

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86 / 2

11009 HOUSE STATE AFFAIRS

downturns in natural ocean conditions are relaxed, production will only bounce back if the habitat is intact. Again, this is supported by scientific evidence.

My comments are not intended to judge the merits of natural resource development that have the potential to injure fish habitats, except to recognize that these activities certainly have that potential. It is of utmost importance, however, if we all agree on the tremendous economic, social, and ecological value of our salmon fisheries, that the pursuit of non-fisheries natural resource development not diminish the "investment principal" of habitat infrastructure. Therefore, based on extensive empirical evidence from locales where habitat management was lax, I am concerned that any relaxation of habitat protection will result in the insidious degradation of habitat that is the essential foundation of Alaska's extremely valuable salmon fisheries.

It is impossible to judge how effectively habitat will be protected if the permitting functions are transferred from ADF&G to ADNR but, because the stated purpose is speed development, I can only believe that habitat protection will be less effective. The existing system of checks and balances has served our stream habitats, and the fisheries that benefit from them, very well. Only a few developments have actually been stopped – most were either approved or modified so that the development could proceed without harm to fisheries. Future difficult cases can certainly continue to be negotiable within ADF&G, without transferring the functions to ADNR. Because our salmon resources are so important, and because there is solid, scientific and experiential evidence demonstrating that healthy habitat is key to sustaining the salmon fisheries, I urge the Alaska State Legislature to reject EO 107 and retain habitat-permitting functions within ADF&G.

Eric Knudsen, Ph.D.  
907-345-5213

To: SRES  
HSTA  
Wilson

From: Kathryn Kyle  
22-13 Sawmill Creek Rd.  
SITKA 99835  
747-3702

Subject: EO moving Habitat Div. to DNR

Please preserve the effectiveness of Habitat Division.  
Vote to keep it in the Department of Fish & Game.

Kathryn Kyle

March 11, 2003

I am strenuously opposed to HB158 which would eliminate the senior longevity program. I am nearly 80 years of age, born, raised, lived in Alaska all my life. Being on a fixed income, this \$250 a month enables me to remain in my home in Cordova. \$3000 a year may not seem like much to many of you but losing it could be what pushes me over the edge to sell my home and either move into Senior housing, if it is still available, or move to the Lower 48 and hope my son has room for me in his home.

The proposal to cut the Senior property tax exemption is also a serious problem for us Older citizens.

I realize that spending needs to be curtailed but hopefully there are other ways to do it. I would feel that a year round sales tax or an income tax would be a more feasible way to help cover State expenses.

Virginia A Lacy  
P O Box 58  
Cordova, Ak 99574

907.424-3613 email: val2@ctcak.net

Chairman Weyrauch and distinguished members:

Good Evening. My name is Matthew LaCroix. I work for the Alaska Department of Fish and Game, in the Habitat and Restoration Division. I am a permitter, and I was one of the 22 Division employees that received a layoff notice last Friday. I am here to ask the members of this committee to do everything within their power to sponsor and support a joint resolution rejecting Executive Order 107.

I am here to ask the members of this committee to honestly examine an issue that the acting Commissioner of Fish and Game believes to be irrelevant. That is whether or not the proposed transfer of Title 16 permitting authority out of Fish and Game will benefit or harm the state. This is a question that every Alaskan resident should be asking, and a question that I believe the legislature has an obligation to answer before the Executive Order is allowed to take effect.

We know that this transfer is not necessary. If the Governor has concerns about the professionalism of certain Division employees, these concerns could and should be addressed through personnel actions taken against individuals. He has the power to name his own commissioners, who set the tone for the Departments; and much of the permitting authority within Title 16 is exercised at the discretion of the Commissioner. No one can doubt that the Governor has found a staunch ally in Acting Commissioner Duffy, and that "unprofessional" biologists would be weeded out of the Habitat Division during his tenure.

This move is not necessary, nor will it be beneficial. It will not "streamline" the state's permitting process. Some members of the public and of the legislature have been waiting for more details on the reorganization before they took a position on the Executive Order. Well, some of these details are now available, and they all point to this transfer being a permitting and environmental train wreck.

In the business world, a company reduces its workforce only if it decreases production or if advances in technology allow fewer workers to produce the same or more. Apparently things work differently in Alaska, because the new Office of Habitat Management and Permitting at the DNR claims it will be able to process the same number of permits (approximately 2,000 per year) with 22 fewer employees than it currently takes to do the work. Not

only will these permitters somehow be able to issue permits much faster than we currently do now, but they will be able to do it with less administrative and no computer support.

The acting commissioner has stated that there will be at least two phases to the downsizing associated with the reorganization, so more cuts are anticipated. This would be funny if it were not so serious. Let me be very clear about what this reorganization is going to cost the state.

When you reduce permitting staff, you undermine the ability of remaining staff to issue meaningful permits, regardless of what Department they work for. Very few of the permits that I personally wrote last year were "off the shelf" as DNR Commissioner Tom Irwin would have you believe. Just like the Fish Habitat Permits issued to Fort Knox that he has said such positive things about, most of these permits were issued after hours of background research and consultation with applicants and staff from other departments and agencies. Often we need to conduct field visits or collect biological data before a permit can be issued.

Currently, we have the ability to work with applicants to modify projects so that they can be permitted. Due to staff cuts, the ability to provide applicants with this level of attention will disappear after the reorganization.

The amount of time that we can currently spend working with applicants is characterized by the Governor as stalling, but it means that few applications are ever denied. It also means that instead of superficially reviewing an application and either approving or denying it as proposed, we can look for alternatives that benefit both the applicant and the environment.

Take the Glenn-Parks Interchange work that the Governor has cited as one case where the Habitat Division stalled a legitimate project. Nothing could be further from the truth. Habitat Division staff worked with the contractor to modify that project in many significant ways that ended up saving them substantial amounts of money. The amount of highway that they were required to elevate on pilings was reduced, two retaining walls were eliminated because we agreed to an increase in the length of a major culvert, and the amount of temporary fill that was authorized for placement in wetlands was increased. All of these changes were made with our cooperation after the initial U.S. Army Corps of Engineers permit had been issued.

I live in the Valley, and I have been the primary Fish and Game contact on this project since work started last summer. I stop at the project site on my way to or from work, and have been there well into the evening, on weekends, and even during my vacation.

I have written the Fish Habitat Permits required for this project; and they have been issued in an average of five business days. Two of these were issued as Field Permits written on the spot. I am accessible to the applicant to help deal with the things that invariably come up on a project of this size. Do you need to get a permit amendment because you came up with a better way to do something? You can often get it in a matter of hours.

I issued a permit amendment to the Alaska Railroad a couple of weeks ago, driving out to where they were working at the Knik River and getting it to them the same day. We turn around emergency permits for DOT within hours. This is the type of accommodation of applicants that will disappear if this Executive Order is allowed to take effect.

I am not suggesting that no one has ever had to put a project on hold while they wait for their Fish Habitat Permit, but our issuance times are as good or better than any other regulatory agency. The current system could be made more efficient, but not through the actions proposed by the Governor.

Having the ability to get into the field also allows us to identify and address environmental problems before they become serious. This allows everyone involved to avoid enforcement and remediation efforts, which is the definition of a win-win situation.

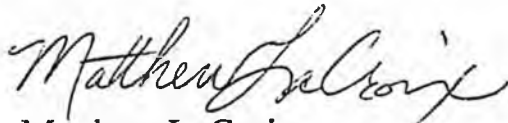
Lastly, having biologists working in the field and at the job site allows them to develop and build on their expertise. The state, applicants, and the environment are all better served by permitters who have seen culverts or roads installed, and know what works and what doesn't based on first-hand knowledge. There is no way that anyone can be an effective permitter if they don't have the time or budget to get into the field.

In summary, this reorganization will lead to increased permit backlogs, more permit denials, less effective permits with less monitoring and compliance, and permitted projects that will have greater environmental impacts. This transfer of permitting authority places the state's valuable fish and wildlife

resources at risk, and opens the state up to lawsuits while gaining us nothing in exchange.

The Governor has spoken about resources being managed using science, not politics, but it is the Governor himself who is playing politics with our state's fish and wildlife. I believe that an honest review of this Executive Order will show it to not only be fatally flawed, but possibly illegal. The members of this committee have an obligation to act in the best interest of their constituents and the state. In this case, that obligation requires nothing less than the rejection of this Executive Order.

Sincerely,

A handwritten signature in cursive script that reads "Matthew LaCroix".

Matthew LaCroix

**Aurah Landau**  
410 Calhoun #5  
Juneau, AK 99801  
907-586-6114 H

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March 12, 2003

To: Representatives Weyhrauch, Berkowitz, Holm, Dahlstrom, Lynn, Seaton, and Gruenberg  
From: Aurah Landau, Juneau resident

**Subject: Personal Testimony Submitted on March 11, 2003 on Executive Order 107**

Honorable Representatives:

At the March 11, 2003 State Affairs hearing I testified as a private citizen on Executive Order (EO) 107. During the course of my short testimony, I stated that, as I understand, the Executive Order could eliminate review over streams, riparian buffers, and important wildlife habitat on federal land. Since I am certainly not a regulatory expert and the regulatory structure is very complicated, I requested that the State Affairs Committee specifically investigate the effects of EO 107 on review of projects occurring on federal land.

As requested by Chairman Weyhrauch, I am putting my question in writing. For reference, I requested that this inquiry be made, partially because:

- EO 107 has no provision to pick up Alaska Coastal Management Plan (ACMP) review into DNR. ACMP is currently the only non-advisory, mandatory method through which the State reviews federal projects, such as timber sales, for impacts on fish and wildlife.
- Federal statutes require the Forest Service to comply with ACMP standards. Since project review happening outside of ACMP (such as through Fish and Wildlife Coordination Act or NEPA) is only advisory, there appears to be no State authority for review of federal projects, such as timber sales.
- DNR does not coordinate with the Forest Service on federal lands. The Forest Service has insisted that Title 16 does not apply on Forest Service lands. EO 107 does not outline how the State and Federal will delegate direct fish habitat permitting authority.
- Even if ACMP were moved over to DNR, full review of projects on federal land would take a back seat to fish habitat permitting authority.
- The Forest Practices Act, often cited as the method for protecting fish and wildlife in silvicultural projects, has minimal statutory requirements for projects on federal land. All wildlife standards on private lands are voluntary.
- Draft ACMP legislation, proposed last week by the Administration, would wipe out habitat standards and coastal district plans, both of which provide streamside protection. It would also eliminate review for anything but large federal projects. The proposed legislation would change individual permits into general permits, thereby eliminating site-specific review. Therefore, even if DNR did have equal consideration for fish habitat with other resource issues, the standards would fail to adequately protect streams, riparian buffers and important wildlife habitat. EO 107 does not assure that field reviews will continue at the same level as within the Habitat Division.

I stated that the vast majority of Southeast Alaska is in federal ownership and 80% of salmon caught in Southeast Alaska spawn and rear in the Tongass National Forest. Potential lack of oversight of timber sales on National Forest land could severely compromise habitat, and eventually long-term sustainability of the region's fisheries. Even if my understanding of the regulatory process, is incorrect, the value of fisheries on federal lands in Alaska is so high that the Legislature would be prudent to assure that EO would not compromise review, monitoring or enforcement of projects on federal land.

I cited two examples of how a significant long-term loss of fish and wildlife habitat could have international and national implications.

- The Pacific Salmon Treaty assumes sustainable Alaskan salmon runs. If our salmon habitat protection is compromised based on EO 107, than there could be grounds for other countries to attempt to renegotiate the treaty and international fisheries allocation. Few people in Alaska want this to happen, including me.
- Several years ago, the Southeast Alaska Conservation Council worked in Washington DC to argue against measures to cut Alaska's fish allocation when the Administration was considering fishing restrictions on Alaska fishermen in association with Threatened and Endangered Snake and Columbia River Chinook. They pointed to sound, sustainable fisheries management coupled with strong habitat protections as reasons why Alaskan fishermen should not be penalized for the negative effects of dams on the Snake and Columbia Rivers. When questioned about the health of Alaska's fish and wildlife, many people, including the Southeast Alaska Conservation Council, have repeatedly pointed to the Habitat Division's work as an important example of Alaska's wise management of its fisheries resources. Because of Alaska's prominent fish and game-dependant way of life and industries, we as Alaskans must continue to be able to demonstrate wise management of fish and wildlife habitat.

As requested by Representative Berkowitz, I have included the Southeast Alaska Conservation Council's letters to former Vice-President Al Gore and NOAA opposing cutting Alaskan salmon quotas in association with the Endangered Species Act (ESA). As an example of decisions to work to protect habitat instead of requesting ESA listing, I have included SEACC's letter to the US Fish and Wildlife Service about the Queen Charlotte Goshawk and Alexander Archipelago wolf. Additionally, I have included a letter and press release describing legal steps taken to stop inappropriate Lower-48 timber sale appeals, as an example of decisions to support wisely-planned timber sales.

Since I specifically stated that I was not testifying on behalf of Southeast Alaska Conservation Council, please forward questions about SEACC's positions and these documents to Buck Lindekugel at SEACC. He can be reached at (907) 586-6942.

Thank you for your thorough review of how EO 107 will affect fish and wildlife on federal land. If EO 107 will indeed remove authority for protecting fish and wildlife habitat on federal land, I urge you to vote to overturn the EO.



Aurah Landau

RE: EO 107

2/11/03 Statement

Robyn Lauster - Anchorage (Bukowitz dist)  
245-1634

Bad idea - we need checks  
and balances - feels habitat  
and ~~it~~ needs the protection it is  
receiving under the present arrangement.

not under 1 umbrella

need professional to look at  
conservation strategies

Values wildlife - not against  
development - that is  
what we come to Alaska for.

MAR 11 2003

Dear Representatives,

It does not make any sense to transfer the Dept. of Fish & Game's Habitat Division's permitting authority to the Dept. of Natural Resources. The Habitat Division's permitting responsibility oversees projects that affect fish and wildlife habitat, while the Dept. of Natural Resources focuses on resource development. The two are not effective within one office, and the one cannot exist without the other. This is our system of check and balance that Murkowski wishes to eliminate.

We would lose the opportunity for Dept. of Fish and Game biologists to work with developers through a just and effective permitting process to ensure responsible and reasonable development. We would forfeit credible environmental review on proposed projects that effect us in potentially numerous ways. We would have limited field analysis and negligible reviews. We don't want that for any reason. As the old saying goes, "We all live down stream", what we mess up now will need to be repaired later at a greater cost by our kids. Our children all live down stream in the wake of this unreasonable, disrespectful, and reckless proposal of the governor.

This kind of legislative action devalues the integrity of our governing system. Is there n accountability? There is a reason why we have evolved to this point where we have this structure of checks and balances set into place. The procedure itself recognizes the importance of ensuring a balance, of exercising moderation, of investigating and evaluating potentially sensitive areas and projects (for the health and respect of the citizens and for the health and integrity of the environment we Alaskans treasure). This system of checks and balances respects the diversity of human values related. That is why it has worked so well in the past. That is why we have evolved to this point in this modern era where we currently are, and use it.

Are we to throw all of this away? Do these values mean nothing from one legislative session to the next? The people beg to differ.

Just the sheer fact that Murkowski even considers this preposterous proposal of his invention makes me seriously doubt the morality of his governing motives. He is trying to take us back into a more archaic time of "leadership", when the people had less choices and there was no system of checks and balances. The only difference is that we already have these rights and the guarantee of these structures, but Murkowski is trying to manipulate it all out from underneath us.

In a Democratic society there needs to be a system of checks and balances. To even consider eliminating or downsizing in any way the Dept. of Fish and Game's Habitat Division which is part of the system of checks and balances regarding "our" environment how it is designated and exploited, is morally wrong and risky.

This is an example of taking away American rights. Murkowski is not a dictator, though it is apparent through his attempts of "streamlining" his own interests which demonstrate his disregard for the diversity of Alaskan values involved, that he couldn't care less about any interests other than his own. That's the definition of a dictator. Don't let him do it! Somebody's got to put their foot down. Somebody has to be held accountable. Our governor, our legislature, our ruling body has got to be held accountable. This is blatant! in our Alaskan faces, wrong!

I strongly oppose moving the Habitat Division's permitting authority from the Alaska Dept. of Fish & Game to the Dept. of Natural Resources. If anything, the fish and wildlife habitat protection and oversight should be strengthened, not weakened or diminished. I ask you to vote in joint session to disapprove the executive order. Our elected officials must be held accountable to protect our fish and wildlife resources. You are the people's Representative.

Sincerely, Thomas Lee

1204 2nd St., Douglas, AK 99824

March 11, 2003

MAR 11 2003

Marina Lindsey  
3431 Greenwood Ave.  
Juneau, AK 99801

Juneau Legislators  
Alaska State Capital  
Juneau, AK 99801

Dear Senator Kim Elton, Representative Beth Kerttula and Representative Bruce Weyhrauch,

I am writing to ask you to vote against the proposed move of the habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources. As five past commissioners of Fish and Game, several fisheries and hunting interest groups, and even more concerned citizens have said in letters to Governor Murkowski and in Alaskan newspapers, moving the habitat authority from a science-based department to a department with a mandate to promote the state's development is a very dangerous prospect. We need to maintain the check and balance system on which our government is based. We cannot afford to risk the environmental destruction that is ensured by moving the authority to review and consult on development proposals to an agency with development interests. The Department of Fish and Game, Habitat Division does not attempt to halt all development, but to make sure that Alaska's wilderness and ecosystems are conserved if science proves that a development proposal will adversely impact an ecosystem. Frequently, habitat consultations don't result in the rejection of a proposal, they lead to the re-thinking of a proposal, which allows the development to move forward AND the ecosystem to be preserved. We can use our natural resources to build human infrastructure, but we have to carefully make decisions and think creatively to come up with ways to meet both human needs and the needs of the ecosystem - which should not be thought of as two separate entities, because ultimately they are interdependent.

The Department of Fish and Game's Habitat Division has not unnecessarily slowed down development in our state. They have only taken the necessary time to make sure that we don't make irrevocable decisions about the environment we depend on for healthy living and enjoyable recreation. If the permitting authority is moved to the Department of Natural Resources with the intent of speeding up the process, the scientists that review development proposals will be pressured to make decisions that are politically motivated, not science-based.

Thank you for your time and your vote against moving the Department of Fish and Game's habitat authority to the Department of Natural Resources.

Sincerely,

Marina Lindsey

3/12/03

**Testimony for the House State Affairs Committee, March 12, 2003  
Executive Order 107  
"Habitat Transfer Proposal"**

My name is Mim McConnell. I live in Sitka. I've lived in Southeast Alaska for 27 years. I was chairman of the Port Alexander Fish and Game Advisory Committee for 8 years and served on the Federal Southeast Subsistence Regional Advisory Council for 10 years. I am strongly opposed to moving the Habitat permitting authority from ADF&G to DNR for the following reasons:

First, it puts Alaska's fisheries at risk. Fisheries are the 2<sup>nd</sup> largest industry in the state. Alaskans should be proud of how well fisheries have been managed since statehood. The once poorly managed and depleted resources are now healthy and productive because of careful management. Let's keep it careful.

Second, Alaska's fish and wildlife habitat would be at risk because the Deputy Commissioner of DNR is not required to provide the same level of protection to habitat as the Commissioner of Fish and Game.

Lastly, it puts rural communities at risk. Many residents of SE Alaska's rural communities are dependent upon fisheries for their income. If resources become poorly managed from lack of personnel and proper checks and balances, they could become depleted. Depleted resources means closures. Closures mean loss of income. Loss of income in rural communities will be devastating.

Please stop this movement of the ADF&G habitat permitting process to DNR.

Thank you.

*Mim McConnell*

MAR 12 2003

MAR 17 2003

**Subject: Executive Order 107**

**Date: Wed, 12 Mar 2003 17:42:54 -0700**

**To: Fairbanks\_LIO@legis.state.ak.us**

I value fish more than immediate approval of construction projects.  
Lets keep habitat permitting in Fish and Game.  
Therefore stop Executive Order 107.

Sincerely

Douglas McIntosh

P.O. Box 80970  
Fairbanks, AK  
99708

EO 107

March 29, 2003

APR 1 2003  
APR 2 1 2003

Rep. Bruce Weyhrauch  
State Affairs Committee  
Alaska State Legislature - House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

I have worried about our state's fisheries and wildlife protection capability ever since I heard about Murkowski's bizarre scheme to take part of their mandate away from the Department of Fish and Game. Therefore, I am happy to be able to petition you regarding this matter with a specific request:

I don't think Governor's Executive Order 107 is an appropriate means to change such an important structure of our state government (as it does not allow a thorough public debate on the issue), but you must allow the "House and Senate Concurrent Resolution Number 1" to pass through your committee for a floor vote so that a public debate can decide this issue. Allowing the resolution to remain in your committee, effectively allowing EO 107 to become law, is not an acceptable means of implementing the Governor's proposed changes.

Incidentally, I worked at the Department of Natural Resources in a staff position for 12 years and saw first hand the costs and complications of several reorganizations. Whenever there was any reshuffling of staff everyone took the opportunity to dump their deadwood on someone else, revise their job descriptions, change their offices, phone lines and computers, knock down or build up walls and generally throw money around. Meanwhile no work got done.

The current system should not be altered without a significant public debate.

Please do not sit idle on this important issue. I would like to know how you will support the process of bringing together a joint session of the House and Senate for discussion of this executive order and alternatives to this plan. Please share my concerns with other committee members and please vote to prevent this executive order from being implemented.

Thank you.

Sincerely,

*Christine Maack*

Christine Maack  
3522 Alexander Ave.  
Anchorage, AK 99508

## Yakutat Fish &amp; Game Advisory Committee

Tom Maloney, Chair

Phone: (907) 784-3323

March 12, 2003

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

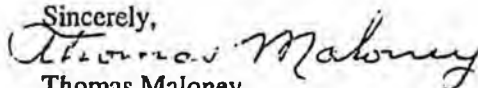
The Yakutat Fish & Game Advisory Committee opposes the proposed move of permitting from the Department of Fish & Game to the Department of Natural Resources.

The Yakutat AC has a history of taking actions to make a positive contribution to managing natural resources for maximum use consistent with the interest of the public. Those actions have included assisting in the recent revision of the Situk/Ahrnkin, and Lost River Chinook Management Plan, which was just approved in Ketchikan by the Board of Fish. Our AC agrees that development of our natural resources including logging and mining is appropriate when it does not jeopardize our fishery resources. Doing away with Habitat Division and shifting the proposed authorities to DNR will undermine the fragile collaborative interagency process underway to manage the Situk River corridor, which currently is the life-blood of this threatened community.

We have specific concerns 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. Similarly, the staff of DNR has minimal presence here in the Yakutat area, so how can stripping Title 16 enforcement capabilities from our local Fish and Game staff guarantee the health of our fish habitat?

Your concerns regarding the effectiveness of the permitting process appear to be issues of individual performance problems rather than system-based problems. We are confident that the concerns raised can be dealt with on a case-by-case basis prior to moving this function to DNR.

I am confident that any problems that may exist regarding permitting can be resolved by improving the existing process. 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 experts with informed members of the public and came up with solutions to problem areas. This approach would prove more effective than expending significant funds for such services as consultants, legal challenges, task forces, that will probably be the end result of the proposed action.

Sincerely,  
  
Thomas Maloney

Chair

**Subject:** RE: Executive Order 107

**Date:** Mon, 10 Mar 2003 07:03:10 GMT

MAR 11 2003

**From:** "Michele Masuda" <Michele.Masuda@noaa.gov>

**To:** Representative\_Bruce\_Weyhrauch@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us,  
Representative\_Nancy\_Dahlstrom@legis.state.ak.us,  
Representative\_Bob\_Lynn@legis.state.ak.us, Representative\_Paul\_Seaton@legis.state.ak.us,  
Representative\_Ethan\_Berkowitz@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

RE: Executive Order 107

I am strongly opposed to the transfer of permitting authority from the Alaska Department of Fish and Game Habitat Division to the Department of Natural Resources. This transfer of permitting authority, a very short-sighted decision, would put Alaska's fish and wildlife habitat at increased risk. Effects will likely be irreversible and more costly in the long run.

I urge the legislature to work towards increasing, not diminishing, protection of fish and wildlife habitat. Also, please vote in joint session to disapprove Executive Order 107. Thank you for your consideration.

Sincerely,  
Michele Masuda  
P.O. Box 210755  
Auke Bay, AK 99821

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Michele Masuda <Michele.Masuda@noaa.gov> Mathematical Statistician Alaska Fisheries Science Center Auke Bay Laboratory
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MAR 17 2003

**Subject: Don't Transfer Permitting to DNR--Habitat Transfer in Executive Order 107**  
**Date: Tue, 11 Mar 2003 20:09:19 -0900**  
**From: "Julie Obermeyer" <jobermeyer@hotmail.com>**  
**Reply-To: jobermeyer@yahoo.com**  
**To: Anchorage\_LIO@legis.state.ak.us**

Dear Legislators:

I don't support the proposal to transfer the Department of Fish and Game Habitat Division permitting authority to the Department of Natural Resources. I understand there are some conflicts between the missions of the Department of Natural Resources and the Department of Fish and Game. This conflict threatens to undermine the effectiveness of habitat protection functions placed within the Department of Natural Resources.

I believe that the transfer of permitting function to the Department of Natural Resources will eliminate an important check and balance between habitat protection and development, and is a major step towards eliminating meaningful environmental review of proposed projects.

I ask that the legislature work for strengthening, not diminishing fish and wildlife habitat protection and oversight. Most importantly, I ask that you please bring the resolution to the Senate and House floors for debate and a VOTE in joint session to disapprove of the executive order.

Sincerely,

Julie L. Obermeyer

3935 San Ernesto Ave. #2

Anchorage, AK 99508

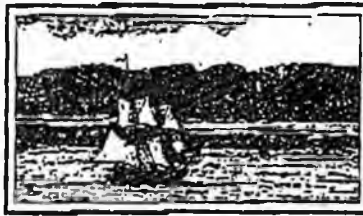
222-5277

[jobermeyer@hotmail.com](mailto:jobermeyer@hotmail.com)

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## Discovery ARTS



P.O. BOX 7814  
(907) 225-3188

KETCHIKAN, ALASKA 99901  
FAX (907) 247-3108

Date 3-11-03

To: House State Affairs Committee  
Re: Executive order 107

MAR 11 2003

This directive is a very poor idea. It will weaken protection of valuable salmon streams and despoil the aesthetics of valuable wilderness with potentially disastrous economic consequences. I've spent 20 years as a commercial fisherman and 20 years in the tour business. Both industries are very dependent on the biological integrity of S.E. Alaska's ecosystems. Streams in S.E. Alaska are an important element in the ecosystems and essential for the economic well being of both industries.

Protecting our salmon streams is essential for the future economic viability of the salmon industry. We are in a period of relative abundance in the salmon industry. However, the level of abundance we are experiencing is largely the result of cyclic environmental factor affecting ocean currents, weather and temperature that are not well understood. I remember vividly the low levels of salmon returns in the 60's. I am appalled that some of my fellow fishermen are not alarmed by this action by the governor. However, these mostly younger fishermen do not remember the years of poor harvest which prompted major changes in the salmon industry such as limited entry and the private non-profit hatchery system. Mother nature is fickle, and this cycle of abundance could quickly change and salmon returns could dramatically drop once again, placing salmon runs in danger.

The biological integrity of streams is also important for the tourism industry. Streams in uncut old growth timbered valleys are the heart and soul of our ecosystems in S.E. Alaska. As wilderness on earth diminishes and the population increases, the value of these valleys increases exponentially. The value of timber near streams in S.E. Alaska to tourism and the fishing industry far exceeds its value as timber harvested every 100 years.

The governor's proposal would dramatically weaken protection of areas that are essential for the long term economic vitality of the fishing and tourism industries for the short term gain of the timber industry

Respectfully,

Dale Pihlman

MAR 18 2003

3/11/03—

Thank you, Committee members, for this opportunity to comment on Executive Order 107. I'm a Habitat Biologist with ADF&G—though I'm speaking only for myself, not my agency or colleagues.

By now, you all must realize you've been given bad information about this proposal, both the rationale and consequences. For corrections regarding the rationale, there are project summaries prepared by ADF&G Habitat and Restoration regions I and II. I will also provide my own memo on this to your Committee. I believe few Alaskans want the consequences of EO 107. To understand these consequences, we need to look at how habitat protection happens, and how that will be affected by organizational structure and staff levels.

#### Loss of accountability

EO 107 strips ADF&G of its authority for habitat protection, but not its responsibility. ADF&G, and therefore users of fish and wildlife, will no longer have a voice at the table, let alone elevation rights. Under the EO, there is not even a requirement for DNR to consult with ADF&G. Yet by law, ADF&G's overall mandate includes protection of fish and wildlife, while DNR's does not. When authority and responsibility do not line up, things go wrong.

For credible habitat protection, a Commissioner charged with protection and management of fish and wildlife AND THEIR HABITAT, and subject to legislative approval, is needed for accountability. A Deputy Commissioner from DNR would NOT be legislatively approved, and would not be responsible by law for protecting use and enjoyment of fish and wildlife. This sounds like philosophy, but it is very important.

#### What does this mean to T16 permit review?

Title 16 fish habitat protection statutes in themselves are open and discretionary, tools for providing protection more than requirements for it. There are no regulations, just policy and statute, so Commissioner-level commitment and accountability are essential. You could see drastic reductions in fish passage and spawning habitat viability, and still strictly meet the "requirements of the statute"--- if the power to protect is not effectively invoked. It appears that this is exactly what the administration has in mind, given the staff cuts and recently drafted legislation. Draft legislation for ACMP that was recently circulated proposes changing General Concurrence projects into General Permits. The majority of T16 permits would then have NO REVIEW, no site-specific conditions. That is a recipe for disaster. Older USFS road crossings would be an example of where this leads—a large proportion of national forest culverts fail to meet fish passage standards.

#### What does this mean to other habitat protection: ACMP?

ACMP Habitat Standards, while broadly defined in regulation, are similarly discretionary. These standards provide the state's ONLY authority in reviewing federal actions—from timber sales to tideland fill. (Anything else we do is advisory, through Fish & Wildlife Coordination Act, FERC, etc. ) These habitat standards also guide municipal code through district coastal plans. The standards, and regulations reviewed to consistent with these standards, are the ONLY TOOLS we have for habitat protection outside of the streambed itself. While broadly defined in code, these standards are fairly well defined in the customary fashion they are used, like common law. The standards could perhaps be clarified, but they are VERY useful, and elevations are rare.

ACMP standards allow us to routinely provide riparian buffers and to avoid, minimize or mitigate effects on key fish and wildlife habitat through project review. This includes marine as well as anadromous fish habitat, including nearshore habitat, eelgrass and estuaries. Other than passage, nothing is more important than this. Yet there is no statutory or regulatory requirement to review such projects at all, let alone review them against these standards in a way that protects key habitat. Concurrence is assumed if there is no objection.

There is no indication that ACMP habitat standards will be used in project review at DNR, though it is currently a large part of our workload. I understand that draft ACMP legislation would eliminate the

habitat standards and coastal districts and would restrict review to a few federal projects. The Coastal Policy Council would be abolished and replaced with an industry rather than a community-oriented group. The administration's intention is clear. The intention, despite statements otherwise ("no change in substantive environmental requirements") is to eliminate even the basic, modest, habitat protection now provided for stream buffers, productive tidelands, and important upland habitats. This will cripple our review of projects on federal land as well as urban areas. If habitat protection remains a goal of the state, the legislature will need to assure through its own authority, that habitat protection is placed in the hands of an agency, and a Commissioner, committed to protect fish and wildlife through effective use of regulation.

Here are some more of the details on how project review and permitting will be affected.

#### **Regulatory chaos**

Oddly enough, other agencies will continue look to ADF&G for habitat guidance.

--The city of Juneau must consult with ADF&G for stream setbacks, restoration plans, subdivisions.

--Same for Army Corps wetland fill permits, and various federal and state actions.

The Fish and Wildlife Coordination Act requests consultation by state agencies with expertise in fish and wildlife --- ADF&G not DNR. Loss of ADF&G's role in the FERC process may lead to roadblocks with the federal agencies. Who will fill these roles, or change other agencies' regulations to fix the regulatory chaos?

#### **Inefficiencies: loss of teamwork, logistical and funding challenges**

There will remain a need for close communication with ADF&G bios, but there is no provision for this and it will not be efficient to do this from another agency.

With the demise of area offices, there will be a loss of the efficiency that comes with knowing the ground & the players. It will be impossible to schedule frequent site visits to distant locales, and since we don't know these places, it will be impossible to issue permits with minimal review. This will result in delays.

We may no longer be able to offer significant scoping early in project development, though that would save time and money for the applicant.

There are already considerable losses of funding (+ 1 million) for habitat protection, assessment, and restoration because many of the funding sources available to ADF&G cannot be transferred to DNR. This unnecessarily impoverishes habitat protection, contributing to degradation and delays.

#### **Staff Cuts**

Approximately one third of the state's permitting/project review staff received lay-off notices last week. SE Alaska was hit hardest, 5 of 9—including the most experienced HB's in the region. This represents over 50 years 'on the ground' from Icy Bay to southern SE. If anyone could streamline—it would be these master permitters. They know the country and the operators, and that is what it takes.

One is a federally-funded specialist in hydropower review, so this lay-off can't be for budget-cutting. For that matter, few of the staff cuts could be justified as cost-saving since only a portion of habitat's funding comes from state. A skeleton crew will remain to cover the entire Archipelago and outer coast to Cape Yakataga. What will this look like?

#### **Refuges/Critical Habitat Area Management--**

Area Habitat Ecologists currently look after refuges in their areas, but this is not proposed to continue at DNR. There will be only one refuge manager/permitter for the state--out of Anchorage ADF&G. Among SE Refuges/CHA's, three of four need management plans or updates. Permits are a means to implement refuge plans—but not the only means. Refuges need enforcement presence, public outreach, coordination of research, and resolution of user conflicts as well as site-specific permitting—and this will not be possible when one person serves all the state refuges. With increasing activity adjacent to and within refuges, refuges deserve more, not less, attention.

**Permitting: Delays, Degradation and/or Rubber-stamping**

There will be backlogs in transition and beyond. How can you stream-line with half or 1/3 the staff?

Most T16 fish habitat permits need field review, some before, during and after construction. But in context of the sweeping changes to ACMP which are ALSO being proposed-- changes that would turn T16 permits into "rubber-stamp general permits"--it is clear there is no commitment to field review or site specific permit conditions. This is not OK. In any case, staff reductions will force de facto 'general permits'. We are already stretched to the limit. There is no way we can cover for even one of the permitters lost to layoff. Degradation will go unmitigated, and undocumented. Bad culverts will fail and block passage. Streams will unravel, fish fail to spawn.

Compliance monitoring, and post-project inspections will be a luxury we can't afford—and without monitoring and inspections, there is no accountability. Enforcement is time-consuming and requires upper level staff support. Not likely at DNR. And wide-ranging ADF&G mgmt and research biologists, who DO get in the field and ARE trained, will lose the ability to enforce for Habitat.

**Other project review--**

In addition to permitting, ADF&G has advisory and regulatory roles with federal agencies and municipalities: "project review", as well as scoping and consultation. In southeast AK, ACMP standards are woven into these review roles, providing our sole state habitat protection authority outside of "ordinary high water". Given the staff levels and proposed priorities, we will lose the ability to apply ACMP standards. Given the draft ACMP legislation, we stand to lose the standards themselves.

There is no sign that DNR will pick up ADF&G's review roles in municipal and federal projects (timber sales/wildlife habitat, stream setbacks, estuaries, eelgrass beds). At DNR you will see much-reduced scope of review --- fewer projects reviewed, fewer issues addressed. You will see degradation of urban and forested watersheds, dwindling wildlife, at-risk stocks and impaired streams.

This will result in loss of state credibility—perhaps handicapping over-arching subsistence and development negotiations. Without hydro review, it may be hard for ADF&G to pass the 'red face' test in negotiations with our salmon-challenged neighbors to the south. There may be other effects down the road, including potential liability to ADF&G's expanding wildlife programs related to tourism and recreation. These SWG/'CARA' funds come with an umbrella goal of conservation planning for non-game species. This means looking at habitat.

Perhaps saddest is loss of a generation of Habitat Biologist expertise, crippling the state's ability to train new biologists and setting our habitat protection capability back at least 10 or 15 years --even if the EO decision is reversed within months.

**From my knowledge of habitat permitting and project review, I am confident in saying that EO 107 will NOT result in streamlined permitting. It WILL gut habitat protection and degrade habitat. It will discredit the state, create chaos, inefficiency, and delays—and may endanger emerging and economically important programs.**

One thing I've learned from working as a Habitat Biologist is that most Alaskans care about fish and wildlife. They care a lot... Maybe we find ourselves wondering—legislators, fishermen, citizens--- where is the limit of our loyalty and trust? Does it kick in when we find ourselves fed misinformation, when we watch state employees attacked without cause --- or public resources imperiled for private gain?

Some say EO 107 is a runaway train. But I don't believe that. And I don't want to see this wreck. Not in Alaska. **Please support the resolution to overturn EO 107.**

--catherine pohl, POB 21168, Juneau, AK 99802 907 586-1272 cpohl@hotmail.com

MAR 17 2003

**Subject: Keep the Habitat Division in Fish and Game**

**Date: Wed, 12 Mar 2003 12:53:10 -0800 (PST)**

**From: Mari Reeves <alaskamari@yahoo.com>**

**To: Anchorage\_LIO@legis.state.ak.us**

Dear Alaskan Legislators:

I am a biologist with a masters degree in natural resource management and 8 years of professional experience in the field of environmental contamination and cleanup. As such, I am concerned about the proposed changes to the Habitat Division of the Alaska Department of Fish and Game. I do not support Governor Murkowski's proposal to move the Habitat Division to the Department of Natural Resources. I think that gutting the Department of Fish and Game could have devastating consequences for our fish and wildlife populations, many of which are a resource to Alaska of themselves. This issue is important enough to me that I will not continue to support my legislators who vote in favor of this decision.

It is my job to deal with the more unfortunate consequences of natural resource development. I am steadily employed because improperly supervised development consistently causes damage to resources in a manner that is either extremely expensive to restore or is irreparable. Often, I witness the taxpayers paying pollution clean up bills for companies that profited from resource development then declared bankruptcy. Although it is true that technology around resource development has improved, chemical spills are often caused by human errors; and it is my belief that the capacity for human error has not significantly decreased concurrent with the touted improvements in technology.

Currently, the Habitat division of the Department of Fish and Game has the responsibility for oversight of land development; the onus is on this agency to protect habitat crucial to the survival and health of Alaska's fish and wildlife populations. These fish and wildlife populations are critical to Alaskans, to the cultural heritage of subsistence users, to the economy of communities supported by the fishing and tourist industries, and to all Alaskans who take pride in the wildlife diversity present and intact in our state.

The Habitat Division has the responsibility to keep wildlife diversity as intact as possible; to ensure that development happens in a sound manner. This is a proactive, forward looking, and important job. If people do not adequately supervise development up front, people like me have to pick up the pieces that fall behind. Often the pieces are broken or destroyed and the populations in a poorly-developed area are unable to recover. We can only come behind and tidy up the mess.

The Department of Natural Resources and the Department of Fish and Game have different objectives and roles.

Each agency follows its own mandates to act as a balance for the other. To move the Habitat Division into the Department of Natural Resources will shift this balance, and will do so in a way that is damaging to our resources and our resource-based cultures and economies.

I strongly encourage the legislature to oppose this recent gubernatorial decision, and to keep the Division of Habitat intact and within the Department of Fish and Game. I encourage you to bring the resolution to the Senate and House floors for debate and a VOTE in joint session to disapprove of the executive order.

Sincerely,

Mari Reeves  
14445 Buffalo St.  
Anchorage, AK 99516

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Bruce Weyhrauch  
House District 4

and

MAR 11 2003

Kim Elton  
Senate B

Gentlemen:

I am writing to express my extreme displeasure in Governor Murkowski's executive order to move habitat permitting authority to the Department of Natural Resources. I strongly oppose this move.

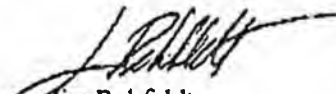
Alaska's economy and Alaskans depend on our unique fish and wildlife. Commercial and sport fisherman, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife. I ask that the legislature work to strengthen fish and wildlife habitat protection and oversight, not diminish it.

Checks and balances are needed to protect Alaska's fish and wildlife habitat. The Department of Fish & Game has a mission to protect Alaska's fish and wildlife resources, the Department of Natural Resources mission is to develop the state's resources. These two missions balance each other to manage the state's unique and diverse resources.

By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development.

I do not feel that Fish and Game oversight has significantly deterred or slowed economic development. Most permits are approved, and many proposed projects do not need them.

In closing, I ask that you listen to the arguments of the five former F&G commissioners who also oppose this move. They are best suited to understand the importance of maintaining habitat under F&G operations.



Jim Rehfeldt  
Juneau

MAR 17 2003

**Subject:** Statement on EO 107

**Date:** Wed, 12 Mar 2003 08:58:44 -0900


**From:** "James B. Reynolds" <ffjbr@uaf.edu>

**To:** fairbanks\_ljo@legis.state.ak.us

My statement is attached as a word file. Thanks.

Dr. James B. Reynolds  
Emeritus Professor of Fisheries  
School of Fisheries and Ocean Sciences  
University of Alaska Fairbanks  
P.O. Box 757220  
Fairbanks, Alaska 99775

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Written Statement to the House State Affairs Committee  
March 12, 2003

Mr. Chairman and committee members, thank you for this opportunity to testify. My name is Jim Reynolds and I am Professor of Fisheries at the University of Alaska Fairbanks. Although I am not here representing the university, I am representing the Alaska Chapter of the American Fisheries Society, an organization of 400+ professional biologists and managers from many fisheries agencies and organizations in Alaska.

Through Executive Order 107, Governor Murkowski has directed that habitat permitting authority, under Title 16 of the Alaska State Statutes, be moved from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR). In doing so, the Governor aims to accomplish two stated objectives: first, "streamline permitting"; and second, do so "without impacting substantive environmental requirements". The Governor is wrong -- neither of his aims will be accomplished -- and I will tell you why.

Governor Murkowski accuses the ADF&G, specifically it's habitat division, of being a major obstacle to development of natural resources. Yet, permitting is already as streamlined as such a complex process can be, if it is to have any meaning to the public interest. For example, in 2002, ADF&G permitters processed about 2000 fish passage permits, at an average rate of two weeks each, with less than one-half of one percent being denied. Most of the permitted projects required only slight, cost-effective revision in order to protect fish resources while allowing development to proceed. Contrast the ADF&G performance with that of the DNR which has a backlog of some 700 water rights applications -- some of them waiting 20 years -- and about 2000 other applications yet to be processed. Furthermore, if a distinct separation of habitat functions is so desired by the DNR, and works so well (using Fort Knox as the example given by Commissioner Irwin in his 3/11/03 testimony to the House State affairs Committee), why are we making changes? We already have this desirable situation with our current, proven structure!

Will EO 107 provide more development without impacting our fish resources and the habitat on which they depend? For the answer, one only need look south to states where the fox was put in charge of the henhouse. In these states, the check-and-balance system was foregone to pursue development with only the appearance of regulation. The result? Large sums are now being paid to repair the damage done. In the state of Washington, for example, the Department of Fish and Wildlife only manages fish and wildlife, and the Washington DNR has total regulatory authority for permitting development of aquatic habitat. Under this arrangement, extensive fish habitats have been lost -- one culvert and one timber cutting unit at a time. Today, thousands of road culverts in Washington state block salmon passage. Only recently have concerted efforts, at substantial taxpayer expense, begun to fix these problems. The price of a little protection

and self-discipline now is paltry, compared to the price of clean up and restoration to be paid by our children and their children, later.

On a personal note, I know many habitat biologists in the ADF&G and not one of them is against development of our natural resources. They believe, as do I, that the check-and-balance system we have, using the sometimes conflicting, but essential missions of both the ADF&G and DNR, is the best way to serve the public interest.

I urge the committee and the entire legislature to disapprove EO 107. If there are isolated administrative problems in the ADF&G, fix them administratively. Our sustained yield system is the envy of the world. Let's keep it intact. Thank you.

James B. Reynolds  
4627 Harvard Circle  
Fairbanks, AK 99709  
Phone 479-5828

**Subject: Recent House State Affairs Committee Hearing on EO 107**

**Date:** Sat, 15 Mar 2003 10:07:11 -0900

**From:** dryland <dbryland@gci.net>

**To:** Representative\_Bruce\_Weyhrauch@legis.state.ak.us

Dear Representative Weyhrauch:

First, I would like to thank you and members of the committee for providing this opportunity to comment on the issue. I am sending my written comments directly to you because I did not get a chance to testify on Tuesday evening and I was not able to return on Wednesday. I sent a copy of my testimony to the LIO in Anchorage via e-mail; however, afterward I realized that the copy of my testimony that was sent to Juneau through the LIO contained typographical errors. I am sending this message with my corrected testimony attached so that it may be entered into the written record in place of the document that contained the errors.

In my testimony, I pointed out what I believe to be a conflict between Executive Order (EO) 107 and existing state statutes. I have not heard of this issue being raised before and I want to bring it to the attention of the committee. I also illustrated the difference in the philosophies of the Alaska Department of Natural Resources (DNR) and Alaska Department of Fish and Game (ADF&G) with respect to the interpretation and application of their respective statutory authority.

Section 2 of EO 107 gives DNR the authority to issue permits to take, possess, transport, sell, offer to sell, purchase, offer to purchase fish, game, or marine aquatic plants or any part thereof or nest or egg of fish or game.

Authority over fish and game was specifically excepted from the purview of DNR in AS 44.37.020(a), which defines the duties of DNR as administering the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, *but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state* (emphasis added). This statute (AS 44.37.020) and others that were crafted to determine and define the functions of Alaska's state government were passed at statehood by many of the same people who were responsible for writing the state constitution.

Finally, I want to commend you and the Honorable committee members on the way the hearing was conducted. Each person that testified was treated with respect and dignity regardless of their views on EO 107.

Thank you for your consideration.

David Ryland

**Subject: Comments on EO 107**

**Date:** Wed, 12 Mar 2003 16:25:39 -0900

**MAR 13 2003**

**From:** "Martin Robards" <asmdr5@uaa.alaska.edu>


**Reply-To:** <mro@uaa.alaska.edu>

**To:** <Representative\_Bruce\_Weyhrauch@legis.state.ak.us>

Thank you for the opportunity to provide testimony on EO 107. I attended the Anchorage meeting last night but cannot attend tonight. I am hoping to find someone to provide my testimony verbally, but have attached a written copy to this e-mail. Please let me know if you have further questions.

Sincerely and thank you for your consideration of this important issue.

Martin Robards  
Department of Biology  
University of Alaska, Anchorage,  
3211 Providence Drive  
Anchorage, Alaska 99508  
mro@uaa.alaska.edu

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# Alaska State Legislature

Please enter into the record my testimony to the HSTA  
committee name

committee on EO 107, dated 3-11-03

MAR 17 2003

*Dirt of*  
 I BELIEVE F & G HAS GOTTEN  
 TOO LARGE & POLITICALLY POWERFUL.  
 THE HABITAT DIV HAS BEEN OBSTRUC-  
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 TIONIST OVER THE YEARS TO DEVELOPMENT  
 OF OTHER USES - I.E. AGRICULTURE, ETC.  
 I THINK BREAKING F & G IS A GOOD  
 IDEA & MOVING THE HABITAT DIV IN  
 PARTICULAR SHOULD BE TRIED  
 Pete Roberts

Signed: \_\_\_\_\_

Testifier

PETE ROBERTS

Representing (Optional)

Address

Box 1134 HOMER 99603

Phone No.

235-4113

MAR 17 2003

**Written Testimony Submitted to the Alaska State Legislature House of Representatives  
State Affairs Committee Regarding Executive Order 107.**

Chairman Weyhrauch and Honorable members of the committee:

First, I would like to thank the Chair and members of the committee for providing this opportunity to comment on the issue before the committee. To begin, I want to point out what I believe to be a conflict between Executive Order (EO) 107 and existing state statutes. I have not heard of this issue being raised before and I want to bring it to the attention of the committee.

Section 2 of EO 107 gives the Alaska Department of Natural Resources (DNR) the authority to issue permits to take, possess, transport, sell, offer to sell, purchase, offer to purchase fish, game, or marine aquatic plants or any part thereof or nest or egg of fish or game.

Authority over fish and game was specifically excepted from the purview of DNR in AS 44.37.020(a), which defines the duties of DNR as administering the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, *but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state* (emphasis added). This statute (AS 44.37.020) and others that were crafted to determine and define the functions of Alaska's state government were passed at statehood by many of the same people who were responsible for writing the state constitution.

The members of Alaska's legislature at this time and the framers of Alaska's constitution understood the importance of a system of checks and balances with regard to resource development and resource protection. This understanding of the importance of having resource protection on the same footing as resource development was in part a result of Alaska having the benefit of hindsight when framing the constitution and drafting natural resource-oriented laws at statehood. The legislators were able to look to California, Oregon, and Washington and the history of resource exploitation in Territorial Alaska as examples of what happens when resource protection is not on the same footing as resource development or when the responsibility for resource protection is located in an agency for which the primary purpose and function is fostering development.

The expertise to protect and manage populations of fish and wildlife lies solely within ADF&G. Neither the framers of the constitution, nor the members of the legislature that crafted and passed the laws related to natural resources or the organization of the government ever intended for DNR to have the authority to permit the taking of fish and wildlife, whether through direct or indirect means.

### **Resource Protection**

The question of resource protection has come up a number of times during the discussion of EO 107. Will protection be the same under the Alaska Department of Natural Resources (DNR) as it is under the Alaska Department of Fish and Game (ADF&G)? I believe the answer is no. These two agencies were created for two very different purposes and thus have very different missions, responsibilities, and philosophies.

### Departmental philosophies

The mission of DNR is to promote development of Alaska's natural resources. This mission and DNR's philosophy with respect to development is evident in the way that DNR interprets laws and regulations. DNR interprets resource development and resource protection statutes liberally with respect to development and developers, including those statutes and regulations that define process and protocol.

As an example of DNR's philosophy, consider the Division of Forestry and their interpretation of the Forest Resources and Practices Act (FRPA) and associated regulations that specify the type and nature of information that must be included in logging plans that are submitted to the division for review. On the surface, this example may seem insignificant; however, the omission of this information often turns out to be the root of many problems that loggers face with respect to compliance with present resource protection statutes and regulations.

In Southcentral Alaska, the Division of Forestry routinely accepts incomplete plans for logging operations. The information most often omitted from detailed plans of operation (DPO) is the location of surface water bodies, the location of stream crossings, and identification of stream crossing structures. This information is required by law to be included in DPO and is critical to agency personnel that review these operational plans; however, Division of Forestry personnel have stated "*there is no specific informational requirement under FRPA to identify the type of road crossing structure that will be used at streams*".

A brief examination of the forest practices regulations clearly shows that the Division of Forestry is wrong. The forest practices regulations state that road building and related activities in riparian areas, bridge construction activities, and material extraction sites located in braided, glacial floodplains must be identified in the detailed plan of operations (11 AAC.95.275(b)). These activities are required to be identified because research and experience show that with respect to logging, resource impacts and regulatory problems are most likely to occur in the riparian zone.

The purpose for the review is to inform agency personnel, the landowner, and the logging contractor (operator) of impacts that are likely to occur as a result of logging activities. Without this information, reviewers have no way of fully assessing impacts to public resources nor can they provide advice to assist the logger with regulatory compliance to ensure that these impacts are minimized or eliminated and to reduce the likelihood that a violation occurs during the logging operation.

In contrast to DNR, the mission of ADF&G is to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska. With respect to the Habitat and Restoration Division, ADF&G's mission, statutes, and regulations are interpreted to allow development of natural resources with causing [permanent, significant, etc.] harm to fish, wildlife, or their habitats. The guiding principle in Habitat and Restoration Division at ADF&G is the Public Trust Doctrine.

The Public Trust Doctrine provides that the public trust lands, waters, and living resources in a State are held by the State in trust for the benefit of the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of recognized public uses. The doctrine also sets limitations on the States, the public, and private

owners, as well as establishing the responsibilities of the States when managing these public trust assets.

The Public Trust Doctrine is applicable whenever navigable waters or the lands beneath are altered, developed, conveyed, or otherwise managed or preserved. It applies whether the trust lands are publicly or privately owned. The doctrine articulates not only the public rights in these lands and waters, it also set limitations on the States, public and private owners, as well as establishing duties and responsibilities of the States when managing these public trust assets.

The Public Trust Doctrine has been described as "*an affirmation of the duty of the State to protect the people's common heritage in streams, lakes, marshlands, and tidelands...*". This duty of protecting public trust resources is central to the Public Trust Doctrine, for as stated by an Oregon court: "*These resources, after all, can only be spent once. Therefore the law has historically and consistently recognized that rivers and estuaries, once destroyed or diminished may never be restored to the public and, accordingly, has required the highest degree of protection from the public trustee.*".—Morse v. Oregon Division of State Lands, 581 P.2d 520 (1978)

#### Functions, Duties, and Responsibilities of the Commissioner

The responsibilities and authorities of DNR are defined in AS 44.37.020(a), which states:

*The Department of Natural Resources shall administer the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, land, water, agriculture, soil conservation, and minerals including petroleum and natural gas, but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state. Emphasis added.*

The duties of DFG are similarly defined by statute in a broad sense (AS 44.39.020) but are further refined under the duties and responsibilities of the Commissioner of Fish and Game.

DNR: EO 107 gives authority to a deputy commissioner in DNR but does not specify any qualifications for this position. Anyone can be appointed to this position regardless of their knowledge of fish or wildlife habitat, biology, or fish and game management. Further, perusing the statutes I could find no specific functions, duties, requirements, or qualifications for the commissioner of DNR. In addition, the deputy commissioner is appointed without public input or legislative oversight.

ADF&G: Statute declares that the commissioner shall be a qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state (AS 16.05.010.). The commissioner of ADF&G is also appointed, however, this appointment is subject to confirmation by the legislature.

The function of the commissioner of ADF&G, as defined in statute, is to manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well being of the state (AS 16.05.020(2)). Without the authority to regulate development and thereby

directly influence how development impacts fish and wildlife resources and their habitats, the commissioner of ADF&G will lose the ability to perform his statutory functions.

In closing, I ask that the committee consider the future of Alaska's resources. Keep habitat protection in the hands of ADF&G by voting to reject EO 107.

Sincerely,

/s/

David Ryland, CF  
Professional Forester  
PO Box 294  
Girdwood, AK 99587  
(907) 337-6756

Page 1

**LEGISLATIVE INFORMATION OFFICE**

Email: Ketchikan\_LIO@legis.state.ak.us

50 Front St., Suite 203  
Ketchikan, Alaska 99901Phone: (907) 225-9675  
Fax: (907) 225-8546**WRITTEN TESTIMONY**NAME: MIKE SALLEE  
ADDRESS: PO Box 7603  
KETCHIKAN AK 99901  
PHONE: 247-3828BILL# or SUBJECT: EO107

COMMITTEE: \_\_\_\_\_

I am Mike Sallee, born in and residing in Ketchikan for most of my 56 years. I began my adult working life as a teenager working on a produce boat and salmon packer that traveled the length and breadth of SE Alaska.

For the last two decades I've seasonally deckhanded on a longline boat for halibut, blackcod and other bottom fish. ALFA, Alaska Longline Fishermen's Association opposes EO107

I've also been harvest diving during this same two decade period. As a permit-holding harvest diver I am a member of SARDF, SE AK Regional Dive Fishermen's Association. I am one of a number of divers in SARDF who've expressed dismay that SARDF's board has come out in favor of EO107

Also for the last two decades I've owned and operated a small sawmill providing lumber for over 100 different clients - mostly my close neighbors but also people in other parts of Alaska and other states.

The governor has surrounded himself with several former timber industry lobbyists, timber industry legal <sup>counsel,</sup> ~~staff~~

Page 2

## ALASKA STATE LEGISLATURE

50 Front St. Suite #203  
Ketchikan, Alaska 99901

Phone: 225-9675

Fax: 225-8546

## LEGISLATIVE INFORMATION OFFICE

WRITTEN TESTIMONYNAME: Mike Sallee

ADDRESS: \_\_\_\_\_

PHONE: 247-3828

EMAIL: \_\_\_\_\_

BILL# or SUBJECT: EO 107

COMMITTEE: \_\_\_\_\_

(continued from page 1) a former pulp mill manager, a former regional forester - in short a dream team heavily weighted toward corporate timber interests.

In noting the habitat biologists layed off it appears the Morkowski team did not like the message delivered by those biologists and is responding by disposing of the messengers.

Reducing Habitat Div. personnel as the governor has done in Ketchikan, Sitka, Anchorage and other towns will mean fewer people with expertise in the field and therefore less data upon which to base enforcement.

From my layman's perspective there are two parts to law - the written statute, and equally important, the enforcement part. We can have great statutes, but they're utterly useless if activities in the field are not monitored and enforced.

Over the last several days I've heard and read numerous innuendos and complaints about habitat division. Every complaint that has been specifically identified has been thoroughly explained and rebutted by ADAG personnel involved.

Page 3

# ALASKA STATE LEGISLATURE

50 Front St. Suite #203  
Ketchikan, Alaska 99901



Phone: 223-5515  
Fax: 225-8546

## LEGISLATIVE INFORMATION OFFICE

### WRITTEN TESTIMONY

NAME: Mike Sallee  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

PHONE: 247-3828  
EMAIL: mikesallee@hotmail.com

BILL# or SUBJECT: EO 107  
COMMITTEE: \_\_\_\_\_

(continued from page 2)

I can only conclude that EO 107 is not about streamlining. It's about rubber stamping.

Please bring to floor vote a resolution to REJECT EO 107

Our fish and wildlife and the habitat it depends upon is too valuable to be making a decision geared primarily toward tending favor from those in political power and repaying political favors.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14-11111111  
Ron Wolfe, Forester  
Sealaska Corp.

**SEALASKA CORPORATION TESTIMONY ON  
EXECUTIVE ORDER 107**

Good evening Chairman Weyhauch and members of the House Committee on State Affairs, my name is Ronald R. Wolfe and I am the Corporate Forester for Sealaska Corporation. I would like to offer my testimony this evening in support of Executive Order 107 that would transfer the habitat permit functions from the Department of Fish and Game to the Department of Natural Resources. My perspective is based on my extensive experience with state resource regulation of Alaska's forest industry through our Forest Resources and Practices Act, which continues to be one of the best in the nation. But, we have experienced disconnects through the years from what otherwise is a remarkably successful consensus based process.

This transfer is an opportunity repair these disconnects by bringing important interlocking affiliations between resource disciplines under one Commissioner to achieve an improved administrative process. In the same way that relationships and communications are improved between operators and agency personnel during field inspections, this transfer will create a closer nexus between the professionals for improved organizational relationships. It is an opportunity to recalibrate agency perspectives through information

exchange, cross training, and to establish a closer physical proximity so a higher degree of efficiency can be achieved at a time when state government must become more efficient.

While these opportunities exist, they must be based upon competent field inspections that include fisheries biologist representation. This process can create a foundation to support and maintain the high public confidence in our resource protection that we in Alaska enjoy, while at the same time create regulatory efficiencies vital to the rebuilding of our industries.

We look forward to our continued relationships with Alaska Department of Fish and Game with the functions that will be retained there for such things as science and research. This transfer will likely improve our relationships for these efforts after the permit functions are transferred to DNR.

Thank you.

**Subject: Testimony heard 3/12/03 re EO 107**

**Date: Sat, 15 Mar 2003 14:22:07 EST**

**From: Nursecate@aol.com**

**To: Representative\_Bruce\_Weyhrauch@legis.state.ak.us**

Thank you again for hearing testimony.

My name is Catherine Senungetuk and I am representing myself. I've lived in Alaska for 27 years and work as an elementary school nurse. I am testifying tonight because I care about this state and its future beyond our current generation.

I would like to thank the State Affairs Committee for taking testimony. I would ask that the resolution to disapprove EO 107 be accepted, and this EO be allowed onto the floor of a joint session for a vote to override. Rather than testify about details of what I believe will be negative impact, I would simply ask that EO 107 is overridden for these following reasons.

1) Why risk? There is a very high risk that loss of Habitat permitting by Alaska Department of Fish & Game (ADF&G) will negatively impact fishing in Alaska, and by this I mean all aspects of fishing - sport, commercial and subsistence fishing.

I would say fish are Alaska's greatest, most sustainable and renewable resource. WHY would the State risk this renewable resource in an act which would undo oversight that has been in place since Statehood and indeed was integral to becoming a State? If the Habitat division of ADF&G is essentially gutted, there are no assurances and no safeguards in place for fish and their habitat. The Department of Natural Resources' (DNR) mission is to develop, not to manage, protect, and maintain.

I have heard promises and assurances from DNR and those who approve of this order. I would like to say that just because someone gives us careful and sincere verbal assurances, once authority is in place, anything can happen. As an illustration, when Governor Murkowski was criticized recently about his proposed \$10.00 tax or "user fee" on each new studded tire purchased, especially when he ran for office on no new taxes, the Governor responded, "Well, you don't have to drive." Are we going to also say, "You don't have to fish"?

2) Loss of fish habitat not only affects fishing but tourism as well, another of Alaska's most "renewable" resources. How many people do you know who come to Alaska or dream of coming to Alaska to fish?

3) Lastly, EO 107 will essentially take away the ability of ADF&G's mission to protect, maintain, and improve fish, game and aquatic plant resources of Alaska. This does not show good stewardship of Alaska's resources. If Alaska ever wants to attempt to resolve the subsistence issue, this is not a good first step, either in regards to the State's example of leadership to the Federal Government, or in the actions of the State towards the Alaska Native Peoples and indeed to anyone who fishes in Alaska.

I again ask that the Resolution to Disapprove EO 107 is accepted, that EO 107 is allowed to come to a vote in a joint session, and I respectfully ask for your vote to override EO 107.

Thank you very much,

Catherine Senungetuk  
7050 Crawford Street  
Anchorage AK 99502  
907/243-6843

Testimony heard 3/12/03 re EO 107

e-mail: Nursecate@aol.com

## SCBOA

**SITKA CHARTER BOAT OPERATION'S ASSOCIATION  
P.O. Box 2422  
SITKA, ALASKA**

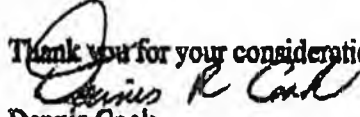
March 12, 2003

Dear Members of the House State Affairs Committee,

I am writing to express our strong reservations about Executive Order 107, concerning the transfer of the Habitat Division from the Department of Fish and Game, to the Department of Natural Resources. We feel this is not in the best interest of fish, wildlife or their habitat.

We strongly support the past performance of the Habitat Division within the Department of Fish and Game, in managing and protecting the natural resources we depend on for our livelihood.

Thank you for your consideration.



Dennis Cook

President

Sitka Charter Boat Operators Association

---



## Sitka Conservation Society

PO Box 6533

Sitka, Alaska 99835

(907)747-7509

(907)747-6705 fax

home.gci.net/~sitkawild

### Testimony of the Sitka Conservation Society concerning

#### EO 107: Transferring Fish Habitat functions from ADF&G to DNR

The Sitka Conservation Society has worked for the last 30 years to protect the resources of Southeast Alaska. We believe that economic health depends on healthy land and waters. Our members include commercial fishermen, hunters, tour operators, and many others who rely on the bounty of our surroundings for their living and their enjoyment.

We do not believe the transfer of the Habitat Division is in the best economic interest of the state or our members. It removes a necessary Check and Balance from our administrative system. The mission of the Department of Natural Resources is to promote development of our resources. The mission of the Habitat Division is to see that when development occurs, it does not destroy the habitat on which those resources depend.

Furthermore, it is clear that the stated reasons for the transfer are not justified. The Governor's intent is to "streamline the permitting process". In FY2002 ADF&G processed over 3000 permits for one year. F&G currently issues fish habitat permits in an average of 15 to 17 days. DNR has historically been much slower than F&G in processing permits. When F&G delays a permit it is because it is going to cause damage to fish habitat and thus damage our commercial fishing industry, and other fish harvesters. It is not likely that DNR will be able process permits faster and better than ADF&G. Developers take for granted the Title 16 permitting service provided by F&G; the quick response to emergency calls after washouts and other emergencies, field trips at short notice to address complicated situations, field permits issued the same day on the ground, and so on.

Permitting time for T16 permits will increase under the new system, because of significantly fewer staff, reduced field presence and field permit issuance, and greater dependence on applicants to provide information. Instead of going to the field to work things out on the ground, information gathering will most likely be primarily a paper exercise. If inadequate information is provided, then DNR permitters will likely request additional information, or cover the missing info with generic stipulations that may or may not be a good solution for fish habitat or the applicant. Transfer of T16 to DNR may also mean that T16 permits will now be subject to the expense and delay of DNR's 30 day public notice requirement. DNR requires that the public pay fees for permit issuance, so the public may now be required to pay for T16 permits.

Under the current system, the Habitat Division pursues a great deal of grant money. Habitat currently receives about \$2.2 million in state general fund moneys, \$700,000 in project specific federal funds, and a complex pile of dollars from other sources. Untangling these funding sources and meeting contractual commitments will be a major task. DNR is not likely to pursue such diverse funding, and general fund dollars will probably be inadequate to support the proposed DNR division. This may result in additional DNR general fund requests, and likely more layoffs.

This administration, which has pledged to create more jobs, has just moved two full-time employees from Sitka to unemployment, and eliminated other seasonal positions. This does not help our community.

We urge the legislature to reverse this executive order.

Sincerely,

*Page Elac*

Page Elac, Acting Director

Governor Murkowski  
Office of the Governor  
POB 110001  
Juneau AK 99811-0001

2-10-3

Dear Governor Murkowski,

At the February 5<sup>th</sup> meeting of the Sitka Fish and Game Advisory Committee a motion was made. That motion stated.

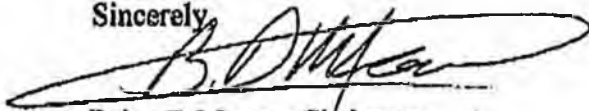
**The Sitka Fish & Game Advisory Committee opposes moving the habitat and permitting functions from the Alaska Department of Fish & Game to the Department of Natural Resources.**

This motion was supported unanimously by a vote of 13 to 0.

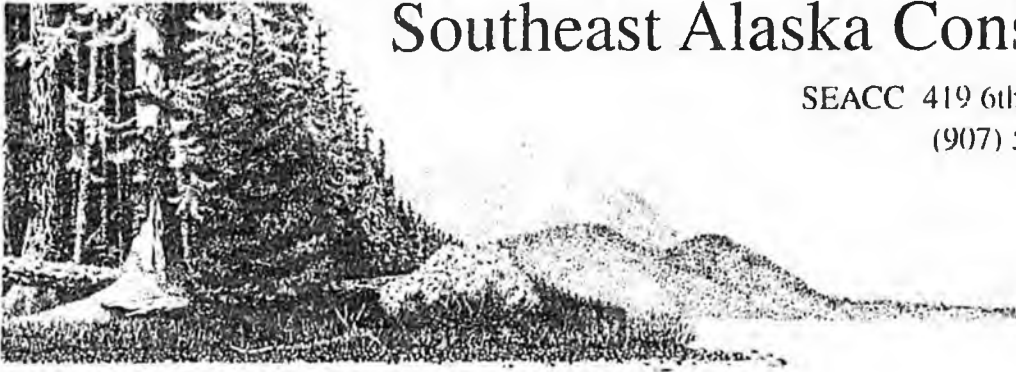
The Sitka Advisory Committee is made up of stakeholders from the following Fishery user groups

- ❖ Seiners
- ❖ Subsistence
- ❖ Gill netters
- ❖ Power Trollers
- ❖ Charter Operators
- ❖ Sports Fishermen
- ❖ Crabbers
- ❖ Conservationists
- ❖ Processors
- ❖ Hunters
- ❖ Hand Trollers
- ❖ Longliners
- ❖ At large members
- ❖ Trappers
- ❖ Guides

Sincerely,



Brian D Massey Chairman  
Sitka Fish & Game Advisory Committee



# Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 200, Juneau, AK 99801  
(907) 586-6942 phone • (907) 463-3312 fax  
www.seacc.org • info@seacc.org

March 12, 2003

House State Affairs Committee—Representatives Weyhrauch, Holm, Dahlstrom, Lynn, Seaton, Berkowitz, and Gruenberg

**Subject: Testimony on Executive Order 107—ADF&G's Habitat Division**

Honorable State Affairs Committee Members:

Thank for you for holding hearings and allowing the public to submit testimony and comments on the proposal to move Habitat to DNR. Executive Order 107 is not a solution to speedy permitting. It eliminates checks and balances, and is a source of new problems for healthy fisheries, big game habitat, jobs, and Southeast Alaska's economy. Please accept this letter as Southeast Alaska Conservation Council's written testimony.

SEACC is a coalition of eighteen volunteer community conservation groups in fourteen communities across Southeast Alaska, from Yakutat to Ketchikan. SEACC's individual members include commercial and sport fishermen, hunters and guides, tourism and recreation business owners, small timber operators, Alaska Natives, and subsistence hunters and gatherers. SEACC is dedicated to safeguarding the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources.

When talking with people from around the region to understand how this would impact communities, time and time again, people told me that the salmon they fish commercially, charters they run, hunts they lead, are all dependant on healthy fish and wildlife habitat. The industries they work in need big game and fish in streams. Our forests and streams are enormous economic engines in small towns around Southeast, putting food on the table and sustaining jobs for families.

In 1953, Alaska was declared a National Disaster area because our fisheries had been hammered by fish traps run by outside companies. Protection of fishery resources was a driving force behind statehood, and those first legislators wisely solved the problem of bad management by assigning fisheries to ADF&G. Ensuring that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and

development of these resources are in the best interest of the economy and well being of the people of the state is a sound approach that balances interests of all Alaskans.

People in Southeast Alaska have shown many times that they want balanced use of the region's resources. They want logging jobs, but they want enforcement of state laws designed to protect Alaska's unique fish and wildlife resources. They also want jobs in other industries like commercial and sport fishing. Many Title 16 (habitat) permits are issued after consultation with development sponsors or private landowners and modifications to the original proposal result in better projects for both the developer and the fish. If the Habitat Division moves to DNR, fish and wildlife resources and the protection of their habitat will no longer be on an equal footing with development interests. Timber industry needs will supersede other resource industries (e.g., commercial or sport fishers) needs.

Without balanced and knowledgeable oversight, many projects will be permitted without modifications that benefit fish habitat; e.g., bigger culvert, avoid rearing habitat. Loss of anadromous fish production causes a loss of resident fish production, diminished health of the riparian areas, and wildlife. Though fish habitat is lost one culvert or project at a time, cumulative effects will have compound impact. Prevention of habitat loss is more economical than habitat restoration. The Pacific Northwest is a good example. Salmon runs are only a fraction of what they once were largely because of habitat losses. Hundreds of millions of dollars are now being spent to restore lost habitat, and those fishing jobs have vanished into thin air.

Sections 18 of the executive order repeals requirement that the State Forester provide detailed plans of operation for logging operations which are supposed to show stream crossings, anadromous and high value resident fish streams, riparian buffers to be retained, and other measure to prevent non point pollution. This kind of information is critical to people who live near a sale area, so that they can know whether or not their drinking water, hunting areas, fishing streams, or other resources will be affected. Removing the source of this kind of public information is irresponsible and ensures conflicts between communities and developers.

Protecting fish and wildlife habitat is a big deal to Alaskans. Decisions about it are serious and must be approached with great caution. There must be better ways to streamline permitting that do not eliminate vital checks and balances, or cause new problems for healthy fisheries, big game habitat, jobs, and Southeast Alaska's economy.

On behalf of our thousands of members in Alaska and our 18 member groups throughout Southeast Alaska, please vote for a resolution opposing Executive Order 107.

Thank you for the opportunity to comment.

Aurah Landau  
Grassroots Organizer



MAR 17 2003

**State House Affairs Committee  
Rejection of EO107**

My name is Jim Stubbs and I am a thirty-two year resident of Alaska and a constituent of Representative Lynn. I have been in construction all thirty-two years in Alaska, and have worked from Prudhoe Bay to Ketchikan. My reason for coming to Alaska in 1972, was its rugged beauty, to hunt and fish, and raise my family under these outstanding conditions. I have lived my dream and fished and hunted all across our great state. The use of our fishing and hunting resources are very important to my family and to all the people of the state of Alaska. With this I would like to state that habitat is the key to the production of Alaska's salmon stocks. If anyone doubts this, that habitat and its protection are ~~the~~ key to our healthy salmon stocks, you only have to look to the South to Washington and Oregon. There, the loss of habitat has taken away their wild fish and replaced them with fish produced in a plastic bucket. Is this what we want for our children and their children to look forward too? Will this be our legacy?

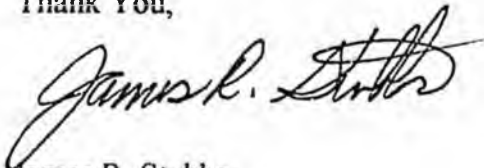
I am a member of the Anchorage Fish and Game Advisory Committee, an advisory committee that represents nearly 50% of the population of Alaska. At our February meeting we voted unanimously against the transfer of habitat division to DNR and sent a letter to the governor voicing our concern. We take this issue very seriously and so do members of the Anchorage community.

In my line of work, as a structural building inspector, I travel around to the various jobsites and housing projects in Anchorage only to hear the hard working construction workers, who I might add, ALL vote, voice their concern and disbelief at the perceived attack on the habitat of the state of Alaska. Most of these people came to Alaska because of a love for the outdoors and have worked hard building our great state. The last thing they want to see is their enjoyment in hunting and fishing diminished. This is one of the hottest topics I have seen since the discussions of the Exxon Valdez fiasco. As you discuss this extremely important issue, please consider the following points:

- 1) Extensive research in the Pacific Northwest has shown that the loss of habitat is disastrous to salmon.
- 2) Habitat is critical to the survival of fish and wildlife, something that is very important not only to Alaskan's, but also to the very important industry called "tourism."
- 3) Consider ~~the~~<sup>the</sup> value of the fish and wildlife to our children and their children. The resources belong to **ALL ALASKAN'S**, not just a chosen few.
- 4) Habitat is critical to the survival of fish and wildlife, let's not fall prey to the same fate that befell the Pacific Northwest.

In closing, in construction if you were building a ten story building with a crew of fifty workers, be they carpenters, plumbers, electricians, labors and others with the time frame of two years to completion, if you reduce my crew by 30% or 40% how in the world could you expect me to not be delayed in completing the building. The answer is, you couldn't! This is my reason for opposing the transfer it simply makes no sense.

Thank You,



James R. Stubbs

3311 Starboard Lane

Anchorage, Alaska

99516

gstubbs@gci.net

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

TONY KNOWLES, GOVERNOR

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

### MEMORANDUM

TO: Wayne Dolezal  
Project Review Coordinator  
Region II  
*Wayne Dolezal*

FROM: Cevin Gilleland  
Area Habitat Biologist  
Mat-Su/PWS/Copper Basin

DATE: February 7, 2003

SUBJECT: Governor's Press Conference  
Monday, February 5, 2003  
Misinformation *Glenn Parks / Tok Cutoff*

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As you know, I was the primary Department biologist that worked on two projects that Governor Murkowski referenced in his Monday, February 5, 2003, press conference. These were the Alaska Department of Transportation and Public Facilities' Tok Cutoff Highway upgrade and the Glenn-Parks Highway interchange project.

The Governor's statements about the Habitat and Restoration Division's review and permitting of these two projects were completely wrong with respect to the Glenn-Parks Highway Interchange and misleading with respect to the Tok Cutoff.

Glenn-Parks: The Governor claimed that the Coastal Consistency Finding was issued in March 2001 and that Habitat Division did not issue a permit until 2002, 16 months after the deadline, and that some permits were held up until 2003. The facts are that the coastal Consistency Finding was issued on March 19, 2002. It required that specific plans be submitted to the ADF&G for permits at least 30 days prior to beginning activities that require ADF&G approval. As of this date the Department has issued seven permits on the Glenn-Parks Interchange project. The average time from our receipt of plans and specifications to permit issuance has been four (4) days.

Tok Cutoff: The Governor claimed that the ADF&G originally had no objection but later changed our comments and halted the project. Our initial scoping comments on the Tok Cutoff

upgrade were based on information provided by the ADOT&PF. In their scoping document the ADOT&PF did not include the fact that they planned to divert a clear water tributary to the Copper River or that the project would impact approximately 30 acres of wetlands. When the ADF&G learned of the additional potential impacts we requested additional information to clarify ADOT&PF's plan and to provide comments to protect Alaska's fish and wildlife resources.

I have reviewed the files and have provided a complete summary of the Habitat and Restoration Division's involvement in these projects.

cc: L. Trasky

Attachment I: Glenn-Parks Interchange (3 pages)

Attachment II: Tok Cutoff (3 pages)

## Glenn- Parks Interchange

1. The Governor stated that the ACMP consistency review was completed in March 2001, that ADF&G permits were not issued for 16 months, and that the ADF&G delayed the project. These statements are all incorrect.
2. The ACMP Final Consistency Determination was issued on March 19, 2002 (not 2001). The project was scheduled to begin construction in the fall of 2002 (it began in August 2002).
3. All ADF&G permits have been issued in a timely manner. The Governor implied that ADF&G permits were to be issued concurrently with the Consistency Determination, when that document specifically states that ADF&G permits would be issued within 30 days of our receipt of detailed plans for those specific portions of the project that required our authorization. To date, seven Fish Habitat Permits have been issued for the project with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

### Resource Concerns

4. The project affects approximately 30 acres of high value wetlands within the boundary of the Palmer Hay Flats State Game Refuge and two anadromous fish streams – Spring Creek and Liepitz Creek. Both these streams support high densities of rearing and overwintering coho salmon. Spring Creek has been documented to support over 600 juvenile coho salmon per acre. Cook Inlet coho salmon stocks have been declining for many years. In 2002, the Board of Fisheries designated upper Cook Inlet coho salmon a stock of concern.

### Project Information

5. The Glenn Parks Interchange is a Department of Transportation and Public Facilities (ADOT&PF) “design-build” project. “Design-build” means that the ADOT&PF provides the project concept and the “design-build” team subsequently develops the specific construction plans. The ADOT&PF project concept was reviewed for consistency with the ACMP, and found consistent, with alternative measures, on March 19, 2002, not March 2001 as the Governor stated. The “Design-Build” team (CH2MHill/Kiewitt Pacific) was selected in June 2002.

### Chronology

6. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
7. March 19, 2002: The ACMP Final Consistency Determination was issued.

- The Determination included Alternative Measure number 10, which reads as follows: *“Sufficient construction installation plans and specifications for all work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 shall be provided to the ADF&G for review and approval at least 30 days prior to beginning construction. All work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 (including springs, seeps, backwaters, sloughs, distributaries, or surface waters connected to these creeks) is prohibited without the prior written approval of the ADF&G.”* Since, at that time the “design-build” team had not been selected, and plans had not been submitted, the ADF&G could not issue a permit.
8. April 16, 2002: The US Army Corps of Engineers issued its Department of the Army Permit. This permit was later modified with an effective date of September 16, 2002 to accommodate design changes made by the contractor.
  9. June 24, 2002: Anticipated date of ADOT&PF’s announcement of Notice of Intent to Award the primary contract for the project.
  10. August 2002: Anticipated date of award of primary contract for the project.

#### ADF&G Permits

11. On Thursday, September 19, 2002, the ADF&G received an application for the placement of temporary and permanent fill below the OHW mark of Spring Creek. On Wednesday, September 25, 2002, the contractor notified the ADF&G of their desire to begin placing fill the following morning. A Habitat Biologist drove to the project site and a field permit was issued to allow the work. **Time to issuance: 2 hours.**
12. On Thursday September 26, 2002, Fish Habitat Permit FG 02-II-0617 was issued authorizing and addressing all aspects of the placement of temporary and permanent fill below the OHW mark of Spring Creek. **Time to issuance: 4 business days.**
13. On Thursday September 19, 2002, the ADF&G received an application for initial construction activities associated with the replacement of the undersized 4-foot culvert. Work begins before the permit was issued. On Tuesday October 1, 2002, Fish Habitat Permit FG 01-II-0458 was issued. **Time to issuance: 8 business days.**
14. On Monday, September 30, 2002, the ADF&G received an application to place permanent fill below OHW of Spring Creek. On Monday, October 14, 2002, Fish Habitat Permit FG 02-II-0624 was issued. **Time to issuance: 10 business days.**

Glenn – Parks Interchange

15. On Tuesday, November 5, 2002: ADF&G receives application for the placement of temporary fill below OHW of Spring Creek. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Monday, November 25, 2002, the Field Permit FG 02-II-0658 was issued (Later changed and recorded as FG 02-II-0692). **Time to issuance: less than 1 business day.**
16. On Thursday, November 7, 2002, the ADF&G received an application for final construction activities associated with replacement of undersized 4-foot culvert. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Wednesday, November 27, 2002, Fish Habitat Permit FG 02-II-0622 issued. **Time to issuance: 3 business days.**
17. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**
18. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**
19. On Thursday, January 30, 2003, Thomas Dougherty of DOT transmits an email stating that he has seen no adverse effect to the project due to Title 16 permitting issues (Attachment).
20. On Friday, January 31, 2003, Scott Fowlds, Project Manager for Kiewit Pacific Company, states that Title 16 permitting has not caused any delays on the project.

Note: Project designs and specifications often changed after materials had been submitted to the ADF&G for review. The dates provided reference the dates that final plans were received.

ADOT Tok East 30 Project

Tok East 30 is an Alaska Department of Transportation and Public Facilities (ADOT&PF) project to upgrade the Tok Cutoff. The project includes replacement of bridges over the Chistochina River and Sinona Creek, filling approximately 28 acres of wetlands, and diverting a clear water tributary of the Copper River.

During the Governor's press conference on Monday February 3, 2003, he stated:

"On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and litigation measures. Habitat's foot dragging has caused a delay in obtaining the needed permits from the Corps of Engineers."

The Governor's allegations are false. The ADF&G, in scoping comments provided on March 3, 2000, had no objection to the project concept, however, ADF&G's comments noted that Fish Habitat Permits would be required for the Chistochina River and Sinona Creek bridges. In the ADOT&PF request for scoping comments there was no mention of a stream diversion, 28 acres of wetland fill, or placement of material below the ordinary high water line of fish bearing waters.

Scoping comments are provided initially to note resources of concern based on a project concept, not specific details. When the ADF&G subsequently learned that the project would require a stream diversion and 28 acres of wetland fill, we requested plans and specifications for the stream diversion, a copy of the ADOT&PF's alternatives analysis, their sediment and erosion control plan, and their mitigation plan.

Timeline:

- 1) January 26, 2000, ADF&G received a request for scoping comments from the ADOT&PF for Tok Cut Off MP 30-38. The request was based on the project concept, not specific details. It did not include mention of 28 acres of wetland fill or a stream diversion. March 3, 2000, the ADF&G responded to the request for scoping comments with a letter of non objection stating that permits would be required for the new bridge at Sinona Creek, and the replacement bridge at the Chistochina River. (Review time 36 days)
- 2) On July 3, 2000 the ADF&G received a permit application for the Chistochina River and Sinona Creek based on preliminary plans and specifications.
- 3) On July 17, 2001, the ADF&G received a notice from the Corps of Engineers that the project would involve the placement of fill in 28 acres of wetlands adjacent to the Copper River and would divert an unnamed tributary stream of the Copper River. This information had not been previously provided to the ADF&G.

- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (Response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. That permit expired on December 31, 2001. (Response time 32 days)
- 6) On August 24, 2000, the ADF&G received the additional information requested about the Sinona Creek Bridge. On November 13, 2000, the ADF&G issued the Fish Habitat Permit. That permit expired on December 31, 2002. (Response time 81 days)
- 7) On August 30, 2001 the ADF&G provided comments to the Corps of Engineers, with a copy to the ADOT&PF, expressing concerns about the wetland fill, stream diversion, the lack of plans for the stream diversion, and the lack of mitigation. This was not a change of ADF&G's previous position, but a revision based on new project information (approximately 30 acres of wetland fill and a stream diversion). (Response time 44 days)
- 8) On September 21, 2001 the ADOT&PF provided additional information regarding sediment and erosion control and wetland impacts. Plans and specifications for the stream diversion were not included.
- 9) On November 30, 2001, requests for a permit amendments were received from DOT&PF for the Sinona Creek and Chistochina River bridges were received.
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (Response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (Response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion (response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion.
- 14) On August 13, 2002, the ADF&G conducted site inspections of the Chistochina River Bridge and the unnamed stream that the ADOT&PF plans to divert. (2 burbot; 1 salmonid shocked in stream.)

The Corps of Engineers permit was issued on April 15, 2002. According to Jan Stuart, Corps of Engineers, the ADOT&PF has not signed that permit.

Tok East 30

According to ADOT&PF, Melissa Parker (Feb 7, 2003) the ADOT&PF is upgrading plans and specifications for the entire project and will be submitting those plans in the near future.

**Subject: Re: EO 107**

**Date:** Wed, 12 Mar 2003 17:41:44 -0800

**MAR 17 2003**

**From:** mms@gci.net

**To:** Anchorage\_LIO@legis.state.ak.us

Dear Committee Members and Citizens,

I wish to voice my opposition to Governor Murkowski's executive order 107. I believe that the Department of Fish & Game has done an admirable job of processing permits with a fair evaluation of land use and protection of Alaska's sensitive fish and wildlife resources. I believe that the Governor Murkowski's plans to consolidate the permitting process overlook the importance of sound management of Fish and Game in our state. The Governor has proposed these plans with the guise that he intends to streamline the permitting process. Instead I believe the Governor is attempting to gain more control over the permitting process by eliminating the professional biologists and resource managers that have consistently acted in responsible, efficient and professional manner.

Sincerely,

Matthew Stichick

2241 Radiant Circle  
Anchorage AK 99501



# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs

Committee on EO 107, dated 031103

I am very concerned about the possibility of the transfer of permitting power from the Department of Fish and Game to the Department of Natural Resources, where fish and wildlife come into the picture. We need to remember that a system of checks and balances is what this country is based on. This system is in place so that ALL aspects of an issue can be perceived from several different points of view. This may seem to get in the way sometimes but ultimately it is a good thing. Just look at the salmon runs in Oregon and Washington. They are all but non-existent. This is because, when these runs were being depleted, there was no organization to balance the system of permitting. Habitats were destroyed and the salmon and wildlife along with them. If you think a permit delay or denial here and there is a burden on our state just imagine what would happen if the salmon and wildlife weren't present in abundance. We would lose millions of dollars in revenue each year. Alaska is an international destination just because of the salmon and wildlife. Do not endanger these resources. Please do not let this transfer take place.

Eben P. Stone  
P.O. Box 580  
Girdwood, AK. 99587

(907)783-0848

### **Testimony of Lance Trasky in opposition to Executive Order 107:**

Mr. Chairman and members of the committee my name is Lance Trasky, and my address is 3941 Truro Drive Anchorage, Alaska 99507. I am a fisheries biologist, and have worked both for the State of Michigan and the State of Alaska. I have 30 years of experience both a fisheries research biologist and a habitat biologist. The views that I present here are my own and not intended to represent the views of my current employer. I am here today to ask you to reject Executive order 107 which would strip the Department of Fish and Game of all its statutory authority and responsibility to protect fisheries habitat and transfer that authority to the Department of Natural Resources. I believe that this change will result in the long-term decline of fish habitat in Alaska, and ultimately the number of fish available to the public. My reasons are:

- 1. EO107 changes the balance between protecting fish habitat and activities that have historically impacted fish habitat. The first Alaskan legislature established the Alaska Department of Fish and Game and gave ADF&G the statutory responsibility to insure that fish passage is maintained on all fish streams, and the productivity of all lakes and streams supporting salmon, steelhead, whitefish and other anadromous fish is preserved for the benefit of the economy and general well being of the state. These laws, the Anadromous Fish Act AS16.05.870-.895 and the Fish Way Act As16.05.840-.860 were designed to provide balance between the non-renewable resource development and the public interest in maintaining the states fisheries resources that support Alaska's sport, commercial and subsistence fisheries. *These laws were enacted and the Department of Fish and Game was created because legislators witnessed the final collapse of the salmon fisheries in the Pacific Northwest, and were well aware of the reasons why fish, fishermen and subsistence users lost every decision.* The legislators made a conscious decision to place the trust to maintain fish habitat in the hands of fisheries professionals in the new ADF&G, rather than in a Department of Natural of Natural Resources where fish habitat protection was just one consideration in a Department with many other competing interests. This was a reasonable decision because Alaska's sport, commercial and subsistence fisheries and the businesses, which support them, were and still are the**

largest non-governmental employers in the State, and a major part of our economy and culture.

I have not seen any evidence that a proper balance between fish and wildlife habitat protection and economic development has not occurred. During in the last 25 years the Department has reviewed about 40,000 to 50,000 application for large and small projects affecting salmon streams, or likely to block fish passage. Permit records show that more than 99% of these permits were issued, and only a fraction of a percent was denied. In 25 years there have been less than 7 appeals of ADF&G Title 16 permit denials or conditions. The fact is that the vast majority of people who have received Title 16 permits from the Habitat and Restoration Division are satisfied that they were treated fairly and their projects permitted efficiently. Contrast that with ADNR where hundreds of decisions has been appealed and litigated in the same time period. Although allegations have been made, I have not seen any evidence that an ADF&G Title 16 permit has halted or significantly delayed any economically viable project.

Currently the Governors resource cabinet resolves those instances where there are unresolved disagreements between ADF&G and another state department or federal agency or a private developer over the appropriate level of fish habitat protection conservation for a project. Because these debates are currently part of the public process, the public or the Coastal District often weighs in. If all of the fish habitat protection authority is transferred to ADNR, any disputes between the ADNR fisheries biologists and the Directors of the Division's of Forestry, Mining, Land and Water, Oil and Gas and Forestry will be settled within ADNR. The Department of Fish and Game will not have any say in the process, and none of these disagreements will be public.

**2. Incremental habitat loss is the primary cause of the dramatic decline in wild freshwater and anadromous fish populations in the United State. By moving ADF&G's fish habitat protection statutes to ADNR, the state is adopting a resource management model, which has historically failed to maintain fish habitat or the fisheries dependent on them. The model where fish habitat protection is just one of many social, economic, and political factors considered by a single state or federal agency charged with developing oil and gas, minerals, logging timber, and building roads has consistently failed to protect fish habitat.**

Many states have a single Department of Natural Resources, which includes a Division of Fish and Game. The best source of empirical data illustrating the inherent flaws in the type of system where all decisions are internalized is the USFS. The USFS is a very large, well-funded agency tasked with developing timber and non-renewable resource and conserving fish resources and habitat on national forests. In addition to foresters, for many years the USFS has employed fish, and wildlife biologists and hydrologists to help decision makers in the USFS to balance competing interests on forestlands. However, a recent report by the Government Accounting Organization found that up to 70% of the entire stream crossings constructed on federally managed lands in the Pacific Northwest over the last 40 years block fish passage. Fish access and production on thousands of miles of former fish habitat has been lost. A similar joint USFS and ADF&G study of Tongass Forest roads in Alaska found that up to 60 percent of the culverts are blocking fish passage!

**3. The Fish Way Act, AS16.05.840-.860, and the Anadromous Fish Act AS16.870 -. 895, by themselves don't protect fish habitat! Because of the way these statutes are written, fish habitat protection is solely at the discretion of the agency and the professionals who implement the statute.** For example, the Fish way Act AS16.05.840 requires, "If the Commissioner *determines it is necessary* every dam or other obstruction on a stream which supports salmon or other fish shall be provided with a durable and efficient fish way". If the Commissioner considers it necessary plans and specifications for fish passage structures be provided to the ADF&G for approval. Similarly AS16.05.870 only requires that the Commissioner of Fish and Game to insure that the projects he permits in salmon streams only provide for the "*proper protection of fish and game.*" There is no definition of *proper protection* of fish and game. There are no standards to measure projects against, only the scientific literature, biologists professional judgment, and experience determine what measures adequately protect habitat. Habitat Biologists are also backed up by a large organization in ADF&G employing many biologists with a broad range of education and experience. The ADF&G fisheries professionals have a statutory responsibility to manage, protect, maintain and where possible extend the fish and wildlife resources of the State in the interest of the economy and general well being of the State. Past ADF&G Commissioners and ADF&G staff have made the determination that providing fish passage is necessary. However, there is no requirement in the statute that the Commissioner of the Department of Natural Resources find that fish passage is necessary or that

plans and specifications for fish ways around dams or obstructions be provided to ADNR for approval. This is a concern

Similarly, the standard in the Anadromous Fish Act "provide for the proper protection of fish and game" provides total discretion to the Commissioner of ADNR on how much protection is provided to anadromous fish habitat. The term proper protection is not defined nor does it limit the amount of damage that could occur to fish habitat or water quality. For example, there would be nothing to prevent a future deputy commissioner of ADNR from rationalizing that establishing mixing zones for industrial wastes and sewage in salmon and high value resident fish spawning areas does provide for the "proper protection of fish and game". This is not hard to envision because in the early 1990's the Alaska Department of Environmental Conservation proposed to change State Water Quality Regulations to allow mixing zones in fish spawning areas.

You are probably asking yourself, why didn't the ADF&G adopt standards to keep this from happening? ADF&G tried to do adopt regulations with standards for the fish habitat protection statutes twice: once during the Sheffield administration and once during the Cowper Administration. Both times the ADF&G was stopped because of opposition by some development interests and the ADNR.

**4. The transfer of all of ADF&G's permitting authority under the Fishway Act, the Anadromous Fish Act and the Forest and Resources and Practices Act to ADNR is being portrayed as simply an efficiency move?** The implication is that ADF&G's permit system delays vital projects because it is inefficient. However, the actual statistics indicate that the ADF&G's Habitat and Restoration Division has the most efficient permitting system in State or Federal Government. The annual ADF&G permit summary indicates that Title 16 fish habitat protection permits were issued within an average of 14 days after the application was received in 2002 ADF&G approvals, and other state and federal permits required under other statutes are issued within an average of 18 days. Many permits for time critical projects have been issued in days or hours. In contrast, it often takes months to obtain an ADNR permit or lease. In a typical year projects reviewed range from very large projects, such as the Bradley Lake Hydro project, to a homeowner who wants to put a culvert for his driveway. In contrast to ADF&G's system, some ADNR programs such as water rights are years behind.

**5. In the Governor's State of the State Speech and in subsequent press conferences the Governor and his staff justified Executive Order 107 by cited 8 projects as examples where Habitat Biologists with personal agendas allegedly obstructed and delayed legitimate projects. Habitat staffs have provided information and documentation refuting these claims for all 8 of these projects. The facts show that habitat biologists didn't obstruct those projects; several were delayed for non-Title 16 related reasons, including OSHA violations and avalanches. There is no evidence in any of these projects that any biologist had any agenda, other than just doing a very difficult and thankless job. ADF&G's Title 16 permit tracking system shows that very few Title 16 permit applications are delayed (summary included). Of the few permits that are delayed the most common reason is that the applicant doesn't submit a complete application or doesn't provide sufficient information to issue a permit. In the Coastal Zone, Title 16 permits are sometimes held up because the Coastal Consistency Determination has not been issued, or the applicant doesn't meet federal permit requirements. However, it is ironic that the very efficient ADF&G permit system is singled out for criticism, when it often takes months or even years to issue other state agency permits! ADOT projects such as the Coastal Trail are delayed because of engineering errors, skyrocketing cost problems with federal statutes and public opposition. However, no similar criticism about efficiency has been leveled at ADOT.**

- 6. The Governor does not have to move ADF&G's permitting authority to implement his policies. He will appoint the AD&G Commissioner, and the Habitat Division Director and can institute any policies favoring development over fish habitat that he wants, during his administration. Moving ADF&G's fish habitat protection statutes to ADNRR permanently tips the balance in the favor of non-renewable resource development over fish in the state of Alaska.**

**In summary, I ask that you take action to reject Executive Order 107 and keep the authority and responsibility to protect fish habitat within the Department of Fish and Game. ADF&G is the most appropriate agency to manage the state's permit system that protects the habitat that produces the fisheries resources that benefit so many Alaskans. ADF&G's**

statutory purpose is to "Manage, protect, maintain and where possible extend the fish and game resources in the interest of the economy and general well being of the state." The value of the states commercial, sport, and subsistence fisheries exceeds the value of all other industries in the state, except for oil. The states fisheries are the biggest private sector employer. Fish habitat loss and migrational blockages are the number one reason that anadromous fish populations have declined to disastrous levels in the United States. Habitat loss is forever, and it is what is keeping salmon fisheries in the Pacific Northwest from recovering even after years of closures and fishing restrictions, and billions of dollars in federal and state expenditures. ADF&G Habitat and Restoration Division has restored several miles of stream bank habitat on the Kenai River and in the Mat-Su Borough, but the cost is high. Habitat protection is relatively inexpensive compared to restoration. Please don't change a system that is efficient and works.

Attachments:

March 10, 2003 Gilleland to Howard memo

November 27, 2002 letter from Frank Rue to John Sturgeon



## Alaska Salmonid Biodiversity Program

MAR 14 2003

March 11, 2003

### Testimony of Jan Konigsberg, Director, Trout Unlimited, Alaska Field Office House State Affairs Committee Hearing on Executive Order No. 107

Trout Unlimited is the nation's largest citizen-based coldwater fish and watershed conservation organization. TU's Alaska program focuses on salmonid biodiversity and fishery management. Alaska has plenty of pristine habitats, which is why it is the world's greatest reservoir of salmon biodiversity and which is why Trout Unlimited opposes the Governor's executive order (No. 107).

The governor drew up his order after hearing unsubstantiated claims by various developers who accuse habitat biologists of abusing and exceeding their authority. The governor has impugned the conduct and motives of Habitat Division staff without ever having independently investigated the veracity of the accusations. The governor's commissioners are on board with this approach. Yesterday, DNR commissioner Irwin testifying to Senate Resources Committee suggested this approach is appropriate since perception is reality and at a press conference last week, acting Commissioner Duffy blithely explained that opinions are facts and facts are opinions.

Habitat Division has/had the responsibility of standing up to those whose business plans regard habitat protection as just another cost to be minimized, if not entirely avoided. It is no wonder that disputes would arise and that developers would protest. Without the habitat biologists ensuring a project has minimal impact, there would be the inexorable incremental, yet cumulative, loss of productive habitat--steadily reducing the sustained yield of fish and wildlife in violation of the constitution and statute. Effective and efficient implementation of The Fishways Act and Anadromous Fish Act depends upon professional knowledge, experience and judgment. Apparently, Habitat Division is being punished for doing its job.

Yet, we're told that getting rid of nearly ½ the positions in the Habitat Division and transferring some to DNR increases "efficiency." So, if there is going to be a whole lot

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more digging, cutting, scraping, drilling, and generally a lot more huffing and puffing going on, we can expect more projects than normal will need permits. The only way less staffing can be more efficient is if permits were to be dispensed like pull-tabs; this makes sense since the transfer means industry has just won the lottery.

If efficiency in government is prized above all else, wouldn't downsizing the legislature by half and consolidating it into a unicameral body be worth considering?

Speaking of efficiency, perhaps someone can also explain why it has taken the Department of Natural Resources more than 6 months to decide what it's going to do about Afognak Native Corp. loggers cutting trees all the way to the fish stream. By the way, Fish and Game biologists not DNR foresters uncovered the violation. (could this have anything to do with why the timber industry is so supportive of having DNR become the permitting agency?)

Do not misunderstand me; I'm not accusing DNR of shirking from its duty nor abusing the public trust by its apparent slowness in resolving this matter. That DNR is not being particularly efficient or eager to enforce the statute is how it may appear. But perception is not reality, no matter what the governor and his commissioner may attest. Undoubtedly it takes time to conduct an investigation into such obvious violations of the law. Various questions come up; information must be gathered and communicated--just like permitting construction projects! Facts may turn out to be just opinions and what have been perceived to be opinions may turn to be the facts.

In fact, while the governor and industry seems to think that it had been Habitat Division's foot-dragging that has delayed various projects, the record clearly shows just the opposite.

At any rate, since when is efficiency supposed to be the most important standard by which to run a government? Efficiency is important, but so is fairness, open access, equal-access, due process, professional integrity, etc. It's ok if corporations put a premium on efficiency, that's their right, but when it comes to government, that's a different story. The only type of government that can claim to makes efficiency the penultimate criterion is fascism. Representative democracy is intrinsically a slower, messier form of government because it is supposed to value thoughtful deliberation.

Bearing this in mind, before accepting a reorganization scheme that flies in the face of a nearly 50-year resource management system, the public and its elected representatives deserve the benefit of a thorough and thoughtful inquiry into whether environmental protection and economic development would be well served by such reorganization. Forgive me, but with all due respect, we just can't take industry's word for it, be it the timber industry or the seafood industry.

**Subject: executive order 107**

**Date: Tue, 11 Mar 2003 11:11:38 -0900**

**From: "Linda Vollertsen" <mirow@acsalaska.net>**

**To: <Anchorage\_LIO@legis.state.ak.us>**

**MAR 14 2003**

Linda C. Vollertsen  
4871 Retriever Circle  
Anchorage, Alaska 99502  
907-243-0535

Dear Sir or Madam,

I am writing concerning the executive order proposed by Governor Murkowski regarding the Department of Fish and Game.

I STRONGLY OPPOSE eliminating the Habitat permitting authority from the Alaska Department of Fish and Game. Since the Department of Natural Resources is responsible for resource development, and the Department of Fish and Game is responsible for projects that affect fish and wildlife habitat we would be losing an important process that provides the checks and balances between the two.

My family has lived in Alaska since 1892. We have raised four generations here and plan to stay for generations to come. We know the importance of the connection between the earth/nature/wildlife and our livelihood. We cannot have the one without the other. The importance of that connection and what it means to our future generations here in Alaska cannot be overlooked.

Please work to STRENGTHEN one of the most important "natural" resources left to our state; the fish and wildlife habitats. Please work to let our past generations as well as our future generations know that creating balance is important to all humanity.

Thank you for your time and I trust that you will look at our history as well as our future in making the right decisions on this matter; balance is the key to a healthy family, community, and society.

Sincerely,

Linda C. Vollertsen

MAR 17 2003

Testimony of Michael Wiedmer, representing himself, before the Alaska State House of  
Representatives, State Affairs Committee  
March 12, 2003

Mr. Chairman, committee members, thank you for the opportunity to provide this testimony. My name is Michael Wiedmer; I am a Habitat Biologist with the Alaska Department of Fish and Game, with whom I have been employed since 1981, including one year in the Gas Pipeline Office. I present this testimony, not as a department spokesman, nor as a biologist, but as an Alaskan who wants state government to work efficiently and effectively, and as a citizen who expects clarity and accountability in the state's decisions and actions.

According to the current proposed organizational chart, I will transfer to the Division of Sport Fish. I have high regard for the individuals in Sport Fish and the professional standards they have created. My life in Sport Fish would certainly be more stable and less stressful than it has been in Habitat Division. The people of Alaska, however, do not employ me so that I can secure a stable and stress-less workplace; they employ me to develop professional and objective decisions in the interests of Alaskans, regardless of personal costs.

During the past two days, many people have testified in opposition to EO 107 with well-chosen words and I will not attempt to restate their cases. I ask you to note my support for the testimonies of commissioners Rosier and Rue and the other biologists and concerned citizens. I would like to quickly draw attention to two concerns that have not had full discussion.

The first concern is the effect of the passage of time on the proposed organizational structure. That is, will the new DNR habitat permitting organization age well?  
The second concern is about the path that took us to this point. How did we get here? What was the process?

Will the new DNR *Office of Habitat Management and Permitting* age well? Will environmental protection remain the same over time, while becoming more efficient? I believe it will not. This belief hinges on the knowledge that while statute language may remain unaltered, statute language alone is meaningless. The training and attitudes of the people implementing the statutory language is what, in the end, counts.

We have heard much of Commissioner Irwin's environmental ethic and the oft-repeated affirmation that Habitat Biologists will move from Fish and Game to DNR to continue their work uninterrupted. I fully expect Commissioner Irwin and the current Habitat permittees will strive hard to make the new system work—it is the people that will follow that concern me. The forecasted success of EO 107 is based on the qualities of the individuals involved, but we know these individuals will not remain with the program indefinitely.

Commissioner Irwin has spoken proudly of the success of the fish enhancement project at the mine he recently led. That the fish enhancement was a success seems not in doubt—I have here the Habitat Division report documenting that success. I find two ironies here, however: the first

is this joint industry-government success story was the product of the very system EO 107 seeks to dismantle, the second is EO 107 will mean miners 10 years from now will not have the opportunity to repeat Commissioner Irwin's recent success story.

Simply put, I believe in Commissioner Irwin's personal commitment to the environment—but that faith is based on him as an individual, not the proposed organizational structure. I cannot have faith that future DNR commissioners and deputies will have similar environmental ethics; I am confident, however, that future Fish and Game leaders will.

Clearly, the Habitat Biologists transferring to DNR are well trained and committed to efficient and effective service. However, a quick review of the proposed transfer list reveals that half the staff are at, or near, retirement. The question then becomes, how successful will DNR be in recruiting competent replacements to maintain the standards of efficiency and effectiveness the public expects. That the state has ever growing difficulty recruiting professional staff is not in doubt; many state administrators have testified to this problem. While Habitat Division is also vulnerable to this increasing problem, we do have the intangible advantage of being a member of the Alaska Department of Fish and Game—which has developed and still maintains a well deserved reputation for high professional standards—it is an agency for which people are proud to work. At least among biologists, DNR does not share that reputation. As such, their ability to recruit competent habitat biologist will be less than that enjoyed by Fish and Game.

Some may believe eliminating trained, experienced biologists will smooth the way for developers, but in my experience, most government delays and frustrations are caused not by experienced professionals, but by inadequately trained novices. DNR will face this problem to a greater degree than would Fish and Game. While Habitat Division has had good fortune in recruiting biologists from sister divisions, it is unlikely DNR will enjoy similar success.

Lastly, as a citizen, I am concerned about how the state reached the decision expressed in EO 107, overturning fundamental agency responsibilities that date to statehood. I fully anticipate and support the public's right to know the processes by which I reach my professional decisions, and I expect no less from the rest of government. The process leading to EO 107 has been completely opaque. It appears that no one in Fish and Game, certainly no one in Habitat Division, was consulted prior to the decision; further, it appears that EO 107 is contrary to the advice given by the transition team. The decision has been publicly justified only by discredited pleas for permitting efficiency, by a short list of geographic place names (Dorothy Lake, Juneau Golf Course), and by an oblique reference to an unsubstantiated six-year old late-night pizza party. To some, EO 107 may demonstrate decisive leadership. To me, EO 107 is an administrative fiat that has no place in an open democracy. Therefore, I ask you to support House Special Concurrent Resolution No. 1 to reject EO 107. Thank you.

MAR 14 2003

**Subject:** Testimony on EO 107

**Date:** Tue, 11 Mar 2003 17:33:57 -0800

**From:** "Wellman, Ted" <tedwellman@DWT.com>

**To:** "Anchorage\_LIO@legis.state.ak.us" <Anchorage\_LIO@legis.state.ak.us>

I would like to take this opportunity to express my opposition to Executive Order 107 which transfers habitat permitting functions to the Department of Natural Resources from the Alaska Department of Fish and Game. I apologize for not having more time to submit a more comprehensive response or to testify in person.

I am a fifty-five year resident of Alaska and my career includes engineer, manager and now attorney. During my eighteen years as a senior engineering manager for Chugach Electric Association, I had frequent opportunities to work with all permitting agencies on new transmission lines including the habitat division of ADF&G and DNR. The habitat division of ADF&G was a pleasure to work with compared to DNR. I never had a project held up waiting for ADF&G. Nor did I have a single permit request denied. I appreciated the professionalism demonstrated by ADF&G Habitat.

Since that time, I have been heavily involved on the Kenai River Special Management Area Advisory Board as Board member and President. In addressing habitat issues I found the senior personnel at ADF&G responsive, helpful and realistic in formulating recommendations.

I am extremely distressed by the proposal to eliminate the protections that the ADF&G provided for all of Alaska's rivers by terminating habitat biologists and turning the functions over to political hacks at DNR. I support reasonable development; however, eviscerating ADF&G and firing the dedicated professionals who have dedicated their careers to protecting the fish habitat is morally wrong, short sighted and ill founded. It will only destroy what we all treasure and have worked so hard to protect in the face of uncontrolled development. This looks like a pointless concession to commercial logging by giving them free rein to destroy salmon streams.

I strongly encourage you to reject this ill-conceived proposal while there is still time. Thanks for the opportunity to offer my opinion.

Ted Wellman  
3500 Twilight Lane  
Anchorage Alaska 99516  
[tedwellman@dwt.com](mailto:tedwellman@dwt.com)  
(907) 257-5326  
Fax (907) 257-5399<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

March 11, 2003

To: House State Affairs Committee

From: Alex Wertheimer  
17200 Andreanoff Drive  
Juneau, AK 99801

Subject: Executive Order 107

My name is Alex Wertheimer. I am a Fishery Research Biologist by profession, and a Past-President of the Alaska Chapter of the American Fisheries Society. Over the past 25 years, I have worked on a variety of issues involving Alaska salmon, and I have been lead author or coauthor of several papers evaluating the current status of Alaska salmon. These papers have documented the remarkable recovery of the resource from depleted levels at the time of Statehood, to the historically high levels of recent years. I am frequently challenged by my colleagues in the lower 48 to explain why in most of Alaska we have record abundances of salmon, in contrast to the decline and endangered species listings of salmon throughout the Pacific Northwest. Are we doing something right in Alaska, or are favorable environmental conditions masking inevitable impacts of development? Certainly Alaska salmon have benefited from favorable environmental conditions in the North Pacific Ocean. In my view, enlightened fisheries and enhancement management policies have also been major factors contributing to the health of the resource. But the most important factor has been the systematic maintenance of habitat quality. Because Alaska has the habitat, management policies and enforcement to ensure escapement have resulted in recovery of spawning populations. Because we have the habitat, recovered populations have had the productive potential to respond to favorable ocean conditions, resulting in record runs. At statehood, the Alaska Legislature recognized the critical importance of maintaining habitat for salmon production, even at a time when salmon were in serious decline. They separated the tasks of resource development and habitat protection between the Department of Natural Resources and the Department of Fish and Game to create a system of checks and balances, and to ensure that both agencies had the expertise and regulatory power to accomplish their tasks. This system has worked remarkably well, as evidenced by the current status of the resource. I am well aware of the legitimate need to develop and utilize Alaska's other natural resources to provide increased economic opportunity in the State. As developmental pressure and scale increase, however, the need for an effective system to ensure that impacts are minimized to the habitat that sustains Alaska's incredible salmon resource also increases. I have served on the Biological Review Team that evaluated the status of chinook salmon in California and the Pacific Northwest for listing under the Endangered Species Act. I can assure you that the perceived burdens of the current system is nothing compared to the regulatory morass and the costs of attempting to restore runs decimated by habitat degradation. Why gamble with one of the crown jewels of Alaska's renewable resources? I urge you not to abandon a system that has been so effective at fulfilling the mandate set by the original Alaska legislature, and to reject Executive Order 107.

MAR 12 2003



Western Division of the American Fisheries Society

20107

March 5, 2003

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



Dear Governor Murkowski :

The Western Division of the American Fisheries Society (WDAFS) represents over 3,700 fisheries scientists and biologists employed in government, academia, and the private sector throughout Western North America. The mission of the American Fisheries Society (AFS) is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries science and by promoting the development of fisheries professionals. AFS is not an advocacy group, but we occasionally bring important issues to the attention of policy leaders and the public. As implied in our mission statement, we only advocate for fisheries conservation and sustainability when our position is firmly founded on quality, peer-reviewed science.

WDAFS has learned of the recent Alaska state Executive Order (EO) No. 107 that you filed on 12 February 2003 to transfer fish habitat protection and permitting authority from the Alaska Department of Fish and Game (ADF&G) Habitat Division to the Alaska Department of Natural Resources (ADNR). WDAFS believes this action should be carefully reviewed and justified to ensure that it will not compromise the long-term health and sustainability of Alaska's fishery resources and the numerous communities that depend on fisheries. WDAFS is concerned that such a transfer may compromise sustainability of fishery resources, especially anadromous fish, and may not be in the public's best interest.

Salmon and other anadromous fish are essential to the people and economy in the State of Alaska. Salmon are also considered "keystone species" because so many other fish, birds, wildlife and even riparian vegetation depend on the flesh or nutrients provided by the eggs and rotting carcasses of spawners. In fact, increasing scientific evidence links the nutrients delivered upstream by carcasses to the future production of subsequent salmon generations. WDAFS is aware that fish and the

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Alaska - Arizona - British Columbia - California - Colorado - Hawaii - Idaho - Mexico - Montana - Nevada - New Mexico - Oregon - Utah - Washington - Wyoming - Western Pacific Islands and Trust Territories - Yukon

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habitat they depend on have had a high measure of protection since Alaskan statehood, but the responsibility for this protection will be transferred to a department where the primary mission is developing other, non-fisheries resources. Our members who have had experience in both Alaska and in the Pacific Northwest suggest that this strategy for fish habitat protection has failed to protect fishery resources in Washington, Oregon, California, Idaho, or British Columbia, Canada and we urge you to not repeat these mistakes.

There is strong scientific evidence that links landscape changes, road building, culvert installations, and water quality impairment (e.g., from logging, urbanization, mining, and agriculture) to many of the dramatically diminished salmon populations in the Pacific Northwest. In the state of Washington for example, the Department of Fish and Wildlife manages the animals within their habitats, while the Department of Natural Resources (WADNR) manages the uplands and has regulatory authority over benthic habitats through an aquatic lands lease permitting process. The WADNR is also the agency responsible for administering the State Forest Practices Act in both state and private forests. Under this arrangement, extensive fish and wildlife habitats were lost—one culvert and cutting unit at a time. Today thousands of road culverts block salmon use on these lands, and only recently have concerted efforts been initiated to fix these problems. Major improvements in the way the state of Washington practices forestry have only come through years of oversight by environmental groups and enforcement of native tribal rights.

Besides extensive fisheries closures, losses of Pacific Northwest keystone anadromous fish runs have had related impacts on resident fish, wildlife, and riparian vegetation; because these resources also depend on the salmon and salmon carcasses for their nutrients. The extremely degraded fish runs have led to numerous legal actions and the listings of some runs under the Endangered Species Act. Alaska is not immune to similar fisheries losses.

Experience has demonstrated that it is extremely difficult and much more costly to restore damaged aquatic habitat than it is to simply protect the habitat from damage in the first place. In recognition of this fact, salmon recovery efforts in the Pacific Northwest are now tiered towards first protecting the viable habitat and runs that remain, before costly expenditures on restoration are exercised. The existing Alaskan system of checks and balances, where development is promoted by ADNR and habitat is protected by ADF&G, has served well. The mostly pristine Alaskan stream corridors and healthy salmon runs are testimony to the effectiveness of the current arrangement. We are concerned that the proposed change will create a conflict of interest within ADNR, leading inevitably to less rigorous protection and gradual loss of habitat integrity, so essential to healthy fisheries.

The WDAFS realizes that long-term sustainability of both fisheries and other natural resources are important to all Alaskans and are guaranteed under The Alaska Constitution. The AFS holds no opinion on the merits of non-fishery natural resource development but, based on existing scientific evidence, it is clear that habitat protection is fundamental to sustainable fisheries. It is uncertain how fisheries habitat, particularly in streams that are clearly essential to healthy salmon populations, will be given the same level of protection under ADNR as it has received under ADF&G. The mandates of the agencies are inherently different and the level of fisheries training of ADNR personnel is likely to be significantly less than personnel from ADF&G. Collectively, these factors suggest that aquatic habitat protection could be relaxed under the proposed policy shift. Any relaxation of aquatic habitat protection has been shown to have incremental, cumulative effects that result in reduced fisheries production. The WDAFS is therefore concerned that this regulatory transfer will likely be detrimental to Alaska's fisheries resources and the aquatic communities and people that depend on them. The impetus for the proposed regulatory transfer remains unclear and does not appear to be founded on sound science.

The expert scientists who are members of WDAFS will be pleased to provide information and testimony in the public process. Please contact me if WDAFS can provide further input.

Sincerely,



Don MacDonald  
President, WDAFS  
24 - 4800 Island Highway North  
Nanaimo, BC Canada V9T 1W6  
Phone: 250-729-9623

cc: House and Senate Legislators

MAR 14 2003

My name is Howard Williamson. I have lived in Alaska 55 years. I have seen many changes during this time. Some have been good for the state and some not. The idea of taking the permitting authority away from Habitat and giving it to DNR is a change I would hate to see.

I know the environment of Alaska needs to be protected. From what I have seen over the years Habitat is doing a good job. It seems to me that doing away with an agency that has proven to do a good job is illogical. To place it under the umbrella of DNR is not a good idea. Government needs checks and balances. Who would be checking on DNR?

I request that you vote against EO 107.

Thank you for your time.

Howard Williamson

607 E 74th  
Anchorage AK 99515

Ph. 522-1734

HJWAK @ yahoo.com

P.S. / Egan thought Habitat was needed &  
he was one smart Alaskan. I hope  
that those representing Alaska will  
shut this move off.




# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs  
 committee name  
 committee on EO 107, dated 3/11/03  
 bill/subject

I oppose moving Habitat Div. to DNR. In  
 my 33 yrs in Alaska I have NEVER seen anything  
 as stupid.

MAR 17 2003

Signed:  DANIEL B. WINN  
 Testifier  
self  
 Representing (Optional)  
PO Box 1272, Homer, AK 99603  
 Address  
907-235-8712  
 Phone No.

MAR 17 2003



## YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

725 Christensen Drive, Suite 3-B, Anchorage, Alaska 99501  
Tel: 907-272-3141 Toll free: 877-999-8566  
Fax: 907-272-3142 E-mail: joe-yrdfa@alaska.com

Governor Frank Murkowski  
State of Alaska  
Office of the Governor  
PO Box 110001  
Juneau, AK 99811-0001

Dear Governor Murkowski,

The commercial and subsistence fishers who constitute the membership of the Yukon River Drainage Fisheries Association (YRDFFA) depend upon good returns of salmon to the Yukon River for their livelihood, life style and traditional culture. We feel that your intent to move the permitting functions of the Alaska Department of Fish and Game's Habitat and Restoration Division into the Alaska Department of Natural Resources threatens to diminish this livelihood, life style and culture. The past several years have seen seriously low salmon returns that threaten these things if they continue into the future. Most recently the primary cause seems to have been poor ocean conditions, but it is survival at all stages of a salmon's life cycle that ultimately determines whether there will be sustainable harvests in the future for us and for our children.

You have announced that you plan to move the permitting elements of the Alaska Dept. of Fish and Game's Habitat and Restoration Division into the Alaska Dept. of Natural Resources. We respectfully ask that you reconsider this move and allow these functions to remain in ADF&G where, we believe, they will provide us with the best ensurance that salmon spawning and rearing habitat will be protected and, thus, the continued healthy returns of salmon sustained.

The missions of the Alaska Dept. of Fish and Game and the Alaska Dept. of Natural Resources are fundamentally different as you can see from their respective Internet web pages. The ADF&G mission statement reads:

The Alaska Department of Fish and Game's mission is to manage, protect, maintain, and improve the fish, game, and aquatic plant resources of Alaska. The primary goals are to ensure that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and development of these resources are in the best interest of the economy

and well-being of the people of the state.  
(<http://www.state.ak.us/adfg/genifo/overview/mission.htm>)

Somewhat different is the mission of ADNR which reads:

To develop, conserve and enhance natural resources for present and future Alaskans.

Certainly there is some overlap between these two guiding statements; conservation rather than complete protectionism is an element of both, but ADF&G's focus is more ensuring the sustainability of fish and wildlife while that of ADNR is developing all natural resources regardless of sustainability as mining (extraction) is not. Fisheries can and should be but are not necessarily sustainable if choices are made that favor other uses of natural resources. We have only to look at the long term decline of salmon in California, Washington and Oregon. It was not just the dams that have caused the loss of salmon runs in those states; it was also the loss of spawning and rearing habitat as ranchers, farmers, and loggers made alterations that favored their intended uses over the salmon's needs.

We are very much concerned that the same can happen in Alaska. Moving Habitat and Restoration's permitting functions into ADNR would pit their primary mission, development against their secondary function, conservation. And it is not at all clear that permitting to allow the extraction of mineral resources would be done with any priority given to maintaining living, renewable resources such as salmon. Conversely, removing the habitat permitting function from Fish and Game would eliminate what is stated as a primary goal of the department to conserve and maintain the habitat of renewable fish. An inability to do that would also severely impact the ability of the department to conserve and maintain the fish themselves. Thus the mission of the Alaska Dept. of Fish and Game becomes somewhat dependent upon the good graces and concern of the Alaska Dept. of Natural Resources which is not directly charged with maintaining fish or their needed habitat.

YRDFA understands that frustrations associated with permitting have been brought to your attention by those who would develop the mineral and other resources of the state and undoubtedly there have been some obstructionist decisions made which perhaps should not have been. All organizations must use people to function and we are all fallible, but there are ways to overcome incorrect decisions individuals within a department make. In general, I think you will find that most applicants for permits required by the Anadromous Fish Act (AS16.05.870) or the Fishway Act (AS16.05.840) were satisfied with the decisions, environmental protection requirements of permits and the speed of action by the Habitat and Restoration Division of ADF&G.

In 2003, 58,385 summer chum salmon were harvested by subsistence fishers from the Alaska portion of the Yukon River drainage. It has been estimated that prior to mining impacts, 45,000 summer chums (a comparable magnitude) may have spawned annually in Bear Creek, a tributary of the Hogatsa River which is within the Yukon drainage.

While lower returns in general probably would not have resulted in this many fish on those spawning grounds this year in the absence of mining, there are other examples of lost spawning and rearing habitat due to mining and logging that cumulatively do significantly impact the numbers of fish available to commercial and subsistence fishers.

The Anadromous Fish Act only protects salmon habitat in those waters listed in the Anadromous Waters Catalog and only to the upstream extent that anadromous fish have been found in that watershed. Listing of waters in the catalog is very incomplete and many streams and rivers that do contain spawning and rearing anadromous fish are not listed. There is no protection given to the essential fish habitat in these streams and thus the fish themselves are at risk. These waters are not in the catalog because Alaska is such a large state that funds required to support the stream surveying needed to put them into the catalog have been insufficient. Those who would not wish to be hindered by modifications to their mining and logging procedures would certainly not wish to see additional streams added to the catalog though, in truth, there are many that should be. ADNR will be much less likely to continue to pursue adding additional legitimate streams to the catalog than ADF&G because it will add requirements to further in-stream development and because it would most likely constitute an unfunded mandate for them. Thus adding streams that should be included and protected may well come to an end, leaving the sustainability of various stocks in question.

Governor Murkowski, it takes a real statesman to reconsider and reverse a publicly stated position on an issue when it appears that original position was in error. Please be that kind of statesman now. When the past five commissioners of ADF&G from both sides of the political aisle tell you this is a mistake, please heed their warning and that of many other people and groups in this state who depend on the living renewable resources of this state. We want those resources to remain renewable, which is not guaranteed by your intended transfer of permitting responsibility. We want them to remain renewable for ourselves, our children and all Alaskans in the future. Thank-you.

Sincerely,

A handwritten signature in cursive script that reads "Jill Klein for J.K.". The signature is written in dark ink and is positioned above the typed name.

Jill Klein  
Executive Director

Phone CALLS | 3-10-03

EO 107

7:35 pm Chris Stocker - Anch - against

7:45 pm Debra Eilcrest - 272 3226

"back idea to move habitat to DNR"

7:42 pm Cecil Rich - opposed to EO 107

support joint resolution to stop EO 107

7:47 pm Heather Gatt - Anch - disapprove

habitat move to DNR

7:50 pm Annabel Albicle - thank you for

holding STA Hearings on Habitat

7:50 Elisa MacFlett - disapprove EO 107

support the resolution to disapprove

8:10 Cathy Krause - Anch repub -

against the HABITAT move

8:17 Beverly Stort - Anch - supports

a joint resolution to disapprove habitat move

8:18 Joe Meehan - Anch - 344-4034

does not support EO 107

3-11-03 - Phone calls

2:30 pm Deb Lassemeire  
against the Habitat to  
DNR change

3:00 pm Anita Getts  
concerned about this change,  
worried about fish resources  
worried about the morals of Habitat staff

**EO**

**107**

**(File 2 of 3)**

Date: 4/7/03

The Honorable Hugh "Bud" Fate,  
Chair, House Resources Committee

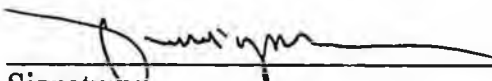
Dear Representative Fate,

I am a sportsman that values wild salmon. They are central to the special lifestyle we enjoy as Alaskans, and I am very concerned about Executive Order 107.

Wild salmon need healthy habitats. Transferring habitat protection authority from ADF&G to the ADNR will almost certainly lead to declines in salmon runs that will affect all users of the resource, from sport fishermen to those who depend on salmon to feed their families or bring home a paycheck.

I am counting on you to act in the best interest of all Alaskans. As Senator Ted Stevens said, salmon are our real Permanent Fund. Please pass the resolution rejecting EO107 out of your committee, so that the full House can vote to reject this risky move.

Sincerely,

  
\_\_\_\_\_  
Signature

David Abayn  
\_\_\_\_\_  
Written Name:

P.O. Box 241711  
\_\_\_\_\_  
Address:  
Anchorage, AK 99524-1711  
\_\_\_\_\_

Cc.

The Honorable Bruce Weyrauch, Chair, House State Affairs Committee

The Honorable John Harris, Chair, House Finance Committee

The Honorable Tom Anderson, Chair, House Labor & Commerce Committee