

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

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11286 SENATE RESOURCES

EO

106

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OFFICIAL BUSINESS

Alaska State Legislature Senate Office of the Secretary

STATE CAPITOL, ROOM 213
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832
EMAIL: senate_secretary@legis.state.ak.us

February 12, 2003

MEMORANDUM

TO: Senator Ogan, Chair
Resources Committee

FROM: Kirsten Waid *KW*
Secretary of the Senate

RE: Executive Order No. 106

The President has referred Executive Order No. 106 (transferring the Alaska Coastal Policy Council and the functions of the office of coastal management to the Department of Natural Resources) to your committee.

Section 23, Article III of the Constitution states:

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

Executive Orders are treated differently than bills. If you wish to report any recommendations to the body, please do so with a memo or in accordance with Section 23, Article III of the Constitution within the sixty day limit.

Attachment

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
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February 10, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

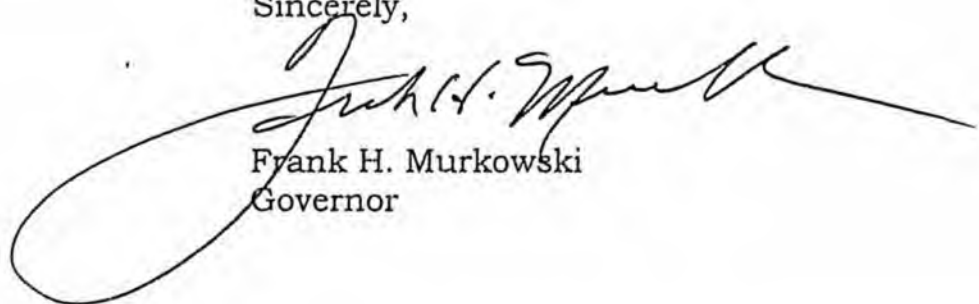
Dear President Therriault:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order transferring the Alaska Coastal Policy Council and the functions of the office of coastal management to the Department of Natural Resources.

The Alaska Coastal Policy Council (CPC) develops and oversees the Alaska coastal management program (ACMP). The office of coastal management (office) is the lead agency for coordinating the ACMP and serves as staff to the CPC. The office is currently part of the office of management and budget and is known administratively as the division of governmental coordination. Both the office and the CPC are located in the Office of the Governor.

I believe that in the interest of efficient administration, it is appropriate to relocate the CPC and the functions of the office to the Department of Natural Resources. My intent is to establish a project office that will coordinate and streamline the state review of development activities throughout Alaska. The Department of Natural Resources would assume the functions of the office and would act as the designated state agency to receive and administer federal grants for implementing the ACMP and rendering, on behalf of the state, all federal consistency determinations and certifications, and multi-agency state consistency determinations.

Sincerely,


Frank H. Murkowski
Governor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: Executive Order #106
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Office of the Governor
 Title EO transferring Alaska Coastal Policy BRU Governmental Coordination
Council and DGC functions to DNR Component Governmental Coordination
 Sponsor Rules Committee
 Requester Governor Component No. 18

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Division of Governmental Coordination with existing funding of 3224.9 Fed Receipts, 961.6 GF Match, 101.9 GF, and 4.2 CIP receipts, in addition to 28 PFTs and 1 non-perm position will be transferred to the Department of Natural Resources in the FY04 operating budget process.

The balance of the federal receipts capital appropriations in Sec 42 (c) and (d), Ch 1, SSSLA02 for the Coastal Impact Assistance Program will also transfer with the division.

Prepared by: Linda Perez, Director Phone 465-3876
 Division Administrative Services Date/Time 3/4/03 4:28 PM
 Approved by: James F. Clark, Chief of Staff Date 3/4/2003
 Agency Office of the Governor

EO

107

nt 4-14-03



OFFICIAL BUSINESS

Alaska State Legislature Senate Office of the Secretary

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JUNEAU, ALASKA 99801-1182
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February 12, 2003

MEMORANDUM

TO: Senator Ogan, Chair
Resources Committee

FROM: Kirsten Waid *KW*
Secretary of the Senate

RE: Executive Order No. 107

The President has referred Executive Order No. 107 (transferring certain functions relating to the protection of fish habitat from the Department of Fish and Game to the Department of Natural Resources) to your committee.

Section 23, Article III of the Constitution states:

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

Executive Orders are treated differently than bills. If you wish to report any recommendations to the body, please do so with a memo or in accordance with Section 23, Article III of the Constitution within the sixty day limit.

Attachment

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



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February 10, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

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

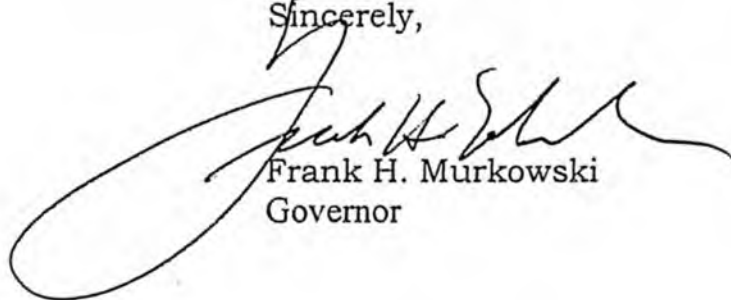
Currently, the division of habitat and restoration in the Department of Fish and Game oversees the requirements of AS 16.05.840, relating to maintaining fish passage whenever a stream frequented by fish is obstructed. The same division oversees the permitting function laid out in AS 16.05.870, which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

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

The Honorable Gene Therriault
February 10, 2003
Page 2

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

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Frank H. Murkowski'. The signature is fluid and cursive, with a large loop at the end.

Frank H. Murkowski
Governor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: EO 107
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title Transfer certain Habitat functions from BRU Management & Administration
Fish & Game to Natural Resources Component Office of Habitat Mgt & Permitting
Sponsor _____
Requester Governor Component No. 2682

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Funding for this Executive Order has been included in the FY04 Governor's operating budget request, as a transfer from the Department of Fish & Game to the Department of Natural Resources.

Prepared by: Nico Bus, Admin Svcs Manager Phone 907-465-2406
Division: Support Services Date/Time 3/10/2003
Approved by: Tom Irwin, Commissioner Date 3/10/2003
Agency: Natural Resources

Alaska State Legislature
Senate Resources Committee
Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
Phone: (907) 465-4907
Fax: (907) 465-3265

Memorandum

DATE: March 14, 2003

TO: All Senate Resources Committee Members

FROM: Senator Scott Ogan
Chairman, Senate Resources Committee

RE: Executive Order # 107

Attached you will find additional handouts from our Monday, March 10th hearing. This material includes written copies of testimony offered that evening as well as other correspondence that was received following the meeting.

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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

MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

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

DATE: February 20, 2003

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

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

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

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

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

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

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

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

Discussion of Specific Projects

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

H&R Region I Response - Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H&R Region I Response - Summary

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

- Prevent Lake Dorothy brook trout from reaching their spawning habitat in some years.
- Allow brook trout to be entrained into the hydro facility's intakes, with potential high mortality;
- Seasonally remove all water from Lower Dorothy Creek between Bart Lake and Taku Inlet, eliminating an isolated population of brook trout

ADF&G has the duty to protect, maintain, enhance and extend fish and wildlife populations under the State Constitution, duties of the commissioner, and the Fishway Act (AS 16.05.840). These statutes also recognize that fish and wildlife values must be evaluated against other beneficial uses. ADF&G has always recognized that fish and wildlife and their users are only a portion of the beneficial uses that must be considered. Clearly, considerations such as the reduction in use of fossil fuels, economics and municipal needs for electricity are valid and important uses that must be considered as well.

The statutes do not differentiate between native species and non-native species (e.g. elk, bison, eastern brook trout, and rainbow trout) or species that have been extended into additional areas (e.g. black-tailed deer, coho, sockeye and Chinook salmon).

Under §10(j) of the Federal Power Act, Federal Energy Regulatory Commission (FERC) licensing statutes recognize the importance of state input, and give state fish and wildlife agencies such as ADF&G, along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, special authority to make recommendations for terms and conditions for power projects.

ADF&G approaches all projects, including FERC licenses, in a routine, organized manner that includes: 1) Identification and analysis of fish and wildlife values (including both populations and habitat) along with the users of these resources; 2) Determination of the protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility. (Note that although our staff are very experienced, and therefore able to ask pertinent questions and suggest possible alternative measures, we normally rely on the applicant for this information); and 4) Working with the applicant to identify and select appropriate and feasible mitigation actions to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

To obtain this information, FERC and resource agencies typically ask the applicant to conduct studies in order to assess environmental effects and to determine the resource protection, mitigation and enhancement measures. FERC must obtain adequate information on all aspects of the project, including effects on fish and wildlife and natural, cultural, recreational, and tribal resources, in order to perform its NEPA environmental analysis, to assess project economics and feasibility, and to carry out other regulatory responsibilities.

FERC also needs information from studies in order to make an informed decision as to the appropriate level and type of resource measures to include in licenses, and to ensure that their decisions are supported by substantial evidence. FERC recognizes that both state and federal agency expertise in fish and wildlife is critical to maintaining the credibility and success of the

licensing process, and ensuring that the needed studies are scientifically and professionally designed. FERC regulations provide several means of dispute resolution if a dispute arises between an applicant and a resource agency or Indian Tribe regarding the need to conduct studies or gather information.

At the time of the Governor's State of the State address, ADF&G and LDHI had completed steps 1 and 2 above, and we were in the process of working through steps 3 and 4. The entire timeline and schedule for FERC licensing is set in federal regulation. Delay of the project is not at the discretion of ADF&G or other reviewing agencies, and our recommendations are not intended in any way to block the project. ADF&G's comments to FERC were due on February 19th, and have been submitted.

As confirmed in LDHI's January 21, 2003 letter to Bill Hanson, H&R Regional Supervisor, ADF&G and LDHI have worked conscientiously and well to consider all aspects of this project and discuss various options for protection, economic feasibility and off-site mitigation.

The Governor's comments on this project suggest that parallels exist between the brook trout populations potentially affected by the Dorothy Lake project and brook trout in the Ward Lake system in Ketchikan. A comparison of the potential effects of a hydroelectric project on the Dorothy Lake brook trout population and the population in the Ward Lake system would not be valid. ADF&G Division of Sport Fisheries data indicate that brook trout in the Ward Lake system occur only in Perseverance Lake, the uppermost lake in the system, which is inaccessible to anadromous fish due to a natural barrier. Unlike Lake Dorothy, therefore, fish passage needed to maintain access to spawning habitat in Perseverance Lake was not put at risk by Connell Lake Dam, nor was the Perseverance Lake brook trout population ever affected by downstream water withdrawals associated with the this dam. However, Connell Lake Dam, which was built to provide water for the Ketchikan Pulp Company in 1953, prior to any requirement for a federal NEPA review and prior to the existence of ADF&G, currently blocks several miles of stream and lake habitat that previously supported coho salmon, sockeye salmon, and steelhead.

Falls Creek Hydroelectric Project – The governor said, *"The Habitat Division, together with the US Park Service, has also contributed to the delays in moving forward in the Falls Creek Hydro project near Gustavus. Unending demands for more studies have become a hallmark for the way this division oftentimes does business, and having had a personal opportunity to pursue a FERC waiver for that particular project, which obviously would reduce dependency of Glacier Bay of power generation from diesel power, why I could never understand why everybody didn't get behind this and recognize it as a considerable contribution to the environment."*

H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project

applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

FERC licenses are issued for a 50-year period. Such a long-term project, which can essentially be renewed forever, deserves careful consideration, including studies sufficient to fully evaluate the short and long-term effects on fish and wildlife populations and their users. This commitment to making decisions on the basis of science, which includes both studies and the best judgment of highly professional biologists, is a fundamental goal and task of ADF&G.

For the Falls Creek project, ADF&G, the US Fish and Wildlife Service and the National Marine Fisheries Service have completed steps 1 and 2 above. During our most recent discussions with the applicant, he indicated that an instream flow license requirement to maintain an isolated Dolly Varden char population in the bypass reach would make the project economically unfeasible. Instream flow requirements to sustain fish production are among the basic conditions required at hydroelectric projects. Nearly all projects in operation are required to maintain instream flows if sport or commercial fish species are present.

The applicant indicated that he would investigate alternatives for off-site mitigation in lieu of the instream flow reservation, but has not returned for any further discussions with ADF&G. ADF&G is simply waiting for his proposal.

The National Park Service (NPS), which is currently the landowner, and FERC are completing an environmental impact statement (EIS) on the proposed Falls Creek project. The project also involves a complicated land swap of Glacier Bay National Park and Preserve wilderness area for state land. Under the Federal Power Act (FPA), FERC is not allowed to license a project in a national park. Therefore, legislation was enacted to change the status of land ownership contingent on agreement that the project will not adversely impact the purposes and values of the park and preserve. The Falls Creek project area will become state land only if the project is acceptable for licensing by FERC. Conservation groups provided some support for the enabling trade legislation. However, several national and Alaska groups now oppose either this land trade or the project. Locally, two neighboring Native Allotments, the Bear Track Lodge, and the Hoonah Indian Association have intervened with FERC opposing the hydroelectric project.

ADF&G has not delayed this project. Rather, we are waiting for the applicant's proposal for off-site mitigation and will be asked to comment on the EIS.

Ketchikan Southeast Intertie – In the State of the State address, the governor mentioned the southeast intertie as an example of his statement that *“On many occasions, the Habitat Division has been the sole agency opposing and delaying legitimate projects important to the state.”*

H&R Region I Response - Summary

In no way did ADF&G oppose or delay this project. In our 1995 scoping comments to the Forest Service on the Tyee-Swan Lake Intertie (the Ketchikan Southeast Intertie to which the Governor refers), ADF&G sought clarification of the extent of road construction associated with the intertie project, which would construct a transmission line to connect the electrical systems serving Ketchikan, Wrangell, and Petersburg. Although road construction was included in several of the original scoping alternatives, the Alaska Energy Authority (AEA) originally proposed using helicopters instead of constructing a road. This was based on an independent feasibility study (completely unrelated to ADF&G) that concluded road construction would not be cost-effective. In our scoping comments, ADF&G indicated *“...a helicopter constructed transmission line should not significantly affect fish habitat”*. We also stated: *“Construction of the transmission line only, in the absence of the road, would eliminate the majority of environmental impacts which would need to be considered in the EIS”*.

The ADF&G review of the 1996 Draft EIS acknowledged clarification of the issue and stated the reduction in road construction *“... has resulted in significantly fewer stream crossings, the avoidance of wetlands and other sensitive areas, less cumulative impact, fewer secondary impacts, and an overall reduction in fish and wildlife habitat losses.”*

Following issuance of the FEIS, ADF&G did not provide any formal additional comments, but did indicate to DGC that the EIS adequately addressed protection of fish and wildlife. ADF&G told a consultant for the Forest Service that right-of-way clearing would **not** require Fish Habitat permits, provided nothing (equipment, trees, brush, etc.) entered fish streams. The DGC Final Consistency Determination included standard conditions necessary to protect water quality by minimizing the introduction of sediments and petroleum products into streams.

Rather than delaying this project, ADF&G worked hard to ensure that it was reviewed and handled efficiently.

1996 Board of Forestry Report: The Governor’s statement that *“almost all of the allegations were proven to be unfounded”* is incorrect.

The Science and Technical Committee (S/TC) organized under the auspices of the Board of Forestry, and including both agency and industry representatives, evaluated the concerns raised by ADF&G in the 1996 Board of Forestry Report. The S/TC recommended that approximately 12 issues should be handled by staff training, monitoring, or informational pamphlets to timber operators, but did not require changes to the FRPA statutes or regulations, and that one issue,

yarding corridors through riparian buffers, should be remanded back to the three resource agencies for further discussion and resolution.

The S/TC and S/TC Implementation Group further dealt with the remainder of the issues directly, with important recommendations (among others) for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources relating to the following topics:

- Requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- Ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- Removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- Recommendations for road construction in unstable or steep areas (Issue 3)
- Requiring a variation to remove trees within fish streams
- New definition of blockage to fish passage (Issues 6 and 16)
- Stream classification system and unclassified streams (Issue 17a)
- Improved slope stability standards encouraging retention of low-value and non-merchantable trees

Clearly, the concerns raised by ADF&G (which were not "allegations"), included many valid and important issues. The S/TC process was a difficult, but essential, means of handling these issues, and resulted in substantial improvements to the FRPA process.

cc: A. Ott, ADF&G
L. Trasky, ADF&G
E. Fritts, ADF&G

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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

MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Lance Trasky
Regional Supervisor
Region II
Habitat and Restoration Division

DATE: February 11, 2003

SUBJECT: Response to Governor Murkowski's February 3, 2003, Press Conference Comments

During his press conference on February 3, 2003, Governor Murkowski cited several projects in the Southcentral Region of Alaska that he viewed as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. He also stated that ". . . *we have seen in the Habitat Division the development of a reputation on some major clearances, the reputation for delay, a reputation for inflexibility, and an input based on protection on the basis of personal viewpoint.*" We reviewed the examples cited in the governor's speech and found that there were significant errors and omissions that he was probably not aware of when he gave the speech. For example, it did not take 16 months before ADF&G issued a permit. The coastal consistency determination for the Glenn Parks Interchange was issued on March 19, 2002, not 2001 as stated by the governor. The examples the governor cited that are applicable to H&R Region II include (1) Tok Highway reconstruction projects, (2) Glenn Parks Highway interchange, (3) Sterling Highway stabilization project. and (4) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A summary of our response to each of the topics raised by the governor is provided below with more details of each project provided as attachments to this memorandum:

TOK HIGHWAY – The governor said, *“On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and mitigation measures. Habitat’s foot-dragging has caused a delay in obtaining the needed permits from the Corps of Engineers.”*

H&R Region II Response - Summary

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.

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 ADOT&PF’s project description 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.

The ADF&G scoping response was provided initially to note resources of concern based on a general project concept, not specific details. ADF&G didn’t change its mind, ADOT&PF changed the project. When, over a year later during July 2001, the ADF&G 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 ADOT&PF’s alternatives analysis, their sediment and erosion control plan, and the mitigation plan.

On July 3, 2000, ADF&G received Fish Habitat Permit applications based on preliminary plans from ADOT&PF for bridge replacements on the Chistochina River and Sinona Creek. ADF&G issued a permit for the Chistochina River bridge on August 4, 2000 (ADF&G response time 32 days) and requested more information of the Sinona Creek crossing. On August 24, 2000, ADOT&PF provided the additional information and a permit was issued on November 13, 2000 (ADF&G response time 81 days). To date the work has not been completed

The project delays mentioned by the governor do not pertain the ADF&G. The U.S. Army Corps of Engineers (USACE) permit was not issued until April 15, 2002, and it does not go into effect until the applicant (i.e., ADOT&PF) signs the permit. However, as of February 10, 2003, ADOT&PF had not signed it. Instead, we are told, ADOT&PF is now in the process of upgrading their plans and will be submitting a revised proposal at some time in the future. In addition, final plans and specifications for the proposed stream diversion that were requested by ADF&G on August 30, 2001, and December 5, 2001, are being cooperatively developed.

A more detailed timeline of the above summary is found in Attachment 1.

Glenn Parks Highway interchange – The governor said, *“On the Glenn Parks Highway interchange, we saw another example of the Habitat division ignoring the DGC consistency*

process. The state DOT sought Title 16 permits to allow this vital infrastructure to be constructed. The final consistency determination was issued March 2001, but Habitat did not issue a permit until 2002, 16 months after the deadline for issuing permits after a consistency review becomes final. Furthermore, some of the needed Title 16 permits were held up until January 2003, nearly two years after the consistency review was finalized."

H&R Region II Response - Summary

1. 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).
2. 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, however, 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. Because this is a design-build project, the plans and specifications are not available until the contractor completes them and is ready to go to work. The design build contract was awarded to CH2M Hill/ Kiewitt Pacific August 1, 2002. Habitat and Restoration worked with the contractors to modify the conceptual design to both reduce impacts on fish habitat and reduce costs. The first permit application was received by ADF&G on September 19, 2002. To date, seven Fish Habitat Permits have been issued for the project in a very timely manner with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 2.

Sterling Highway stabilization project – The governor said, *"Another example is the stabilization project on the Sterling Highway, where Anchor River scouring has been threatening the stability of the highway for several years. The Habitat Division has contributed to the delays in addressing this major safety issue because it would not agree to several proposals to install riprap. DOT was told that the Department of Fish and Game would deny any permits that proposed riprap despite assertions by DOT hydrologists that vegetated stabilization would be less effective and more expensive. Last October's flooding, however, proved the vegetation stabilization would have been much more effective. The Habitat Division has been unwilling to work with experienced highway engineers to develop alternatives that balance the interest of the traveling and public and instream habitat. I think we all agree that Alaska is entitled to safe highways."*

H&R Region II Response - Summary

The Sterling Highway Mile 161.4 project included armoring the Anchor River bank adjacent to the highway. On April 30, 2001, the Alaska Department of Transportation proposed to armor 1,000 linear feet of Anchor River streambank with riprap to protect the area from erosion. A week later resource agencies (i.e., ADF&G, EPA, USFWS) and the Kenai Peninsula Borough inspected the site with ADOT&PF representatives. In June 2001, resource agencies suggested changes to the plan that would better protect/enhance the nearshore fish habitat and simultaneously retain the riprap foundation desired by ADOT&PF. Six months later, during January 2002, ADOT&PF requested a meeting to discuss the hybrid designs. The final designs were being completed by ADOT&PF and USFWS when on April 29, 2002, high waters created by an undersized culvert on an Anchor River tributary stream caused water to overtop the road and weaken the road embankment. Under an ADF&G emergency authorization, issued immediately upon notification of the situation during the evening of April 29, 2002, the riverbank was armored on April 30, 2002, to protect the highway embankment.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 3.

1996 Board of Forestry Report – The governor said, *“In 1996 the Habitat Division delivered a report to the Board of Forestry alleging dozens of problems of implementing the forest resources and practices act, and after more than a years of scientific reviews and investigations, that consumed vast amounts of state time and state money, virtually all of the allegations were proven to be unfounded.”*

H&R Region II Response - Summary

The Forest Resources and Practices Act (FRPA) requires that ADF&G submit an annual report to the Board of Forestry (BOF) on the effectiveness of the FRPA statutes and regulations in protecting fish and wildlife resources. The law also requires that the department offer recommendations to correct any procedural or substantive problems. On January 16, 1996, ADF&G submitted its annual report pursuant to AS 41.17.047. The report was titled *1995 Report to the Board of Forestry*. The report discussed ADF&G frustrations and concerns about (1) inadequate funding, (2) interagency coordination, and (3) administration of FRPA. The report also identified a number of technical, biological, and economic issues that related to the implementation and effectiveness of FRPA. The department was simply fulfilling its responsibilities according to the statute.

The BOF then requested the formation of a Science/Technical Committee (S/TC) to review all of the concerns and issues and make recommendations to the BOF for statutory and regulatory changes. The S/TC consisted of approximately 25 state and federal scientists, state field personnel, and scientist-representatives of the fishing and timber industries. As a result of work completed during the S/TC review process, a bill (HB 373) amending parts of FRPA based upon S/TC recommendations was crafted and submitted to the state legislature. The bill was adopted and the FRPA statutes and regulations were improved.

A more detailed description of the work completed and issues addressed, as well as forest industry and agencies comments concerning the process that resulted from ADF&G's original report is provided in Attachment 4.

Should you have any questions or if I can provide addition information please do not hesitate to let me know.

cc: A. Ott, ADF&G
B. Hanson, ADF&G
E. Fritts, ADF&G

Tok Cut Off Milepost 30-38

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. On 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. (ADF&G review time 36 days)
- 2) On July 3, 2000 the ADF&G received permit applications for the Chistochina River and Sinona Creek bridge replacements based on preliminary plans and specifications. (see 4, 5, and 6 below for response information).
- 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. (see 7 below for response information)
- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (ADF&G response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. (ADF&G response time 32 days) To date no construction work has been done.
- 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. (ADF&G response time 81 days) To date no construction work has been done.
- 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 28 acres of wetland fill and a stream diversion). (ADF&G 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. (see 10 and 11 below for response information)
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (ADF&G response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (ADF&G response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion because the September 21, 2001 information was not sufficient (ADF&G response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion. (ADOT&PF response time 172 days)
- 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. Fish (i.e., burbot and salmonids) were found in the unnamed stream.

The Corps of Engineers permit for the project was issued on April 15, 2002. According to Jan Stuart (personal communication on February 7, 2003), of the U. S. Army Corps of Engineers Regulatory Branch, the ADOT&PF has not yet signed that permit.

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

Glenn Park Highway Interchange

Resource Concerns

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 and their connected wetlands support very 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. During the regular meeting cycle in a 1999 and then during in a special meeting in 2000, the Board of Fish (BOF) implemented changes to the commercial fishery and reduced the bag limit for coho salmon in the sport fishery in an attempt to increase escapement to Upper Cook Inlet spawning areas. The BOF reaffirmed its actions during meetings in 2002 when proposals were reviewed that would have relaxed the changes made in 1999 and 2000. Because young coho salmon spend a year or more in freshwater systems before going to the sea, it is critically important to maintain their freshwater habitat, particularly streams and wetlands like Spring Creek and Liepitz Creek that are so extremely productive.

Project Information

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 (CH2M Hill/Kiewitt Pacific) was selected in June 2002.

Chronology

1. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
2. 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.

3. 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.
4. June 24, 2002: Anticipated date of ADOT&PF's announcement of Notice of Intent to Award the primary contract for the project.
5. August 2002: Anticipated date of award of primary contract for the project.

ADF&G Permits

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

6. 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 materials 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.**
7. 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.**
8. 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.**
9. 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.**
10. 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.**
11. 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.**

12. 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.**

13. 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.**

STERLING HIGHWAY MILE 161.4

1. Resource and Statutory Concern:
 - A. High value salmon, steelhead, and Dolly Varden rearing habitat and salmon spawning habitat within this section of the Anchor River.
 - B. Anchor River chinook salmon is presently a "stock of management concern" based on chronic inability to meet escapement goals.
 - C. Anchor River supports a very popular sport fishery for chinook salmon, coho salmon, Dolly Varden, and steelhead. This sport fishery is extremely important to the local economy.

2. Was the project delayed by Title 16 permitting actions delay the project? NO
 - a. The ADF&G received a request from ADOT&PF for scoping comments in April 30, 2001.
 - b. The ADF&G, US Fish and Wildlife Service (USFWS), Kenai Peninsula Borough (KPB) and EPA conducted a site inspection with ADOT&PF on May 8, 2001.
 - c. ADOT&PF sent revised plans to ADF&G on May 23, 2001.
 - d. ADF&G sent formal recommendations on June 8, 2001, prior to ADOT&PF's comment deadline. ADF&G recommended the addition of bioengineering components to the riprap along the streambank.
 - e. ADOT&PF formally responded to ADF&G recommendations: "We (ADOT&PF) expect to have firm design drawings during winter 2001/02."
 - f. January 7, 2002, ADOT&PF requested a meeting with EPA, KPB, USFWS and ADF&G to discuss new proposal. Agencies and ADOT&PF conceptually agreed to new "hybrid" design incorporating bioengineering into riprap above the ordinary high water level.
 - g. March 28, 2002, USFWS provided ADOT&PF with a sketch of what they believed was agreed to at the January 7th meeting.
 - h. During late April 2002, spring meltwater caused a small tributary to the Anchor River to inundate an undersized culvert, overtop the Sterling Highway and damaged the road embankment. ADOT&PF placed riprap armor to stabilize roadway after consultation with ADF&G.

3. If the project was delayed, why? Our files indicate that the ADF&G responded to ADOT&PF inquiries prior to their deadlines. We were also available to meet with ADOT&PF on several occasions. The ADF&G, KPB, USFWS, NMFS and EPA all recommended ADOT&PF incorporate habitat components to the original design during initial project scoping.

4. Did the issuance of Anadromous Fish Act (AS 16.05.870) or Fishway Act (AS 16.05.840) delay the project? NO

On Monday April 29, 2002, an ADOT&PF representative contacted the ADF&G representative at home at approximately 7:00 pm concerning the flow across the road. Emergency authorization was immediately given to complete the work necessary to protect the Sterling Highway from damaged resulted from an undersized culvert causing water to flow across the highway. The riverbank was stabilized on April 30, 2002 with riprap armor.

1996 Board of Forestry Report

Issues from the ADF&G report ultimately were addressed by the Science/Technical Committee (S/TC) through the following actions:

1. Approximately 12 issues addressed by the S/TC recommendation to the Board of Forestry (BOF) were that staff training, monitoring, or informational pamphlets to timber operators would be a more appropriate actions to take, rather than changing the FRPA statutes or regulations.
2. The 'yarding corridors through riparian buffers' issue was remanded back to the three resource agencies by the ST/C for resolution.
3. The S/TC and S/TC Implementation Group ultimately addressed the remaining (approx. 20) issues. The three resource agencies (i.e., ADNR, ADEC, and ADF&G) concurred with the recommendations reached by the S/TC and the S/TC Implementation Group and the BOF. A sample of the more important recommendations for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources include:

- requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- recommendations for road construction in unstable or steep areas (Issue 3)
- requiring a variation to remove trees within fish streams
- new definition of blockage to fish passage (Issues 6 and 16)
- stream classification system and unclassified streams (Issue 17a)
- improved slope stability standards encouraging retention of low-value and non-merchantable trees

The Governor's statement that "*almost all of the allegations were proven to be unfounded*" is incorrect. As a result of the work done by the S/TC and the S/TC Implementation Group, amendments to improve the FRPA were promulgated in the form of HB 373 that was passed by the legislature in 1999. If the ADF&G had not fulfilled its agency responsibility under FRPA, the bill amending parts of FRPA based upon S/TC recommendations (i.e., HB 373) would never have occurred.

The updates to the FRPA and the process used to evaluate the issues and make changes were supported by the timber industry. In testimony before the BOF on January 13, 1998, the then Executive Director of the Alaska Forest Association (AFA), Jack Phelps (currently Environment/Natural Resources Advisor to Governor Murkowski) pointed out that "*The cooperative effort between the agencies and affected industries has led to refinements in the way forest practices are performed in Alaska, and will help ensure that Alaska continues to lead the nation in both fisheries and forest management*" (see <http://www.akforest.org/fishpro.htm>). During testimony concerning HB 373 (a bill amending parts of FRPA and based upon S/TC

recommendations) on February 19, 1998, before the House Resources Committee, Mr. Phelps reaffirmed that position and stated "*In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This bill can and should enjoy full, bi-partisan support. I urge its speedy passage.*" (see <http://www.akforest.org/2-19-98.htm>). On March 6, 1998, the Alaska State House of Representatives passed HB 373 and Mr. Phelps on behalf of AFA issued a press release stating, "*This legislation, which has the strong support of the timber industry, is good for fish, it is good for the industry, and it is good for all Alaskans.*" (see <http://www.akforest.org/3-6-98.htm>) In the Final Report on Resolution of S/TC Issues (June 17, 1998), ADNR, ADF&G, ADEC, and the BOF concluded that, "the S/TC review was a positive, constructive process."

THE
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March 10, 2003

TO: Senate Resources Committee

FROM: Don Muller, Box 1042, Sitka, Alaska 99835

My name is Don Muller. I have lived in Sitka for nearly 30 years. I have been a business person for almost all of that time.

I am strongly opposed to the Governor's attempt to move the Habitat Division into DNR. The Governor has taken the law into his own hands. He has ignored the experts in order to promote his own short-sighted goals of economic development. He fails to acknowledge that a healthy economy depends on a healthy environment. Where does he think salmon come from? Does he not know that healthy forests and healthy streams are required in order to have a healthy salmon industry? Does he not know that a healthy tourist industry depends on healthy forests and beautiful landscapes and clean water? Has he forgotten that the timber industry is just a tiny, tiny portion of Alaska's economy—and should be even smaller?

Please vote to DISAPPROVE of the governor's executive order moving the Habitat Division into DNR.

Thank you.

Don Muller

March 10, 2003

TO: Senate Resources Committee

FROM: Auriella Hughes 611 Biorka St. Sitka AK 99835

Please vote to **DISAPPROVE** of the governor's executive order moving the Habitat Division into DNR.

I am strongly opposed to the Governor Murkowski's desire to move the Habitat Division into Department of Natural Resources. Habitat Division is concerned with protecting the environment, while DNR wants to develop natural resources at the expense of sound environmental practices. The Governor has ignored the experts and fails to acknowledge the undeniable truth that a healthy economy depends completely on a healthy environment. The Habitat Division should remain within the Department of Fish and Game.

Thank you.

Auriella Hughes



Western Division of the American Fisheries Society

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

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.

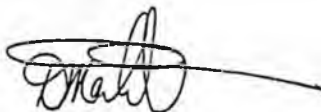
Besides extensive fisheries closures, losses of Pacific Northwest keystone anadromous fish runs have had related impacts on resident fish, wildlife, and riparian vegetation; because these resources also depend on the salmon and salmon carcasses for their nutrients. The extremely degraded fish runs have 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

Subject: Public Testimony Regarding Executive Order 107

Date: Tue, 11 Mar 2003 12:32:06 EST


From: Jeannems7@aol.com

To: Senator_Kim_Elton@legis.state.ak.us

Honorable Senator Elton:

Thank you for your continued support of bringing Executive Order 107 into the open and under review. I appreciate your continued support to disapprove E.O. 107. Unfortunately, you had to leave before my public testimony was heard. Please review and enter this information into the public record. I testified around 7:30 PM and I do not believe it has been recorded. If you have any questions concerning my position on this issue, or if I may provide any information, please feel free to contact me at 907-688-5878.

Sincerely,
Jeanne Walter
19658 Creek Way
Chugiak, AK 99567

 [Public Testimony to the Senate Resources Committee.doc](#)

Name: Public Testimony to the
Senate Resources
Committee.doc

Type: WINWORD File
(application/msword)

Encoding: base64

Download Status: Not downloaded with
message

I would like to thank the State Resources Committee for giving the public an opportunity to comment on Executive Order 107. My name, for the record, is Jeanne Walter. I am speaking as a resident of Alaska and as a registered voter. My background is toxicology and biology, and as such I have worked for the Department of Interior, State of Alaska, Universities and Industry, in particular the paper industry. I am also a Board member for the Pacific Northwest International Erosion Control Association.

I view this transfer as a paramount issue in the compliance of state law for fish and wildlife resources. The original intent of Executive Order 107, as stated, was to streamline permitting. This will not be possible under E.O. 107 for the following reasons:

Alaska Department of Fish & Game (ADF&G) Habitat and Restoration Division staff process 2000 permits per year averaging a 14-day turn around time. Only 0.5% of these permits were denied in 2002. These records are documented and are part of the public record. The turn around time described includes the time from when a complete application is submitted, to when the permit is issued.

Alaska Department of Natural Resources (ADNR) water permits take much longer, with as many as 700 permits backlogged (the backlog is expected to be finished by 2007, at the earliest).

Commissioner Irwin and Acting Commissioner Duffy stated that 22 Habitat Division staff received pink slips (3/7/03) releasing them from state employment as of May 1, 2003. Additionally, 12 currently vacant positions will be eliminated.

Decreasing the staff by 30% will decrease site inspection, monitoring, restoration efforts, and mitigation suggestions and will slow down the permitting process. The only way to speed up the permitting process under these cuts would be to rubber stamp permit acceptance without proper review. Proper review of permits and the biologist's expertise save the applicants money from costly legal fines (both Federal and State). Biologist input in the initial phases of the project often save expensive litigation fees and time delays.

Only 36 Habitat Division employees will be transferred to ADNR.

The remaining 38 Habitat employees will be spread out between three different divisions and the EVOS office.

Dismantling the Habitat and Restoration Division will decrease the ability of biologists to receive consultative information from adjacent ADF&G Divisions and field biologists.

If you do not disapprove E.O. 107, the State of Alaska will lose a dedicated habitat staff including oil and gas experts, erosion control specialists, cartographers, biologists, ichthyologists, fish passage specialists, etc. In fact, the biologists in Region II worked 1½ years of unpaid overtime in 2002. **One and a half years!**

The ANWR development vote is presently very close in our Nation's Capitol. Many members have been swayed to vote in favor of ANWR development due to the success and professional integrity of the ADF&G Habitat and Restoration Division's permitting responsiveness. I believe that with such a drastic change in permitting and the dismantling in the ADF&G Habitat and Restoration Division, Representatives and Senators will vote against opening ANWR to exploration drilling. If Executive Order 107 passes, I will spend all my time educating our Nation's Leaders on the effects of this Executive Order. Is it worth risking ANWR development under a new and questionable permitting section? I will assure you, many people believe it is not, and these people vote. Please note that I am for **responsible development**.

Please bring Executive Order 107 to the floor of a joint session and vote to **disapprove** it. Keep the Habitat and Restoration Division where it belongs, in the Alaska Department of Fish and Game. Thank you for your time and attention to this important issue.

Marlene A. Clarke
PO Box 1020
Wrangell, AK 99929-1020

March 6, 2003

Alaska House of Representatives
Attn: Peggy Wilson
Alaska State Senate
Attn: Robin Taylor

Re: EO107

Dear Madams and Sirs:

Please note that I strongly oppose moving the Habitat Permitting Authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

This legislature should work to strengthen, not diminish, fish and game wildlife habitat protection and oversight.

Please vote NO in joint session to ^{M.C.} approve executive order EO107. You, as elected officials, will be held accountable in protecting our fish and wildlife.

Respectfully submitted,



Marlene A. Clarke

Note correction, last paragraph,
first sentence.
Marlene Clarke



43961 Kalifornsky Beach Road • Suite E • Soldotna, Alaska • 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

March 10, 2003

Chairman Ogan, Members of the Senate Resource Committee;

My name is Paul A. Shadura II, I am the president of the Kenai Peninsula Fishermen's Association. I reside on the Kenai Peninsula. KPFA has been in existence since 1956 and is the largest set-net representation organization in Cook Inlet.

KPFA respects the right of the Governor and his administration to streamline government and improve the economic well being of the state. Re-structuring administrative services is an efficiency necessary to reduce costs and lessen the burden on the states already beleaguered commercial fishing families.

We believe that EO 107 has merits, but we also believe that there are serious flaws that do not allow a system of reviews necessary to protect the environment from overzealous industrialization.

There are three main points for suggested modifications:

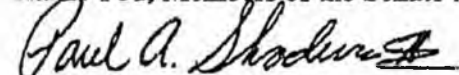
- 1) The Commissioner of Fish and Game should retain a voice in the final permitting process. It is extremely important that aquatic systems are protected to the highest *standards* available. Reviewing the Sustainable Salmon Fisheries Policy regulation, the importance of habitat is the pivotal theme to which all salmon management plans are designed after. The ADF&G are the states specialists who live and breath our states constitution's mandate to sustain and conserve. Commercial fishermen and others have access and a voice through the department to emphasis their concerns. The Commissioner should have authority to: object, veto, vote or call for further analysis and public involvement if he believes a vital habitat will be compromised.
- 2) The new *deputy commissioner's* position created in the DNR should be one that has the assurance of all that they will perform the task with all environmental considerations made. This position has more control and autonomous decision making power than either commissioner of natural resources or fish and game. This position has to be filled with an individual of special talents and the ability to not be influenced by individuals who have only their interests and not the states

best interests in mind. We believe this position should go through the full confirmation and administrative appointment review process. The people of the state should be allowed due process in confirming this highly pivotal position.

- 3) We highly recommend that the functions of the anadromous fish catalogue remain within the dept of fish and game. There is no reason for this mapping of our salmon resources to be delegated to non biological staff. This is the most important log of fisheries management that tells the public what systems are performing and which are showing stress. It is the performance document that spans time, a resource history book. In Cook Inlet, where our fisheries are fully utilized by commercial, sport, subsistence and personal use no fish lost can be acceptable to oversight or mitigation. You cannot buy-out an eco-system that has been developing since the time of man and expect to restore it overnight.

We strongly encourage the governor and his staff to re-consider the adoption of EO107 and to consider the improvements that we have suggested.

Thank You, Members of the Senate Resources Committee.



Paul A. Shadura II

March 10, 2003

Members of the Senate Resources Committee:

Thank you very much for the opportunity to submit these comments in regards to Executive Order 107. I appreciate your time in taking these comments into consideration and I also appreciate the time you dedicate to representing your constituents in the state legislature.

I am a resident of Sitka and I have taken the time to submit testimony because I am strongly opposed to Executive Order 107, which would move the Habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources.


I enjoy fresh water fly fishing, and a good portion of my household's food comes from various hunting and fishing activities in the Tongass forest and surrounding waters. I am deeply concerned with Executive Order 107 as I believe it will dismantle a vital check and balance that has existed and allowed for responsible development and protection of habitat.

I came to Alaska from Newport, Oregon, a small town with the largest fishing fleet on the Oregon coast. I come from a fishing family, and because of the destruction of watersheds up and down the Oregon coast, my family now has to travel hundreds of miles north to fish for salmon in Alaska.

Oregon as a state made little to no concerted effort to protect vital watersheds and salmon streams from development, and now almost all of Oregon's natural salmon runs have vanished. Dozens of fish runs are listed as threatened species and the state spends millions of dollars a year on habitat restoration.

I moved to Alaska in part to live in a community where I could live off of what the land and sea provide. I urge you to work for strengthening, not diminishing fish and wildlife habitat protection and oversight. Please vote in joint session to disapprove of the executive order and do not let the destruction of watersheds that exists in Oregon be replicated in Alaska.

Sincerely,



Erin Dougherty

722 Biorka Street
Sitka, AK 99835
907-747-3498

3/13/03 POWMS

Roberta R Sheldon
Po Box 292
Talkeetna AK, 99676-0292

Email:
Constituent
BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: It is a serious mistake to transfer the F&G Habitat Division to DNR. This is a dangerous departure from a sound habitat supervision and will cause serious degradation to our outstanding environmental assets. Please do not support this irrational proposal.

DISTRIBUTION: 1

Gregory W Bell
2048 Esquire Dr
Anchorage AK, 99517-1345

Email:
Constituent
BILL#:

SUBJECT: EXECUTIVE ORDERS

MESSAGE: I support EO 107 as I've experienced what I believe is a personal environmental agenda with the habitat biologists in my dealings with the current habitat division. I feel this isn't right. I believe we need to put this division over in DNR for better representation. Thank you.

DISTRIBUTION: 7

Subject: Please find attached testimony from 3/10/03

Date: Tue, 11 Mar 2003 12:15:00 EST

From: Jeannems7@aol.com

To: Senator_Scott_Ogan@legis.state.ak.us

Honorable Senator Ogan:

I appreciate your time last night and your continued review of this important issue.

Sincerely,
Jeanne Walter
19658 Creek Way
Chugiak, AK 99567



Public Testimony to the Senate Resources Committee.doc

Name: Public Testimony to the
Senate Resources
Committee.doc

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(application/msword)

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message

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I view this transfer as a paramount issue in the compliance of state law for fish and wildlife resources. The original intent of Executive Order 107, as stated, was to streamline permitting. This will not be possible under E.O. 107 for the following reasons:

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Please bring Executive Order 107 to the floor of a joint session and vote to **disapprove** it. Keep the Habitat and Restoration Division where it belongs, in the Alaska Department of Fish and Game. Thank you for your time and attention to this important issue.

Subject:

Date: Tue, 11 Mar 2003 03:25:09 +0000

From: "Pete Smith" <petes_mile@hotmail.com>

To: Senator_Scott_Ogan@Legis.state.ak.us

As a retired commercial fisherman, I noticed that F&G worked just fine before the establishment of the Habitat Division.

Transferring a pared down version to DNR should be a good step in eliminating this redundant agency.

Land use managers should well know by now, after some 28 years, the parameters concerning dangers to habitat and that should lend itself to the use of a fairly cookie-cutter approach.

So do we need a DIVISION for that ???

Gov. Murkowski is right on track.

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<http://join.msn.com/?page=features/featuredemail>

Subject: Support EO 107

Date: Tue, 11 Mar 2003 15:39:24 -0900

From: Julie Decker <juliedecker@gci.net>

To: Ogan Scott <Representative_Scott_Ogan@legis.state.ak.us>,
"Seaton, Paul" <representative_paul_seaton@legis.state.ak.us>,
"Weyrauch, Bruce" <Representative_Bruce_Weyrauch@legis.state.ak.us>

To State Affairs Committee, House Fisheries Committee, and Senate Resources Committee:

On behalf of the Southeast Alaska Regional Dive Fisheries Association, SARDFA, I would like to support Executive Order 107.

SARDFA supports resource protection. Without a healthy resource, there is no healthy industry.

However, SARDFA also believes the Department of Natural Resources will be able to uphold the retained Title 16 permitting requirements just as conscientiously as the Department of Fish & Game has in the past, with the added benefit of making government more efficient.

Thank you for your time,

Julie Decker

Executive Director
SARDFA, Southeast Alaska Regional Dive Fisheries Association
P.O. Box 2138, Wrangell, AK 99929
Ph: 907-874-3110
Fax: 907-874-4270
Email: juliedecker@gci.net or info@sardfa.org
Web Site: www.sardfa.org

Decker, Julie <juliedecker@gci.net>

Executive Director
SARDFA



KENAI RIVER
Special Management Area

"Working together...for the river"

ADVISORY BOARD

March 5, 2003

Dear Senator:

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

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

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

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



Kenai Area Office, Box 1247, Soldotna, AK 99669, Soldotna 262-5581
Kenai Peninsula Borough, Box 850, Soldotna, AK 99669, Soldotna 262-4441

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



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

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

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

Sincerely,

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

Ken Lancaster
KRSMA Advisory Board President

Cc: DNR Commissioner Tom Irwin

POM re: F&G transfer to DNR

Roberta R Sheldon
Po Box 292
Talkeetna AK, 99676-0292

Email:

Constituent

BILL#:

SUBJECT: FISH & GAME (BOTH)

MESSAGE: It is a serious mistake to transfer the F&G Habitat Division to DNR. This is a dangerous departure from a sound habitat supervision and will cause serious degradation to our outstanding environmental assets. Please do not support this irrational proposal.

DISTRIBUTION: 1

State of Alaska

Legislative Affairs Agency Division of Public Services

Wrangell Teleconference Center
Fax cover sheet

To: Senate Resource, Committee Phone: _____

From: Sarah Merritt Phone: 874-3013

Instructions: Please include this in your written

testimony for ED 107. Thank you.

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Sent: Date 03-12-03 Time 1:30 pm

By: Wrangell Teleconference Center

Disposal of Original: Throw Away _____

Hold for Pick Up _____

Number of pages 1 (not counting this cover sheet)

permitting

Subject: permitting

Date: Wed, 12 Mar 2003 10:51:20 -0900

From: Dave Atcheson <daveatch@gci.net>

To: Senator_Scott_Ogan@legis.state.ak.us

Dear Mr. Ogan:

I want to state my concern about the Governor's plan to move permitting from Fish and Game's Habitat Division over to DNR. As a commercial fisherman for many years, and as an avid hunter and sports fisherman, I am very concerned about the future of our fisheries and feel moving permitting to another division is an enormous mistake, and will only further risk one of our most valuable resources. I urge you and your fellow state senators to oppose this.

Thank you,

Dave Atcheson

Subject: oppose Habitat Division EO

Date: Tue, 11 Mar 2003 21:50:47 +0000

From: "Thomas Paragi" <tparagi@hotmail.com>

To: Senator_Ralph_Seekins@legis.state.ak.us

CC: Senator_Scott_Ogan@legis.state.ak.us

1271 Lowbush Lane
Fairbanks, AK 99709
11 March 2003

Hon. Ralph Seekins
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

As a hunter, fisherman, and trapper in Alaska for the last 18 years, I would like to request that you oppose Governor Murkowski's Executive Order to dismantle the Habitat and Restoration Division of ADF&G. The founders of our State Constitution had the wisdom to separate the DNR Divisions (largely non-renewable resources) from fish and wildlife resources so that both sectors of our economy and livelihoods can be strong. Habitat Division was created years ago to maintain the strength of our fishing industry by ensuring land-based projects did not harm spawning and rearing areas, particularly in coastal Alaska.

In the Interior, Habitat Division has been an asset to balance mining projects with freshwater fisheries and local water quality. Testimony to the Legislature within the last week cited Habitat Division as an asset to developing a good environmental program at Fort Knox. I have to wonder whether the "increased delay in permitting in recent years" cited by the Governor and other behind-the-scenes interests is the result of poorly-planned developments that indeed should be held under greater scrutiny. We have a bounty of resources in Alaska, but we don't need to repeat the mistakes of the other 49 states in developing them in a sustainable fashion.

The financial wisdom of this EO escapes me after talking with some employees of ADF&G. Habitat Division receives about 15% General Funds, with the rest of their salaries and operations sustained by outside grant support and Federal Aid matching funds. To my knowledge, only the Department with statutory authority over public trust resources (fish and game, hence ADF&G) is eligible for Federal Aid. Thus, transferring the permitting section to DNR will lose their eligibility for 3:1 federal match, along with ownership of equipment that ADF&G has purchased with these funds in past years. Where will the Legislature find the money to re-tool the permitting biologists so they can do their job effectively and in a timely manner?

This blatant attempt to remove the internal check-and-balance system characteristic of our State government will almost assuredly result in increased legal intervention by the Federal government and public interest groups, further delaying development projects and costing the State untold revenue that will be diverted to legal bills. Concurrent attempts by this Administration to further reduce the effectiveness of public interest groups within Alaska will only shorten the trigger for Federal intervention. The Governor has started down a slippery slope that all previous Administrations, of all political stripes, were wise to avoid. I am not confident he will admit a mistake and take corrective action.

There may well be problems with how Habitat Division interacts with the private sector, but the Legislature has the collective wisdom to fairly fix those problems, as previous Administrations have done. As a member of the Senate Resources Committee, perhaps you could introduce the EO as

legislation that could be debated and properly amended for intent without the costly consequences as presently worded.

Sincerely,

Tom Paragi

cc: Hon. Scott Ogan, Chair, Senate Resources Committee

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<http://clinic.mcafee.com/clinic/ibuy/campaign.asp?cid=3963>



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) RESOURCES
 Committee on EO 107 Committee Name
Bill / Subject Dated 3-10-03

I am in support of the Governor's plan to transfer the ADF&G permitting to DNR.

I am for the streamlining of positions as well as streamlining of the permit process. Currently the ADF&G can be slowed down with special interest groups who do not support any Resource development.

I do not expect any compromise of the environment, but would expect permitting to move forth without holdups.

SIGNED:

Testifier Leslie Gustafson
 Representing Self - owner of White Spruce Enterprises
10293 Old Valdez Tr, Salcha
Address / Phone Number 99714
488 3004

Subject: Fish and Game permitting

Date: Thu, 6 Mar 2003 08:09:29 -0900

From: "Stone_Eben" <Stone_Eben@asdk12.org>

To: <Fairbanks_LIO@legis.state.ak.us>

Greetings

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

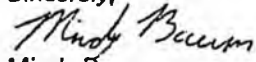
Mindy Baurr.
8515 Cormorant Cove Circle
Anchorage, Ak 99507
907-349-3760(ph)
907-338-0370(fax)

3/10/2003

I am writing in opposition to the Executive Order moving the Habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources.

The mission of the Department of Natural Resources of developing natural resources has an inherent conflict with the mission of the Alaska Department of Fish and Game of protecting natural resources. As such, the Department of Natural Resources is not the appropriate agency to oversee the permitting process. Such a move only serves to undermine environmental protection of natural resources and to eliminate any meaningful review of development projects.

Sincerely,


Mindy Baum

RE:

Subject: RE:

Date: Thu, 13 Mar 2003 21:16:03 -0900

From: "Bill Stevens" <casscon1@acsalaska.net>

To: "SCOTT OGAN" <Senator_Scott_Ogan@legis.state.ak.us>

CC: <casscon@alaska.net>



8:55 PM
03/13/03

Sir,

As promised, my testimony and permitting time line are attached.

Thank you.

Bill Stevens

 LEGISLATURE LETTER 03_13_03.doc	Name: LEGISLATURE LETTER 03_13_03.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
 Cassandra Permitting Timeline 3-11-03.doc	Name: Cassandra Permitting Timeline 3-11-03.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message

CASSANDRA ENERGY CORPORATION

P.O. Box 100453
Anchorage, Alaska 99510-0453

Telephone: Anchorage (907) 344-7188 Kenai (907) 283-3567
Fax: Anchorage (907) 344-2262 Kenai (907) 283-7065
E-Mail: casscon@alaska.net with cc to casscon1@acsalaska.net

Bill Stevens (907) 240-7040

03/13/03

Alaska State Legislature

Please enter my testimony to the Senate Resources Committee on EO 107, dated 03/10/03.

Mr. Chairman,

Thank you for the opportunity to testify today.

My name is Bill Stevens and I am President of Cassandra Energy Corporation.

Cassandra Energy Corporation has been attempting to permit an exploration drilling operation for the past 29 months. The State has been involved in the last 12 months of this effort.

I feel that The Habitat Division of Alaska Department of Fish and Game has added approximately 7 months to the permitting ordeal. Specifically, this was done through lack of interest or attention concerning the initial introduction of our project at and following the ADGC Pre-Ap Meeting. Later, the apparent usurping of authority outside of their scope, "turf wars" with other regulating agencies, unreasonable or seemingly baseless demands, and an arrogance demonstrated by their disregard of the rules and regulations that applied to others involved in the DGC process, would help account for or explain the delays.

I am attaching a color coded Timeline to this correspondence to help clarify and qualify my statements.

I find it rather easy to believe that China and Russia are ahead of Alaska on the list of desirable Geo-political areas to invest.

Govenor Murkowski has shown excellent insight and fortitude in EO 107. I urge the committee to help make it law or let it become law.

William H. (Bill) Stevens
Cassandra Energy Corporation
P.O. Box 100453
Anchorage, Alaska 99510

907-344-7188



Alaska State Legislature

Please enter into the record my testimony to the SENATE RESOURCES COMMITTEE
committee name

committee on EO-107, dated MARCH 10, 2003
bill/subject

The following written testimony was faxed to the
Senate Resources Committee on the evening of March 10, 2003
following the Committee's Public Meeting on EO-107.

This is the original copies submitted to the Anchorage LIO.

Edw. Bayn
Anchorage LIO

Signed: _____
Testifier

Representing (Optional)

Address

Phone No.

Chairman Ogan and distinguished members:

Good Afternoon. 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 is concerned 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. Last year I personally wrote 36 Fish Habitat Permits and participated in approximately an equal number of project reviews where no permit was required. Very few of these were "off the shelf" as DNR Commissioner Tom Irwin would have you believe. Just like the 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. That 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,


Matthew LaCroix

Mr. Chairman, members of the committee.

My name is Cindy Anderson and I am here today to testify that I oppose the movement of the laws that maintain fish habitat to the department of Natural Resources.

I have spent the past 20 years of my career as a Management Biologist for the Division of Commercial Fisheries. I have managed herring and salmon fisheries from the Kuskokwim area to the North line of Egegik in Bristol Bay. I have spent hundreds of hours in airplanes and helicopters counting fish to ensure that there are more than enough fish to provide for all users and to ensure that there will always be new generations of salmon for the future generations of Alaskans.

During the time period that I worked for Commercial Fisheries, I flew surveys to check on projects in western Alaska streams for Habitat Division. I provided input on streams impacted by mining projects, and rural airport construction projects. This sharing of responsibility for the resources we manage, (the fish, the mammals and birds and their habitat) has been done in concert with each division at Fish and Game. The bear biologist is just as interested in fish runs and spawning success as the commercial fisheries manager or the technician collecting subsistence data.

The movement of the Division of Habitat to the Department of Natural Resources undermines the responsibility of the Department of Fish and Game to protect all of the renewable resources that are now sheltered under one roof. It is counter productive to fragment the Department of Fish and Game and dilute their ability to provide all the resource protection needed for the Fish and Wildlife of the State of Alaska.

. The dedicated staff in the Region II habitat staff work many hours of unpaid, uncompensated hours of time to protect fish habitat. In the past year more than 2,000 hours have been freely given by the Region II staff to meet the standards necessary to review permit requests. Every Alaskan, young or old, Sportfish or Subsistence user, commercial fishermen or tourist who values salmon as a resource needs to know that the Department of Fish and Game Habitat Division belongs at Fish and Game. Every Alaskan needs to be aware that Department of Fish and Game biologists will no longer be able to protect the fish and wildlife habitat when Habitat Division is disbanded. If a considerable number of Habitat Biologists have been laid off, the balance moved to DNR, and the experienced forced to leave, how can we possibly be protecting the Resources for the State of Alaska and all resource users.

Thank you for your consideration.

10 March 2003

Barbara Mahoney
3905 Locarno Drive
Anchorage, Alaska
99508

To: Legislative Affairs

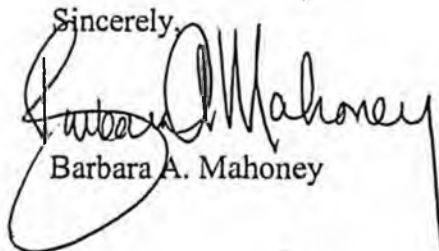
I would like to inform the Legislative Affairs that I am opposed to executive order 107, which transfers the Alaska Department of Fish and Game, Habitat Division (Title 16) to the Alaska Department of Natural Resources.

I request a joint resolution to reject or overturn this executive order.

The protection of salmon habitat in Alaska should be of the utmost importance for a state whose history was created by salmon and the salmon industry. The executive order to get rid of ADFG Habitat Division is a short term view, with short term goals and possible pay outs to a select few. However, the long term loss to the state will be measured in the future with poor salmon returns, lower and more problematic than what is occurring now. A stream or river does not need a dam to destroy its salmon habitat, what will destroy salmon habitat is development along their streams and rivers with minimal review and little time and concern for those impacts to all stages of the salmon's life cycle. Alaska will not be able to avoid the problems of the northwest as related to salmon, and the federal responsibility and severe restrictions of the Endangered Species Act.

Governor Murkowski's executive order 107 will be back to haunt the state of Alaska when the salmon industry suffers, more so than just the cost per pound. The Alaska Legislature should take this opportunity to correct this mistake, before Title 16 and the protection it offers through expert and experience biologists working with the Habitat Division of ADFG, is lost.

Sincerely,



Barbara A. Mahoney

Jeffrey C. Davis
20905 Jayhawk Drive
Chugiak, Alaska 99567

March 10, 2003

Alaska State Senate Resource Committee

Dear Senators:

Subject: Executive order 107

I am asking that you submit a joint house and senate resolution to rescind the Governor's executive order 107. Implementation of the executive order will increase permitting review time the majority of projects requiring fish and game authorization, have no affect on the efficiency of regulatory reviews of large projects, result in the long-term loss of State resources. Identifying regulatory issues and finding solutions that adequately address all concerned should be accomplished through the legislature, not by executive order.

Regulatory permit efficiency would decrease if E.O 107 is implemented. Of all of the State regulatory permit agencies DNR probably has the worst record. DNR is encumbered with extensive public notice and review processes due to a number of lawsuits associated with the regulation of State land and waters. There is no distinction between large and small process. Therefore, permits currently issued within days for small-scale projects with minor impacts that can easily be mitigated will require length reviews with mandatory public notice and review deadlines. Permits currently issued within days will take months and impose a greater cost to the State.

Large projects generally require multiple State and federal permits. The review timeline and process generally is due to federal regulations. Incorporating habitat permitting into DNR will have no effect on this process.

Resource protection likely will decrease and permit conditions become more cumbersome to developers. In order to reduce permit review times, permits will need to be issued without adequate environmental review or permits issued for project that should not be authorized. One way to issue permits faster is to incorporate generic permit conditions. Generic permit conditions do not protect the resource because site-specific or species-specific information is not incorporated into the review. Generic conditions often require applicants to conduct monitoring or implement project modifications that do not fit the given situation. This results in more of a burden to developers that spending additional up-front project review time. This also causes further frustration for those wishing to conduct activities within the State.

All of us currently reviewing projects recognize that the State regulatory review process could be made more efficient; however, there are literally hundreds of different issues to consider when evaluating how this could be accomplished. It makes much more sense for the Governor or legislature to set up a regulatory review committee that would take into account all of the

different permitting requirements within all State resource agencies. Recommendations from this committee could lead to appropriate legislation with appropriate legislative review. However, for real and appropriate changes to the regulatory progress to occur, this executive order must be rescinded.

Sincerely;

A handwritten signature in cursive script, appearing to read "Jeffrey C. Davis".

Jeffrey C. Davis

Testimony before the Senate Resources Committee – March 10, 2003

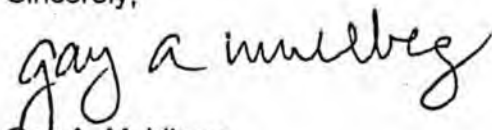
Dear Chairman Ogan, Vice-Chairman Wagoner and Members of the Senate Resources Committee:

I would like to express my concern about the Governor's executive order to transfer permitting authority from the Department of Fish and Game's Habitat Division to the Department of Natural Resources. I am aware that the missions of these two departments are different and I see a real danger in moving enforcement authority for the protection of fish and wildlife resources/habitat to the Department of Natural Resources whose primary mission is the development of resources. The permitting authority was established at Fish and Game in 1959 so that checks and balances would be maintained on issues and decisions related to the protection of fish and wildlife resources. This executive order eliminates those checks and balances.

The main reason the governor gave for issuing this executive order was "streamlining" the permit process though there doesn't seem to be much evidence of inefficiency. The permit process at Fish and Game handles an average of 2000 permits per year. Many projects are inspected and monitored in the field. Permits are issued in an average of 15 days by an experienced staff of habitat biologists who coordinate with the Sport Fish, Commercial Fish, Wildlife and Subsistence Divisions within ADF&G. Less than 1% of these permit applications are denied for legitimate reasons. The Governor's executive order reduces the number of staff to handle this work and eliminates input and coordination with other Fish and Game Divisions. This move will be costly and counterproductive and will have the opposite effect of slowing down the permit review process. The Governor has not provided a convincing argument for moving the ADF&G permitting staff. There needs to be discussion on alternatives that will support both development and protect the fish and wildlife resources.

I am asking you to pass a joint resolution rescinding Executive Order 107. Thank you for your time.

Sincerely,



Gay A. Muhlberg

20905 Jayhawk Drive

Chugiak, AK 99567

Testimony before the Senate Resources Committee Monday March 10, 2003

My name is Cevin Gilleland. I am the area habitat biologist for the Mat-Su Borough, Prince William Sound, and the Copper River Basin. I've been involved in three of the projects that have been used to demonstrate why the Department of Fish and Game's responsibility to protect fish and wildlife should be moved to DNR; and make no mistake about it, moving the Department's permitting responsibility and authority to DNR will eliminate most of the Department of Fish and Game's ability to project fish and game.

*I am not testifying
on behalf
of the
ADF&G*

The three projects I want to talk about are real projects but the information presented to the press and the public is not. The projects are the Tok Cutoff Highway upgrade, The Glenn Parks Interchange, and the Power Creek hydroelectric project in Cordova.

On the Tok Cutoff it was alleged that Fish and Game at first had no objection, then changed our comments, resulting in project delays. Let me explain what happened.

The DOT&PF requested scoping comments on the highway upgrade, their plans said that the bridges across the Chistochina River and Sinona Creek would be replaced. There was no mention of stream diversions or wetland impacts. The ADF&G sent a letter stating that the Department had no objection, that permits would be required for the bridges, and that they would be issued upon receipt of plans and specifications. The plans and specifications came and the permits were issued. Approximately 6 months later we received a letter from the Corps of Engineers, indicating that the project would fill approximately 24 acres of wetlands adjacent to the Copper River, and that a clear water tributary to the Copper River would be diverted. Because of the very high fishery values of the Copper River, this new information, provided by the Corps of Engineers, not DOT&PF, raised additional questions.

So we contacted the DOT&PF and the Corps of Engineers, and asked for plans for the permanent diversion channel (which required an ADF&G permit), and an evaluation of the wetland impacts. If you are charged with protecting fish and game, that seems to be the prudent thing to do!

To date, we have re-issued the bridge permits twice – they have now expired. I contacted the DOT Northern Region in January to see if they wanted to renew the bridge permits and was told by Melissa Parker that the ADOT&PF was developing new plans for the project and that the new plans would be available this spring. The ADF&G did not delay this project. The DOT&PF project changed significantly from what was presented during scoping, and the ADF&G responded appropriately. To do otherwise would have been irresponsible.

The second project was the Glenn Parks Interchange. The Governor said that the ACMP Consistency finding was issued in March of 2001, and that the ADF&G didn't issue permits for 16 months. His statement was simply incorrect. The first discussions of the Glenn Park Interchange project didn't take place until June 2001. The ACMP Consistency review and final finding was based on the project concept (not the actual plans), because it was a design build project - that is, the contractor both designs and builds the project. The consistency finding was issued on March 27, 2002 (not 2001); and it required that plans and specifications be submitted by the contractor at least 30 days before construction. In other words the ADF&G could not issue any permits until the actual plans were submitted.

The design build contractor Kiewitt Pacific and CH2M Hill were selected in the summer of 2002. They worked with us to develop an alternative to the DOT&PF concept plan that eliminated one of the bridges over Spring Creek. We worked with the federal resource agencies (EPA, NMFS, and the USFWS) and the Corps of Engineers to get the additional wetland fill approved quickly, saving the contractor a significant amount of time and money.

We also worked with the contractor to save time and money on a large culvert that is part of the project. The culvert was originally supposed to be 385 feet long with a huge concrete wall. We helped the contractor modify the plan, extend the length of the culvert to about 410 feet, and replace the concrete wall with a much smaller headwall around the culvert ends, again saving the contractor time and money, while protecting important fish and wildlife resources.

The final Project I'm going to talk about is the **Power Creek Hydroelectric Project in Cordova.** On at least two occasions a photograph of the contractor washing a huge boulder has been shown to reporters, implying

that the ADF&G required the contractor to wash rock. This is simply not the case. Washing the rock was Jack Snyder's idea. Mr. Snyder was a contract employee with Cordova Electric.

The permits issued by the Department of Fish and Game, for the construction of the diversion, dam, and intake, where the rock washing took place, did not require that the contractor wash rock, or even that the contractor use clean rock. The permits required that the diversion be constructed to carry the flow and not pollute the downstream anadromous fish spawning areas.

I have copies of those permits attached to my comments. And some photographs of what happened when Power Creek was first diverted into the diversion channel. Hundreds of tons of sediment washed into Power Creek, Hatchery Creek, and Eyak Lake, just after sockeye salmon had begun spawning.

It took the contractor 16 days to re-divert Power Creek back into its natural channel. After Power Creek was back in its natural channel both the ADF&G and the Federal Energy Regulatory Commission asked Cordova Electric to redesign the diversion channel.

We helped. I contacted Paul Janke, the ADOT&PF south-central regional hydraulic engineer and requested his assistance in order to expedite the project. Mr. Janke provided a standard design that I forwarded to CEC and Whitewater Engineering.

On August 30, 2000, the ADF&G received CEC's revised stream diversion plans, incorporating the minimum design criteria provided by the ADOT&PF, and stating that CEC's contractor would wash the rock. After the Federal Energy Regulatory Commission approved the plan on September 13, the ADF&G wrote a memorandum to the Division of Governmental Coordination asking that the diversion of Power Creek into the bypass channel not be required to undergo an Alaska Coastal Management Program Consistency Review (Attachment 4), again, in order to expedite the project. On September 29, the ADF&G issued Fish Habitat Permit for the temporary diversion of Power Creek into the diversion channel and the re-diversion of Power Creek back into its natural channel once construction of the dam was completed.

The ADF&G did not cause delays at the Power Creek Project, but expedited completion of the project by providing plans from the ADOT&PF, and by requesting that the project not undergo further ACMP consistency review.

The ADF&G had a substantial involvement in these three projects. In every case the applicant's benefited and so have fish and wildlife resources.

ADF&G's permitting is the primary mechanism used by the department to protect fish and wildlife. Transferring that responsibility to DNR will not benefit fish and wildlife, will not benefit Alaskans, is poor public policy, and a bad message to send to the rest of the country, especially when we're lobbying for support for ANWR and NPRA.

I urge you to reject Executive Order 107.

ATTACHMENT 1

Photographs of original diversion channel and its failure, resulting in downstream pollution of sockeye and coho salmon spawning habitat.

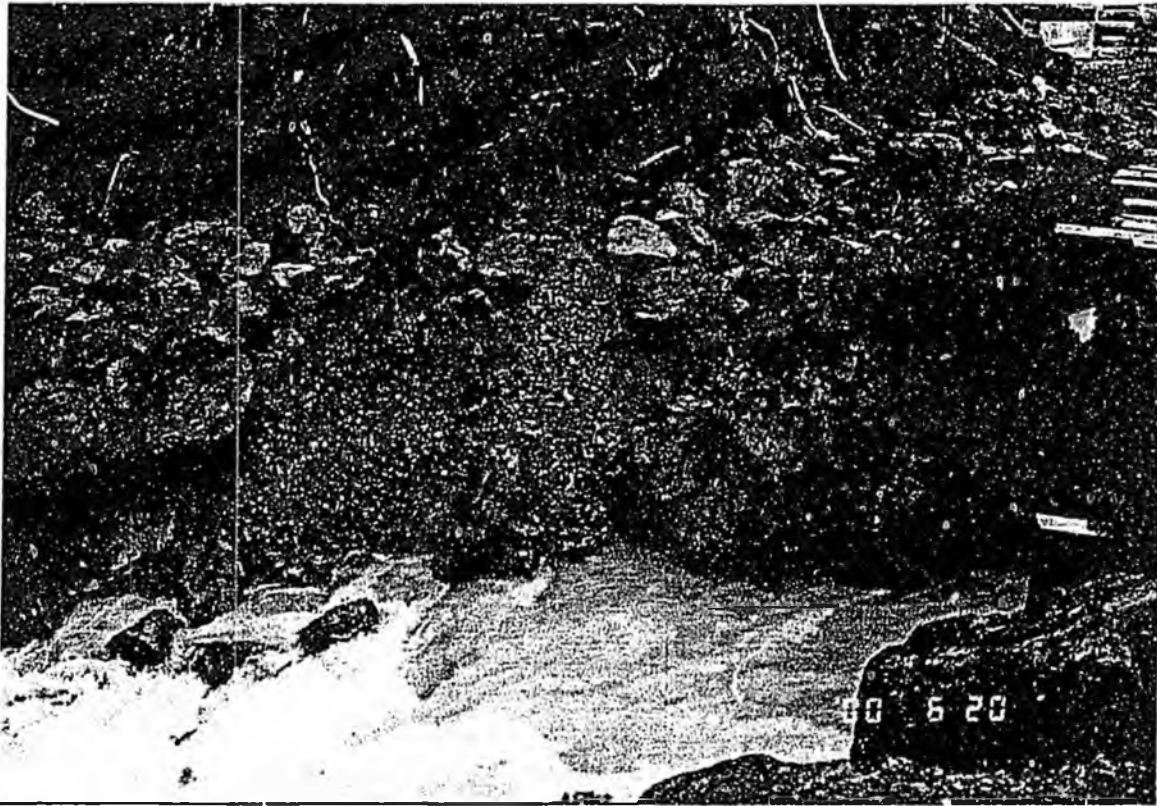


Figure 1. Photo shows diversion channel construction. Note fine material covered with a single layer of large rock. This photo shows one of the areas in the diversion channel where the rock armor failed. It is approximately 30 feet long and 12 feet high. It is important to note the soil that was exposed when the riprap collapsed into the channel – the channel armor consisted of large rock placed directly on the native soil matrix, which is not the accepted or appropriate method of placing riprap in an erodable channel.



Figure 2. Sediment laden water from diversion channel entering clear water of Power Creek at the diversion channel outlet. The density of the sediment plume indicates a large amount of soil and fine material being eroded from the channel and released into Power Creek.

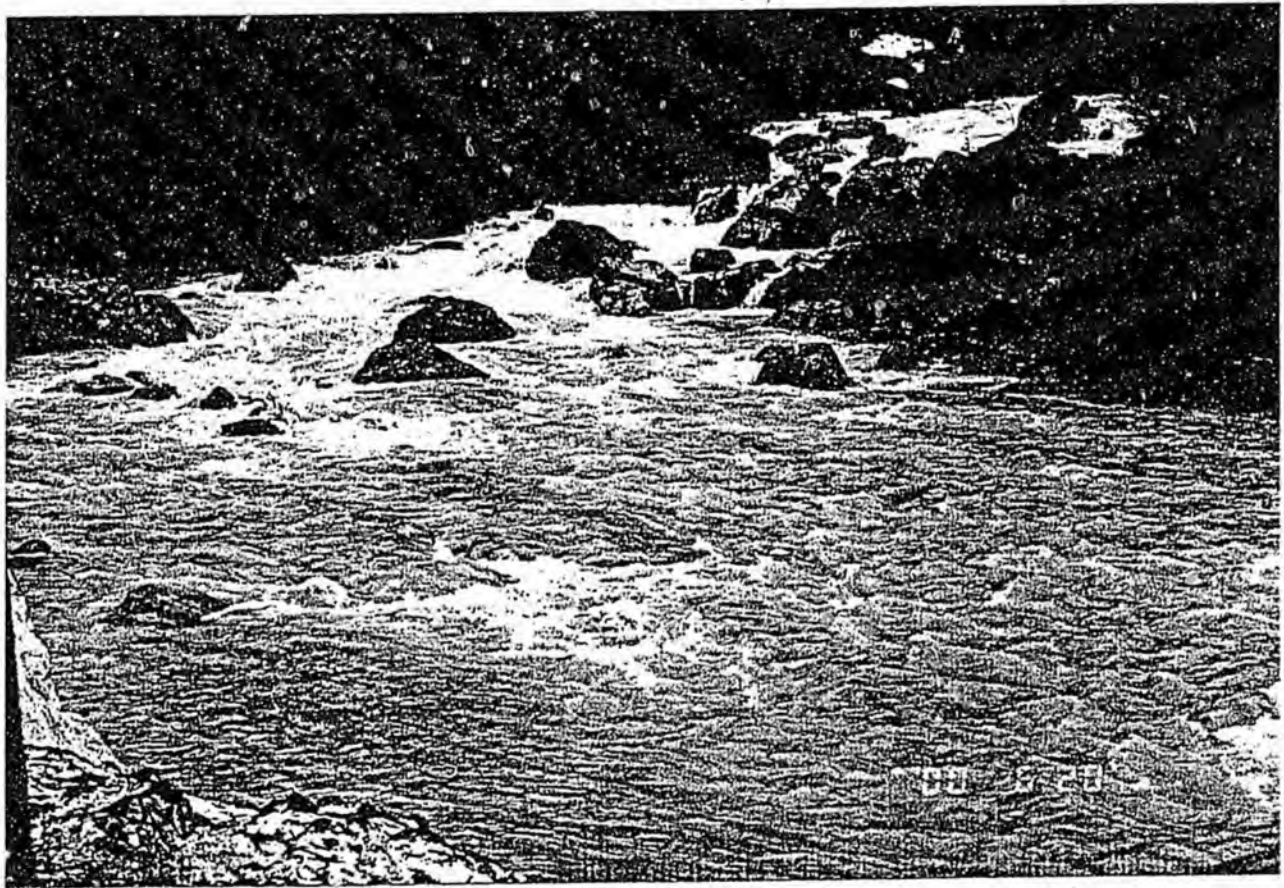


Figure 3. Sediment laden water in Power Creek approximately 0.5 miles downstream at lower portal, approximately 16 minutes after the initial plume entered Power Creek at the end of the diversion channel.

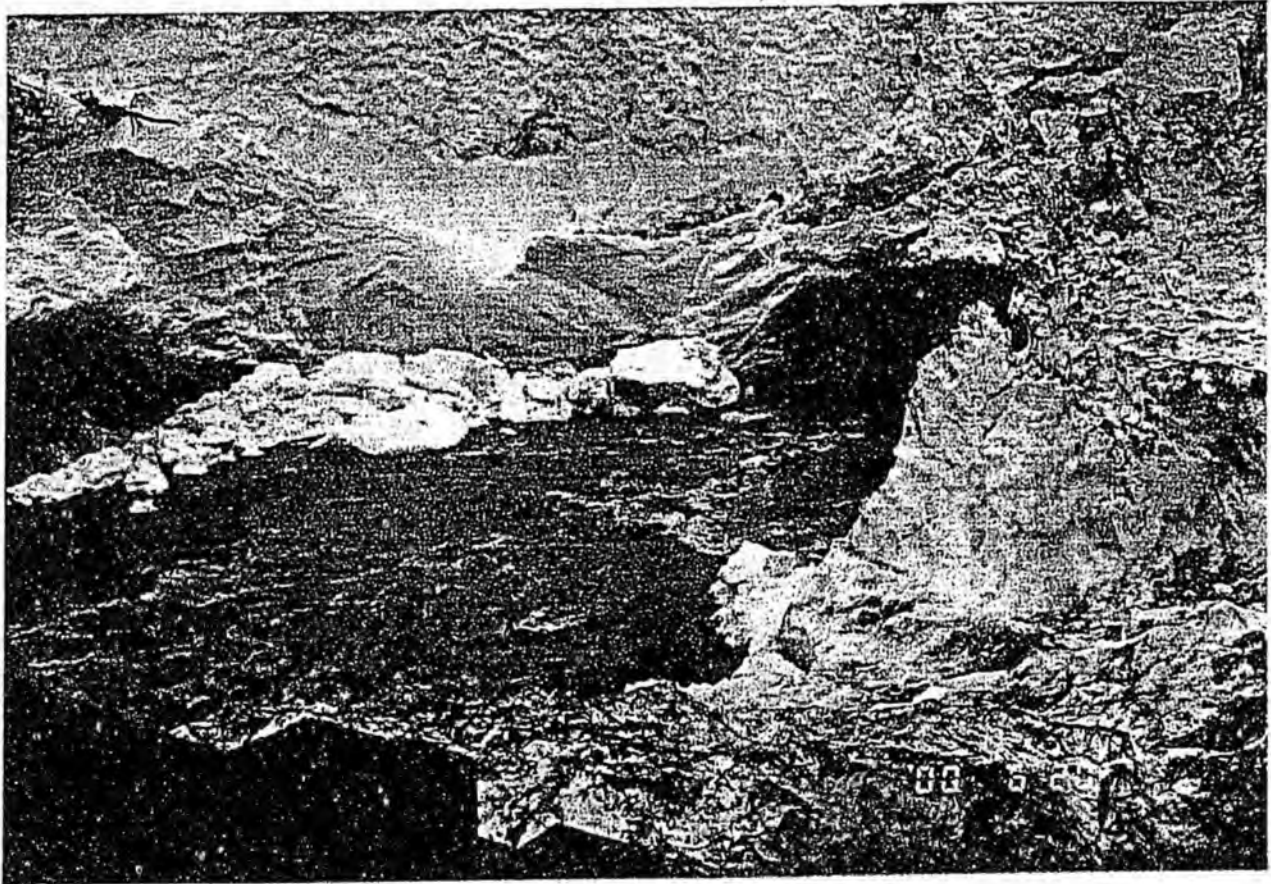


Figure 4. Sediment plume in Power Creek approximately 0.5 miles downstream from the diversion, approximately 90 minutes after the sediment plume first entered Power Creek at the downstream end of the diversion channel.

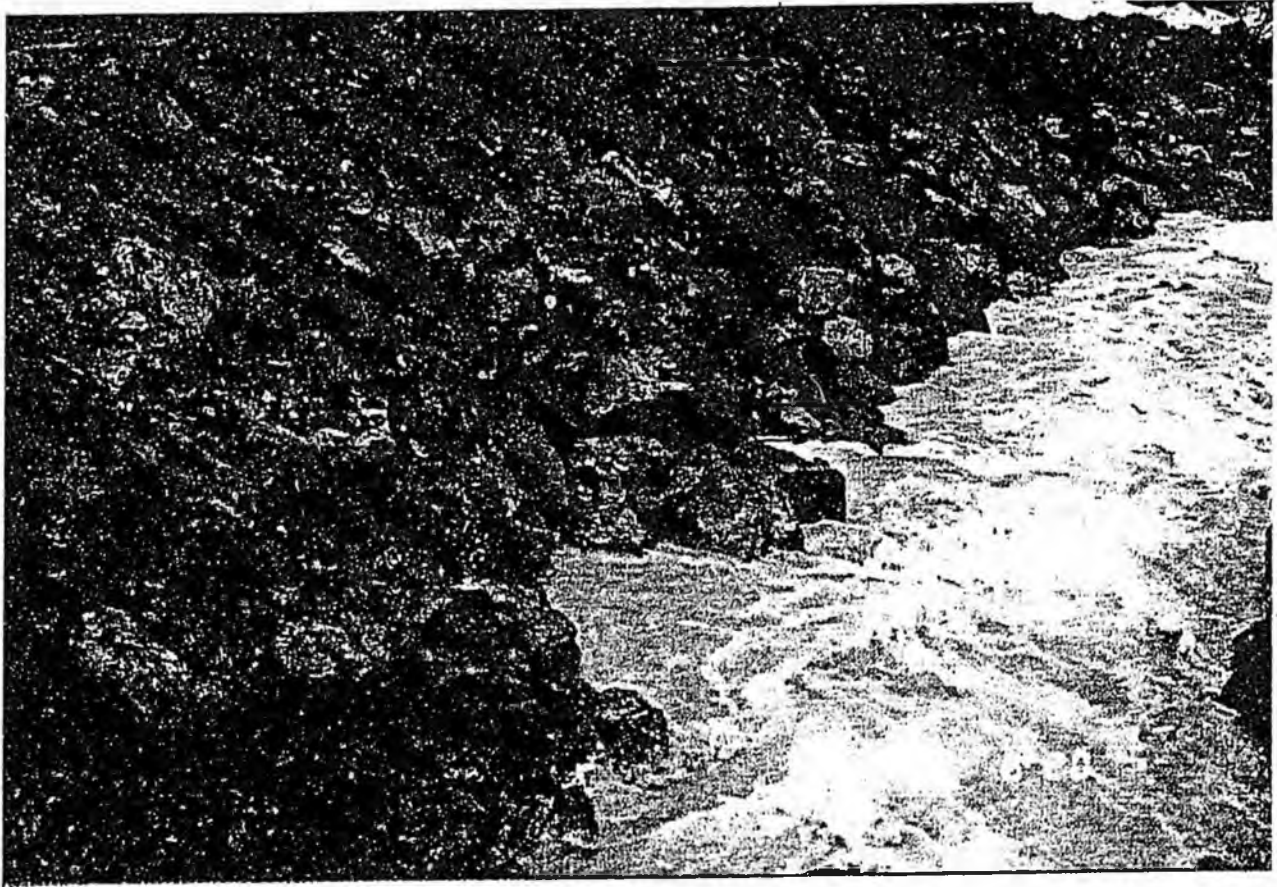


Figure 5. Continuing failure of diversion channel



Figure 6. Sediment laden water at Hatchery Creek. Note small amount of clear water and sockeye salmon at lower right.