

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11287 SENATE RESOURCES

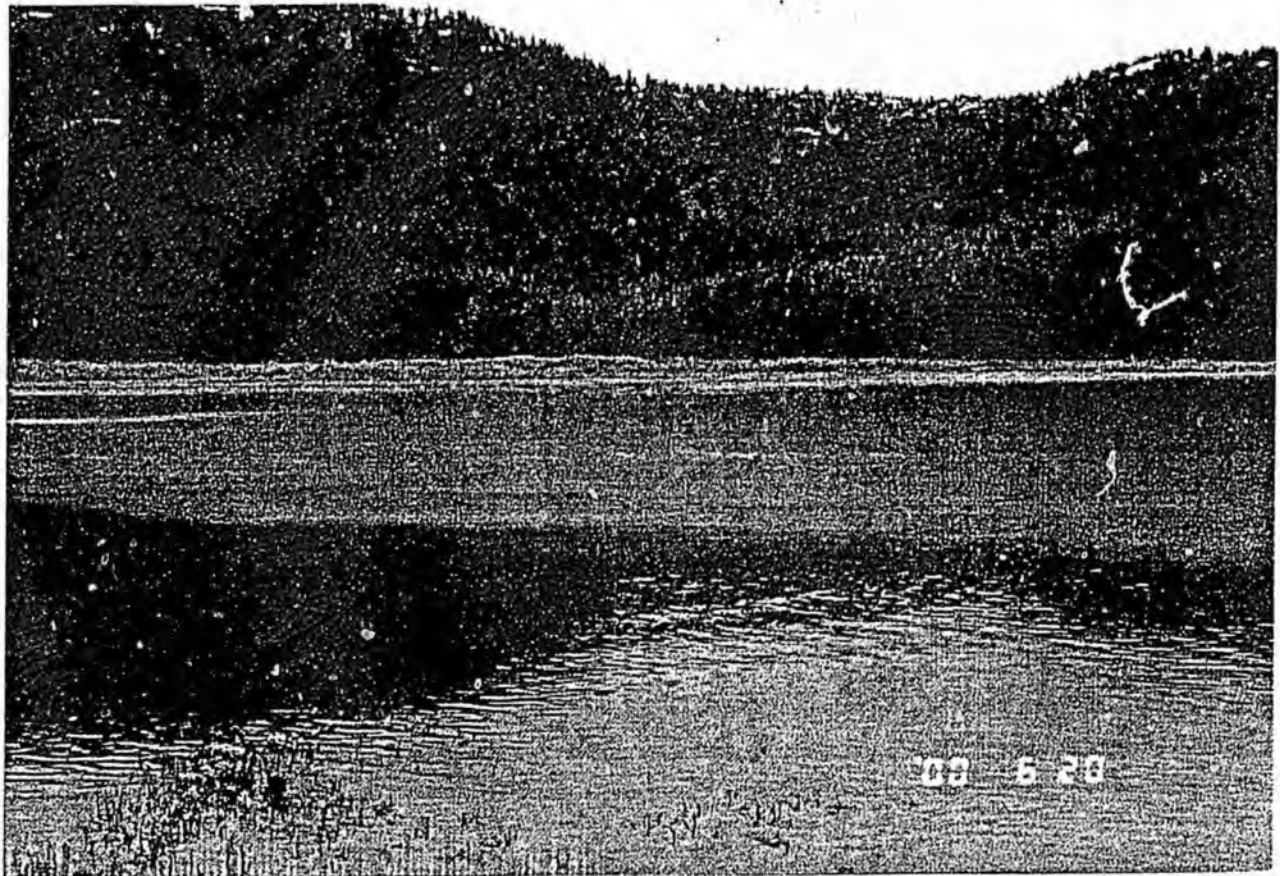


Figure 7. Sediment laden water entering Eyak Lake



Figure 8. Sediment laden water extends 0.6 miles into Eyak Lake approximately 2 hours after the initial sediment plume entered Power Creek at the downstream end of the diversion channel.

ATTACHMENT 2

Fish Habitat Permit FG 97-II-0741

DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION333 RASPBERRY ROAD ^{MB}
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 97-II-0741

ISSUED: August 14, 1998
EXPIRES: December 31, 1999

Whitewater Engineering Corporation
Attention: Mr. Thom Fischer
1050 Larrabee Avenue, Suite 104
Bellingham, WA 98225

Dear Mr. Fischer:

Re: Power Creek Hydroelectric Project - Stream Diversion
Power Creek - Stream No. 212-10-10050-2240
SID AK 9709-08AA; COE No. 4-970547
Section 4, T. 15 S., R. 2 W., C.R.M
FERC No. 1243-001-AK

Pursuant to AS 16.05.840, the Alaska Department of Fish and Game (ADF&G) has reviewed your plans to construct a dam and temporary diversion channel on Power Creek at the referenced location. Both the dam and diversion channel will be constructed above (upstream of) Ohman Falls, the upper limit of documented anadromous fish use on Power Creek. Separate authorizations will be issued for those activities that directly affect the specified anadromous reach of Power Creek--downstream of Ohman Falls.

The 300-foot long diversion channel will approximate the width and depth of the original channel. The channel will be lined with clean rock or fabric sufficient to prevent the downstream pollution of Power Creek when flow is diverted into the temporary diversion channel and for the duration of the use of the temporary diversion channel. The coffer dam at the upstream end of the natural channel will be constructed out of clean material (clean rock, plastics, or commercially available cofferdams). Once the diversion is complete, construction of the dam will take place in the de-watered natural channel. Water seeping into the work area will be pumped through a "dirt bag", other suitable product, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. The pollution of Power Creek, downstream from Ohman Falls is prohibited and will subject the permittee, its contractors, and participants to substantial penalties pursuant to AS 16.05.870 and AS 16.05.880.

Once the construction of the dam has been completed the water will be re-diverted back into the natural channel and the temporary diversion channel will be returned to pre-project conditions.

Please be advised that the Power Creek Road is currently closed. Power Creek has changed its course in the delta area and is now flowing across and down the road in several places. The new channels, including those crossing, and flowing down the roadway, are now a part of Power

Creek. Operating wheeled or tracked vehicles, or changing the bed, bank, or flow of Power Creek (again including those sections now crossing and flowing down the road) requires the prior written approval of the ADF&G pursuant to AS 16.05.870. Until the road is moved to a new location or until adequate plans and specifications to fix the road, including plans for the proper protection of the anadromous fish resources and habitats currently using and present in the area have been approved by the ADF&G, the road will remain closed.

Power Creek supports resident species of fish above Ohman falls in the area of your proposed activity and anadromous fish downstream from the falls.

In accordance with AS 16.05.840, project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cfs (cubic feet per minute) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation the diversion channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends.
3. The bed and banks of the temporary diversion channel must be constructed of material that will not erode at expected flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying anticipated stream flow at all times.
4. The diversion channel must provide a durable and efficient fishway. It shall be supplied with a quantity of water sufficient to pass fish at all times, and it shall be constructed and maintained at a grade and velocity approximating that of the original stream to provide for both upstream and downstream movement of fish.
5. Prior to diverting the flow into the temporary diversion channel and prior to re-diverting the flow into the natural channel, diversion structures shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division.
6. Diversion of flow into the temporary diversion channel shall be accomplished by first removing the downstream plug, then the upstream plug. The natural stream channel shall be de-watered by closing the upstream end, followed by the downstream end. Fish that become stranded in de-watered channel shall be captured and returned to the active stream channel without further harm.
7. Once the dam is complete the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The temporary diversion channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm.

August 14, 1998

8. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G, Habitat and Restoration Division, and obtain written approval in the form of a permit amendment before beginning the activity. Any action taken by the permittee or an agent of the permittee that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of ADF&G, Habitat and Restoration Division. Therefore, it is recommended that ADF&G, Habitat and Restoration Division, be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.840. This permit must be retained on site during the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits, state, federal, or local.

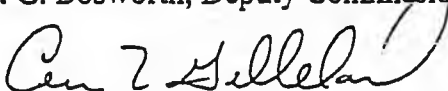
This permit provides reasonable notice from the commissioner that failure to meet its terms and conditions constitutes violation of AS 16.05.860; no separate notice under AS 16.05.860 is required before citation for violation of AS 16.05.840 can occur.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The department reserves the right to require mitigation measures to correct disruption to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

By: 
Cevin L. Gilleland
Habitat Biologist
Region II
(907) 267-2294

August 14, 1998

cc: R. Thompson, DNR/DL
J. Davis, OMB/DGC
A. Rappoport, USFWS
D. Vos, NMFS
M. Henry, FERC
J. Miriashi, FERC
J. Roberts, CEC
C. Estes, ADF&G
C. Hawks, ADF&G
A. Hoffmann, ADF&G
S. Morstad, ADF&G
J. Babcock, FWP

ATTACHMENT 3

Fish Habitat Permit FG 99-II-0612

DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 267-2100
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 99-II-0612

ISSUED: June 13, 2000
EXPIRES: December 31, 2000

Mr. Kenneth Gates, General Manager
Cordova Electric Cooperative
P.O. Box 20
Cordova, AK 99574

Dear Mr. Gates:

Re: Power Creek Hydroelectric Project - Stream Diversion/Dam
Power Creek - Stream No. 212-10-10050-2240
Section 4, T. 15 S., R. 2 W., C.R.M.
SID AK 9709-08AA; CE No. 4-970547
FERC No. 1243-001-AK

Pursuant to AS 16.05.840, the Alaska Department of Fish and Game (ADF&G) has reviewed your revised plans to construct the dam, intake structure, and temporary diversion channel on Power Creek at the referenced location. Both the dam and diversion channel will be constructed upstream of Ohman Falls which marks the upper limit of documented anadromous fish use on Power Creek. Resident fish do, however, use this section of Power Creek. This permit is being reissued under a new permit number due to the transfer of the Federal Energy Regulatory Commission (FERC) license from Whitewater Engineering Corporation (WEC) to Cordova Electric Cooperative (CEC).

Construction of the diversion dam and intake structure and the placement of the penstock will require de-watering the natural channel of Power Creek. In order to prevent the pollution of Power Creek, the contractor (WEC) will employ commercially produced filter bags or other suitable approved products and two sediment ponds to control water that infiltrates the work area. Water removed from the work area by pumping will be discharged through a filter bag, other approved suitable products, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. Sediment Pond Number 1 will be constructed and stabilized prior to any on-site de-watering operations. Material excavated from the bed and banks of Power Creek during construction will be stored and stabilized so that none of this material enters the waters of Power Creek. No excavated material will be stored in the area between the temporary diversion channel and the natural channel of Power Creek as shown on the drawings submitted to the ADF&G on June 7, 2000. Upon completion of the project, the natural channel (bed and banks) of Power Creek will be restored to pre-project contours and revegetated using approved techniques from the book: *Streambank Revegetation and Protection - A Guide for Alaska* (ADF&G Technical Report No. 98-3, Enclosure 1).

The initial diversion of Power Creek will be accomplished through the use of clean 1 cubic yard (yd³) sandbags. The sandbags will be arranged to divert the flow of Power Creek away from the plug in the upstream end of the diversion channel while the plug is being removed. Following the removal of the plug, the 1 yd³ sandbags will be repositioned across Power Creek to form a barrier behind which the upstream

cofferdam will be constructed. A similar barrier of 1 yd³ sandbags will be constructed across the natural channel of Power Creek to isolate the downstream cofferdam from the waters of Power Creek prior to construction. Both cofferdams will be constructed and removed in no-flow conditions. If such conditions do not occur during the construction timeframe convenient for the permittee or contractor, the diversion will remain in place and the cofferdams will be removed when approved conditions once again occur at the site. NOTE: See Stipulations 6 & 7 below, for specific instructions on the approved diversion sequence.

The cofferdams will be constructed of material excavated from the diversion channel. The faces of the cofferdams that contact Power Creek will be covered with an impermeable membrane. This membrane will extend under the cofferdams for a distance of 10 feet and will be secured to the face by clean gravel and riprap.

Although the ADF&G is herein approving construction and maintenance of the cofferdam and diversion channel, we are not fully convinced that the project design can avoid pollution of Power Creek or carry high flows that typically occur in Power Creek in the summer and fall. We have made numerous suggestions in attempts to work with WEC and CEC to ensure protection of Power Creek and have been assured by your contractor that the current design will carry the flows and will not pollute the creek. Based on an informal consultation with a hydrologist, however, the ADF&G remains concerned that the channel may not carry typical high flows during the period of use. To this end, you are hereby advised and notified that the pollution of Power Creek, downstream from Ohman Falls is prohibited. Any pollution of Power Creek downstream from Ohman Falls will subject the permittee, its contractors, and participants to substantial penalties pursuant to AS 16.05.870, AS 16.05.880, and AS 16.05.895. Because of previous construction delays, calculation errors, and other factors beyond the control of the permittee and its contractors, the ADF&G suggests that the diversion channel design and construction be checked by a hydrologist or hydraulic engineer to ensure it is sufficient to carry flows that may occur during its use (including fall, in case of delays that require its use until next winter).

Once the construction of the dam has been completed and the natural channel restored, the water will be re-diverted back into the natural channel and the temporary diversion channel will be returned to pre-project conditions.

Power Creek supports resident species of fish above Ohman falls in the area of your proposed activity and anadromous fish downstream from the falls.

In accordance with AS 16.05.840, project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cubic feet per second (cfs) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation and at all times prior to diverting the water, the diversion channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends. The permittee and its contractors are responsible for maintaining the plug under all flow conditions until the diversion is approved.
3. The bed and banks of the temporary diversion channel shall be constructed of material that will not erode at expected high flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying all predictable stream flows at all times it may be necessary for its use.

4. The diversion channel must provide a durable and efficient fishway. It shall be supplied with a quantity of water sufficient to pass fish at all times, and it shall be constructed and maintained at a grade and velocity approximating that of the original stream to provide for both upstream and downstream movement of fish.
5. Prior to diverting the flow into the temporary diversion channel and prior to re-diverting the flow into the natural channel, diversion structures shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division. This approval will not relieve the applicant or contractor of their engineering responsibility, of responsibility for compliance with this or other permits, or for other responsibilities and liabilities associated with this project.
6. Diversion of flow into the temporary diversion channel shall be accomplished by first removing the downstream plug in the diversion channel, then the upstream plug. The natural stream channel shall be de-watered by closing the upstream end, followed by the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
7. Once construction in the natural channel of Power Creek is complete, the streambed and banks shall be stabilized and revegetated to prevent erosion and sedimentation of Power Creek. Once stabilization is approved, the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The temporary diversion channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the de-watered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
8. Prior to diverting the flow back into the natural channel of Power Creek, the natural channel shall be restored to natural contours and the bed and banks shall be stabilized to prevent erosion and sedimentation.
9. After the flow has been diverted back into the natural channel of Power Creek, the upstream bed of the diversion channel and the natural bed of Power Creek disturbed during construction shall be stabilized and revegetated to prevent erosion and sedimentation and to ensure permanent closure of the diversion channel.
10. The ADF&G shall be notified in writing (Fax No. (907) 267-2464, Enclosure 2) five days prior to diverting the flow (both the initial diversion and the return to the natural channel) so that staff can be present to monitor potential impacts. The notification shall include the time and date the diversion will take place and the name and phone number of the on-site supervisor. The diversion of Power Creek (both the initial diversion and its return to the natural channel) is prohibited unless the project Environmental Compliance Monitor (ECM) is on site during the permitted activity.
11. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish. The permittee is hereby notified that at the present time the contractor has not submitted a plan to comply with this stipulation.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G and obtain written approval in the form of a permit amendment before

beginning the activity. Any action taken by the permittee or an agent of the permittee that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of ADF&G. Therefore, it is recommended that ADF&G be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.840. This permit must be retained on site during the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits, state, federal, or local.

This permit provides reasonable notice from the commissioner that failure to meet its terms and conditions constitutes violation of AS 16.05.860; no separate notice under AS 16.05.860 is required before citation for violation of AS 16.05.840 can occur.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The department reserves the right to require mitigation measures to correct disruption to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

I have read and understand all of the foregoing and attached stipulations. By signing this permit, I agree to conduct the authorized activity in accordance with the terms and conditions of this permit.

[Signature] _____ 6-19-00
Signature of Permittee Date

Permittee's Address _____ City _____ State _____ Zip _____
Oil B _____ HABITAT BIOLOGIST _____ 6/19/00
Signature of Authorized ADF&G Representative Title Date

Enclosures (2)

- cc: R. Thompson, DNR
- S. Magee, DGC
- M. Henry, FERC
- T. Fischer, WEC
- C. Hawks, ADF&G
- G. Prokosh, DNR
- A. Rappoport, USFWS
- J. Miyashiro, FERC
- J. Babcock, FWP
- B. Stratton, ADF&G
- M. Jen, EPA
- D. Vos, NMFS
- C. Swanson, FERC
- C. Estes, ADF&G
- D. Sharp, ADF&G

ATTACHMENT 4

Memorandum from ADF&G to DGC

Requesting no further ACMP Consistency Review

FG00-TT-0538 cy

STATE OF ALASKA

TONY KNOWLES, 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

amc

TO: Maureen McCrea
Senior Project Review Coordinator
Office of Management and Budget
Division of Governmental Coordination

FROM: ⁴⁰ Cevin Gilleland
Habitat Biologist
Region II

DATE: September 27, 2000

SUBJECT: Power Creek Hydroelectric Project
Diversion Channel Permit Amendment
No ACMP Review

The Alaska Department of Fish and Game (ADF&G) is in receipt of revised plans and specifications for the temporary diversion of Power Creek for construction of the dam and intake structures. As you requested, the ADF&G has conducted a preliminary review of the plans and has prepared this explanation of why we believe no further Alaska Coastal Management Program public review is required.

The Power Creek hydroelectric project, including the temporary diversion, dam, and intake were previously reviewed for consistency with the ACMP. Permits were issued by the ADF&G, the Department of Natural Resources, Division of Water, the U.S. Army Corps of Engineers, and the Department of Environmental Conservation. The permit issued by the ADF&G prohibited the pollution of Power Creek, required that fish passage be maintained, and required that the intake be designed and maintained to exclude fish. The original channel was not constructed according to the plans submitted to the agencies for review nor was it constructed as required by the ADF&G permit. Nevertheless, the ADF&G was assured by the engineers at Whitewater Engineering that the channel, as constructed, would carry expected flows and would not pollute Power Creek. Shortly after the permittee's contractor began the diversion, it began to fail resulting in a channel that did not pass fish and polluted Power Creek and other waters. As a result of the pollution, the ADF&G required the permittee to restore Power Creek to its natural

channel and submit revised plans and specifications that would meet the requirements of the original permit.

At the present time the Cordova Electric Cooperative has provided plans, signed by a professional engineer, with a channel designed and protected with filter fabric and riprap that should, according to their calculations, withstand flows up to a 5-year flood event. The channel has been designed to contain the fines and avoid downstream pollution. It will not pass fish upstream. Nevertheless, since the channel is temporary, the ADF&G has agreed to allow the temporary fish blockage. The only other change in the ADF&G's permit is that we will issue a Fish Habitat Permit pursuant to AS 16.05.870 rather than AS 16.05.840, because of the downstream pollution of specified anadromous fish-bearing waters that previously occurred at this site. No other changes to the original permits will be required. Furthermore, after substantial review, the Corps of Engineers has indicated that a modification of the existing Corps permit is not required, and the Coastal Project Questionnaire submitted by the applicant does not indicate that other permits or permit amendments are needed.

As the result of this analysis the ADF&G has concluded that the changes are minor, that no additional stipulations are necessary solely for consistency with the Alaska or Cordova Coastal Management Programs, and that the proposed changes will not result in additional adverse impacts to coastal habitats or resources.

Please notify the ADF&G of your concurrence or non-concurrence at your earliest convenience so that this permit can be issued. Although it has taken nearly 12 weeks for the applicant to prepare a revised plan, stamped by a professional engineer, the ADF&G does not believe the state should delay the project if all the necessary information has been provided and procedures followed.

Please call me if you have any questions.

cc: R.J. Kopchak, City of Cordova
R. Thompson, DNR

ATTACHMENT 5

Fish Habitat Permit FG 00-II-0538

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541
FAX: (907) 267-2464

FISH HABITAT PERMIT FG 00-II-0538

ISSUED: September 29, 2000
EXPIRES: March 31, 2001

Mr. Kenneth Gates, General Manager
Cordova Electric Cooperative
Post Office Box 20
Cordova, AK 99574

Dear Mr. Gates:

Re: Power Creek Hydroelectric Project—Stream Diversion/Dam
Power Creek: Stream Number 212-10-10050-2240
SID AK 9709-08.AA; COE No. 4-970547
Section 4, T. 15 S., R. 2 W., C.R.M.
FERC No. 11243-001-AK

Pursuant to AS 16.05.870(b) the Alaska Department of Fish and Game (ADF&G) has reviewed your proposal, submitted September 22, 2000, to construct a diversion dam, intake structure, and temporary bypass channel on Power Creek at the referenced location. Both the dam and bypass channel will be constructed upstream of Ohman Falls, which marks the upper limit of documented anadromous fish use on Power Creek; however, a resident population of fish has been confirmed in this reach. In addition, the waters downstream of the project have been specified as important for the spawning, rearing, or migration of anadromous fish pursuant to AS 16.05.870(a). Coho, sockeye, chum, and pink salmon use these waterbodies for spawning, migration, and/or rearing.

Construction of the diversion dam and intake structure and the placement of the penstock will require dewatering the natural channel of Power Creek. Dewatering will be accomplished by diverting Power Creek around the work area by means of a bypass channel. According to the plans and specifications submitted for review, the bypass channel will be lined with clean rock or a combination of clean rock and geotextile fabric sufficient to contain fine soil particles, prevent erosion, and the subsequent pollution of Power Creek when flow is diverted into the channel and for the duration of its use. In addition, the contractor will employ commercially produced filter bags or other suitable approved products and two sediment ponds to control water that infiltrates the work area. Water removed from the work area by pumping will be discharged through a filter bag, other approved suitable products, or to uplands a sufficient distance from Power Creek to avoid pollution, sedimentation, or erosion. Sediment Pond Number 1 will be constructed and stabilized prior to any on-site dewatering operations.

Material excavated from the bed and banks of Power Creek during construction will be stored and stabilized so that none of this material, including sediment, enters the waters of Power

Creek. No excavated material will be stored in the area between the temporary bypass channel and the natural channel of Power Creek. Upon completion of the project, the natural channel (bed and banks) of Power Creek will be restored to pre-project contours and revegetated using approved techniques from the book: Streambank Revegetation and Protection - A Guide for Alaska (ADF&G Technical Report No. 98-3). A copy of this book has been furnished to the contractor.

The upstream end of the bypass channel is plugged by a combination of boulders, 1 cubic yard (yd³) sandbags, and 3-inch cobble material. Following the removal of the plug, the 1-yd³ sandbags will be repositioned across Power Creek to form a barrier behind which the upstream cofferdam will be constructed. A similar barrier of 1-yd³ sandbags will be constructed across the natural channel to isolate the downstream cofferdam from the waters of Power Creek prior to construction. Both cofferdams will be constructed and removed in no-flow conditions. If such conditions do not occur during the construction timeframe convenient for the permittee or contractor, the diversion will remain in place and the cofferdams will be removed when approved conditions once again occur at the site. NOTE: See Stipulations 5 & 7 below, for specific instructions on the approved diversion sequence.

The cofferdams will be constructed of material excavated from the bypass channel. The faces of the cofferdams that will contact the waters of Power Creek will be covered with an impermeable membrane. The membrane will extend under the cofferdams for a distance of 10 feet. It will be secured to the face of the cofferdams as shown in the drawings submitted to the ADF&G on September 22, 2000.

In accordance with AS 16.05.870(d), project approval is hereby given subject to the following stipulations:

1. A minimum of 5 cubic feet per second (cfs) of water shall be released to the natural channel at all times during construction, maintenance, and operation of the facility. At no time is a release of less than 5 cfs authorized.
2. During excavation and at all times prior to diverting the water, the bypass channel shall be isolated from the natural stream channel and the flowing waters of Power Creek at both the upstream and downstream ends. The permittee and its contractors are responsible for maintaining the plug under all flow conditions until the diversion is approved.
3. The bed and banks of the bypass channel shall be constructed of material that will not erode at expected high flows. It shall be designed, constructed, and maintained in a manner that ensures the channel is capable of carrying all predictable stream flows at all times it may be in use.
4. Prior to redirecting the flow into the natural channel, the channel shall be inspected and approved, in writing, by the ADF&G, Habitat and Restoration Division. This approval will not relieve the applicant or contractor of their engineering responsibility, of responsibility for compliance with this or other permits, or for other responsibilities and liabilities associated with this project.

5. Diversion of flow into the bypass channel shall be accomplished by first removing the downstream plug in the diversion channel, then the upstream plug. The natural stream channel shall be dewatered by closing the upstream end, followed by the downstream end. Fish that become stranded in the dewatered channel shall be captured and returned to the active stream channel without further harm.
6. All bank cuts, slopes, fills, and other exposed earthwork attributable to this project shall be stabilized and revegetated to prevent sedimentation and erosion that may occur both during and after construction. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
7. Once construction in the natural channel of Power Creek is complete, the streambed and banks shall be restored to natural contours and stabilized and revegetated to prevent erosion and sedimentation prior to diverting the flow back into the natural channel. Once stabilization is approved, the flow shall be diverted back into the natural channel by first removing the downstream plug in the natural channel, then the upstream plug. The bypass channel shall be closed by first closing the upstream end, then the downstream end. Fish that become stranded in the dewatered channel shall be captured and returned to the active stream channel without further harm. Sufficient sediment and erosion control shall be in place to prevent pollution of Power Creek. Pollution of Power Creek downstream from Ohman Falls is prohibited.
8. After the flow has been diverted back into the natural channel of Power Creek, the upstream banks of Power Creek disturbed during construction shall be stabilized and revegetated to prevent erosion and sedimentation and to ensure permanent closure of the diversion channel.
9. The ADF&G shall be notified in writing (Fax No. (907) 267-2464; Enclosure) prior to diverting the flow (both the initial diversion and the return to the natural channel) so that staff can be present to monitor potential impacts. The notification shall include the time and date the diversion will take place and the name and phone number of the on-site supervisor. The diversion of Power Creek (both the initial diversion and its return to the natural channel) is prohibited unless the project Environmental Compliance Monitor (ECM) is on site during the permitted activity.
10. A restoration plan shall be submitted to the ADF&G for review and approval within 30 days of the initial diversion of Power Creek. The plan shall include specific details with plan view and cross sectional drawings, the species, spacing, and number of plants, timetable for completion of restoration, and a plan for monitoring and ensuring the success of plantings.
11. The dam and intake structure shall be designed, installed, operated, and maintained in a manner that precludes the entry or impingement of fish. The permittee is hereby notified that as of the date of issue of this permit the contractor has not submitted a plan to comply with this stipulation.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G, Habitat and Restoration Division, and obtain written approval in the form of a permit amendment before beginning the activity. Any action taken by the permittee or an agent of the permittee that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of the ADF&G, Habitat and Restoration Division. Therefore, it is recommended that the ADF&G, Habitat and Restoration Division, be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.870. This permit must be retained on site during the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits: state, federal, or local.

Pursuant to 6 AAC 80.010(b), the conditions of this permit are consistent with the Standards of the Alaska Coastal Management Program and the Cordova Coastal District Plan.


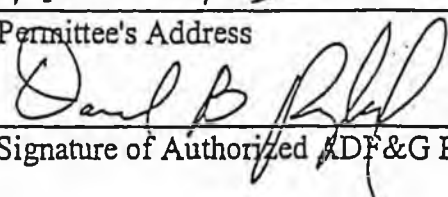
In addition to penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The ADF&G reserves the right to require mitigation measures to correct disruptions to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

I have read and understand all of the foregoing and attached stipulations. By signing this permit, I agree to conduct the authorized activity in accordance with the terms and conditions of this permit.

		<u>10-9-00</u>	
Signature of Permittee or Authorized Representative		Date	
<u>P.O. Box 20</u>	<u>Cordova</u>	<u>AK</u>	<u>99574</u>
Permittee's Address	City	State	Zip
		<u>10/11/00</u>	
Signature of Authorized ADF&G Representative		Date	
<u>HABITAT BIOLOGIST</u>			
Title			

cc: R. Thompson, DNR
G. Prokosh, DNR
M. Jen, EPA
S. Magee, OMB/DGC
A. Rappoport, USFWS
D. Vos, NMFS
M. Henry, FERC
J. Miyashiro, FERC
T. Fischer, WEC
C. Estes, ADF&G
C. Hawkes, ADF&G
B. Stratton, ADF&G
D. Sharp, ADF&G

ATTACHMENT 6

Letter From Jack Snyder to Ken Gatas

Design and Construction Deficiencies

April 21, 2000

Thom Fischer, President
Whitewater Engineering Corp.
1050 Larrabee Ave, Suite 104-707
Bellingham, WA 98225

**Subject: Power Creek Hydroelectric Project
Review of Final Bridge Design Calculations**

Dear Thom:

DE&S has reviewed the latest set of penstock bridge calculations, dated March 30, 2000 which were provided to us on April 5, 2000. The calculations provided show us the thinking behind the current design; however, we have significant concerns about the final design as noted below.

The traffic bridge design itself is acceptable as a maintenance bridge that will be used only infrequently for tunnel access after the project is up and running. As noted, the wooden decking should be removed and stored on the south side of the bridge after project construction is complete, and should always be removed during the avalanche season.

The penstock bridge design, in our estimation, is inadequate and must be re-designed. We believe that with the current design, and based on your corrected calculations, the design avalanche side load may overstress the pipe wall and cause it to fail at the ring girder locations. Our specific comments to this effect are as follows:

1. The avalanche side load was reduced 60% in the calculations for the pipe resistance to the side loads. Is this because pipe is round? We don't believe it is appropriate to reduce the load and the full side load should be used without reduction.
2. Page 17 B of the calculations-radius of ring girder is 48" not 42". Effective section should be at the most equal to C' (see figure 7.3 page 72, AWWA M11). Using this value for C' will increase the stress significantly. Should the area of the ring girder include the pipe wall? We do not recommend the pipe wall be included as the pipe is already experiencing stress due to internal pressure and other sources of stress.
3. Check calculations of f_3 on page 17C. There appear to be math errors.
4. On page 17D, stresses in pipe shell do not account for the avalanche load ("w" should be equal to 23 +700). This appears to have been inadvertently left off. Rim bending calculation should be corrected for pipe internal pressure of 91 psi.

5. Based on the calculations, the wall thickness of the pipe should be reevaluated. Thicker pipe, thicker ring girders and/or more closely spaced girders may be required to avoid overstressing the pipe.
6. No earthquake or thermal loads were evaluated for the bridge or penstock. The penstock ring girders in particular should be checked for earthquake. We believe their design may be marginal for earthquake resistance.
7. We recommend that the final calculations, when complete, should be signed, checked and stamped with an Alaska PE stamp as required by Alaska statute.

The ring girder should not rely on the pipe wall. We recommend the girder be reevaluated and a strap around the pipe be added to the design to reduce high localized stresses. The thickness of the ring may also need to be thicker

That concludes our review comments. Please contact us if there are questions or if you would like to discuss any of these items. We would be glad to sit down with Stephen or your other designers and discuss our concerns in detail. That may be the most effective way to work through this concern in a timely way. Please give us a call and we can schedule a meeting or conference call at your convenience. Thanks.

Sincerely,
DUKE ENGINEERING & SERVICES

John J. "Jack" Snyder, P.E.
General Manager

cc: File (Power Creek) 2.2, Don Hammelman (Summit), Ken Gates (CEC), G. Keeney (CEC), Steve Beers, P. Carson, S. Mahnken

Testimony to the Senate Resources Committee, March 10, 2003

Chairman Ogan, members of the committee:

My name is Ellen Simpson and I am here today representing myself. I have lived in Alaska for over 20 years and I work at ADF&G. I came here from Washington State to work as a fish biologist. I wanted spend my career with wild salmon not fish raised in a hatchery because the habitat they needed was gone. Now it looks like the same thing will happen here if Governor Murkowski's executive order is allowed to become law. Fish habitat is lost one project at a time. Without productive habitat salmon returns can never be sustainable - no matter how good your management policies are.

I believe that if EO 107 is allowed to take effect salmon, trout and other fresh water fish populations will be put at risk. Superficially, one of the things this executive order does is to move a couple of statutes, the Anadromous Fish Act and the Fishway Act, from ADF&G authority to DNR authority. But this is more than just a simple reorganization of the executive branch. It is a major policy change for the state of Alaska that strips ADF&G of any permitting authority over freshwater fish habitat. The ADF&G commissioner was given this responsibility and the tools to accomplish it at statehood and to give this authority to the agency primarily responsible for development activities is a major policy change. No standards are contained in either statute. Effective implementation relies on the expertise and commitment of the responsible agency. This expertise is at ADF&G. Not DNR. Protection of fish and game is not and never has been a DNR core value. Habitat protection needs to be on an equal footing with development interests.

I am especially concerned because the administration has not adequately justified such a major change in how we do business. I've been listening to the Governor, his press secretary, and the commissioners of DNR and ADF&G discuss this issue now for almost two months. The Governor says his goal is to streamline permitting and make it more efficient along the lines of the "the large mine projects". He believes that moving habitat permitting to DNR will accomplish that. The new Commissioner of DNR, Tom Irwin, has experience in the large project concept. He worked for Fort Knox Gold mine before he came to DNR. In both his overview to the House resources committee on Feb 20 and in a press conference last Friday he explained the large mine project concept. He said that Fort Knox and the habitat biologists at ADF&G worked together to modify the project to both benefit the company and fish habitat. That they got together and each brought to the table what they wanted and what they could and couldn't do. He had nothing but praise for the way the process worked. This sounds like an endorsement for the current process not a justification for changing it.

Of the 2000 permits ADF&G issues each year only a few are for large projects. Over 80% require only consultation within the divisions of ADF&G. These permits are very important to the land owners and developers who depend on ADF&G expertise to help them construct projects that are fish friendly and still get the job done. But now Acting Commissioner Duffy and Commissioner Irwin need to craft a memorandum of

understanding to detail how biologists at DNR will communicate and work with ADF&G biologists that were once were just down the hall. This doesn't sound like streamlining to me – it sounds like taking a process that is working and increasing the chances that it won't.

It may be that permitting could be more efficient. But I don't believe this is the way to make it happen. There are alternatives. The large project concept could be used more often and regulations to standardize habitat protection measures could be adopted.

Productive fish habitat is worth protecting. Habitat losses will take years to become apparent. Billions and billions of dollars are being spent in the Pacific Northwest to restore salmon runs and the habitat that is essential to their survival. They are finding out that no matter how much money they throw at the problem they can't fix it. We don't have to do that here – we don't have to take the risk. EO 107 should be disapproved.

If you have any questions or more information I would be happy to talk to you more about this issue. Thank you for your time.

Ellen Simpson
2900 Porcupine Trail Road
Anchorage, Alaska 99516
907-345-4306

Good afternoon Chairman Ogan and members of the committee. My name is Daniel Sharp. I am a 30 year resident of Alaska and have been employed as a biologist with the Alaska Department of Fish and Game since 1982. Since September of 2002, I have been employed as a Habitat Biologist III. Under the Governor's planned reorganization, my current position and duties with Habitat Division are slated to remain within the Department of Fish and Game.

The organizational structure employed by the Department of Fish and Game has long relied on the concept of relying upon Area Biologists; these are individuals who's experience and tenure in an area allow them to speak knowledgably about the fishery or wildlife resources for which they hold responsibility. As a 12-year resident of Cordova, I had the unique pleasure of serving as the Commercial Fisheries Area Management Biologist for Prince William Sound from 1995 to 1998 and as the Copper River Area Management Biologist from 1999 to 2001.

The Power Creek hydroelectric project in Cordova is one that has been repeatedly cited as an example of Habitat Division's interfering with a legitimate development project. Anyone who has seen Ohman Falls on Power Creek can attest to the hydraulic energy released there. For a town heavily reliant on diesel generated power, the option of a less expensive, cleaner, and stable source of hydroelectric power was widely supported by both industry and local residents, myself included.

Habitat biologists connected with this project were recently described as "refusing to be reasonable" on a project that was said to be "way up in the hills where there are no fish". I'd like to clarify that description just a bit. In actuality, just a few hundred yards downstream from Ohman Falls which is the natural barrier to upstream salmon migration, thousands of sockeye salmon, silver salmon and pink salmon spawn each year. Brown bear, black bear, trumpeter swans and other waterfowl live in the area year round. Power Creek drains into nearby Eyak Lake which supports a significant return of tens of thousands of early timed sockeye salmon. These are the same early fish that Copper River commercial fishermen receive their highest price per pound for each season.

Sockeye salmon returning to this drainage have paid substantial dividends to the residents of Cordova for over a hundred years and have likely sustained generations of native Eyak people for thousands of years. If any area deserved due diligence from a habitat protection standpoint, the Power Creek project and Eyak Lake certainly qualified.

I cannot attest directly as to whether unreasonable "due diligence" was exercised by the habitat biologists assigned to this project. However, I can attest that, as the local area biologist and a resident of Cordova at the time, I received numerous phone calls, in person complaints, and even occasional anonymous tips about unreported small and large fuel spills, unchecked erosion into spawning streams, and repeated illegal stream crossings with heavy equipment at the work site. It quickly became evident by the contractors behavior that any permit stipulations or timing restrictions designed to protect spawning salmon and wildlife were only to be followed if the habitat biologist was on site to enforce it.

I believe the laws and regulations designed to protect our common property resources deserve a great deal more respect than they were given during the construction phase of this project. I find it most unfortunate that this particular project has been heralded by the administration as a prime example of showing unreasonable interference by habitat biologists working for ADF&G. My experience, however ancillary, was that this project needed almost constant department oversight if one was to receive any cooperation from the contractor. I feel badly that the governor's office has been so ill served by those seeming to pass on misinformation about the significant importance of Power Creek to the people of Cordova, the conduct of the contractor, and about the work that Habitat Division has performed in attempting to provide a minimal amount of protection this area deserved.

Thank you Chairman Ogan and committee members for your service. I urge your thorough exploration of the issues regarding this proposed transfer. My belief is that the long term interests of the people and resources of this state will be best served by maintaining the current separation of authorities between resource protection and resource development agencies. I believe the bureaucratic efficiencies planned for will be realized at the expense of the fish and wildlife resources of this state. Please co-sponsor and support a joint resolution to rescind E.O. 107.

Daniel Sharp
2821 Cutwater Court
Anchorage, AK 99516
907-345-3424

Public Testimony, Senate Resources Committee, March 10, 2003.

Thank you.

My name is William J. Hauser.

First, I want to say that I am in support of our fishery resources and the unique habitats that are required to support them.

Second, I must say that I am a retired employee of the Alaska Department of Fish and Game and currently a temporary employee of the Habitat and Restoration Division, but my work status is unaffected by the Executive Order 107 because my tenure will terminate at the end of June even if this order had not been issued.

Third, and most importantly, I am speaking here as a Fishery Scientist. With a BS, a MS, and a PhD, each from different educational institutions and I have had experience living, working and recreating in six or more states. I am past President of the Alaska Chapter of the American Fisheries Society, which includes over 400 fishery scientists in Alaska from academia, private and governmental sectors of our profession. I have lived, worked, recreated, and raised a family in Alaska for 22 years. My work has included fish biology, ecology, research, management, and fishery and habitat enhancement in many regions of the state as well as community education about the importance of good quality fish habitat to preserve fisheries.

Fish is the most important natural resource in the State of Alaska and it is important for so many users – recreational, subsistence, commercial and non-consumptive as well. If we care about this resource and if we want a legacy of this resource for future generations, we must protect the production factory for that resource. Good quality fish habitat. Habitat that fish need for spawning, rearing, hiding, and overwintering and open pathways for access and migration among these habitats. In addition, when anadromous fish populations are reduced or destroyed, other resident fish populations, birds, wildlife, and even streambank vegetation is diminished.

Until now, our fishery resources have had a measure of protection with equal consideration with development of our other resources that included a system of checks and balances to minimize the impacts of those developments. With the function of habitat protection included within Alaska Department of Natural Resources, the system will not be in balance, but will favor development of resources at the detriment of our aquatic resources.

Until now, when developers proposed a project, habitat biologists, with close support of other fish and wildlife biologists, would provide consultation to improve the "fish-friendliness" and reduce the impact. With habitat protection and fewer habitat biologists in the Alaska Department of Natural Resources, I do not understand how that will continue to happen. There may be some large-scale losses but small-scale losses will accrue with each project and each year.

My colleagues in the State of Washington tell me that the system outlined in EO 107 resembles the approach that has been in place in the State of Washington. There, anadromous fish runs

have been depleted to about 3% of historic levels – mostly because of habitat loss and degradation – in a matter of a few human generations.

Is this the legacy that we want for our children and our grand children?

This is not what I want and I don't think that you want that either. Please do not support the transfer of habitat protection to ADNR. Please support the present system of checks and balances and protection of good quality fish habitat.

Dr. William J. Hauser
3621 Hazen Circle
Anchorage, AK 99515
907-349-7175
karelbill@gci.net

When losses occur, they are expensive to repair and the original conditions cannot be restored.

If there is a problem with some aspect of permitting, fix the problem. A sore toe is not a reason for major surgery.

Thank you for your consideration.

I will gladly answer questions if you have any.

Bill Hauser



ALASKA CENTER *for the* ENVIRONMENT

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Senate Resources Committee - Public Comments on Executive Order 107, March 10, 2003

Dear Committee members:

Senator Scott Ogan
Senator Thomas Wagoner
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

Thank you for this opportunity to provide comment on Executive Order 107. I am here representing Alaska Center for the Environment, Alaska's largest home-grown public interest environmental organization with over 8,000 dues-paying members.

Checks and Balance

We recognize the need to develop our states resources but also identify the responsibility to conserve and protect the state's fish and wildlife resources. Alaska's economy and Alaskans depend on our unique fish and wildlife. Commercial and sport fishermen, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife. Fish and Game has the authority under the Fishway Act, Anadromous Fish Act and Forest Practices Act to manage the state's fish and wildlife resources through upholding proper stream buffers and approving suitable culverts for safe fish passage.

In order to fully comprehend and assess the impacts of the Governor's proposal, the missions of ADF&G and DNR need to be understood. They are very different. The Department of Fish & Game's mission is to protect and develop Alaska's fish and wildlife resources while DNR's mission is to promote development of the state's resources. These two missions balance each other providing a system of checks and balances and an opportunity for fish and wildlife biologists to work with developers through the permitting process. That is why the first state legislature created two separate resource-agencies to manage the state's unique and diverse resources.

By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development. We believe that if the permitting function is transferred to DNR, the balance will be tilted away from habitat protection to the long-term detriment of our fish and wildlife resources.

Substantive Change

The fundamental purpose of the Fish and Game Habitat division Title 16 permitting is to ensure free and efficient movement of fish and to protect the natural productivity of the aquatic life found in the streams. This authority has been in place since 1959, and applies equally to all persons, governmental agencies, and industries in Alaska.

Under the proposed EO, for the first time in Alaska's history, Fish and Game permitting and habitat protection will no longer reside in the Department of Fish and Game. Fish and Game will lose its authority, as the Habitat division will be eliminated, cutting 22 jobs and transferring 36 positions to DNR. This is far more than a process change; this is a major substantive and statutory change. The EO will change the standard of scrutiny. The system of checks and balance will be gone. There will be no need for DNR or industry to work out problems with ADF&G. The appeal process will be entirely through DNR.

Science vs. Politics

In recent years, a growing body of research in Alaska and the Pacific Northwest has documented the widespread impacts that poorly designed or installed culverts can have on fish passage and productivity. Experience has shown that the direct involvement of biologists knowledgeable about fish and fish habitat in the review of culvert designs and installation plans is the single most effective means of preventing fish passage problems. This gives biologists that ability and authority to respond to both individual environmental conditions and the needs of operators.

Only a small percentage of the streams that support spawning and rearing salmon and other anadromous fish have been identified in Alaska. Without review of plans and specifications, there is a substantial risk that many anadromous streams as well as resident fish streams may be blocked, and a significant amount of fish production lost, as has already occurred throughout the Pacific Northwest.

ADF&G staff are the state's experts on fish habitat and fish passage, including design, construction, and maintenance of culverts that simulate natural stream conditions and provide adequate passage for adult and juvenile fish. ADF&G has conducted research on the swimming capabilities of various species of fish in Alaska, and assessed the capability of hundreds of culverts to pass fish, on thousands of miles of forest roads in Alaska. Over the last ten years, we have learned that designing and installing culverts that will pass fish in the short term and also continue to pass fish over time requires applying knowledge of fish to individual conditions. Designs must take into account the swimming habits and abilities of the fish species present as well as site-specific hydrologic and hydraulic conditions such as stream gradient, velocity, substrate, and annual flow.

Governor Murkowski's plan prevents Fish and Game biologists from speaking up about the impacts on wildlife and fish habitat from industrial development. Under the super DNR, Fish and Game biologists and even the ADF&G Commissioner roles would only be advisory, with no power to prevent destruction of habitat. All decisions would be

made by DNR, the department responsible for resource development. The costs of this proposal are borne on backs of Alaska's fish and wildlife and the Alaska residents and businesses that depend on them.

Justification

The Murkowski Administration contends that the Habitat Division stands in the way of "legitimate projects" for personal reasons. When Governor Murkowski's examples and Habitat's permitting history is examined in detail, it is clear Habitat permitting is timely (especially in comparison to DNR) and the cited examples show how ADF&G is upholding the standards required to protect habitat under state law.

Permits are issued in a very timely manner when applicants provide ADF&G staff with the necessary basic information. Of nearly 2000 Title 16 permit applications received in FY02, 99.5% of the applications received permits or were told that no permit was required with an average of 14 days processing time. Currently DNR has a backlog of 700 water rights applications, 20 years old or older. 3000 miscellaneous applications, such as water rights transfers, have yet to be processed.

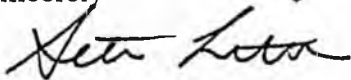
If there are problems with personnel and personal views and actions impeding projects, then this is a management situation and should be handled through proper discipline.

The facts relating to in-stream permitting don't point out a streamlining problem. Nor does it appear that moving Title 16 permitting to DNR will speed up the process. With less staff and less balance, it appears that project proposals may well lead to litigation and more delays.

We urge the legislature to bring this issue to the House and Senate floors to be debated and we urge the legislature to support the resolution to disapprove Executive Order 107.

Thank you again for this opportunity to provide public comment.

Sincerely



Seth Little
Legislative Coordinator
Alaska Center for the Environment

Statement of Dr. Eric Knudsen to
Senate Resources Committee on
Executive Order 107 to Transfer habitat Division from ADF&G to ADNR
March 10, 2003

I am a professional fisheries scientist with over 20 years experience in management and research on Pacific salmon, steelhead, and other fish and wildlife. I have conducted studies both here in Alaska and the Pacific Northwest, much of which have focused on the effects of habitat alterations on the ecology and productivity of salmon and trout. I am a member of the American Fisheries Society and I am the current Past President of the Western Division AFS. My testimony today represents only my own professional opinions.

Today I would like to make three primary, scientifically based points that, taken together, argue for a joint resolution to reject Executive Order 107, which would transfer the permitting functions of the ADF&G Habitat Division to ADNR.

First, there is absolutely no scientific doubt that healthy stream and riparian habitats are fundamental to the amount of salmon, steelhead, and other related fish and wildlife produced in Alaskan watersheds. Both research and experience have shown that where habitats are degraded from upland and streamside effects, or where access to streams are blocked by road culverts or increased landslides and erosion, salmon populations have been diminished. The scientific record on this is extensive.

Second, a combination of solid science in Alaska and elsewhere, together with a long history of experience in the Pacific Northwest, clearly demonstrates that the gradual, incremental, cumulative effects of numerous seemingly minor habitat alterations can lead to the destruction of the habitat base that supports productive salmon populations and the fisheries that depend on those populations. Each development project may not alone have a serious impact but, when added together, the cumulative effects can be devastating.

Third, scientific research in the Pacific Northwest has generally led to the conclusion that it is much more difficult to repair stream and riparian habitats to their fully functional state than it is to simply protect the natural stream functions in the first place. Recent scientific literature on repairing damaged habitats has indicated that the repairs can be relatively ineffective when compared to naturally functioning stream ecosystems.

Taken together, these rigorous, scientific conclusions have demonstrated that it is imperative to protect stream and riparian habitats. Experience in the Pacific Northwest is replete with examples of degraded habitats and lost salmon runs. While not all the losses are attributable to habitat effects, it is also clear that, when the effects of heavy fishing or downturns in natural ocean conditions are relaxed, production will only bounce back if the habitat is intact. Again, this is supported by scientific evidence.

My comments are not intended to judge the merits of natural resource development that have the potential to injure fish habitats, except to recognize that these activities certainly

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

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

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

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217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515

Regional Office:
601 West 5th Ave., Suite 600
Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643



FOR IMMEDIATE RELEASE

CONTACT: Pamela LaBolle at (907) 586-2323 (asccjuno@ptialaska.net)

Alaska State Chamber of Commerce Stands with Governor in His Call for Change

(JUNEAU, AK, February 12, 2003) – In a move to support the Governor's political courage to press for positive change the Alaska State Chamber of Commerce today announced its strong support of Governor Murkowski's leadership in making the Department of Natural Resources the lead agency for all State permitting. His bold move will also incorporate the permitting function of the Habitat Division of Fish & Game into DNR in order to consolidate permitting authority.

"The Governor is doing what business people do every day: increasing the level of service, speeding up processes, cutting costs, meeting customer needs and identifying efficient problem-solving methods," said Pamela LaBolle, President of the Alaska State Chamber of Commerce.

Members of the Chamber believe this move will ensure a high standard of environmental protection, reduce the cost of government and encourage future investment in Alaska.

The Alaska State Chamber of Commerce represents approximately 700 business members and Alaska's local chambers of commerce in promoting the planned, orderly growth and development of Alaska through strong, private sector business leadership that influences statewide economics and politics.

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Bruce H. Baker

P.O. Box 211384

Auke Bay, AK 99821-1384

Phone: (907) 789-9354

March 10, 2003

Senators Scott Ogan, Thomas Wagoner, Ralph Seekins, Ben Stevens, Kim Elton, and Georgianna Lincoln

Senate Resources Committee, Alaska Legislature
State Capitol (Mail Stop 3100), Juneau, AK 99801

Subject: Testimony on E.O. 107 - ADF&G's Habitat Protection Responsibilities

Honorable Resources Committee Members:

My name is Bruce Baker. I live in Juneau. I urge you to bring to floor vote a resolution to reject Executive Order 107. The executive order would eliminate ADF&G's habitat protection responsibilities under the Anadromous Fish Act, Fish Passage Act, and Forest Practices Act. The state needs to maintain the checks and balances between ADF&G and DNR that have benefited Alaska's economy since statehood. ADF&G's fundamental mission is to protect Alaska's fish and wildlife resources, and DNR's fundamental mission is to develop the state's other natural resources. These two missions balance each other in a way that ensures adequate protection of the state's economically important fish and wildlife habitats while allowing legitimate natural resource development to proceed in a timely manner. By eliminating the permitting authority of one agency, the executive order eliminates these essential checks and balances.

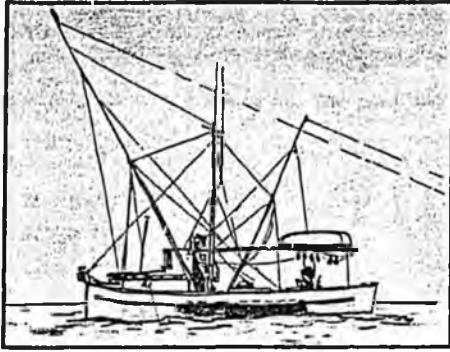
The executive order is a solution looking for a problem. The timeliness of ADF&G's permitting is exemplary. Of 1,926 Title 16 applications ADF&G received last year, over 99% of applicants either received permits or were told that they did not need one. The average processing time was only 14 days. If there is an occasional development project that seems to be high centered over a habitat related authorization, there's a process for department commissioners to quickly resolve the issue consistent with the Governor's policies. In contrast, I'm told that DNR has a current backlog of 700 water rights applications, some apparently 20 years old, and 3,000 miscellaneous applications such as water right transfers, that have yet to be processed.

Saturday's Anchorage Daily News reports that the Governor is laying off 22 ADF&G Habitat Division staff and transferring 36 others to DNR. What Alaska needs in order to boost its natural resource development without costly permit delays and lawsuits, is to increase rather than eliminate habitat staffing and to leave it in the department that has the bedrock of fish and wildlife expertise upon which to draw.

The Governor has criticized ADF&G for habitat permits for which he was given incorrect information. For the record, I'm providing your committee with two ADF&G memoranda which provide correct and specific information the Governor did not have available to him when he made his public statements.

In closing, Executive Order 107 is not so much about making state government more efficient as it is a thinly veiled effort to lower the habitat protection bar for permit applicants.





Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

March 10, 2003

Senator Scott Ogan, Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99811

Dear Senator Ogan:

The Alaska Trollers Association (ATA) appreciates the opportunity to submit comments on Executive Order 107. ATA opposes EO 107 as it is currently written and has questions with respect to EO 106 and the elimination of DGC. While we appreciate you holding a hearing on the matter, we note that Executive Orders don't really give the public enough time to fully understand the issues and ramifications of either the Administration's preferred option, or any alternatives that might be available to address the wide variety of problems the EO's seek to remedy. **ATA requests that the legislature work with the Governor to more fully engage the affected public in a review of the situation and discussion of alternatives prior to implementing the EO's.**

ATA appreciates the Administration's stated intent of streamlining government and reducing state spending, but we are concerned about removing Title 16 and due deference authorities of the Commissioner of Fish and Game, which effectively eliminates the Commissioner's responsibility for safeguarding habitat. As the primary guardian of fish and wildlife, the Commissioner of ADFG should have a significant role in key habitat determinations and the legal standing to debate the merits of various habitat issues with other Commissioner's and the Governor. According to Legal Service's analysis, the Executive Orders eliminate the ADFG Commissioner's authority altogether. DNR states that they will "consult with" the Commissioner of ADFG, but consultation is far different than authority and in some cases has made all the difference in protecting important habitat values.

Our members are highly reliant on sustainable salmon runs, which depend on an abundance of near pristine habitat. Alaska is the world's leader in the maintenance of healthy habitat. Our successes are directly related to the checks and balances built into our resource management program. Removing the voice and responsibility of cabinet level officials could be a big mistake down the road.

Unique concerns have been expressed by some developers about the existing permitting process within ADFG. Others seem quite satisfied. There appear to be common concerns raised by all affected sectors, like with regard to the permit appeals process. The problematic areas that we have so far identified do not seem to be structural in nature. Many issues appear to be related to management, a lack of process, or processes in need of repair. So it is difficult to understand

why a new Administration chooses to completely remove Fish and Game's authority. I remember when Governor Hickel considered this, but decided it wasn't in the state's best interest. What has changed?

Since the Executive Orders have been filed, a number of issues have been raised. For instance, permit delays by ADFG. I am submitting for the record the summary of a draft chart from Marathon Oil, which rated ADFG among the lowest in average turn around time for both state and federal agencies that permit their projects. This seems particularly impressive when considering the level of difficulty for the various permits - say, doing paperwork to verify a bond versus getting staff into the field to evaluate a watershed. ADFG has approved 99% of the roughly 2000 permit applications it receives each year, with an average turn around of 15-17 days. My guess is that somewhere in the other 1% there had to be problematic permits. And, of those approved permits that took a bit more time, there were likely some good reasons. If there were also some problems, it seems fair to analyze what they were and address them accordingly. If problems are identified which stem from the policies of the last administration, penalizing staff now seems pointless, since the rules are likely to be different under the new Governor. And, has anyone questioned why staff is already receiving pink slips when the EO's have not yet worked their way through the system? Regardless where habitat division ultimately resides, our hope is that there are enough professionals to do the job, whether in the field or in the office.

Many details of these Executive Orders are worthy of deep discussion. ATA will be submitting additional comments as the legislative hearings progress. Our hope is that through these hearings the issues will be identified and perhaps a compromise reached with the Administration with respect to the terms of the Orders. More efficient government is a good and positive thing, particularly in this time of economic decline for the state. However, let's not forget that solid habitat protection, brought about by a beefy system of balanced authorities, has created tremendous wealth for our state and communities. Working together, I'm sure we can find ways to both improve our permitting process and continue to secure the state's important values.

Respectfully,



Dale Kelley
Executive Director

Summary of Marathon Oil Chart for Cook Inlet Gas Permitting Dated 2-24-03

Days for Permit Approval	Type of Permit	State Agency	Federal Agency
2	NPDES: pollution discharge/prevention		USEPA
2	Special Use: refuge lands		USFWS
5	Sundry request/follow up: wells	AOGCC	BLM
5	ESA Review: eagle nests		USFWS
5	Bond to drill in AK	AOGCC	
5	Well completion/recompletion		BLM
5	Financial Responsibility Bond	AOGCC	
5	Well completion/recompletion	AOGCC	
7	Waste Discharge		FAA
7	Permit to drill	City of Kenai	
10	Letters of objection		ANCSA Native Corp
14	NEPA EA: Right of Way		Federal Land Mgr
15	Approval to work in or cross lakes, streams, rivers.	ADFG	
15	Wetlands Jurisdictional Determination		USACE
15	Designation of Operator	AOGCC	
30	Beneficial Re-Use: solid waste	ADEC	
30	Oil Discharge Prevention/Contingency	ADEC/AOGCC	
30	Wastewater disposal	ADEC	
30	Waste Disposal: drill cuttings	AOGCC	
30	Temp Water Use Permit: Industrial well	DNR	
30	Plan of Operation: Cook Inlet Mitigation	DNR	
30	Driveway Permit	DOT/PF	
30	Conditional Use Permit in Kenai city limits	City of Kenai	
30	Land Use Permit	Kenai Peninsula Borough	
45	Drilling Unit Spacing Exception	AOGCC	
50	State Land Use Permit	DNR	
0-53	CAMA Consistency Determination	DGC	
60	Use of timber or soils		USFS/USFWS
60	Voluntary Reclamation Plan	DNR	
70	Section 404 Wetlands Fill		USACE
30-90	Drilling Unit	AOGCC	
90	Right of Way Access: Construction in Federal Lands		BLM
90	NEPA EIS: Right of Way; Fill; FERC		Federal Land Mgr
90	Right of Way Access: Construction in Forest Lands		USFS/USFWS
90	Air Quality Control	ADEC	
100	Right of Way: State Lands	DNR	
30-110	APD Permit to Drill Well: Federal	BLM	
30-110	Permit to Drill Well: State	AOGCC	
30-180	Water Right of Way		USCG

Citizen's Proposal to the Governor and Legislature
RE: Habitat Permitting

Issue

Governor Murkowski's stated intent to move, by executive order, habitat permit authority and Coastal Management Program to DNR; and, elimination of Division of Governmental Coordination (DGC).

Proposed Concept

To engage the Administration in discussions with a broad coalition of interest groups, agency staff and legislators to develop alternatives to an executive order, which will accomplish the Governor's goals of streamlining government, reducing costs, and protecting the environment, while leaving in place the important checks and balances that have resulted in healthy fish, wildlife, and habitat.

Who Supports?

A growing coalition of individuals and organizations engaged in commercial, sport and subsistence fishing and hunting, tourism interests, past Commissioner's of ADFG, Advisory Committees, environmental organizations, and others.

Questions & Concerns

General

What are the most effective means of securing strong habitat values while reducing the permitting burden on developers and state agencies? Can the current system be improved?

ADFG Authority

Under the Governor's Executive Order, will ADFG Commissioner still have ultimate permit authority to negotiate with other agencies and decide what's best for fish and wildlife if DNR becomes the permitting agency?

Is it necessary or desirable to remove permit authority from the Commissioner of Fish and Game, whose primary mission is to conserve fish and wildlife, and grant that authority to an agency whose primary mission is development? How will these commissioners interact and resolve problems if differences of opinions arise with regard to development projects?

Could changes in management, personnel and policy address some of the issues of concern that have been raised with respect to ADFG conduct?

If ADFG habitat division is moved to DNR, will adequate staff be retained to provide thorough field support and timely analysis for permit processing? If some staff is left at ADFG, how will the two agencies communicate and integrate their efforts?

Division of Governmental Coordination (DGC)

Who will work with the agencies to coordinate complete and consistent multi-agency comments, broker agreements between agencies in disagreement, and provide expertise and perform other duties as presently assigned to DGC? Will this loss of service hamper the state's ability to effectively present its position to the public and federal government?

Without DGC, where will commissioners go to resolve conflicts between the agencies on important matters of public policy?

What do we envision an alternative could include?

Legislative package (possibly fast-tracked), with associated regulatory changes, administrative reviews and reorganizational plans.

Crucial elements:

- Maintains Title 16 authority and due deference provisions for ADFG Commissioner.
- Provides improved permitting and appeals process for developers and agencies.
- Ensures adequate participation by the affected public.

We suggest a facilitated forum of affected agencies and interest groups to help craft a set of recommended statutes and regulations to achieve the Governor's goals, while securing the health and vitality of critical habitat and dependent wildlife. This group might consider options such as:

- **Title 16 Implementing Regulations**
 1. General permit provisions for certain stream classifications (catalogued?) – perhaps an "either/or" option to allow opportunity for greater flexibility for those willing to undergo more detailed review and negotiation with the agencies (same as now?).
 2. More rigorous permit provisions (same as now?) for certain stream classifications (uncatalogued?).
- **Improve Alaska's Coastal Management Program**
 1. Some common, over-arching policies, which govern all Coastal Resource Districts.
 2. Maintain local area management planning process, financial assistance for communities, and other positive features of current program.
 3. Review and revise the appeals process to make it fair and meaningful for all affected parties.
- **Division of Governmental Coordination**

Maintain functions of DGC separate from other agencies.
- **Reorganization of Habitat Division**

Allow thorough review by ADFG and DNR of their respective and combined agency roles in the permitting process. Allow commissioners to bring forward a joint plan detailing a streamlined, cost-effective, and productive structure to accomplish the Governor's goals while maintaining existing authorities of both Commissioners.

Contact Information

Dale Kelley, Alaska Trollers Association, 586-9400

Carl Rosier, Alaska Outdoor Council / Former ADFG Commissioner, 789-9117

1. Reject EO 107 - Don't sacrifice fish & wildlife habitat for short term solutions that may result in long term habitat loss.
2. Don't allow EO 107 to remove Dept of Fish & Game Input from Forest Practices Act involvement. We must retain ADF&G oversight.
3. Don't Accept a substitute position (Deputy Commissioner) with no qualifications or criteria specified for ^{Job} ~~that~~ ^{qualified} positions and staff already in Fish & Game.
4. Don't threaten the use of Fish & Game License money for use in appropriate projects.
5. Don't Limit the use of Federal Fish & Game Funds by shifting Fish & Game Habitat protection & enforcement & improvement out of ADF&G Authority.
6. Don't negate the intent of the Anadromous Fish Act through Transfer of Fish & Game authority to DNR. Both DEC / DNR have joined to minimize protection of anadromous fish spawning habitat by ~~the~~ recommending mixing zones (mixing outflow) in spawning areas. Only ADF&G have been able to assure protection of such habitat.
8. The suggested changes under EO 107 seem to develop a similar independent decision authority under DNR. This ploy is recognized exactly for what it is - a concerted effort to circumvent critical review of resource development plans.
9. On Friday I had the privilege of speaking with the State forester - off the record. He seems like a fine person and believes he can administer the Governor's EO's etc. However he admits that the EO 107 will have a different perception to The General Public.

March 10, 2003

Senate Natural Resources Committee

Re: Hearings on Executive Order 107

Dear Committee Members,

I was born in Alaska, and fished commercially for salmon and halibut for over 30 years. Most of that time was spent purse seining with my parents, Moses and Amy Johnson, on their boat throughout SE Alaska. I was taught from an early age that protecting salmon and wildlife habitat was necessary if we wished to continue our livelihood and enjoy a subsistence lifestyle.

I have always considered the Fish Game Habitat division to be most responsible for ensuring that our valuable fish and wildlife resources are protected. I strongly oppose Executive Order 107 ~~and~~ which would severely diminish Habitat's division ability to ensure that development does not damage our natural resources.

If Executive Order 107 is implemented, it will hurt Alaska's credibility as a state that values its wild salmon runs. I don't think that moving the Habitat division to DNR, which has a massive backlog of ^{permitting} permits, will accomplish the stated goal of speeding up the permit process. The only thing that will speed up will be the decline of the wild salmon runs that make Alaska's fishing industry unique in the world.

I think all Alaska representatives and senators should be held accountable for the future of the salmon industry and the habitat it depends on. I urge you to vote in a joint session against Executive Order 107.

Clarice Johnson
506 O'Connell St
Sitka, AK

johnson@pti.alaska.net



Sitka Conservation Society

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(907)747-6105 fax
home.gci.net/~sitkawild

Testimony of the Sitka Conservation Society concerning EO 107: Transferring Fish Habitat functions from ADF&G to DNR

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

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

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

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

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

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

We urge the legislature to reverse this executive order.

Sincerely,

Page Else
Page Else, Acting Director



Kachemak Bay Conservation Society

3734 Ben Walters Lane, Suite 202

Homer, AK 99603

Phone: (907)235-2062 • Fax: (907)235-4069 • kbcsc@xyz.net

March 10, 2003

Senate Resources Committee
Alaska State Senate
Juneau, AK

Dear Committee Members:

The Kachemak Bay Conservation Society is a membership organization whose mission is to protect the environment of the Kachemak Bay region and encourage sustainable use and stewardship of resources through advocacy, education/information, and collaboration.

KBCS urges the Senate Resource Committee (House State Affairs on Tuesday) to recommend overriding the Governor's E.O. 107 and keep the Habitat Division within the Department of Fish and Game. Protecting our fish and wildlife is a bi-partisan issue. As the habitat of fish and wildlife goes, so go those resources. This is well evidenced in the Lower 48 where the salmon have been greatly reduced by habitat modifications, to the point of Endangered Species status for some populations. Impacts to salmon habitat, through development, such as dams, culverts, logging, mining, application of pesticides, oil and gas development, subdivisions, road building and more, if not given careful oversight through permitting will eventually deplete our fisheries and other wildlife. Alaska's economic development needs the careful oversight of an independent "watchdog" that will protect the public interest by protecting its resources.

Placing habitat permitting within the Department of Natural Resources makes protection of our fish and wildlife secondary to DNR's mission to conserve and develop state land. ADF&G currently has habitat permitting authority over projects on various types of land ownerships, including private, borough and federal lands. DNR has a very different mandate than ADF&G, a mandate that will certainly change a system that currently ensures a balanced development of our resources. KBCS is further concerned that with DNR's development mandate, the Title 16 requirements regarding fish passage will decrease protection of our fisheries. A good example of DNR's less than adequate protection of fishery streams occurred in 1992 when the Division of Oil and Gas, under DNR, proposed a reduction or elimination of some production rig setbacks from water bodies to protect salmon streams despite protests from ADF&G.

KBCS also has other concerns about the effects of E.O. 107:

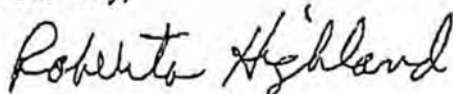
- The State will lose its system of checks and balances in the oversight of fish and wildlife.

- DNR's primary mission to develop lands will take precedence over ADF&G's mission to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska.
- There will be an essential disconnect between the Habitat Division and the rest of the agency that does the long-term scientific research on the species that Habitat seeks to protect. This physical separation will make collaboration and sharing of this essential research more difficult, time-consuming and expensive.
- Reducing the permitting oversight that will definitely occur with the transfer to DNR will cost us in the long run through incremental degradation of our resources, a deterioration that will occur so slowly that its effects will be noted only when it is too late to prevent them.
- KBCS has a special concern that there will not be adequate permitting or enforcement of the management plans for Kachemak Bay and Fox River Flats or the Anchor/River Fritz Creek Critical Habitat areas.
- Adequate oversight will be lost by significant reduction of employees. The permitting section is presently understaffed and will become more so if the Governor's request to eliminate 50 more jobs is implemented. How will permitting, with the necessary site inspections and research, be implemented with these additional job losses?

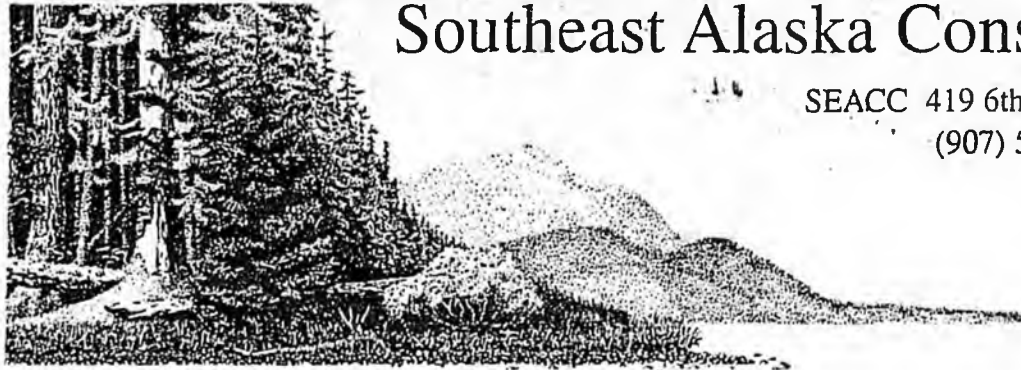
In 1959 the present system of checks and balances was established by vesting permitting authority with the Department of Fish and Game. The Governor's E.O. 107 takes away this important system in the name of "streamlining" the permitting process. The facts do not show any real inefficiency in the present system with 2000 permits and site visits handled yearly with an average turn-around of 14-17 days and not even 1% denied. There are no clear and convincing reasons to dismantle a permitting system that has worked well for more than 40 years.

Please overturn this Executive Order in the interests of the long-term health and productivity of our fisheries, wildlife and its habitat.

Sincerely,



Roberta Highland, President



Southeast Alaska Conservation Council

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(907) 586-6942 phone • (907) 463-3312 fax
www.seacc.org • info@seacc.org

March 10, 2003

Senate Resources Committee—Senators Scott Ogan, Thomas Wagoner, Ralph Seeking, Ben Stevens, Kim Elton, and Georgianna Lincoln.

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

Honorable Resources Committee Members:

My name is Aurah Landau and I'm testifying on behalf of Southeast Alaska Conservation Council. Thank for you for holding this hearing and allowing the public to speak on the proposal to move Habitat to DNR. Executive Order 107 is not a solution to speedy permitting. It eliminates checks and balances, and is a source of new problems for healthy fisheries, big game habitat, jobs, and Southeast Alaska's economy.

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

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

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

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

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

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

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

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

On behalf of our thousands of members in Alaska and our 18 member groups throughout Southeast Alaska, I urge you to move Senator Elton, Davis, and Lincoln's resolution out of committee for full consideration by the entire Senate, and to vote to support it.

Thank you for hearing public testimony.



Senator Ogan, Chair
Senate Resources

Following is a letter
for your committee meeting
of this afternoon.

Please share with
committee members.

Thank you.

Milli Martin

March 10, 2003

Senate Resources Committee
Senator Ogan , Chair
Senator Wagoner, Vice-Chair
Senators Dyson, Seekins, Stevens, Elton and Lincoln, Members

Re: EO 107 Shifting of Fish & Game Habitat Division to DNR

Dear Senators,

This is to advise that I strongly object to the Governor's recommendation in EO 107, and request that this issue come to a vote in joint session to disapprove of the executive order.

As an Assembly representative for Kenai Peninsula Borough District 9 that encompasses from Anchor Point to the head of Kachemak Bay and the communities across the bay, I have received several calls and requests to speak out on this issue. My constituents are very, very concerned that this action will undermine the good work of this division.

It is a known fact that the Fish & Game Habitat Division is a very efficient department, that rarely requires more than 14 days to complete permit requests. For my district in particular there is much concern for the continued oversight of precious salmon streams and wildlife habitat.

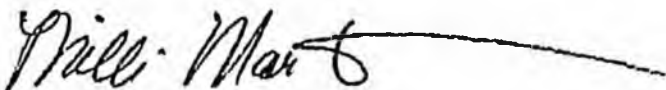
In 1996 the Kenai Peninsula Borough Assembly passed Resolution 96-010 urging the Governor to designate the Alaska Department of Fish and Game the lead agency in the monitoring of logging operations and providing the proper funding for the habitat division. This was done in a concern for the intensive logging that would be taking place, but it included any activity that could impact our precious natural resources.

It does not make sense to remove and destroy a very efficient department and place it in a department that is not related to fish, game and wildlife issues. I believe it needs to remain where it is and properly funded.

Therefore, I urge a vote to disapprove of executive order 107.

Thank you,

Sincerely,



Milli Martin
P.O. Box 2652
Homer, Alaska 99603

3/10/03

TESTIMONY TO SENATE RESOURCES COMMITTEE
AND HOUSE STATE AFFAIRS COMMITTEE
HEARINGS ON EXECUTIVE ORDER 107

As a longtime SE Alaska resident who spent 30 yrs Commercial fishing I was deeply disturbed to read of executive order 107,

During those years I came to realize how vital protection of our fish and wildlife habitat was — not just to protect future fish runs but to insure the subsistence and recreational needs of our residents. Fish, wildlife and their habitats are part of what makes SE Alaska so special. Any possibility that protections may be modified in the interest of short term gains is scary.

In the past when local development plans have had issues with the habitat division there has always been resolution through dialogue and compromise — please preserve a state agency which has demonstrated a willingness to take a long term view in the protection of our fish and wildlife.

Sincerely

Amy Johnson

Amy JOHNSON

423 Verstopia

SITKA AK 99835

747-8133

SENATE RESOURCES COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE HEARING
EXECUTIVE ORDER 107

KAREN L. JOHNSON
617 KATLIAN E33
SITKA, AK 99835
(907) 747-6762

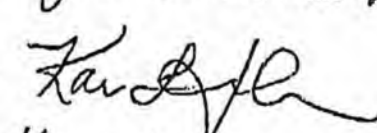
MARCH 10, 2003

AS A LIFELONG SITKA RESIDENT AND COMMERCIAL FISHERMAN I AM WRITING TO EXPRESS MY OPPOSITION TO EXECUTIVE ORDER 107 WHICH WOULD TRANSFER THE DEPARTMENT OF FISH AND GAME HABITAT DIVISION PERMITTING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES.

I BELIEVE THIS CHANGE WILL ONLY CAUSE HARM TO OUR RESOURCES. THE ADF&G HABITAT DIVISION HAS DONE A GREAT JOB KEEPING THE BALANCE BETWEEN DEVELOPMENT AND HABITAT PROTECTION. AS A FISHERMAN & SUBSISTENCE USER I RELY ON THEM TO PROTECT HABITAT CRUCIAL TO MY FUTURE AND THAT OF MY FAMILY'S. PLEASE KEEP THE ADF&G HABITAT DIVISION IN CHARGE, DO NOT TRANSFER THEIR PERMITTING AUTHORITY.

THE ADF&G HAS THE KNOWLEDGE TO KEEP CHECKS & BALANCES ON COMMERCIAL FISHING, GRANTED WE MAY NOT AGREE WITH IT ALL THE TIME BUT WE KNOW IT'S NECESSARY ~~TO~~ TO ENSURE OUR ABILITY TO FISH IN THE FUTURE. WHY DENY THEM (ADF&G) THE ABILITY TO PROTECT HABITAT IN THE SAME MANNER?

Thank you for your consideration

Sincerely, 
Karen Johnson

3/10/2003

ERIC B. STROMME

I AM NOT IN SUPPORT OF TRANSFERRING
ADF&G'S FISH HABITAT FUNCTIONS TO
DNR AS I BELIEVE THIS TRANSFER
WILL ADVERSELY AFFECT FISH HABITAT,
COMMERCIAL FISHERIES AND TOURISM
BASED ON SPORT FISHING.

I AM ALSO OPPOSED TO TRANSFERRING
AK COASTAL POLICY COUNCIL AND OFFICE
OF COASTAL MANAGEMENT TO DNR.

THANK YOU FOR THE OPPORTUNITY TO
COMMENT.



ERIC STORMME SITKA RESIDENT
MEMBER, AWRTA



Alaska Salmonid Biodiversity Program

March 10, 2003

**Senate Resources Committee
Testimony of Trout Unlimited on
E.O. No. 106 & E.O. No. 107**

My name is Jan Konigsberg and I am the director of Trout Unlimited's Alaska field office, based in Anchorage. Thank you for opportunity to comment on Executive Orders 106 & 107.

The Murkowski administration has stated that its executive orders consolidating environmental permitting and oversight functions in the Alaska Department of Resources are good for economic development and for environmental protection. As I understand it, the administration says that the State of Oregon's consolidated permitting and environmental review process was the inspiration for the executive orders and is a role model for economic growth and habitat protection.

The last time I checked, Oregon's unemployment was 7%, the state had a short fall of around \$2 billion, and the school year in many districts had to be shortened by three to five weeks.

And what about Oregon's environment? Could it be that the reason Oregon's economy is no longer a natural resource-based economy has something to do with the fact that Oregon has lost much of its productive habitat? Only about 10% of Oregon's old-growth forest remains. With nearly 700 dams, few free flowing rivers, and more than 13,000 culverts on state highways and forest roads block fish passage, no wonder Oregon's wild salmon abundance has fallen by 90%. With nearly three quarters of salmon stocks in the Columbia River Basin extirpated or are at some level of risk, why on earth would we want to follow in Oregon's endangered-species footsteps?

By choosing to ride down the Oregon Trail, we're going to be eating canned, pink salmon when we could be eating fresh sockeye. Those who don't countenance how they do it Outside, now tell us we better do it like they do Outside! This misguided approach makes one wonder if anyone's done the homework to produce a sensible plan for economic development. The administration believes that consolidating permitting and

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jkonigsberg@tu.org • www.tu.org

environmental oversight in DNR will remedy what it perceives to be the undue influence of environmentalists and professional biologists and then economic development apparently will take care of itself. If subtracting citizen participation, science and public policy analysis from the equation is the solution, we can look forward to more projects like the Ketchikan veneer plant or the Great Alaska Seafood Plant in Anchorage – no doubt a money maker for a few select individuals, but a net loss for the state.

Let's be honest, the Southeast timber industry, which depended mainly on federal dollars anyway, didn't tank because of environmentalists and habitat biologists, it tanked because world demand for dissolving pulp collapsed. The salmon industry, which depended mainly on Japanese demand, has shriveled not because of habitat biologists, but because of the huge supply of farmed salmon and the inability of Alaska salmon to compete effectively. Of course if the salmon industry is ever to regain market share, then in we are going to have to maintain high-quality salmon habitat.

When it comes to developing a meaningful plan to grow the economy, one starting point ought to be Alaska's comparative advantages. Many resource development projects cannot compete successfully because of their distance from markets and the high cost of production. On the flip-side, the state's natural advantage is that it is still natural. Undisturbed habitat is becoming increasingly scarce and prized by the multi-billion dollar recreational fishing, eco-tourism, and cruise ship tourism industries. Obviously, undisturbed habitat alone doesn't constitute an economic development plan, but no economic development plan can afford to ignore its intrinsic value. Moreover, any plan to bolster the economy that is not premised on ensuring minimum impact from developing the common-property resources of fish, wildlife, water, minerals and land would sacrifice public wealth for private gain.

If we are serious about stepping up the pace of economic development, we need more, not fewer habitat biologists. We need stricter, not laxer habitat protection standards. We need to be just as concerned about depleted habitat as we are about depleted oil reserves. In other words, we need to make sure we don't do it like they do Outside. Otherwise, like Oregon, we'll end up with a lot of roads along pock-marked forest land and along impounded rivers full of salmon spawned in hatchery buckets.

I would urge the Senate Resources Committee to oppose the executive orders. Further, before accepting a reorganization scheme that flies in the face of a 50-year old resource management system, the public deserves the benefit of a thorough inquiry into whether environmental protection and economic development would be well served by such reorganization.

Thank you.

Department of Fish and Game

Division of Habitat and Restoration

**Reorganization Proposal
In Accordance With Executive Order No. 107**

Effective Date: April 15, 2003

Functions Moving to DNR (36 positions)

- Title 16 fish passage and anadromous fish stream permitting
- Anadromous Waters Catalog (regulatory function)
- Project-related research and monitoring
- Consistency reviews, ACMP plan review, review of 6217 documents, coastal boundaries atlas
- Forest Resources and Practices Act permitting

Functions Moving to Sport Fish (18.5 positions)

- Fish stream surveys and database
- Various research and restoration projects (e.g., stream bank restoration manuals and assistance, ATV study and mapping)
- Oil spill contingency plan reviews
- ACMP support to DFG Commissioner

Functions Moving to Wildlife Conservation (5.5 positions)

- Special Areas Permitting
- Access Defense
- CARA/SWG
- North Slope Grizzly Project

Functions Moving to Comm Fish (2 positions)

- LTF Dive Survey
- Mariculture Leases

EVOS (1 position)

- ARLIS Librarian

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting

Job Class		HB IV	HB III	HB II	HB I	Admin Mgr	Admin Asst	Admin Clk	Exec	Totals
Range		20	18	16	14	17	13	10	26/24	
AREA OFFICES	Anch Area	1 ^s	6	2	1		1	1		12
	Mat-Su		1 ^s	1				0.5		2.5
	Kenai		1 ^s					1		2
	Fairbanks	1 ^s	4	2			1			8
	POW		1 ^s					0.5		1.5
	Petersburg		1 ^s							1
	Juneau	1 ^s	1	2			1			5
	JPO	1								1
	HQ					1			2	3
Totals		4	15	7	1	1	3	3	2	36

s = lead biologist/supervisor

DEPARTMENT OF FISH & GAME
Sport Fish Habitat Component inc. SSF

Job Class		HB IV	HB III	HB II	HB I	Cart II	Admin Mgr	AP II-IV	Totals	
Range		20	18	16	14	15	15	16-20		
	Anchorage	1 ^s	4	2		1	1	1	10	
	Fairbanks		1						1	
	Juneau		1						1	
	SSF		2	1	1.5			2	6.5	
Totals		1	8	3	1.5	1	1	3	0	18.5

Kachemak Bay Research Reserve

Job Class		HB IV	HB III	HB II	HB I	Educ Spec	Res Analys	Acct Clrk I	Adm Clk III	Totals
Range		FB IV	FB III	16	14	19	16	9	10	
	Homer	2 ^s	1	1.5	2	1	1	1	1	10.5

Wildlife Component

Job Class		HB III	HB II	HB 1	Cart II	FWT III			
Range		18	16	14	15	11			Totals
Anchorage		2		1	1	0.5			4.5
Fairbanks		1							1
Totals	0	3	0	1	1	0.5	0	0	5.5

Comm Fish, EVOS Component

Job Class		HB III	Libr II						
Range		18	17						Totals
Anchorage		1	1						2
Juneau		1							1
Totals	0	2	1	0	0	0	0	0	3

Habitat Division Layoffs and Position Deletions

ANTICIPATED LAYOFFS

Anchorage
 11-6029 Regional Supervisor
 11-6054 Habitat Biologist II
 11-6149 Cartographer I
 11-6053 Administrative Clerk
 11-6066 Administrative Clerk
 Non-Perm Administrative Clerk
 Non-Perm F&W Technician II
 Non-Perm Fisheries Biologist III
 Non-Perm Natural Resource Mgr I

Fairbanks
 11-6010 Regional Supervisor

Juneau
 11-6011 Deputy Director
 11-6003 Regional Supervisor
 11-7711 Assistant Director
 11-6047 Habitat Biologist III
 11-6043 Administrative Assistant
 11-7714 Accounting Technician
 Non-Perm College Intern

Sitka
 11-6135 Habitat Biologist III
 11-1702 Habitat Biologist I
 11-6058 Administrative Clerk

Ketchikan
 11-6069 Habitat Biologist III

Craig
 11-6083 Habitat Biologist II

VACANT POSITIONS TO BE DELETED

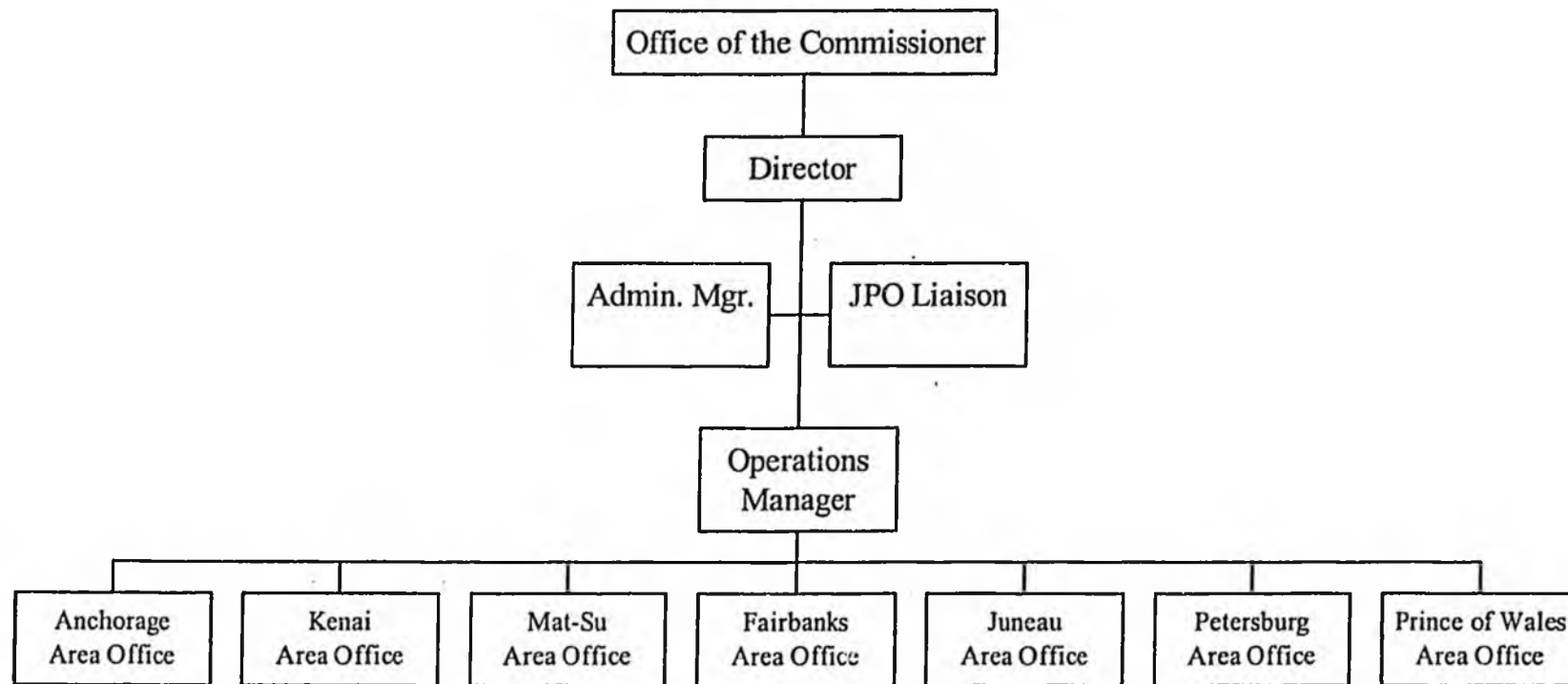
Anchorage
 11-135X Pipeline Liaison
 11-6146 Habitat Biologist III
 11-7716 Habitat Biologist III
 11-7717 Habitat Biologist III
 11-7600 Habitat Biologist I
 11-7090 F&W Technician III

Fairbanks
 11-6061 Habitat Biologist I

Juneau
 11-6018 Habitat Biologist I
 11-7097 Habitat Biologist I
 11-7713 F&W Technician III
 11-7108 Accounting Technician II
 11-6012 Administrative Clerk

Layoff notices issued March 7, 2003 with an effective date of May 1, 2003.

DEPARTMENT OF NATURAL RESOURCES
Office of Habitat Management & Permitting



Director Sport Fish

Anchorage	Juneau	Fairbanks	Southeast Sustainable Salmon Fund	Kachemak Bay Research
Habitat Biologist IV - 1 Habitat Biologist III - 4 Habitat Biologist II - 2 Cartographer II - 1 Administrative Manager - 1 Analyst Programmer - 1	Habitat Biologist III - 1	Habitat Biologist III - 1	Habitat Biologist III - 2 - Juneau Habitat Biologist II - 1 - Juneau Habitat Biologist I - 1.5 - Juneau Analyst Programmer - 2 Anchorage	Habitat Biologist IV - 1 Fishery Biologist IV - 1 Fishery Biologist III - 1 Habitat Biologist II - 1.5 Habitat Biologist I - 1 Fishery Biologist I - 1 Education Specialist - 1 Research Analyst II - 1 Accounting Clerk I - 1 Administrative Clerk III - 1



**Alaska Department of
Fish and Game**

Kevin Duffy, Acting Commissioner
PO Box 25526
Juneau, AK 99802-5526



**Alaska Department of
Natural Resources**

Tom Irwin, Commissioner
400 Willoughby Ave Ste 500
Juneau, AK 99801

Contacts: Nancy Long, ADF&G - 465-6166 or Wyn Menefee, DNR - 269-8412

News For Immediate Release

March 7, 2003

**ADF&G Working with DNR on Transition of
Title 16 Permitting Responsibilities**

The plan transferring Title 16 habitat permitting functions from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR) is designed to streamline permitting without sacrificing Alaska's environmental safeguards. Specific permitting functions will move to DNR, while certain habitat related functions will remain within ADF&G divisions.

"In order to facilitate this process change, Commissioner Irwin and I will be developing a detailed memorandum of understanding to ensure close coordination between the agencies," said Kevin Duffy, Acting Commissioner of ADF&G. "I'm looking forward to the new relationship between our agencies and will work hard to make this a positive transition."

DNR is creating the Office of Habitat Management and Permitting to administer the agency's new responsibilities. The new DNR office will include:

- Title 16 fish passage and anadromous fish stream permitting
- Anadromous Waters Catalog (regulatory function)
- Project-related research and compliance monitoring
- Consistency review, land use plan review
- Forest Resources and Practices Act permitting, monitoring and compliance

"I welcome this transition which will allow habitat biologists to work closely with the other permitting functions within DNR," said DNR Commissioner Tom Irwin. "I am impressed with the dedicated and professional staff that has been working on this reorganization." While protecting valuable fish and wildlife habitats, the new office will work to reduce permit issuance times and lower permitting costs through close coordination.

-More-

Habitat-related activities that will be maintained within other ADF&G divisions include:

- Special area permitting
- Fish stream surveys and database
- Various research and restoration projects
- Oil spill contingency plan reviews
- Land use support
- Wildlife-related projects
- Mariculture leases
- Log Transfer Facility Dive surveys

"An outstanding group of experienced and professional staff dedicated to resource conservation will be transferring to DNR," Duffy said. "In addition, I am very pleased that many of our staff will remain within the department."

The plan anticipates transferring 36 ADF&G Habitat positions to DNR with a remainder of 38 positions moving to other ADF&G divisions. The streamlining effort will layoff 22 currently filled positions from ADF&G's Habitat Division and eliminates 12 currently vacant positions.

The Executive Order directing the transition will become effective April 15, 2003.

###



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
 committee name
 committee on EO 107, dated March 10, 2003.
 bill/subject

MAR 18 2003

J. PAGES

Signed: GARVAN BUCARIA
 Testifier

SELF / RESOURCES
 Representing (Optional)

PO Box 870298
 Address

Wasilla AK 99687 907-373-4974
 Phone No.

1. Reject EO 107 - Don't sacrifice fish & wildlife habitat for short term solutions that may result in long term habitat loss.

MAR 18 2003
2. Don't allow EO 107 to remove Dept of Fish & Game Input from Forest Practices Act involvement. We must retain ADF&G oversight.

3. Don't Accept a substitute position (Deputy Commissioner) with no qualifications or ^{Job} criteria specified for ~~staff~~ ^{qualified} positions and staff already in Fish & Game.

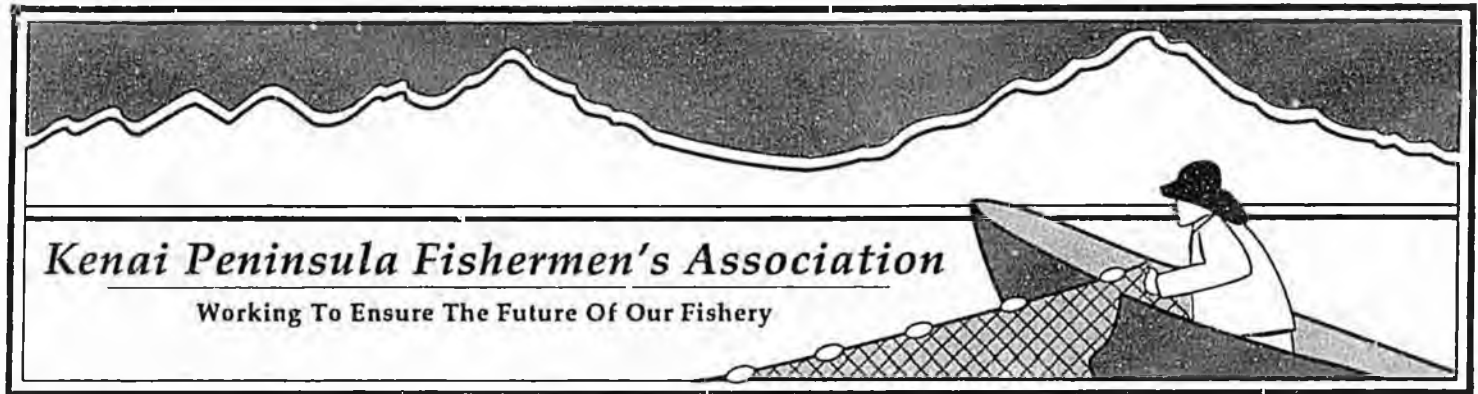
4. Don't threaten the use of Fish & Game License money for use in appropriate projects.

5. Don't Limit the use of Federal Fish & Game Funds by shifting Fish & Game Habitat protection & enforcement & improvement out of ADF&G Authority.

6. Don't negate the intent of the Anadromous Fish Act through Transfer of Fish & Game authority to DNR. Both DEC / DNR have joined to minimize protection of anadromous fish spawning habitat by ~~the~~ recommending mixing zones (mixing outflow) in spawning areas. Only ADF&G have been able to assure protection of such habitat.

8. The suggested changes under EO 107 seem to develop a similar independent decision authority under DNR. This ploy is recognized exactly for what it is - a concerted effort to circumvent critical review of resource development plans.

9. On Friday I had the privilege of speaking with the State forester - off the record. He seems like a fine person and believes he can administer the Governor's EO's etc. However he admits that the EO 107 will have a different perception to The General Public.



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

March 10, 2003

MAR 17 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:

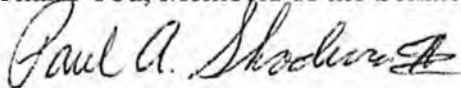
- 1) The Commissioner of Fish and Game should retain a voice in the final permitting process. It is extremely important that aquatic systems are protected to the highest *standards* available. Reviewing the Sustainable Salmon Fisheries Policy regulation, the importance of habitat is the pivotal theme 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



State Of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
907-283-2030

MAR 17 2003

Date: 3-11-03

Please accept the enclosed original(s) of written testimony for
the SRES teleconference hearing that was
scheduled on 3-10-03.

A copy of this testimony was transmitted to your committee via
fax on 3-11-03.

Thank you,

M. Byrnes

ALASKA HUNTERS UNITED
A Proud Voice for Conservation
PO Box 876485
Wasilla, Alaska 99687

MAR 17 2003

March 10, 2003

Dear Fellow Wildlife and Hunting Advocate:

We would like to introduce ourselves—and to ask for your help. Alaska Hunters United: A Proud Voice for Conservation is a new organization of hunters whose focus is the conservation of wildlife and wildlife habitat. Our Guiding Principles are:

- Our fundamental priority is to ensure the long-term conservation of wildlife populations and their habitats in Alaska.
- We proudly recognize the vital role hunters have played in the conservation of wildlife and habitat in North America over the past 100 years.
- We support diverse opportunities for people to use and enjoy Alaska's wildlife consistent with sustained use.
- We support all methods and means of hunting that are safe, legal, and ethical, while recognizing cultural differences.
- We respect other wildlife values and uses and will build upon common ground with others.

Alaska Hunters United are very concerned about Governor Murkowski's Executive Order to **transfer the permitting authority and other responsibilities of the Alaska Department of Fish and Game's Habitat Division to the Department of Natural Resources**. Since statehood the responsibility for protecting Alaska's wildlife, fish, and habitat **throughout the state**, and the responsibility to develop timber, oil and gas, mining, and similar resources on **state-owned land**, have resided in separate agencies. When conflicts between these two missions have arisen, those conflicts have been resolved by elevating them to the agency heads and, if necessary, the governor.

Governor Murkowski's Executive Order **eliminates this essential check and balance**, and instead will allow all such decisions to be made solely by the Department of Natural Resources. We need development in Alaska -- development that occurs with reasonable protection of Alaska's legacy of healthy and resilient fish and wildlife populations. Alaska's fish and wildlife populations themselves provide important economic benefits to the state through commercial and sport fishing, hunting, and tourism, as well as priceless subsistence, recreational, and cultural benefits to Alaska's people.

Governor Murkowski's Executive Order 107 transfers ADFG's permitting authorities under the Anadromous Fish Act and the Fishway Act to DNR. Fish habitats will receive less protection. ADFG will no longer be reviewing logging plans and monitoring logging operations on private, state, and federal lands. **Wildlife, fish and their habitats would be the inevitable casualties of such a transfer.**

Other changes are expected to occur independently of the EO. We understand that:

- Twenty-two Habitat Division employees will **lose their jobs**, 36 staff will be transferred to DNR, and 20 will be retained at ADFG. The staff remaining at ADFG will be dispersed into several divisions. Alaska will lose the benefit of years, and in some cases decades, of experience. With fewer employees, those remaining biologists will spend far less time in the field consulting with developers, providing field approval for projects, and checking on projects as they proceed.
- Fewer biologists means **permits will take more time to process, not less**. In fact, Habitat's permitting efficiency has been impressive: in 2002 the division reviewed almost 2000 Title 16 permit applications; the average time to process them was 14 days, and only nine were denied. On the other hand, DNR has a backlog of about 700 water rights applications, some of them pending for as long as 20 years.
- ADFG's involvement in state and federal land use planning will suffer. Currently the Habitat Division solicits and consolidates comments from throughout ADFG's diverse programs to ensure that ADFG communicates effectively with one voice. While ADFG might still comment on land management planning through area biologists in varying divisions, those divisions are already short on staffing and time, so ADFG's participation will be minimal and disjointed. Without the Habitat Division, ADFG will be a less effective player in planning efforts that have major, long-term implications for Alaska's fish and wildlife resources.

Many people have already spoken out against this proposal, including Governor Murkowski's own ADFG transition team, five former ADFG commissioners, the Alaska Fisheries Society, several commercial fishing organizations, and several advisory boards.

Executive Order 107 goes into effect on April 15 unless a majority of the legislature sitting in joint session **disapproves** the order. Presently, several legislative committees are holding hearings and Senator Elton and Representative Gara have introduced House and Senate Resolutions to override the Governor's Executive Order. We urge your group—and your members—to contact the following legislators and ask them to disapprove the Governor's Executive Order:

1. Attend the House Fisheries Committee **hearing** March 18th,
2. **Contact** "Important Committee Chairs or Other Leaders" (see next page), and
3. **Contact** your legislators and ask that they allow the resolutions to reach the House and Senate Floors for debate and passage.

Directions on how to contact your legislators and how to contact the Legislative Information Office in your area to participate in hearings are attached. If you're able to send us a copy of your letter we'll distribute it to other interested legislators.

Finally, if you'd like more information about Alaska Hunters United please don't hesitate to get in touch. Thanks.

Sincerely,

ROB HARDY *BY* *MEAM*

Rob Hardy
Alaska Hunters United

Contacting your Legislators

The best way to communicate with the legislature is by letter, fax, or phone. Since many offices ignore emails, an email should be your last choice. The best legislators to target are: those who chair or sit on committees to whom the EO has been referred or who have expressed an interest in holding hearings; those with whom you already have a good relationship; and the leadership. We've provided contact information below:

The **address** for all legislators is:

Senator/Representative _____
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

The **email address** for all legislators is:

Senator/Representative_First Name_Last Name@legis.state.ak.us.

Important Committee Chairs or Other Leaders

Rep. Paul Seaton, Chair, House Special Committee on Fisheries (465-2689/ph); (465-3472/fax).

Rep. Bruce Weyrauch, Chair, House State Affairs (465-3744/ph); (465-2273/fax).

Sen. Kim Elton, Senate Resources (465-4947/ph); (465-2108/fax).

Senate President Gene Therriault (465-4797/ph); (465-3884/fax).

House Speaker Pete Kott (465-3777/ph); (465-2819/fax).

To find your legislators name

Through the web, <http://w3.legis.state.ak.us/legdist/23/legdist23.htm>

Call the Legislative Information Office in your town:

Anchorage, 269-0111

Barrow, 852-7111

Bethel, 543-3541

Cordova, 424-5461

Delta Jct, 895-4236

Dillingham, 842-5319

Fairbanks, 452-4448

Glennallen, 822-5588

Homer, 235-7878

Juneau, 465-4648

Kenai Peninsula, 283-2030

Ketchikan, 225-9675

Kodiak, 486-8116

Kotzebue, 442-3880

MatSu, 376-3704

Nome, 443-5555

Petersburg, 772-3741

Seward, 224-5066

Sitka, 747-6276

Tok, 883-5020

Valdez, 835-2111

Wrangell, 874-3013

Subject: EO 107 Testimony

Date: Mon, 17 Mar 2003 14:59:07 -0800

From: "WILLIAM DENNERLEIN" <cdennerlein@msn.com>

To: <Scott_Ogan@legis.state.ak.us>, <Kim_Elton@legis.state.ak.us>

Dear Chairman Ogan:

Thank you for the opportunity to testify before Senate Resources on this important issue. I also appreciate your invitation to provide more thorough written testimony. Attached please find an analysis of EO 107 that I have prepared for your consideration.

There are many complex and significant issues associated with the EO. I have tried to address the most important. Even so, these require some background and the attached comments are not short. I have provided sub-headings and highlighted major points. I hope this is helpful to you, your colleagues and staff.

Thank you.

Chip Dennerlein



EO 107 Chips Testimony.doc

Name: EO 107 Chips Testimony.doc

Type: WINWORD File (application/msword)

Encoding: base64

Download Status: Not downloaded with message

Chip Dennerlein

1627 W. 14th Ave., Anchorage, AK 99501
907-278-3420. cdennerlein@msn.com

PREFACE

The following represents my analysis and observations regarding Executive Order 107, issue by Governor Murkowski. EO 107 would transfer the current permitting authority of the Alaska Department of Fish and Game (ADF&G) Habitat Division to the Department of Natural Resources (DNR). Under state law, the Governor can initiate the transfer by EO, but the Legislature has 60 days to review, approve, amend or reject the Governor's order before it permanently takes effect. Legislative action must occur in the form of a Joint Resolution in joint session.

First and foremost, I want to acknowledge and thank the members of the Legislature - both Democrats and Republicans, from the House and Senate - who have recognized the significance of the Governor's action, and who are now taking the time and effort to give EO 107 the serious scrutiny it deserves. From the moment the Governor Murkowski announced his intent to issue EO 107 in his first State of the State speech, the move triggered debate within sport, commercial and subsistence fishing groups, uncertainty within some key industry sectors, public opposition from every past Alaska Fish and Game commissioner, and a series of media reports. No one should be surprised. Natural resources - from oil and timber, to fish and wildlife - are at the very core of our lives, livelihoods and quality of life as Alaskans.

I particularly want to thank the members of the several legislative committees that have held (or plan to hold) hearings for giving Alaskans across the state an opportunity to present their concerns and views. I have testified before Senate Resources and House State Affairs, and will participate in additional hearings over the next week. I understand that the tremendous public response to the hearings made it necessary to limit verbal testimony to only a few minutes. I appreciate the invitation to submit more comprehensive comments in writing. While I know that reviewing the following comments (and those of many others who will likely submit written testimony) will require substantial time and effort, I urge you give them careful attention. The issues raised by EO 107 are serious and complex, with tremendous potential ramifications for both Alaska's environment and our future economy. A few minutes of verbal testimony can provide valuable information and raise important issues, but it does not allow time to explain or explore the issues. The Legislature is to be commended for holding hearings. They are a crucial first step. I hope that Legislators will now follow-through, review the issues in detail, and provide a forum and time for thoughtful discussion and debate.

INTRODUCTION

During 2002, I served as Director of the Division of Habitat and Restoration in ADF&G. My recent experience in that position has obviously gives me special knowledge of, and a specific management perspective on, the division and EO 107. I am familiar with the division's staff (in the three regional offices and field offices),

budget and funding sources, and daily operations. I was directly involved in a number of the major projects (e.g. Juneau Golf Course; Parks-Glenn Highway Interchange; Falls Creek Hydro) that the Governor has used as examples to justify EO 107. **Naturally, I draw on that knowledge in these comments. However, I do not offer these comments simply as a former Habitat director, or former ADF&G colleague of the individuals whose professional careers and personal lives are affected by EO 107.**

I present these comments primarily as a 30-year Alaskan resident, who has spent nearly 25 years working in the field of natural resources management and conservation. I have worked for the State of Alaska twice during my career, the great majority of that time as a special assistant and director in the Alaska Department of Natural Resources. I have spent more of my career outside of government than inside. Over the years I have dealt with ADF&G Habitat division as: a municipal executive during the period of greatest growth and construction (including road construction) in Anchorage's history; a resource consultant and project permitter for an oil and gas production company; and the manager of a commercial fishing company. My comments also reflect these experiences and perspectives. **From all of these perspectives, I urge the Legislature to reject EO 107. It is bad public policy – and it is bad business.**

EO 107 constitutes a dramatic, fundamental change to Alaska's current system of resource management. Governor Murkowski continues to promote EO 107 by accusing habitat biologists of holding up legitimate economic developments based on personal agendas, while assuring Alaskans that moving ADF&G personnel and authority to DNR will not reduce protection of Alaska's fish and wildlife resources. He points to projects that, he asserts, are examples of many projects where ADF&G Habitat division has been the only agency blocking approval. He says the move will reduce bureaucracy and improve efficiency. And he claims the transfer will mean better use of "good science" in decision-making. In addition to the Governor's assertions, ADF&G acting-commissioner Kevin Duffy recently assured southeast fishermen that ADF&G will still retain authority to protect fish habitat. If these statements were true, the Governor's plan would be a good deal. The problem is, none of these statements are true.

I was initially astounded – and am appalled – at extent to which misleading statements and outright falsehoods have been (and are still being) put forth to justify EO 107. As a result, many Alaskans are (understandably) confused about what EO 107 actually is and does. As a prime example, the current president of United Fishermen of Alaska recently wrote a newspaper opinion column supporting the Governor action on EO 107. It was heartfelt. It was also about as far off the mark as one could get. There is no question that Alaska's fishermen are facing many pressures. But *not one* of the examples in the column had anything whatsoever to do with the division of Habitat or ADF&G permit authority. His two prime examples were: 1) increased restrictions based on concerns over Steller sea lion populations – a federal regulatory issue driven by agencies such as National Marine Fisheries Service (NMFS) and U. S. Fish and Wildlife Service (USFWS); and 2) long permit delays for a fish processing facility in Akutan - an air-quality issue (emissions and transmission of persistent organic pollutants) driven by EPA with some involvement by state DEC. The

examples had *nothing* to do with the issue at hand, and his acceptance of the Governor's assurance that stewardship over fish habitat would not diminish was simply blind faith. No responsible government official or business executive would ever make a decision – especially one with the significant and long-term ramifications of EO 107 – based on fiction and blind faith.

I do not fault Alaskans who accept or believe these statements. Making fun of politicians is an Alaskan and American tradition. But most people are generally inclined to trust their elected officials. The first responsibility to promote truth – to lead rather than mislead – lies with leadership itself.

Unlike the Administration, I will not make generalized or vague assertions. Nor do I expect you to take these comments at face value. I will be glad to answer any follow-up questions with specifics, and verify my statements with documentation. In addition, I will make myself available to meet with legislators and staff, and/or participate in any other appropriate forum for further review (e.g., oversight/advisory panel, public meetings, working group, etc.).

There's an old saying, "You can't find the right answer if you're debating the wrong questions." The purpose of the following comments is to convey good information, correct some of the major fictions, and help set the record straight. The Legislature and all Alaskans deserve the straight story about why EO 107 is needed – and what it will actually do. So far, the Administration has given us neither.

1. EO 107 ELIMINATES THE FUNDAMENTAL STATUTORY, HISTORIC ROLE OF THE DEPARTMENT OF FISH & GAME IN FISH HABITAT PROTECTION

EO 107 is not simply an issue about Habitat Division. It is an issue about the fundamental role of Alaska Department of Fish & Game in fish habitat protection. Over the years, fish habitat (Title 16) permits have been issued by ADF&G biologists working in Sport Fish division, a habitat section, and (for the past few decades), a habitat division. The division is simply an organizational structure. The legal responsibilities and authorities being transferred to DNR under EO 107 – AS 16.05.840 (Fishway Act) and AS 16.05.870 (Anadromous Fish Act) – have been the Commissioner of ADF&G's core statutory authorities for protection of fish passage and fish stream habitat since 1959. They are not vested in the habitat *division*, but in the *department*. If the Governor's action stands, this will be the first time in our state's history that Alaska's Commissioner of Fish and Game will have no specific, effective authority to protect waters important to migration, rearing and spawning of Alaska's Anadromous and resident fish populations. In plain English, that means salmon, trout, grayling, dolly varden, whitefish, burbot and many other species across the entire state.

EO 107 does not simply change permitting practice. It reverses the fundamental principle that has underlain Alaska's "check and balance" system of resource management since Statehood. Delegates to Alaska's Constitutional Convention, and the first Alaska Legislature considered the idea of a single agency responsible for all

resources. They wanted to facilitate development. They didn't want (and couldn't afford) big bureaucracy. But they were also keenly aware the tremendous importance of fish and wildlife, and particularly concerned about protection of salmon habitat. **After much discussion, the first Alaska Legislature decided to establish two agencies - DNR and ADF&G - with specific separate authorities, to ensure that both land development and fisheries habitat conservation had an effective voice future resource decisions.** When the current State Forest Resources Practices Act was amended in 1989, legislators again considered the question. Forest management and permitting was consolidated in DNR - with the specific exception that ADF&G retained authority over actions affecting fish passage and fish stream habitat. In addition, the State Forester must consult with - and "give deference" to - concerns of ADF&G biologists, prior to granting a request from a timber operator to selectively harvest individual trees within the coastal area stream buffers established on private lands by the Act

These past decisions have served us well. Today, one of the world's largest complex of oil fields operates on Alaska's North Slope. The world's largest open pit gold mine (e.g. Fort Knox) is located just outside Fairbanks, built in a valley that supports wildlife and grayling. Hundreds of millions of board feet of timber have been harvested from National Forest and Native-owned lands in Southeast watersheds. Major hydro-electric projects have been constructed in sensitive watersheds on the Kenai Peninsula (e.g. Bradley Lake) and Kodiak Island (e.g. Terror Lake), and electrical Inter-ties (e.g. Anchorage-Fairbanks) strung across hundreds of miles. All of these, and thousands of other developments, large and small, were developed with ADF&G habitat staff involvement and ADF&G permits. **We continue to develop oilfields, timber, roads, airports and communities. At the same time, Alaskans today continue to enjoy fish and wildlife opportunities that are unequalled in any other state, and are the envy of the world.** Alaska's fish habitats still support healthy populations of wild salmon, trout and other species for sport, commercial and subsistence users. **The fundamental "check and balance" system, enacted in 1959 and confirmed through public debate over succeeding years has been one of the foundations of this success.**

The personal assurances - given by the Governor and Acting Commissioner Duffy, and repeated by supporters of the transfer - that ADF&G will still retain effective authority to protect fish habitat - are nothing more than that - personal statements. They are not supported by the facts and will not be supported by the law if EO 107 goes into effect. Let's just take one example. **Today, if a timber operator wants to harvest some trees from private land with the stream buffer designated by the Alaska Forest Resources Practices Act, DNR foresters must consult with - and "give deference" to - ADF&G biologists prior to deciding whether to allow the cut. If there is disagreement, the issue is elevated to respective DNR/ADF&G directors (and commissioners if necessary) for final decision. Under EO 107, the State Forester decides. The Forester is only required to give deference to the DNR Deputy Commissioner, his boss. There is no requirement that anyone from ADF&G even be involved in the process.** Does this sound like a system that will ensure an effective check-and-balance voice for fish habitat protection, especially over time?

Under Alaska's present system, DNR and ADF&G each come to the table with specific, separate authorities. Under EO 107, DNR has the legal authority, and ADF&G has DNR's "goodwill". I do not discount goodwill, and I have great respect for (and many friends among) the professionals in DNR. I have no doubt that Commissioner Erwin is sincere. The working relationship between Fort Knox gold mine, and ADF&G Habitat division has been exemplary at all levels. Clearly, Tom Erwin's personal commitment to responsible development and stewardship of fish and wildlife has been a key ingredient in the formula for success on this major project. However, what businessperson - or American - would trade a system based on separation of power, and check-and-balance, for a system where one entity held all the authority - and your interests depended solely on the other guy's "goodwill"? Not me - and I hope not you.

2. THE CHARACTERIZATIONS OF PROJECTS USED AS EXAMPLES TO JUSTIFY EO 107 ARE INACCURATE AND TOTALLY MISLEADING

The examples cited by the Governor, of important projects that have been delayed solely by habitat division are misleading at best. Several of the descriptions dramatically misrepresent the individual facts and the overall situation regarding the projects in question.

It is absolutely true that ADF&G concerns about the Glenn-Parks Highway Interchange project required extra time, effort and additional (federal) funding to resolve. The project involves massive fills on wetlands. It is surrounded by Palmer Hay Flats State Game Refuge. Most important, it affects a system of several small creeks that provide some of the most productive coho (silver) salmon-rearing habitat in upper Cook Inlet. Information was gathered. Design changes were made. Pilings were used in some locations where fill had been proposed. Larger culverts were installed. DOT transferred land (excess property acquired with federal highway funds) to ADF&G to be managed as part of the refuge, and water control structures were incorporated to protect and enhance wetland habitat (as recommended in the original Federal Highway Administration environmental impact statement for the proposed project). The issues were complex, the stakes high. Decisions were reviewed and agreements reached at the director and commissioner levels in both ADF&G and the Department of Transportation.

Were there frustrations and tensions along the way? Absolutely. Directors on both sides became personally involved at several points, with good reason. But that is exactly what management is about. Joe Perkins, the State's longest-serving DOT Commissioner, stated recently that ADF&G was right in pushing his department on the project, and that it was also appropriate that the issues rose to his level. The first, because engineers would not have perceived the significance of the small streams and wetlands to salmon-rearing. The second, because only the Commissioner of DOT could have committed the additional federal highway funds needed for effective mitigation. Interestingly, in a recent press article, all three of the key project managers stated on the record that they generally enjoyed very good working relationships with Habitat division.

The claim that Habitat division ignored the Alaska Coastal Management Program (ACMP) approval for the Glenn-Parks Highway Interchange project is absolutely false. The Consistency Finding (approval) required development of specific project stipulations and mitigation to address the ACMP Habitat Standard and protect highly productive fish habitat. The project is under construction today. The difference is that it will now provide safe, efficient travel for people – and safe passage and sustainability for salmon that migrate to five stream systems in the Mat-Su valley.

ADF&G also advanced concerns about fish spawning and fish passage in relation to certain design elements of the proposed Falls Creek Hydropower project in Gustavus. These are being evaluated as part of the planning and design process. **The Governor's statements that Habitat division is responsible for holding up the Falls Creek hydro project near Gustavus is absurd. Falls Creek is located inside the boundaries of Glacier Bay National Park, in congressionally designated Wilderness. An Alaska lodge business, local landowners and the neighboring Hoonah Indian Association have objected to the project, which is under the jurisdiction of the Federal Energy Regulatory Commission and subject to a federal EIS. The project may well be built, but it will almost surely require a congressionally authorized land exchange involving the National Park Service, the state and others. Those discussions have been underway. Given his familiarity and concerns about the project, it is surprising that the Governor is not aware of this, especially since the required exchange falls within the jurisdiction of the Senate Energy and Natural Resources committee which he chaired for the past six years.**

I will not address each of the other examples here. Suffice it to say, they don't hold water either, and I would be glad to discuss them with any legislators who are interested. I would only note that in a recent major news article, the statements by a City and Borough of Juneau official more than adequately debunked the version of the Juneau golf course project that has been used to promote EO 107.

Many people have testified that the average time for issuance of Title 16 permits by Habitat division is two weeks. This is true. It is also true that the great majority of permits issued actually fall close within the two-week "average". However, there are also wide time variances among the some of approximately two-thousand (2000) permits issued annually by the division. A number of permits are issued each year by habitat biologists on-site, in the field. These are often issued within one or two days. On the other hand, do some projects take much longer to permit than the two-week average? Absolutely. Are there legitimate reasons? Take a hard look at the actual details of these specific projects and then decide. Do not simply rely on blanket statements from project proponents who, for whatever reasons, may not have considered or anticipated potential impacts to public fish and wildlife resources that would likely result from their initial project designs or operational plans, or who needed (or wanted) additional time and effort to respond or mitigate impacts.

3. EO 107 WILL WEAKEN, NOT STRENGTHEN THE USE OF "GOOD SCIENCE" IN PROJECT REVIEW AND PERMITTING.

Governor Murkowski has stated that one of his primary objectives for management of the state's natural resources is to insure that decisions are made on the basis of "good science". I completely agree with and support the Governor on this point. "Good science" is not a thing, but a process. Every responsible agency and agency manager should continually seek to enhance the collection and use of new and better information that can help improve our ability to design and develop projects in ways that better sustain environmental resources. However, moving ADF&G permitting staff and permitting authority to DNR will not enhance the use of "good science". It will ultimately result in just the opposite.

Under EO 107, there will still be habitat function in ADF&G – for research, not permitting and compliance. Thus, there will now be two groups of habitat biologists – one in DNR for permitting, one in ADF&G for research. **Today, permit staff in Habitat division interact daily with professional biologists in other ADF&G divisions. They are regularly involved in team efforts within the department and with other state and federal agencies to gather and review current information, and to design and conduct additional research aimed at improving the ability to protect fish habitat as part of resource development or road projects. This is how – and where- science and decision-making get connected.**

Under EO 107, habitat permit staff will separated – by agency and by physical proximately – from fish and wildlife biologist colleagues and from on going science and research. **Separating permit biologists from research and their professional colleagues cannot possibly improve the link between "good science" and good decisions.** In the real world, what is most likely is that those with the most knowledge of how to successfully incorporate biological needs into project designs and permit requirements will leave. Back-filling vacant habitat biologist positions over time in DNR – an agency with much professional expertise, but not in the fields associated with habitat biology – will be equally problematic. The most likely long-term effect will be a decrease in the level of professional experience and quality among permit staff responsible for determining necessary and appropriate habitat stipulations and conditions for many projects.

It is also difficult to reconcile a commitment to "good science" with the recent condemnation of Habitat biologists for delaying projects by requesting additional information. The Juneau golf course was the very first example cited by the Governor as evidence that Habitat division staff attempt to drag out legitimate projects. **When the Juneau golf course project was proposed, eight salmon streams were documented on the project site in the state's Anadromous Waters catalogue. When (following a request from the local government), biologists conducted an updated on-site survey, twenty-three fish bearing streams and stream segments were identified. The streams are there. The fish are in the streams. That is fact. Habitat division worked with this fact – and with the project proponents – to successfully achieve a revised design that will**

allow the project to be developed and will adequately protect fish. **Would it have been "good science" to proceed on the basis of eight fish streams, when there were really twenty-three? Would it have been "good science" to simply ignore the fish resources in those streams once we knew what was there?** Unfortunately, that is exactly what recent criticism about requests for additional information imply - and what Alaskans should expect the real effects of EO 107 on "good science" will inevitably be.

4. EO 107 WILL NOT NECESSARILY RESULT IN PERMIT STREAMLINING OR EXPEDITE DEVELOPMENT OF MOST OF ALASKA'S IMPORTANT PROJECTS.

If EO 107 does result in *greater efficiency* regarding approval of development projects, I firmly believe that such efficiency will come at the cost of *reduced effectiveness* in the protection and stewardship of wildlife and (especially) fish resources.

Nearly all of the projects cited as justification for EO 107 - projects that were supposedly unreasonably delayed because habitat biologists requested additional information and/or recommended additional stipulations or mitigation to protect habitat values - were complex undertakings that have potentially significant effects on fish resources. Second, and equally important, in most cases, while ADF&G had general knowledge regarding biological values in the proposed project locations, important, site-specific information needed to adequately review proposed development plans, work with project proponents, and design reasonable and effective permit stipulations tailored to the specific site conditions, resource values and project needs was lacking when the projects were initially proposed. Third, again in most cases (and independent of any recommendations by ADF&G), project developers made material changes to initial project designs and construction plans during the course of the review and permitting process. None of these three factors are unreasonable. They are common to many projects, especially large-scale resource developments and public infrastructure. However, unless these realities are simply ignored, time is needed to adequately respond.

As has already been shown, in the case of the Juneau golf course, only eight of an actual twenty-three fish-bearing streams in the project area were known (by the developers and ADF&G when the project began). Under the initial proposed design, fairways (areas cleared of all trees and brush and replanted in short grass) would have bisected four important stream segments. The plans would have also eliminated vegetative buffers and brushy cover (critical to preventing swings in water temperature and especially freezing events during winter months) on a number of additional tributary channels. In addition, the developers initially stated that no chemicals (herbicides, fungicides) would be used, but changed their plans when they realized that conditions in southeast Alaska would require some use of chemicals to protect greens and other areas from growth of mosses and mold. The project proponents are local residents. They are well intentioned, but they are not full-time developers or project engineers, and had limited resources. They were not prepared to respond quickly to the more detailed information about site conditions. The City and Borough of Juneau was particularly concerned about potential impacts to both fish resources and water

quality, and requested ADF&G to conduct additional site surveys. In the end (as has recently been reported in the news) **Habitat division offered to assist the developers in redesigning the project. If the developers agreed to take the updated information regarding fish streams into consideration, Habitat division would focus on developing stipulations tailored specifically to the project needs and to the most important habitat values of the site, rather than requiring the standard "buffer" on all tributaries. That is exactly what happened.** ADF&G habitat biologists helped develop a creative design that the agency can now support in good conscience – and has done so on record at City and Borough hearings. Finally, it is interesting to note that the City and Borough still has not issued final approval because of some remaining concerns.

Only over the past few years did ADF&G research (conducted primarily by Sportfish division as part of a project to determine fish movement and production in Mat-Su area stream systems such as the Cottonwood Creek-Wasilla Creek complex) document the extremely high productivity (six thousand coho per acre) of the small stream and wetland complex in the location of the Glenn-Parks Highway Interchange project. Even more recently, analysis of fish survey data indicates that juvenile coho salmon from as many as five different spawning streams migrate to this area for rearing. Research and monitoring efforts continue as this major "design-build" project proceeds. Just a few weeks ago, habitat biologists set fish traps under the ice in area where the contractor was scheduled to set pilings. Project engineers were astounded to find the traps packed with healthy juvenile coho, blackfish and other species – from locations that on the surface appeared to be nothing more than frozen marsh. **Habitat biologists and project engineers used the information to tailor construction activities to protect fish resources while enabling the project to proceed on schedule.**

One could certainly argue that development of these two projects would have been more efficient if the time and effort spent to gather site-specific information and develop site-specific mitigation measures was eliminated. But one would have to accept, given the facts, that the resultant mitigation measures (and the long-term protection of fish productivity) would have been far less effective. **Thus, it would have – certainly should have - made *no difference* whether those with responsibility to address fish protection issues for these two projects were sitting in ADF&G or DNR.** However, there are several other key factors regarding the nature of most major development projects in Alaska which argue that placing habitat permit staff in DNR instead of ADF&G could easily result in a *less efficient* and more confusing process.

Transferring fish habitat permit *authority* to DNR won't necessarily eliminate all of ADF&G's *involvement* in future Alaska development decisions. Under federal laws, such as the Fish and Wildlife Coordination Act, federal agencies are required to consult with the respective state *fish and wildlife* agencies on a variety of issues, including fish habitat protection and input into proposed development projects. In Alaska, under our current system, federal agencies have generally deferred to ADF&G's lead. **If the state's fish and wildlife agency no longer has authority over fish habitat protection, it is easy to imagine the U.S Fish and Wildlife Service, the Corps of Engineers, even EPA and National Marine Fisheries Service, taking a more active**