100 subunits of the American Fisheries Society and includes more than 400 fisheries professionals who work in state and federal government, academia, and the private sector. A primary mission of the American Fisheries Society is "to ensure self-sustaining populations that support commercial and recreational fishing both now and in the future."

The Alaska Constitution states that fish and wildlife resources must be managed by the State for the sustained yield, maximum benefit and common use of all people. The framers of our State Constitution were concerned for the long-term viability of Alaska's most important renewable resource when they enacted safeguards to ensure that fish habitats would be maintained. These safeguards are a "check and balance" to assure that fishery and aquatic resources have equal standing with other important resources. This is accomplished by a review of project plans that may affect fish habitat by an independent professional fisheries scientist.

There is ample evidence from States in the Pacific Northwest that poorly designed, installed, or maintained culverts result in loss of access by fish to thousands of miles of productive habitat. Fishery scientists have estimated that the production of anadromous fish in Washington and Oregon is about three percent of historic levels; resident fish abundance is affected as well. Most of the productivity loss has been attributed to loss of aquatic habitat. Alaska is not immune to such loss; for example, recent studies of the State road system and logging roads on the Kenai Peninsula revealed that more than half of culverts block or impede fish passage to spawning, rearing and overwintering habitats.



*American Fisheries Society*

ALASKA CHAPTER

We, the Alaska Chapter of the American Fisheries Society, believe that if Alaska's fisheries resources are to be sustained for the benefit of all Alaskans, common property fisheries and aquatic resources must be given equal consideration with other land uses at the highest level. The best way to achieve this is to maintain the time-tested process enacted by the first State Legislature. We believe that if the review and permitting function is transferred from the Alaska Department of Fish and Game to the Department of Natural Resources the invaluable system of checks and balances that have existed in

State Statute since statehood will be lost. We believe that professional fisheries scientists within the Department of Fish and Game must continue to review and approve the design and installation of all proposed projects that affect our fish and aquatic resources in Alaska to ensure responsible stewardship of our sustainable fisheries and the healthy habitats that support them.

We encourage a dialogue (public hearings for example) concerning this matter and members of the Alaska Chapter of American Fisheries Society are available to assist if that will be useful. Please feel free to contact us if you have questions about our fishery and aquatic resources ([akafs@hotmail.com](mailto:akafs@hotmail.com)).

Thank you,  
Alaska Chapter of the American Fisheries Society

cc:  
Senate and House Legislators

**AVCP, INC.**

The Association of Village Council Presidents  
Office of Administration  
Pouch 219, Bethel, AK 99559

Ivan M. Ivan, Chairperson  
Myron P. Nanang, President  
Phone (907) 543-7300  
Fax (907) 543-3369



- Akicchak
- Akiak
- Alakanuk
- Andreafsky
- Aniak
- Atmautluk
- Bethel
- Bill Moore's Sl.
- Chefornak
- Chevak
- Chuvathluk
- Chuloomniwick
- Crooked Creek
- Eek
- Emmonak
- Georgetown
- Goodnews Bay
- Hamilton
- Hooper Bay
- Lower Kalakuk
- Upper Kalakuk
- Kaighuk
- Kipnuk
- Kongiganak
- Kotlik
- Kvethluk
- Kwigillingok
- Linn Village
- Marshall
- Mekoryuk
- Mtn. Village
- Napaimni
- Napakciak
- Napakiak
- Newtok
- Nightmute
- Nunakuyuk
- Nunam Iqua
- Nunapitchuk
- Ohogamiut
- Oscarville
- Painiut
- Pilot Station
- Pitka's Point
- Platignon
- Quinhagak
- Red Devil
- Russian Mission
- Scammon Bay
- Steeteute
- St. Mary's
- Stony River
- Tuluksak
- Tuntuvlak
- Tununak
- Uinkumiut

February 7, 2003

The Honorable Governor Murkowski  
Office of the Governor  
PO Box 110001  
Juneau, AK 99811-0001

**RE: Plan To Transfer ADF&G Habitat Protection Programs and Permitting to DNR**

Dear Governor Murkowski,

The Association of Village Council Presidents (AVCP) was established in 1964, by and for the benefit of the tribal governments and the Native people of the Yukon-Kuskokwim (YK) Delta. Consistent with this mission, AVCP is very concerned about your plan to transfer the permitting function of the Habitat and Restoration Division of Fish & Game to the Department of Natural Resources.

Specifically, AVCP is concerned that this radical plan will significantly erode Alaska's Fishways Act (AS 16.05.840), Alaska's Anadromous Fish Act (AS 16.05.840), Alaska's Forest Practices Act (A.S. 41.17), and Alaska's Coastal Zone Management Program (AS 40.010-210). AVCP notes that these statutes and programs are absolutely critical in guiding ADF&G toward fulfilling its statutory responsibility for conservation of fish and wildlife populations and habitats.

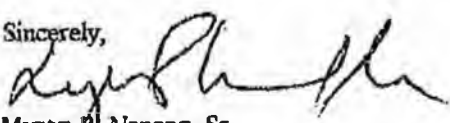
This proposal was not generated by, and is not intended to involve, any public process. It seems that this plan is designed to not only remove ADF&G from the business of issuing habitat permits but also from the business of protecting fish and wildlife habitat. AVCP would point out that the Department of Natural Resources is absolutely not capable of protecting fish and wildlife habitat. The Board of Fish's Sustainable Salmon Fisheries Policy explicitly recognizes the fundamental importance of maintaining habitat quality to sustain wild salmon biodiversity. By law, the Boards of Fish and Game and the ADF&G, not DNR, are empowered to conserve fish and wildlife.

AVCP understands that this plan would likely increase the profitability of mining, oil, and especially timber industries, but it would do so at the expense of Alaska's great wealth in terms of fish biodiversity. This would negatively impact subsistence, sport and commercial fisheries, since fisheries have long been one of the most important pillars of the Alaska economy, and in many rural areas of the State, the mainstay of the economy. But the value of healthy, natural fisheries cannot be reduced to dollar value alone.

If quality of living issues are considered, such as the importance of fishing to Alaskans, our identity, and quality of life, our fisheries may indeed have produced more in the way of true wealth and well-being than all of the extractive industries have, combined. Fish and wildlife habitat, population and harvest issues are rightfully the purview of a State Department made up primarily of fish and wildlife biologists. Likewise, land and water disposition issues are rightfully the purview of a second State Department of Natural Resources.

Pristine habitat is what sets Alaska apart from the rest of the world. If this transfer were to occur, Alaska will be one step closer to the path of ruin already followed by the Pacific Northwest and British Columbia. Alaska's reputation for fishery and habitat management will inevitably suffer.

Sincerely,

  
Myron P. Nanang, Sr.  
President, AVCP

Cc: Sen. Ted Stevens  
Sen. Lisa Murkowski  
Congressman Don Young  
Sen. Lyman Hoffman  
Sen. Georgiana Lincoln  
Sen. Donny Olson  
Rep. Mary Kapsner  
Rep. Carl Morgan  
Rep. Richard Foster  
Rep. Les Gara  
House Speaker Pete Kott  
Senate Majority Leader Gene Theriault  
Mr. Ed Dersham, Chair, Board of Fisheries, P.O. Box 25526, Juneau, AK 99802-5526  
Mr. Kevin Duffy, Acting Commissioner of Fish and Game, P.O. Box 25526, Juneau, AK 99802-5526  
Mr. Ben Grussendorf, Chair, Board of Game, P.O. Box 25526, Juneau, AK 99802-5526





**KENAI RIVER**  
Special Management Area

"Working together...for the river"

## ADVISORY BOARD

March 5, 2003

Dear Representative:

During a meeting of the Kenai River Special Management Area (KRSMA) Advisory Board on February 20, our Board discussed Governor Murkowski's Executive Order No. 107, which transfers the fish habitat permitting functions, and all of the Department of Fish and Game's responsibilities to protect fish habitat and riparian buffers on logging operations from the Department of Fish and Game to the Department of Natural Resources. We urge that you take Legislative action to disapprove this executive order, and use your position to affirm that the fish and wildlife habitat protection standards for the State of Alaska are not to be compromised.

Our comments related to EO 107 are those of the KRSMA Board, and may not reflect the position of the Department of Natural Resources. The KRSMA Board was established to advise the Department of Natural Resources on issues of importance within the Kenai River watershed. We take our charge seriously as the Kenai River is the lifeblood for a tremendous segment of our Kenai Peninsula economy, from supporting a vital sportfishing and tourism industry, to supplying the largest share of the fishery resources upon which the commercial fishing industry depends. Maintaining healthy habitat is the basis for maintaining sustained salmon runs.

We are concerned that transferring the habitat permitting functions of ADF&G to ADNR will weaken the important checks and balances that must be weighed in all resource development equations. Resource development permitting decisions that are made by more than one agency will enable healthy dialogue and discussion between experts with diverse, often conflicting, but equally essential missions. Centralizing all permit decisions within one agency will increase the likelihood that decisions will be made that promote resource development at the expense of habitat preservation and protection. At what cost must we learn the lesson of the Pacific Northwest? When we, too, have lost much of our salmon resources due to the insidious loss of important habitat?

The KRSMA Board has supported the creation and implementation of the Kenai River Center (KRC) in Soldotna, a brainchild of former Kenai Peninsula Borough Mayors Don Gilman and Mike Navarre. The KRC is an award-winning example of interagency cooperation and permit streamlining and efficiency. Permit applicants are provided a "one stop" office for all of their permitting needs, having access to Borough representatives, state agency representatives from ADF&G and ADNR and federal



Kenai Area Office, Box 1247, Soldotna, AK 99669, Soldotna 262-5531  
Kenai Peninsula Borough, Box 850, Soldotna, AK 99669, Soldotna 262-4441

Alaska Division of Parks and Outdoor Recreation, Department of Natural Resources, in cooperation with the Kenai Peninsula Borough.



agency representatives from EPA. Our experience in working with the ADF&G-Habitat Division staff has been positive and productive.

We do not agree with the premise that inefficiencies within the Habitat Division dictate the transfer of permitting functions to ADNR, as EO 107 alludes. Rather, the Habitat Division representatives at the Kenai River Center have been instrumental in efficiently and fairly issuing permits to hundreds of applicants yearly, while also helping to educate landowners, businesses and others regarding how they might play a role in protecting critical fish habitat along the Kenai River. Over the past decade, there has been a tremendous increase in habitat protection awareness and education among residents of the Kenai River watershed, much of it brought about by Habitat Division permitting staff.

We respectfully urge you to consider your role in promoting the responsible development of Alaska's natural resources while protecting those habitat resources that support the wealth of the state's sport, commercial and subsistence fisheries and wildlife resources. Please oppose Executive Order 107. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in cursive script that reads "Ken Lancaster". The signature is written in dark ink and is positioned above the printed name and title.

Ken Lancaster  
KRSMA Advisory Board President

Cc: DNR Commissioner Tom Irwin

## Alaska Public Waters Coalition

10332 High Bluff  
Eagle River, AK 99577

The Honorable Frank Murkowski, Governor  
Office of the Governor  
PO Box 110001  
Juneau, AK 99811-0001

February 10, 2003

Dear Gov. Murkowski:

Your announced decision to transfer selected permit functions from the Habitat Division of ADF&G to DNR appears to have not been well thought out! First off, why would you give more work to a Department that can not do the work it is now charge to do? DNR has been failing to protect the public trust values by managing water resources in accordance with statute and regulations for more than 10 years. Do you propose to give them Habitat's job with no more money and staff and allow them to fail in this assignment too?

If this is such a good idea, why did you not offer it during the campaign when you were asked for details on just how you would go about jump starting the Alaska economy.

Secondly, your perception of the job ADF&G's Habitat Division has been doing appears to be based on poor and inaccurate advice! Habitat has denied only 9 permits out of 2000 in the past year. That hardly constitutes an indictment of an overly aggressive public service division.

Thirdly, regarding behavior of some Habitat Division employees, I sat through four hours of town meeting with members of your transition team. There were a couple of complaints about performance of employees of the Habitat Division. It became evident to me that these should appropriately be handled by supervisor attention, rather than government reorganization.

On behalf of the Alaska Public Waters Coalition, I urge you to reconsider this matter.

Sincerely,

Keith Bayha, Steering Committee Chair

cc: all legislators

# STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 267-2285  
FAX: (907) 267-2464

### MEMORANDUM

TO: Kerry Howard  
Acting Director  
Habitat and Restoration Division

FROM: Bill Hanson  
Regional Supervisor  
Region I  
Habitat and Restoration Division

DATE: February 20, 2003

SUBJECT: Region I Response to Governor Murkowski's State of the State Address and  
Subsequent Press Conference Comments

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During his State of the State address on January 23, 2003, and in a February 3, 2003 statewide press conference, Governor Murkowski cited several projects in the Southeast Alaska as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. The following information is presented to provide a more clear understanding of the Division's role in these projects.

The examples from H&R Region I include (1) the Juneau Golf Course; (2) Dorothy Lake Hydroelectric Project; (3) Ward Lake, and by association the Connell Lake Hydroelectric Project; (4) Falls Creek Hydroelectric Project; (5) the Ketchikan Southeast Intertie Project; and (6) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A brief summary of our response to each of these topics is provided below. More detailed explanations can be provided as needed.

In addition, in the February statewide news conference, Governor Murkowski stated that Habitat Division had sponsored a pizza party in Juneau to celebrate the closure of the Ketchikan Pulp Company mill in Ketchikan. Although we were certain that the Division had not and would not have sponsored such an event (and certainly what employees do on their own time is irrelevant), we have asked all of our staff as well as the former SE Regional Supervisor whether any such

event took place inside or outside the workplace. No one has any idea what the Governor was referring to, and we can state categorically that this statement was erroneous.

In summary, we disagree that the Division of Habitat and Restoration has caused undue delays in projects. We believe that we have provided exceptionally efficient and professional service to the state, federal government, municipalities, applicants and the public. Our staff has provided a unique and useful combination of skills that unite:

- Implementing the mission of ADF&G to protect, enhance, maintain and extend fish and wildlife as well as protecting uses of these resources;
- Substantial experience and expertise in understanding the physical, economic and technical needs and limitations of diverse industries and applicants, including mining, timber harvest, municipal development, hydroelectric development, coastal development, transportation, road construction and many others;
- Identifying and understanding creative ways to allow development activities to proceed while protecting fish and wildlife and their uses;
- A detailed knowledge, gained by experience and fieldwork, of the landscapes across Alaska.

We recognize that it takes time, money and effort to fully evaluate and carefully consider the potential effects of development activities and the options for avoiding unnecessary damage. This can only be done with a strong commitment to listening to the needs of applicants and detailed knowledge gained by field review. ADF&G has been and continues to be fully committed to both.

### Discussion of Specific Projects

**JUNEAU GOLF COURSE** – In the February 3 press conference, the governor said, *“I don't know why we always start out with the Juneau Golf Course. But they've been trying since 1996 to get a conditional use permit granted to build a golf course. In 1998, after consulting with the Habitat Division, the Division of Governmental Coordination assented to the project. However, the Habitat's field biologist kept reopening the process by alleging that new information was required. The project's proponents have now spent more than one million dollars and I understand they still don't have a conditional use permit.”*

#### H&R Region I Response – Summary

The Totem Creek, Inc. (TCI) golf course project (the “Juneau Golf Course” to which the Governor refers) is proposed for undeveloped city-owned land in the Peterson Creek drainage, a cataloged anadromous watershed on North Douglas Island. Approximately 24 fish-bearing tributaries of Peterson Creek are within the project area. Peterson Creek provides habitat for a number of anadromous fish species, including pink, chum, and coho salmon, Dolly Varden char, and cutthroat trout. Currently, this watershed is in nearly pristine condition and provides excellent fishery and wildlife values. The watershed is also a popular deer hunting area.

ADF&G participated in the Alaska Coastal Management Program (ACMP) review of the golf course that resulted in issuance of a Consistency Determination (CD) on January 23, 1998. To

address CBJ and State concerns about the lack of information related to the project, TCI made a number of commitments to provide several additional documents for future planning and review. These commitments were incorporated into the project description of the CD, including future development of a wildlife management plan, pest management plan (related to use of pesticides) and others. TCI, the CBJ and the agencies all knew that these additional materials would require review in the future. ADF&G issued a Title 16 Fish Habitat permit for 23 stream crossings in a timely fashion following issuance in 1998 of the ACMP Consistency Determination (CD).

Since 1998, ADF&G has participated in the next phase of the review: the issuance of the Conditional Use Permit (CUP), which is a City and Borough of Juneau (CBJ) requirement, not an ADF&G permit. ADF&G has been consulted by the City both as an expert agency and as a legal participant in the CBJ review process. As the recognized expert on fish and wildlife for the state, ADF&G provides such assistance on a daily basis to municipalities, other agencies, commercial businesses, and the general public.

The Governor's statement points toward "*the Habitat's biologist*" who "*kept reopening the process by alleging that new information was required.*" We strongly disagree. There was no subsequent "reopening" of the process. The Department of Fish and Game, not an individual biologist, continued to work with the CBJ and TCI. The 1998 ACMP review included commitments by TCI to provide additional planning and review documents prior to construction of the golf course. The CBJ added to these requirements during their CUP process. ADF&G has worked with both the City and the applicant to obtain and review the required information.

The original ACMP project description, which describes TCI's proposal, also included the following commitment:

*"There would be 66-foot buffers on each side of ordinary high water on all tributaries of Peterson Creek."*

Note that this applies to **all tributaries**, not just fish habitat. It describes the applicant's proposal, not ADF&G or ACMP requirements.

An additional stipulation proposed by ADF&G was included in the final CD:

*"Sixty-six foot undisturbed stream buffers measured from the ordinary high water mark on each side of the stream, and in the condition they are found today, must be maintained along all fish streams other than at road and golf cart trail crossings."*

Note that this is **less stringent** than the applicant's proposal as described in the project description, since it applies only to fish streams. It does not distinguish between anadromous and non-anadromous habitat. Like all applicants, TCI had the opportunity to discuss the description and stipulation in draft, as well as the opportunity to elevate the CD to the directors and commissioners if they disagreed with any portion of the CD. TCI did not object to the description or stipulation, nor did they elevate the ACMP CD.

In 2000, after two years in which no further documents or plans related to the golf course were submitted to ADF&G for review, TCI requested that ADF&G reissue the Fish Habitat Permits for stream crossings, and applied for a Conditional Use Permit from the CBJ. At this point, TCI

objected to the 66-foot buffers on any streams other than 6 cataloged tributaries of Peterson Creek. TCI indicated that they had never intended to place such buffers on all streams or on all fish streams, despite the clear language in the CD. TCI contended that the CD inaccurately portrayed the project and their commitments, but we have found no documentation that this is correct.

Given the disagreement between TCI and the state regarding the protection of fish habitat, ADF&G agreed to work with TCI to evaluate smaller buffers on streams affected by the project. ADF&G conducted a full survey of streams in the project area, identifying 17 additional anadromous waters that TCI had not identified as fish bearing in the original project review. After considerable discussion and negotiation, TCI redesigned the golf course to minimize effects on fish habitat, and ADF&G agreed to variable-width buffers that range from no standing trees at all to 66 feet, depending on specific stream characteristics and values. ADF&G, TCI and the CBJ signed a letter of agreement pertaining to these changes in September 2002.

This is a complex project located in an area with high fish and wildlife values. The need to address such issues as use of pesticides, protection of drinking water and water quality, wetland protection and windthrow, and other issues managed by a variety of federal and state agencies as well as the CBJ have required substantial time and effort, only a portion of which has been related to ADF&G's concerns for protection of fish, wildlife, and the users of these resources.

**DOROTHY LAKE HYDROELECTRIC PROJECT** – In the press conference, the governor said, *“The Dorothy Lake Hydro Project, which will provide electricity to southeastern Alaska, is being held up over the concerns about eastern brook trout, which was introduced in the 1920s. One of the functions of the Department of Fish and Game commissioner is to manage, protect, maintain, improve and extend the fish, game and aquatic plant resources of the state in the interest of the economy and the general well being of the state. This statutory requirement clearly envisions a balancing of public interest, such as those embodied in the Dorothy Lake hydro project. Further, there is no specific statute or regulation that says the Department of Fish and Game has to protect non-native species, although I personally feel that they certainly should. Requirements for instream flow, intake screens and minimum water depths, which go beyond reasonable measures needed to protect the state's legitimate interest, only serve to make the project uneconomical. From a personal experience point of view, I have observed the Ward Lake system in Ketchikan, where the third lake was dammed to accommodate the Ketchikan Pulp Mills in the late 60s or thereabout, and there's a significant flow of water goes out of that dam and down in the pulp mill. There are eastern brook trout in that system previous to this dam being built, and there are eastern brook trout today. And I don't know a lot about habitat biology, but I do know that they managed to survive and they're still there for the enjoyment for folks in Ketchikan.”*

#### H&R Region I Response - Summary

Lake Dorothy is a 4-mile long lake at 2400 feet elevation that spills down to Lieuy Lake, then Bart Lake and finally empties into Taku Inlet, 12 miles from Juneau. The applicant, Lake Dorothy Hydro, Inc. (LDHI), has proposed a hydroelectric project that would: